

SCOMM

62:18

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Administration Mark up
4-29-90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 567 (Finance)

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, civil penalties
9 for discharges of crude oil, and inspection authority
10 of the Department of Environmental Conservation; au-
11 thorizing certain additional uses of the oil and
12 hazardous substance release response fund and re-
13 stricting use of the fund for municipal grants and
14 reimbursable service agreements; authorizing the
15 Department of Environmental Conservation and munic-
16 ipalities to enter into agreements pertaining to
17 vessel traffic control and monitoring systems; relat-
18 ing to reporting requirements; and providing for an
19 effective date."

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

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

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

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

29 (c) Subject to the \$500,000,000 maximum set under (a) of this

1 section the court shall assess five [FOUR] times the penalty set out
2 in (a) of this section if the court finds

3 (1) the discharge was caused by the gross negligence or
4 intentional act of the defendant;

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

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

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

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

14 (1) facilitate coordinated and effective oil prevention and
15 discharge response in the state, including agreements relating to
16 development and enforcement of vessel traffic control and monitoring
17 systems for tank vessels and oil barges operating in or near the
18 waters of the state;

19 (2) provide for cooperative review of oil discharge preven-
20 tion and contingency plans submitted to the department under AS 46.-
21 04.030;

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

25 (4) provide for cooperative oil discharge notification
26 procedures.

27 * Sec. 4. AS 46.04.030 is amended to read:

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

29 (a) A person may not cause or permit the operation of an oil terminal

and the person is in compliance with the provisions of the P

1 facility in the state unless an oil discharge prevention and contin-
2 gency plan for the facility has been approved by the department [and
3 has been properly implemented]. THE DEPARTMENT IS THE ONLY STATE
4 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY
5 PLAN FOR THE PURPOSES OF THIS SECTION].

6 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
7 the operation of ~~an~~ ^{pipeline, or} [OFFSHORE] exploration or production facility in
8 the state unless an oil discharge prevention and contingency plan for
9 the facility has been approved by the department [and has been properly
10 implemented.] and the person is in compliance with the provisions of the P

11 (c) A person may not operate a tank vessel or an oil barge
12 within the waters of the state, or cause or permit the transfer of oil
13 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
14 an oil barge, unless an oil discharge prevention and contingency plan
15 for the tank vessel or oil barge has been approved by the department
16 [and has been properly implemented] and the person is in compliance with the plan.
17 [EXCEPT FOR PROSECUTIONS UNDER
18 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-
19 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-
20 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE
21 HAD BEEN APPROVED BY THE DEPARTMENT].

insert language
in attachment
#1

21 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at
22 least every three years.

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

1 section, and to ensure that the applicant properly implements the
2 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
3 CHARGE] contingency plan must provide for the use [OF THE BEST AVAIL-
4 ABLE TECHNOLOGY] by the applicant of the best technology that was
5 available at the time the contingency plan was submitted or renewed.
6 The department may require an applicant or holder of an approved
7 contingency plan to take steps necessary to demonstrate its ability to
8 carry out the contingency plan, including
9 (1) periodic training;
10 (2) response team exercises; and
11 (3) verifying access to inventories of [available] equipment,
12 supplies, and personnel. identified as available in an approved plan
13 (f) Upon request of a plan holder or on the department's own
14 initiative, the [THE] department, after notice and opportunity for
15 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
16 plan if the department [IT] determines that a change has occurred in
17 the operation of a facility [, MARINA] or vessel necessitating an
18 amended or supplemented plan, or the operator's discharge experience
19 demonstrates a necessity for modification. The department, after
20 notice and opportunity for hearing, may revoke its approval of a [AN
21 OIL DISCHARGE] contingency plan if the department [IT] determines that
22 (1) approval was obtained by fraud or misrepresentation;
23 (2) the operator does not have access to the quality or
24 quantity of resources identified in the plan; [OR]
25 (3) a term or condition of approval or modification has
26 been violated; or
27 ~~X~~ (4) the plan has not been properly implemented and the
28 deficiency materially affects the plan holder's response capability.
29 (g) Failure of a holder of an approved or modified [OIL

to comply with the provisions of the plan

1 DISCHARGE] contingency plan [to properly implement the plan, or] to have
2 access to the quality or quantity of resources identified in the plan
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources
4 within the shortest possible [FEASIBLE] time in the event of a spill
5 is a violation of this chapter for purposes of AS 46.03.760(a),
6 46.03.765, 46.03.790, and any other applicable law. If the holder of
7 an approved or modified [OIL DISCHARGE] contingency plan fails to
8 respond to and conduct cleanup operations of an unpermitted discharge
9 of crude oil with the quality and quantity of resources identified in
10 the plan and in a manner required under the plan, the holder is
11 strictly liable, jointly and severally, for the civil penalty assessed
12 under AS 46.03.758, 46.03.759, or 46.03.760 against any other person
13 for that discharge.

14 * Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

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

22 (i) Before the department approves or modifies a contingency
23 plan under this section, the department shall provide a copy of the
24 contingency plan to the Department of Fish and Game and to the Depart-
25 ment of Natural Resources for their review. The department shall by
26 regulation establish the procedures and time limits applicable to
27 agency review of contingency plans.

28 (j) Except as provided in (l) of this section, the holder of an
29 approved contingency plan required under this section shall maintain

1 in its region of operation, singly or in conjunction with other opera-
2 tors in its region of operation, sufficient oil discharge containment,
3 storage, transfer, and removal equipment, personnel, and resources to
4 rapidly contain a

5 (1) realistic maximum oil discharge and to remove that
6 discharge within 72 hours if the contingency plan is for ^{Pipeline} ~~an~~ explora-
7 tion or production facility;

8 (2) discharge in an amount equal to the capacity of the
9 largest oil storage tank at the facility and to remove that discharge
10 within 72 hours if the contingency plan is for an oil terminal facil-
11 ity; if the department determines that the oil terminal facility is
12 located in an area of high risk because of natural or manmade condi-
13 tions outside of the facility, the department may increase the volume
14 requirement under this paragraph so that the contingency plan must be
15 designed for response to a discharge that is greater in amount than
16 the capacity of the largest oil storage tank at the facility;

17 (3) discharge of oil in an amount equal to the maximum
18 capacity of the vessel or barge and to remove that discharge within 72
19 hours if the contingency plan is for a tank vessel or oil barge.

20 (k) Notwithstanding (j) of this section, failure to remove a
21 discharge within 72 hours does not constitute failure to properly
22 implement a contingency plan for purposes of (g) of this section.

23 (1) Notwithstanding (j) of this section, the department may
24 approve a contingency plan for a noncrude oil terminal facility or for
25 a tank vessel or barge carrying noncrude oil that provides for the
26 holder of the plan to maintain the equipment, personnel, and resources
27 required under (j) of this section outside the holder's region of
28 operation upon a showing satisfactory to the department that the
29 planning requirements of (j) of this section are otherwise satisfied.

1 (m) In this section

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

4 (2) ^{"in compliance with the provisions of the plan"}
5 ["properly implement"] means, with respect to a contin-
6 gency plan, to

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

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

12 (C) fulfill the assurances espoused in the plan in the
13 manner described in the plan;

14 (D) comply with terms and conditions attached to the
15 plan by the department under the authority of (e) of this sec-
16 tion; and

17 (E) successfully demonstrate the ability to carry out
18 the plan when required by the department under (e) of this sec-
19 tion;

20 (3) "realistic maximum oil discharge" means the maximum and
21 most damaging oil discharge that the department estimates could occur
22 during the lifetime of the facility based on the size, location, and
23 capacity of the facility; on the department's knowledge and experience
24 with the facility or with similar facilities; and on the department's
25 analysis of possible mishaps at the facility or at similar facilities;

26 (4) "region of operation," with respect to the holder of a
27 contingency plan, means the area where the operations of the holder
28 that require a contingency plan are located, the boundaries of which
29 correspond to the regional boundaries established by the commissioner
for regional master planning purposes under AS 46.04.210.

1 * Sec. 6. AS 46.04.040(a) is amended to read:

2 (a) A person may not cause or permit the operation of an oil
3 terminal facility in the state unless the person has furnished to the
4 department, and the department has approved, proof of financial abil-
5 ity to respond in damages. Proof of financial responsibility for a
6 crude oil terminal may not be less than \$50,000,000 per incident.
7 Proof of financial responsibility for a noncrude oil terminal may not
8 be less than \$25, per incident, for each barrel of total noncrude oil
9 storage capacity at the terminal or [WHICH HAS BEEN ACCEPTED BY THE
10 DEPARTMENT. ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000
11 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH
12 BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)]
13 \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000.
14 For purposes of this subsection, an oil terminal facility that stores
15 both crude oil and noncrude oil is subject to the financial responsi-
16 bility requirements applicable to the type of facility that corre-
17 sponds to the type of oil storage that predominates at the facility.
18 However, if the facility stores more noncrude oil than crude oil, the
19 \$25 per incident, per barrel requirement of this subsection applies to
20 each barrel of oil storage capacity at the facility.

21 * Sec. 7. AS 46.04.040(b) is amended to read:

22 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
23 operation of ~~an~~ ^{pipeline,} [OFFSHORE] exploration or production facility in the
24 state unless the person has furnished to the department, and the
25 department has approved, proof of financial ability to respond in
26 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ↓ Proof of financial
27 responsibility for an offshore exploration or production facility may
28 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of
29 financial responsibility for an onshore [exploration or] production

Proof of Financial responsibility for pipelines may not be less than \$50,000,000
per incident.

Proof of financial responsibility for an onshore exploration
Facility may not be less than \$5,000,000 per incident.

1 facility may not be less than \$20,000,000 per incident. ✓

2 * Sec. 8. AS 46.04.040(c) is amended to read:

3 (c) A person may not operate a tank vessel or an oil barge
4 within the waters of the state, or cause or permit the transfer of oil
5 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]
6 an oil barge, unless the person operating the tank vessel or oil barge
7 has furnished to the department, and the department has approved,
8 proof of financial ability to respond in damages. Proof of financial
9 responsibility under this subsection may not be less than

10 (1) \$300, per incident, for each barrel of storage capacity
11 or \$100,000,000, whichever is greater, for a tank vessel or barge
12 carrying crude oil;

13 (2) \$100, per incident, for each barrel of storage capacity
14 or \$1,000,000, whichever is greater, subject to a maximum of
15 \$35,000,000, for a tank vessel or barge carrying noncrude oil in an
16 amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR
17 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY
18 UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

19 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-
20 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE
21 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204
22 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

23 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS
25 GREATER;

26 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY
27 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
28 GREATER].

29 * Sec. 9. AS 46.04.040(d) is amended to read:

1 (d) Except for prosecutions under AS 46.03.790(b), it is not a
2 defense to an action brought for violation of (a) - (c) [(c)] of this
3 section that the person charged believed in good faith that proof of
4 financial ability to respond in damages had been furnished to, and
5 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
6 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

7 * Sec. 10. AS 46.04.040(e) is amended to read:

8 (e) Financial responsibility may be demonstrated by (1) self-
9 insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter
10 of credit approved by the department, or (6) other proof of financial
11 responsibility approved by the department, including proof of finan-
12 cial responsibility provided by a group of insureds who have agreed to
13 cover pollution risks of members of the group under terms the depart-
14 ment may prescribe. An action brought under AS 46.03.758, 46.03.759,
15 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT
16 PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court
17 directly against the insurer, the group, or another person providing
18 evidence of financial responsibility. The applicant, and an insurer,
19 surety, [OR] guarantor, person furnishing an approved letter of cred-
20 it, or other group or person providing proof of financial respon-
21 sibility approved by the department shall appoint an agent for service
22 of process in the state. For purposes of this subsection, an [AN]
23 insurer, other than a group of insureds whose agreement has been
24 approved by the department, must either be authorized by the Depart-
25 ment of Commerce and Economic Development to sell insurance in the
26 state or be an unauthorized insurer listed by the Department of Com-
27 merce and Economic Development as not disapproved for use in the
28 state.

29 * Sec. 11. AS 46.04.040(f) is amended to read:

1 (f) Acceptance of proof of financial responsibility expires
2 (1) one year from its issuance for self-insurance;
3 (2) on the effective date of a change in the surety bond,
4 guarantee, [OR] insurance agreement, letter of credit, or other proof
5 of financial responsibility; or
6 (3) on the expiration or cancellation of the surety bond,
7 guarantee, [OR] insurance agreement, letter of credit, or other proof
8 of financial responsibility.
9 * Sec. 12. AS 46.04.040(g) is amended to read:
10 (g) The person whose proof of financial responsibility is ac-
11 cepted by the department under this section shall notify the depart-
12 ment at least 30 days before the effective date of a change, expira-
13 tion or cancellation in the surety bond, guarantee, [OR] insurance
14 agreement, letter of credit, or other proof of financial responsibil-
15 ity. Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.
18 * Sec. 13. AS 46.04.040 is amended by adding new subsections to read:
19 (j) Upon acceptance and approval of proof of financial responsi-
20 bility under this section, the department shall issue to the applicant
21 a certificate stating that the state's financial responsibility re-
22 quirements have been satisfied. The certificate must include the name
23 of the facility, tank vessel, or barge for which it is issued and the
24 expiration date of the certificate.
25 (k) Notwithstanding the requirements of (e) of this section, the
26 applicant may provide evidence of financial responsibility provided by
27 an insurer or other person who does not agree to be subject to direct
28 action in state courts or to appoint an agent for service of process
29 if

1 (1) the department is satisfied that the insurance or other
2 form of financial responsibility covers judgments under the statutes
3 listed in (e) of this section;

4 (2) proof of \$50,000,000, or the amount required
5 by (a) - (c) of this section, whichever is less, in insurance or other
6 form of financial responsibility that meets the requirements of (e) of
7 this section is provided; and

8 (3) the applicant provides a sworn statement or affidavit
9 that insurance or other form of financial responsibility that meets
10 the requirements of (e) of this section is not available in greater
11 amounts.

12 * Sec. 14. AS 46.04 is amended by adding a new section to read:

13 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
14 amounts in AS 46.04.040 change, as provided in this section, according
15 to and to the extent of changes in the Consumer Price Index for all
16 urban consumers for the Anchorage metropolitan area compiled by the
17 Bureau of Labor Statistics, United States Department of Labor (the
18 index). The index for January of the year in which this section
19 becomes effective is the reference base index.

20 (b) The dollar amounts change on October 1 of each third year
21 according to the percentage change between the index for January of
22 that year and the most recent index used to determine whether to
23 change the dollar amounts. After calculation of the new amounts, the
24 resulting amounts shall be rounded to the nearest cent.

25 (c) If the index is revised, the percentage of change is cal-
26 culated on the basis of the revised index. If a revision of the index
27 changes the reference base index, a revised reference base index is
28 determined by multiplying the reference base index applicable by the
29 rebasing factor furnished by the United States Bureau of Labor

1 Statistics. If the index is superseded, the index referred to in this
2 section is the one represented by the Bureau of Labor Statistics as
3 reflecting most accurately changes in the purchasing power of the
4 dollar for Alaskan consumers.

5 (d) The department shall adopt a regulation announcing

6 (1) on or before June 30 of each third year, the changes in
7 dollar amounts required by (b) of this section; and

8 (2) promptly after the changes occur, changes in the index
9 required by (c) of this section, including, if applicable, the numer-
10 ical equivalent of the reference base index under a revised reference
11 base index and the designation or title of any index superseding the
12 index.

13 (e) The department shall also provide notification of a change
14 in dollar amounts required under (b) of this section to the clerks of
15 court in each judicial district of the state.

16 * Sec. 15. AS 46.04.050 is amended to read:

17 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE
18 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE
19 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and
20 46.04.060 do not apply to an oil terminal facility that has an effec-
21 tive storage capacity of less than 5,000 [10,000] barrels of crude oil
22 or less than 10,000 barrels of noncrude oil.

23 * Sec. 16. AS 46.04.060 is amended to read:

24 Sec. 46.04.060. INSPECTIONS. [In addition to other rights of
25 access or inspection conferred upon the department by law or other-
26 wise, the department may at reasonable times enter and inspect oil
27 [OIL] terminal facilities, [OFFSHORE] exploration and production
28 facilities, tank vessels, and oil barges within the territorial juris-
29 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE

See substitute
language in
attachment
#2

1 DEPARTMENT] to

2 (1) ensure compliance with the provisions of this chapter;

3 (2) examine the structural integrity of tank vessels, oil
4 barges, oil terminal facilities, oil exploration and production facil-
5 ities, pipelines, and other facilities related to the exploration,
6 production, storage, and transportation of oil; or

7 (3) participate in an examination of the structural integ-
8 riety of tank vessels and oil barges by the United States Coast Guard.]

9 * Sec. 17. AS 46.04.200 is amended to read:

10 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall
11 prepare and annually review and revise a statewide master oil and
12 hazardous substance discharge [AND] prevention and contingency plan.

13 (b) The state master plan prepared under this section must

14 (1) take into consideration the elements of an oil dis-
15 charge prevention and contingency plan approved or submitted for
16 approval under AS 46.04.030;

17 (2) clarify and specify the respective responsibilities of
18 each of the following in the assessment, containment, and cleanup of a
19 catastrophic oil discharge or of a significant discharge of a hazard-
20 ous substance into the environment of the state:

21 (A) agencies of the state;

22 (B) municipalities of the state;

23 (C) appropriate federal agencies;

24 (D) operators of facilities;

25 (E) private parties whose land and other property may
26 be affected by the oil or hazardous substance discharge; and

27 (F) other parties identified by the commissioner as
28 having an interest in or the resources to assist in the contain-
29 ment and cleanup of an oil or hazardous substance discharge;

1 (3) specify the respective responsibilities of parties
2 identified in (2) of this subsection in an emergency response; and
3 (4) identify actions necessary to reduce the likelihood of
4 catastrophic oil discharges and significant discharges of hazardous
5 substances.
6 (c) In preparing and annually reviewing the state master plan,
7 the commissioner shall
8 (1) consult with municipal and community officials, and
9 with representatives of affected regional organizations;
10 (2) submit the draft plan to the public for review and
11 comment;
12 (3) submit to the legislature for review, not later than
13 the 10th day following the convening of each regular session, the plan
14 and any annual revision of the plan; and
15 (4) require or schedule unannounced oil spill drills to
16 test the sufficiency of an oil discharge prevention and contingency
17 plan approved under AS 46.04.030 or of the cleanup plans of a party
18 identified under (b)(2) of this section.
19 * Sec. 18. AS 46.04.210(a) is amended to read:
20 (a) For any region of the state, the boundaries of which are
21 determined by the commissioner by regulation, in which the department
22 is required to review and approve an oil discharge prevention and
23 contingency plan submitted by a person under AS 46.04.030, the depart-
24 ment shall prepare and annually review and revise a regional master
25 oil and hazardous substance discharge [AND] prevention and contingency
26 plan.
27 * Sec. 19. AS 46.04.900(8) is amended to read:
28 (8) "[OFFSHORE] exploration[or production] facility" means a
29 platform, vessel, or other facility used to explore for [or produce]

Insert language
in attachment
#3

1 hydrocarbons ^{or on} in the waters of the state ^{platforms or} or on land in the state; the
2 term does not include ^{platforms or} vessels used for stratigraphic drilling or other
3 operations that [WHICH] are not authorized or intended to drill to a
4 producing formation;

5 * Sec. 20. AS 46.04.900(15) is amended to read:

6 (15) "tank vessel" means a self-propelled waterborne vessel
7 that is constructed or converted to carry liquid bulk cargo in tanks
8 and includes tankers, tankships, and combination carriers when carry-
9 ing oil; the term does not include vessels carrying oil in drums,
10 barrels, or other packages, or vessels carrying oil as fuel or stores
11 for that vessel;

12 * Sec. 21. AS 46.08.040 is amended to read:

13 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
14 money from the fund to

15 (1) investigate and evaluate the release or threatened
16 release of oil or a hazardous substance, and contain, clean up, and
17 take other necessary action, such as monitoring and assessing, to
18 address a release or threatened release of oil or a hazardous sub-
19 stance that poses an imminent and substantial threat to the public
20 health or welfare, or to the environment;

21 (2) pay all costs incurred

22 (A) to establish and maintain the oil and hazardous
23 substance response office and for the expenses of the oil and
24 hazardous substance response corps and the oil and hazardous
25 substance response depots established by that office;

26 (B) to review oil discharge prevention and contingency
27 plans submitted under AS 46.04.030;

28 (C) to conduct training, response exercises, inspec-
29 tions, and tests, in order to verify equipment inventories and

1 ability to prevent and respond to oil and hazardous substance
2 release emergencies, and to undertake other activities intended
3 to verify or establish the preparedness of the state, a munic-
4 ipality, or a party required by AS 46.04.030 to have an approved
5 contingency plan to act in accordance with that plan; and

6 (D) to verify or establish proof of financial respon-
7 sibility required by AS 46.04.040;

8 (3) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation, and Liability Act of
11 1980); [AND]

12 (4) recover the costs to the state or to a municipality of
13 a containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance; [.]

15 (5) prepare, review, and revise

16 (A) the state's master oil and hazardous substance
17 discharge [AND] prevention and contingency plan required by
18 AS 46.04.200; and

19 (B) a regional master oil and hazardous substance
20 discharge [AND] prevention and contingency plan required by
21 AS 46.04.210; and

22 (6) restore the environment by addressing the effects of an
23 oil or hazardous substance release.

24 * Sec. 22. AS 46.08.040 is amended by adding a new subsection to read:

25 (b) Except for direct response to a declared disaster emergency
26 relating to an oil or hazardous substance discharge or for specific
27 projects authorized by the legislature, the department may not receive
28 or expend money in the fund as grants to municipalities or for reim-
29 bursable service agreements with any state agency.

1 * Sec. 23. AS 46.08.060(a) is amended to read:

2 (a) The commissioner shall submit a report to the legislature
3 not later than the 10th day following the convening of each regular
4 session of the legislature. The report may include information con-
5 sidered significant by the commissioner but must include:

6 (1) the amount of money expended under AS 46.08.040 during
7 the preceding fiscal year;

8 (2) the amount and source of money received and money
9 recovered during the preceding fiscal year as specified in AS 46.08.-
10 020;

11 (3) a summary of municipal participation in responses
12 funded by the fund;

13 (4) a detailed summary of department activities in re-
14 sponses funded by the fund during the preceding fiscal year, including
15 response descriptions and statements outlining the nature of the
16 threat; in this paragraph, "detailed" includes information describing
17 each personal services position and total compensation for that
18 position, each contract in excess of \$20,000, and each purchase in
19 excess of \$10,000; and

20 (5) the projected cost for the next fiscal year of monitor-
21 ing, operating, and maintaining sites where response has been com-
22 pleted or is expected to be continued during the fiscal year.

23 * Sec. 24. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By
24 January 31, 1992, the Department of Environmental Conservation shall sur-
25 vey, inspect, and prepare an inventory of noncrude oil terminal facilities
26 in the state with an effective storage capacity of 5,000 to 10,000 barrels
27 in order to determine for each facility

28 (1) its actual storage capacity;

29 (2) the type of noncrude oil products stored;

1 (3) its age, design, construction, and general condition;
2 (4) the design and construction standards applicable or rele-
3 vant;
4 (5) the presence or absence of containment structures and equip-
5 ment;
6 (6) its ability to respond to a release or threatened release;
7 (7) the environmental sensitivity of the surrounding area and
8 the potential risk to the environment if a release occurs;
9 (8) the presence or absence of surface and subsurface pipelines
10 and storage tanks; and
11 (9) other appropriate information.
12 (b) By January 31, 1992, the Department of Environmental Conservation
13 shall report to the legislature the results of the survey required under
14 (a) of this section and its written recommendations concerning discharge
15 prevention and contingency requirements or design review requirements that
16 should be enacted for noncrude oil terminal facilities with storage capac-
17 ities of less than 10,000 barrels.
18 (c) Upon completion of the survey required under (a) of this section,
19 the Department of Environmental Conservation may
20 (1) notify each facility of the results of the facility's in-
21 spection; and
22 (2) provide each facility with recommendations and technical
23 assistance concerning identified deficiencies.
24 (d) The Department of Environmental Conservation may conduct the
25 inspections required under this section notwithstanding the provisions of
26 AS 46.04.050. The department shall conduct the inspections at reasonable
27 times.
28 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

DRAFT
4-30-90

Refiners
are oil
terminal
facilities

new IP to Section (e)

credit for prevention

p. 4, insert following 1. 12: The department may consider evidence that the holder of the contingency plan has implemented oil spill prevention measures and may, in its discretion, modify the standards set out in (j) of this section to reflect reduced risk of oil spills.

measures

P. 6, substitute the following for the whole page:

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:

encounter rate

(1) for discharges onto or into land from oil terminal facilities, contain ~~and~~ control a discharge in an amount equal to the capacity of the largest oil storage tank at the facility within 72 hours and remove the discharge within the shortest feasible time consistent with minimizing damage to the environment; *land cleanups are generally longer*

largest
tank
is
scrambled

(2) for discharges onto or into land from exploration or production facilities and pipelines, contain ~~and~~ control the realistic maximum oil discharge within 72 hours and remove the discharge within the shortest feasible time consistent with minimizing damage to the environment;

(3) for discharges onto or into waters from oil terminal facilities, contain ~~and~~ control, and remove 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 manmade conditions outside of the facility, it 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 capability of the largest oil storage tank at the facility;

(4) for discharges onto or into waters from exploration or production facilities and pipelines, contain ~~and~~ control, and remove the realistic maximum oil discharge within 72 hours;

(5) for discharges into or onto waters from tank vessels and oil barges, contain ~~and~~ control, and remove a discharge of up to 15% of the maximum capacity of the vessel or barge within 24 hours; contain, control, and remove a discharge of up to 60% of the maximum capacity of the vessel or barge within 72 hours; and contain, control, and remove a discharge of up to the entire maximum capacity of the vessel or barge within 144 hours; notwithstanding (j) of this section, the plan may provide for use of equipment, personnel, and resources maintained outside the holder's region of operation for purposes of containment, control and removal of the entire capacity of a vessel or barge.

5%

30%

100%

instated?
not
necessarily

(k) Notwithstanding (j) of this section, failure to

remove a discharge within the time periods set out in (j) does not constitute failure to comply with the provisions of a contingency plan for purposes of (g) of this section.

(1) Notwithstanding (j) of this section, the department may approve a contingency plan for a noncrude oil terminal facility or for a tank vessel or barge carrying noncrude oil that provides for the holder of the plan to maintain the required equipment, personnel, and resources outside the holder's region of operation upon a satisfactory showing to the department that the operator maintains or has access to sufficient equipment, personnel and resources within the region to contain, control, and remove at least 15% of the maximum capacity of the tank vessel or barge or 15% of the largest tank of the facility, within the region, and that the planning requirements of (j) of this section are otherwise satisfied.

o tanks and
a barge.

Attachment #1
4/29/90

CSHB 567 (Fin)

**CERTIFICATES FOR FINANCIAL RESPONSIBILITY AND CONTINGENCY
PLANS:**

p.3, line 21-22, add language as follows [AS 46.04.030(d):

Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the date by which the contingency plan must be submitted for renewal. A [AN OIL DISCHARGE] contingency plan must be renewed at least every three years.

(A similar certificate requirement for proof of financial responsibility is already in the bill at p. 11, lines 18-24.)

CSHB 567 (Fin)

INSPECTIONS

Starting at p.13, line 24, amend AS 46.04.060 to read:

following
safety
rules
reg

INSPECTIONS. (a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner, enter and inspect oil [OIL] terminal facilities, [OFFSHORE] exploration and production facilities, pipelines, tank vessels, and oil barges within the territorial jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to ensure compliance with the provisions of this chapter and to participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, pipelines, and facilities by federal and state agencies with jurisdiction.

written

(b) When the department determines that no federal or state agencies with jurisdiction are able to perform timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel or oil barge, it may, using personnel with qualifications in the areas being inspected, perform its own inspections of structural integrity and operating and mechanical systems.

permissive

good
cause
necessary

what
type
determination?

Bettye.
Concern about
state liability.

reason to
inspect

(9) "Production Facility" means a drilling rig, drill site, flow station, gathering centers, pump stations, storage tanks, wells and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition or store crude oil and associated hydrocarbons in or on the waters of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

(10) "Pipeline" means the facilities, including but not limited to piping, compressors, pump stations, storage tanks, and ~~loading terminals~~ used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels or refineries.

oil terminal facility definition
needs to drop
production facility
for this section.

As 46.04.030
new section

✓ Good Samaritan

(5) In the event of an oil discharge within or directly affecting the state, a person with an approved contingency plan under this section may, without liability ^{for failure to maintain required supplies, personnel, services} ~~under this section~~, loan ^{OR} or transfer cleanup or containment supplies, personnel, services or equipment to another person for the purpose of responding to that discharge:

- (1) upon notice to the department; and
- (2) if the transferor ^{requires} ~~is~~ to the replacement or return of the supplies, personnel, services or equipment at the earliest feasible time.

✓ language to allow sharing

- Doug will
get to
know it

AMENDMENT NO. _____

H.B. 566

567

AS 46.03.823 is amended to read:

Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance *whose acts or omissions are not contrary to a response plan or orders by a state or federal agency* is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section 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 any response action with respect to the release or threatened release [STRICTLY LIABLE UNDER THIS SECTION].

(c) The defense provided in AS 46.03.822 (b)(1)(B) is not

Amendment No. _____

HB 566

4/24/90

Page 2 of 3

available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

[(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 OR CONDITIONS OF A RESPONSE ACTION CONTRACT OR A REMEDIAL ACTION PLAN IF ONE HAS BEEN APPROVED BY THE DEPARTMENT.]

[(f)][e] This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

[(g)][f] In this section,

(1) "response action" means an action taken in connection with the mitigation or cleanup of a hazardous substance release or threatened release, including investigation, evaluation, plan development, mapping and surveying, engineering, design and con-

~~not contrary to existing law or better
language provided.~~

Amendment No. _____

HB 566

4/24/90

Page 3 of 3

struction, removal, and equipment provision;

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

(A) the department; [OR]

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

(C) a federal agency with jurisdiction over the release or threatened release; or

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

(3) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract; and

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract.

4/28/90

State Pipeline Inspections

The review and inspection of the Trans Alaska Pipeline System, Alaska Natural Gas Transportation System, and Trans Alaska Gas System have been coordinated through a single state point of contact established in the Office of the State Pipeline Coordinator. By Administrative Order, the Governor has assigned the Department of Natural Resources, through the State Pipeline Coordinating Office, the lead responsibility for processing the state right-of-way (A.S. 38.35) and coordination of state permitting, monitoring, and inspection actions under the authorities of all state agencies. This office also coordinates interaction with federal authorities dealing with these pipelines. Other state agencies having authority over the construction and operation of common carrier oil and gas pipelines, that will work through the State Pipeline Coordinating Office, include the Departments of Environmental Conservation, Fish and Game, Transportation and Public Facilities, Law, and the Division of Governmental Coordination.

Consistent with administrative procedures to date, an administrative order has been drafted to establish a management system for oversight of all common carrier oil and gas pipelines in the State (Exhibit I). Under this order, the Office of the State Pipeline Coordinator, located in the Department of Natural Resources, would coordinate, and serve as the single point of contact for, all inspection activities under the authority of the Department of Environmental Conservation and other state agencies.

DRAFT
May 1990

Administrative Order No. 104

Exhibit I

The purpose of this Order is to establish a management system for oversight of all common carrier oil or gas pipelines including designating the lead agency and procedures for processing and adjudicating applications, monitoring design, construction and close out of common carrier pipeline right-of-way leases. This Order defines responsibilities of State agencies and procedures the State will follow during the processing of the right-of-way lease and monitoring of preconstruction, construction, operations, closure and rehabilitation of common carrier lines.

FINDINGS:

- 1) It is the best interest of the people of the State of Alaska that North Slope gas and oil is expeditiously brought to market with minimum practicable effect on the environment, positive effects on the socioeconomic climate of Alaska, and safe design and construction.
- 2) Application processing, preconstruction and construction of common carrier pipelines will involve many State agencies to review the right-of-way lease application, preconstruction documents and plans, construction monitoring, permitting, licensing, taxing, or offsetting the impacts on Alaska's environment, its economy and its people. For this reason, close coordination among these agencies is necessary.
- 3) The review, processing and monitoring of past pipeline project rights-of-way of this magnitude (TAPS and NWA) have been coordinated through a single point of contact established in the Office of the State Pipeline Coordinator.
- 4) The Alaska Natural Gas Transportation System (ANGTS) is currently scheduled for construction along a similar alignment with TAGS and the existing Trans-Alaska Pipeline System.
- 5) Portions of the Trans-Alaska Pipeline System (TAPS) and TAPS Fuel Gas Pipeline are parallel or crossed by the TAGS route and their integrity is vital to the State of Alaska.
- 6) The President of the United States, through the Office of the Federal Inspector, has established a single point of contact with the federal government for matters relating to ANGTS.
- 7) The Bureau of Land Management (BLM) has been established as the lead federal agency to process the TAGS Environmental Impact Statement (EIS) and issue the federal grant of right-of-way to YPC.

8) TAPS corrosion and SPCC Plan Review.

9) It is desirable that the State have a single point of contact for right-of-way matters to ensure adequate coordination among State and federal authorizations and, where appropriate, develop substantially similar terms and conditions in these documents.

ORDER:

In light of the foregoing, I, Steve Cowper, Governor of the State of Alaska, order and declare the following:

- 1) Each State agency shall comply with applicable provisions of this Order to ensure that where appropriate, substantially similar terms and conditions are developed, implemented and placed on all federal, State and local authorizations for the common carrier lines on State and Federal land, and that a schedule is developed to implement this process. This includes the federal EIS, U.S. Army Corps of Engineers (USACE) 404 permit, State 401 certification, federal and State rights-of-way and associated stipulations.
- 2) The Department of Natural Resources, through the State Pipeline Officer, shall be the lead agency for the State processing of the AS 38.35 right-of-way and the review and coordination of the federal grant of right-of-way and the associated stipulations. In addition, the State Pipeline Officer will be the lead for the State for monitoring, preconstruction, construction, operation and closeout of the common carrier pipelines.
- 3) Each department will appoint a liaison officer who will be available to do necessary work to process the State right-of-way application, Alaska Coastal Management Program (ACMP) consistency review, federal EIS and other related State and federal authorizations for common carrier pipeline on a schedule established by the State Pipeline Office. Liaison officers shall represent their departments in matters relating to processing the State right-of-way application, issuance of respective authorizations and monitoring of the proposed and existing projects to assist the State Pipeline Officer and the State Pipeline Officer's staff in carrying out their responsibilities. Each liaison shall keep the State Pipeline Officer informed of actions taken on each common carrier pipeline.
- 4) The State Pipeline Officer shall have the authority and responsibility for planning and coordinating the input and activities of the liaison agencies and their staff for purposes of processing State authorizations and monitoring of field activities. At present, these agencies include the Departments of Natural Resources, Fish and Game, Environmental Conservation,

Transportation and Public Facilities, and Law, and the Division of Governmental Coordination. Other agencies are expected to assign a liaison officer who has other duties as well such as Revenue, Labor, APUC, CRA. If an agency's monitoring responsibilities expand to the point which a full-time liaison officer is needed, it will appoint one, with the concurrence of the Pipeline Officer who is responsible for coordinating and submitting necessary budget documents.

- 5) The Division of Governmental Coordination (DGC), through its liaison officer, shall coordinate the processing of the ACMP consistency determination(s) related to common carrier pipelines as provided under 44.19.145 and 6 AAC 50. The DGC liaison officer shall, in cooperation with the State Pipeline Officer, also coordinate the State's review of the federal EIS and, with the exception of rights-of-way and their associated stipulations, other permits or authorizations requiring involvement of more than one State agency (e.g., Corps of Engineers and 404 Permitting).
- 6) If a department's responsibilities require staff additional to the liaison officer, the department shall, with concurrence of the State Pipeline Officer, appoint additional staff. This staff will be under the supervision of the liaison officer or the officer's designee.
- 7) All applications for permits and other authorizations which the State may require of the sponsor of a common carrier pipeline shall be submitted by the sponsor to the State Pipeline Officer. The State Pipeline Officer shall forward the applications to the Division of Governmental Coordination or to the appropriate department liaison officer, who shall ensure that they are properly processed. The State Pipeline Officer shall receive a copy of the permit or other authorization issued.
- 8) To the extent consistent with applicable law, departments shall delegate permit or other authorization signatory authority to their liaison officers and/or to staff of the liaison officer.
- 9) Except for routine or follow-up informational inquiries by or to departmental liaison officers or other department staffs, as may be mutually agreed upon by the respective Commissioner and the State Pipeline Officer, all correspondence relating to pipeline monitoring between a department and the pipeline sponsor(s) or the United States Government shall be routed through the Office of the State Pipeline Officer and be reviewed by him.

This does not apply to agency liaison officers' communications with ~~their~~ respective agencies. The State Pipeline Officer and a department Commissioner may, if mutually agreeable, modify or amend this provision as it relates to that department's communications regarding pipeline monitoring.

10) Each department shall keep a full set of files in a central location on all aspects of its activities relating to common carrier pipelines.

11) The State Pipeline Officer shall establish those field monitoring teams and activities pertaining to common carrier pipelines and related facilities that the officer determines, with the concurrence of affected agencies, are in the best interests of efficiency and effectiveness. Such monitoring teams may be composed of staff from a number of agencies. Responsibilities and authorities of affected agencies may, consistent with law, be delegated to team members regardless of their department affiliation, and those team members shall conduct the entire field monitoring program of the agencies involved. The State Pipeline Officer shall appoint the team leader.

12) All applicable departments shall prepare and submit an annual budget request for all costs which are reimbursable under AS 38.35.140(b) and all other costs associated with the common carrier pipeline projects. These budget requests will be reviewed and will require approval by the State Pipeline Officer. All such budget requests will be submitted as a consolidated unit to the Division of Budget Review in a manner established by the Division. Costs will not be reimbursable unless proposed budgets are approved by the State Pipeline Officer. The State Pipeline Officer shall have the authority to negotiate reimbursement agreements for common carrier pipelines and ensure that reimbursement is secured promptly for costs incurred under approved budgets.

13) To the extent allowed by law, before taking enforcement action against the common carrier pipeline project sponsor(s), its agents or contractors for violation of State law relating to design, preconstruction, construction, operation and termination of the pipeline, the department involved shall consult with the State Pipeline Officer and consider the Officer's advice. Whenever feasible, and the department involved and the State Pipeline Officer agree on a particular course of action, such enforcement action shall be undertaken under the grant of lease and right-of-way issued by the Department of Natural Resources. For the purposes of this section, consultation is considered "infeasible" only if the nature of the violation requires prompt or immediate action, and the State Pipeline Officer or the Officer's designee is not available.

14) In the event of a dispute between departments regarding a matter covered under this Order, including matters involving annual ~~budget~~ requests, the departments involved will consult with the Department of Law, and (a) if the dispute involves the right-of-way lease and the matter cannot be resolved between a department and the State Pipeline Officer, the affected department Commissioner should attempt to resolve this matter with the Commissioner of Natural Resources, and the decision of the Commissioner of Natural Resources shall be final; (b) if the dispute involves a question covered by a department's statutory or regulatory authority, the dispute will be resolved by the department responsible for administering that law, and the decision of that department Commissioner is final. In all such disputes, affected Commissioners shall seek the views of the State Pipeline Officer, and consider these views before making a decision; (c) in disputes between Commissioners other than in cases subject to (a) and (b) above, the Office of the Governor shall resolve the matter.

15) The terms of this Order do not apply to those subject areas specifically excluded from the jurisdiction of the State Pipeline Officer.

16) This Order is for administrative purposes only, and does not create any third party rights.

17) The State Pipeline Officer is the designee of the Commissioner of the Department of the Natural Resources.

DATED at Juneau, Alaska, this _____ day of _____

Steve Cowper
Governor

Page 1:

Comments:

1. Dave--Obviously we need to be sure that there is a provision for ample time for existing facilities to draft plans and for DEC to approve them.

2. DEC should be required to complete its review and either approve or deny within a fixed time.

Pg. 3:

line 2 -- delete "and has been properly implemented."
add "and the person is in compliance with the provisions of the plan."
(Literally, contingency plans can only be "implemented" when the event they are designed to respond to has occurred.

line 7 -- delete "offshore exploration or"
add "an offshore drilling vessel or a"
add after facility ", whether on shore or offshore, or a transportation system"

line 9 -- delete "has been properly implemented"
add "and the person is in compliance with the provisions of the plan."

line 16 -- delete "has been properly implemented"
add "the person is in compliance with the plan"

Pg. 4:

line 4 & 5 -- ?

line 11 -- delete "available"

line 12 -- add after "personnel" --"purported to be available in an approved plan."

line 25 -- add after "a" -- "material"

Page 5:

line 1: -- delete "to properly implement the plan, or"
add "to comply with the provisions of the plan, or"

line 18: -- (make the time specific in law)

Page 6: (suggests that lines 5 - 22 be deleted, and that, alternatively, the Department be required to adopt regulations establishing reasonable standards.)

If lines 5 - 22 are not deleted then:

line 6: -- delete "exploration"
add "offshore drilling vessel"

line 7: -- add before "production" -- "a"
add after "facility" -- "whether onshore or offshore or
a transportation facility;"

lines 8 - 22: ?--couldn't come up with changes

line 24: -- delete "noncrude oil"
add "refined hydrocarbon products"

line 25: -- delete "noncrude oil"
add "refined hydrocarbon products"

Page 7:

lines 19-24 -- (This is simply unworkable--this definition actually defines the "unrealistic" maximum discharge)

Page 8:

Lines 7-10 -- ? Can Tesoro do?

line 7,8 & 15: -- delete "noncrude oil"
add "refined hydrocarbon products"

line 23: --- delete "OFFSHORE exploration"
add "offshore drilling vessel"
add after "or" -- "a"
add after "facility" -- ",whether onshore or
offshore,"

line 27: -- delete "exploration"
add "drilling vessel"
add before "production" -- "a"
add after "facility" -- "whether onshore or offshore
or a transportation facility"

line 29: -- delete "exploration or"

Page 9:

line 15: -- delete "noncrude oil"
add "refined hydrocarbon products"

Page 11:

line 23: -- add after "of the" -- "vessel,"

Page 13:

line 22: -- delete "noncrude"
add "refined hydrocarbon products"

line 27: -- delete "exploration"
add "offshore drilling vessels"

line 28: -- add after "facilities," -- "whether onshore or
offshore,"

Page 14:

line 4-6: ? Structural?

line 4: -- delete "oil exploration"
add "offshore drilling vessels"

line 5: -- add after "ities" -- "whether offshore or onshore"

Page 15:

line 28 -- much of section 19 is replaced with:

(8) "offshore drilling vessel" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, including but not limited to a jack-up drilling rig, a semisubmersible drilling rig, or floating drilling ships which are designed and authorized or intended to drill exploratory oil and gas wells. The term does not include vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "production facility" means one or more lease or unit facility, whether on state, federal or private lands, used to produce, gather, clean, dehydrate, condition, and store crude oil and associated hydrocarbons as well, including the pipeline or pipelines used to transport the treated crude oil and associated hydrocarbons to the inlet of a common-carrier pipeline system for delivery to market.

(10) "transportation facility" means the combined common-carrier facilities, including but not limited to compressors, pump stations, pipelines, storage tanks, loading terminals, and flowlines used to transport crude oil and associated hydrocarbons from one or more production facility to marine vessels or

refineries.

(11) "unit" means two or more oil and gas leases covering all or part of one or more potential hydrocarbon accumulations, or all or part of one or more adjacent or vertically separate oil or gas reservoirs which are subject to an agreement or plan of development and operation for the recovery of oil and gas without regard to separate lease ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan. "

Page 18:

line 23 & 25: -- delete "noncrude oil"
 add "refined hydrocarbon products"

line 29: -- delete "noncrude oil"
 add "refined hydrocarbon"

Page 19:

line 16: -- delete "noncrude oil"
 add "refined hydrocarbon products"

Hawkins pld

Original sponsor(s): Rules/Governor

1. A.R. - Obviously, we need to call
that there is a provision for imp.
time for existing facilities to do
plans and for DEC to approve them.

(D) DEC should be required

BY THE FINANCE COMMITTEE

To complete its review a

either approve or dis

within a fixed time

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 567 (Finance)

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, civil penalties

9

for discharges of crude oil, and inspection authority

10

of the Department of Environmental Conservation; au-

11

thorizing certain additional uses of the oil and

12

hazardous substance release response fund and re-

13

stricting use of the fund for municipal grants and

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reimbursable service agreements; authorizing the

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Department of Environmental Conservation and munic-

16

ipalities to enter into agreements pertaining to

17

vessel traffic control and monitoring systems; relat-

18

ing to reporting requirements; and providing for an

19

effective date."

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

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

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

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

29 (c) Subject to the \$500,000,000 maximum set under (a) of this

1 section the court shall assess five [FOUR] times the penalty set out
2 in (a) of this section if the court finds

3 (1) the discharge was caused by the gross negligence or
4 intentional act of the defendant;

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

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

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

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

14 (1) facilitate coordinated and effective oil prevention and
15 discharge response in the state, including agreements relating to
16 development and enforcement of vessel traffic control and monitoring
17 systems for tank vessels and oil barges operating in or near the
18 waters of the state;

19 (2) provide for cooperative review of oil discharge preven-
20 tion and contingency plans submitted to the department under AS 46.-
21 04.030;

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

25 (4) provide for cooperative oil discharge notification
26 procedures.

27 * Sec. 4. AS 46.04.030 is amended to read:

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

29 (a) A person may not cause or permit the operation of an oil terminal

person
and the ~~applicant~~ is in
compliance with the
provisions of the plan.

(literally) that agency plans can be
"implemented" when the OSCAT plan
designed to respond is not approved

1 facility in the state unless an oil discharge prevention and contin-
2 gency plan for the facility has been approved by the department and
3 has been properly implemented] [THE DEPARTMENT IS THE ONLY STATE
4 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY
5 PLAN FOR THE PURPOSES OF THIS SECTION].

6 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
7 the operation of ~~an offshore drilling vessel or a~~ an offshore exploration or production facility in the
8 the state unless an oil discharge prevention and contingency plan for
9 the facility has been approved by the department and has been properly
10 implemented.] *Same comments above.*

11 (c) A person may not operate a tank vessel or an oil barge
12 within the waters of the state, or cause or permit the transfer of oil
13 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
14 an oil barge, unless an oil discharge prevention and contingency plan
15 for the tank vessel or oil barge has been approved by the department
16 and has been properly implemented *the person is in compliance with the plan.* [EXCEPT FOR PROSECUTIONS UNDER
17 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-
18 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-
19 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE
20 HAD BEEN APPROVED BY THE DEPARTMENT].

21 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at
22 least every three years.

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

1 section, and to ensure that the applicant properly implements the
2 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
3 CHARGE] contingency plan must provide for the use [OF THE BEST AVAIL-
4 ABLE TECHNOLOGY] by the applicant of the best technology that was
5 available at the time the contingency plan was submitted or renewed.
6 The department may require an applicant or holder of an approved
7 contingency plan to take steps necessary to demonstrate its ability to
8 carry out the contingency plan, including

- 9 (1) periodic training;
10 (2) response team exercises; and
11 (3) verifying access to inventories of ~~available~~ equipment,
12 supplies, and personnel purported to be available in an approved plan.

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

- 22 (1) approval was obtained by fraud or misrepresentation;
23 (2) the operator does not have access to the quality or
24 quantity of resources identified in the plan; [OR]
25 (3) ^{material} ~~a term~~ or condition of approval or modification has
26 been violated; or ~~the plan has not been properly implemented and the~~
27 (4) the plan has not been properly implemented and the
28 deficiency materially affects the plan holder's response capability.

29 (g) Failure of a holder of an approved or modified [OIL

1 DISCHARGE] contingency plan ^{to comply with ~~the~~ the provisions of the plan, or} ~~to properly implement the plan, or~~ to have
2 access to the quality or quantity of resources identified in the plan
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources
4 within the shortest possible [FEASIBLE] time in the event of a spill
5 is a violation of this chapter for purposes of AS 46.03.760(a),
6 46.03.765, 46.03.790, and any other applicable law. If the holder of
7 an approved or modified [OIL DISCHARGE] contingency plan fails to
8 respond to and conduct cleanup operations of an unpermitted discharge
9 of crude oil with the quality and quantity of resources identified in
10 the plan and in a manner required under the plan, the holder is
11 strictly liable, jointly and severally, for the civil penalty assessed
12 under AS 46.03.758, 46.03.759, or 46.03.760 against any other person
13 for that discharge.

14 * Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

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

22 (i) Before the department approves or modifies a contingency
23 plan under this section, the department shall provide a copy of the
24 contingency plan to the Department of Fish and Game and to the Depart-
25 ment of Natural Resources for their review. The department shall by
26 regulation establish the procedures and time limits applicable to
27 agency review of contingency plans.

28 (j) Except as provided in (l) of this section, the holder of an
29 approved contingency plan required under this section shall maintain

*Time
Specific
in
Law!*

1 (m) In this section

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

4 (2) "properly implement" means, with respect to a contin-
5 gency plan, to

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

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

11 (C) fulfill the assurances espoused in the plan in the
12 manner described in the plan;

13 (D) comply with terms and conditions attached to the
14 plan by the department under the authority of (e) of this sec-
15 tion; and

16 (E) successfully demonstrate the ability to carry out
17 the plan when required by the department under (e) of this sec-
18 tion;

19 (3) "realistic maximum oil discharge" means the maximum and
20 most damaging oil discharge that the department estimates could occur
21 during the lifetime of the facility based on the size, location, and
22 capacity of the facility; on the department's knowledge and experience
23 with the facility or with similar facilities; and on the department's
24 analysis of possible mishaps at the facility or at similar facilities;

25 (4) "region of operation," with respect to the holder of a
26 contingency plan, means the area where the operations of the holder
27 that require a contingency plan are located, the boundaries of which
28 correspond to the regional boundaries established by the commissioner
29 for regional master planning purposes under AS 46.04.210.

1 * Sec. 6. AS 46.04.040(a) is amended to read:

2 (a) A person may not cause or permit the operation of an oil
3 terminal facility in the state unless the person has furnished to the
4 department, and the department has approved, proof of financial abil-
5 ity to respond in damages. Proof of financial responsibility for a
6 crude oil terminal may not be less than \$50,000,000 per incident.
7 Proof of financial responsibility for a ~~noncrude oil~~ ^{refined hydrocarbon products} terminal may not
8 be less than \$25, per incident, for each barrel of total ~~noncrude oil~~ ^{refined hydrocarbon products}
9 storage capacity at the terminal or [WHICH HAS BEEN ACCEPTED BY THE
10 DEPARTMENT. ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000
11 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH
12 BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)]
13 \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000.
14 For purposes of this subsection, an oil terminal facility that stores
15 both crude oil and ~~noncrude oil~~ ^{refined hydrocarbon products} is subject to the financial responsi-
16 bility requirements applicable to the type of facility that corre-
17 sponds to the type of oil storage that predominates at the facility.
18 However, if the facility stores more ~~noncrude oil~~ ^{refined hydrocarbon products} than crude oil, the
19 \$25 per incident, per barrel requirement of this subsection applies to
20 each barrel of oil storage capacity at the facility.

21 * Sec. 7. AS 46.04.040(b) is amended to read:

22 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
23 operation of an ~~[OFFSHORE]~~ ^{offshore drilling vessel} exploration or ~~production~~ ^a facility in the
24 state unless the person has furnished to the department, and the
25 department has approved, proof of financial ability to respond in
26 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
27 responsibility for an offshore ~~exploration or production~~ ^{drilling vessel} facility ^a may ^{whether onshore or offshore}
28 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of
29 financial responsibility for an onshore ~~[exploration or]~~ production

transportation
or a
transportation

1 facility may not be less than \$20,000,000 per incident.

2 * Sec. 8. AS 46.04.040(c) is amended to read:

3 (c) A person may not operate a tank vessel or an oil barge
4 within the waters of the state, or cause or permit the transfer of oil
5 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]
6 an oil barge, unless the person operating the tank vessel or oil barge
7 has furnished to the department, and the department has approved,
8 proof of financial ability to respond in damages. Proof of financial
9 responsibility under this subsection may not be less than

10 (1) \$300, per incident, for each barrel of storage capacity
11 or \$100,000,000, whichever is greater, for a tank vessel or barge
12 carrying crude oil;

13 (2) \$100, per incident, for each barrel of storage capacity
14 or \$1,000,000, whichever is greater, subject to a maximum of
15 \$35,000,000, for a tank vessel or barge carrying ~~noncrude oil~~ ^{refined hydrocarbon product} in an
16 amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR
17 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY
18 UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

19 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-
20 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE
21 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204
22 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

23 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS
25 GREATER;

26 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY
27 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
28 GREATER].

29 * Sec. 9. AS 46.04.040(d) is amended to read:

(d) Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of (a) - (c) [(c)] of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

* Sec. 10. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an [AN] insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

* Sec. 11. AS 46.04.040(f) is amended to read:

1 (f) Acceptance of proof of financial responsibility expires
2 (1) one year from its issuance for self-insurance;
3 (2) on the effective date of a change in the surety bond,
4 guarantee, [OR] insurance agreement, letter of credit, or other proof
5 of financial responsibility; or
6 (3) on the expiration or cancellation of the surety bond,
7 guarantee, [OR] insurance agreement, letter of credit, or other proof
8 of financial responsibility.
9 * Sec. 12. AS 46.04.040(g) is amended to read:
10 (g) The person whose proof of financial responsibility is ac-
11 cepted by the department under this section shall notify the depart-
12 ment at least 30 days before the effective date of a change, expira-
13 tion or cancellation in the surety bond, guarantee, [OR] insurance
14 agreement, letter of credit, or other proof of financial responsibil-
15 ity. Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.
18 * Sec. 13. AS 46.04.040 is amended by adding new subsections to read:
19 (j) Upon acceptance and approval of proof of financial responsi-
20 bility under this section, the department shall issue to the applicant
21 a certificate stating that the state's financial responsibility re-
22 quirements have been satisfied. The certificate must include the name
23 of the ^{vessel} facility, tank vessel, or barge for which it is issued and the
24 expiration date of the certificate.
25 (k) Notwithstanding the requirements of (e) of this section, the
26 applicant may provide evidence of financial responsibility provided by
27 an insurer or other person who does not agree to be subject to direct
28 action in state courts or to appoint an agent for service of process
29 if

1 (1) the department is satisfied that the insurance or other
2 form of financial responsibility covers judgments under the statutes
3 listed in (e) of this section;

4 (2) proof of at least \$50,000,000, or the amount required
5 by (a) - (c) of this section, whichever is less, in insurance or other
6 form of financial responsibility that meets the requirements of (e) of
7 this section is provided; and

8 (3) the applicant provides a sworn statement or affidavit
9 that insurance or other form of financial responsibility that meets
10 the requirements of (e) of this section is not available in greater
11 amounts.

12 * Sec. 14. AS 46.04 is amended by adding a new section to read:

13 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
14 amounts in AS 46.04.040 change, as provided in this section, according
15 to and to the extent of changes in the Consumer Price Index for all
16 urban consumers for the Anchorage metropolitan area compiled by the
17 Bureau of Labor Statistics, United States Department of Labor (the
18 index). The index for January of the year in which this section
19 becomes effective is the reference base index.

20 (b) The dollar amounts change on October 1 of each third year
21 according to the percentage change between the index for January of
22 that year and the most recent index used to determine whether to
23 change the dollar amounts. After calculation of the new amounts, the
24 resulting amounts shall be rounded to the nearest cent.

25 (c) If the index is revised, the percentage of change is cal-
26 culated on the basis of the revised index. If a revision of the index
27 changes the reference base index, a revised reference base index is
28 determined by multiplying the reference base index applicable by the
29 rebasing factor furnished by the United States Bureau of Labor

1 Statistics. If the index is superseded, the index referred to in this
2 section is the one represented by the Bureau of Labor Statistics as
3 reflecting most accurately changes in the purchasing power of the
4 dollar for Alaskan consumers.

* 5 (d) The department shall adopt a regulation announcing

6 (1) on or before June 30 of each third year, the changes in
7 dollar amounts required by (b) of this section; and

8 (2) promptly after the changes occur, changes in the index
9 required by (c) of this section, including, if applicable, the numer-
10 ical equivalent of the reference base index under a revised reference
11 base index and the designation or title of any index superseding the
12 index.

13 (e) The department shall also provide notification of a change
14 in dollar amounts required under (b) of this section to the clerks of
15 court in each judicial district of the state.

16 * Sec. 15. AS 46.04.050 is amended to read:

17 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE
18 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE
19 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and
20 46.04.060 do not apply to an oil terminal facility that has an effec-
21 tive storage capacity of less than 5,000 [10,000] barrels of crude oil
22 or less than 10,000 barrels of ^{refined hydrocarbon products.} ~~noncrude oil.~~

23 * Sec. 16. AS 46.04.060 is amended to read:

24 Sec. 46.04.060. INSPECTIONS. In addition to other rights of
25 access or inspection conferred upon the department by law or other-
26 wise, the department may at reasonable times enter and inspect oil
27 [OIL] terminal facilities, [OFFSHORE] ^{offshore drilling vessel} exploration, and production
28 facilities, ^{whether onshore or offshore,} tank vessels, and oil barges within the territorial juris-
29 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE

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DEPARTMENT] to

(1) ensure compliance with the provisions of this chapter;

(2) examine the structural integrity of tank vessels, oil barges, oil terminal facilities, ^{offshore drilling vessels} ~~oil exploration~~ and production facilities, ^{whether offshore or onshore} pipelines, and other facilities related to the exploration, production, storage, and transportation of oil; or

(3) participate in an examination of the structural integrity of tank vessels and oil barges by the United States Coast Guard.

* Sec. 17. AS 46.04.200 is amended to read:

Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge [AND] prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of a catastrophic oil discharge or of a significant discharge of a hazardous substance into the environment of the state:

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commissioner as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

1 (3) specify the respective responsibilities of parties
2 identified in (2) of this subsection in an emergency response; and

3 (4) identify actions necessary to reduce the likelihood of
4 catastrophic oil discharges and significant discharges of hazardous
5 substances.

6 (c) In preparing and annually reviewing the state master plan,
7 the commissioner shall

8 (1) consult with municipal and community officials, and
9 with representatives of affected regional organizations;

10 (2) submit the draft plan to the public for review and
11 comment;

12 (3) submit to the legislature for review, not later than
13 the 10th day following the convening of each regular session, the plan
14 and any annual revision of the plan; and

15 (4) require or schedule unannounced oil spill drills to
16 test the sufficiency of an oil discharge prevention and contingency
17 plan approved under AS 46.04.030 or of the cleanup plans of a party
18 identified under (b)(2) of this section.

19 * Sec. 18. AS 46.04.210(a) is amended to read:

20 (a) For any region of the state, the boundaries of which are
21 determined by the commissioner by regulation, in which the department
22 is required to review and approve an oil discharge prevention and
23 contingency plan submitted by a person under AS 46.04.030, the depart-
24 ment shall prepare and annually review and revise a regional master
25 oil and hazardous substance discharge [AND] prevention and contingency
26 plan.

27 * Sec. 19. AS 46.04.900(8) is amended to read:

28 ~~(8) "[OFFSHORE] exploration or production facility" means a~~
29 ~~platform, vessel, or other facility used to explore for or produce~~
offshore drilling vessel means . . . (See new defi

I am not sure
of the numbering, but
these are now defined.

(9) ~~Fractionation~~ means
(10) ~~Transpiration~~ means
(11) ~~that~~ means
(12) ~~that~~ means

1 ~~hydrocarbons in the waters of the state or on land in the state~~; the
2 term does not include vessels used for stratigraphic drilling or other
3 operations that [WHICH] are not authorized or intended to drill to a
4 producing formation;

5 * Sec. 20. AS 46.04.900(15) is amended to read:

6 (15) "tank vessel" means a self-propelled waterborne vessel
7 that is constructed or converted to carry liquid bulk cargo in tanks
8 and includes tankers, tankships, and combination carriers when carry-
9 ing oil; the term does not include vessels carrying oil in drums,
10 barrels, or other packages, or vessels carrying oil as fuel or stores
11 for that vessel;

12 * Sec. 21. AS 46.08.040 is amended to read:

13 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
14 money from the fund to

15 (1) investigate and evaluate the release or threatened
16 release of oil or a hazardous substance, and contain, clean up, and
17 take other necessary action, such as monitoring and assessing, to
18 address a release or threatened release of oil or a hazardous sub-
19 stance that poses an imminent and substantial threat to the public
20 health or welfare, or to the environment;

21 (2) pay all costs incurred

22 (A) to establish and maintain the oil and hazardous
23 substance response office and for the expenses of the oil and
24 hazardous substance response corps and the oil and hazardous
25 substance response depots established by that office;

26 (B) to review oil discharge prevention and contingency
27 plans submitted under AS 46.04.030;

28 (C) to conduct training, response exercises, inspec-
29 tions, and tests, in order to verify equipment inventories and

1 ability to prevent and respond to oil and hazardous substance
2 release emergencies, and to undertake other activities intended
3 to verify or establish the preparedness of the state, a munic-
4 ipality, or a party required by AS 46.04.030 to have an approved
5 contingency plan to act in accordance with that plan; and

6 (D) to verify or establish proof of financial respon-
7 sibility required by AS 46.04.040;

8 (3) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation, and Liability Act of
11 1980); [AND]

12 (4) recover the costs to the state or to a municipality of
13 a containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance; [.]

15 (5) prepare, review, and revise

16 (A) the state's master oil and hazardous substance
17 discharge [AND] prevention and contingency plan required by
18 AS 46.04.200; and

19 (B) a regional master oil and hazardous substance
20 discharge [AND] prevention and contingency plan required by
21 AS 46.04.210; and

22 (6) restore the environment by addressing the effects of an
23 oil or hazardous substance release.

24 * Sec. 22. AS 46.08.040 is amended by adding a new subsection to read:

25 (b) Except for direct response to a declared disaster emergency
26 relating to an oil or hazardous substance discharge or for specific
27 projects authorized by the legislature, the department may not receive
28 or expend money in the fund as grants to municipalities or for reim-
29 bursable service agreements with any state agency.

1 * Sec. 23. AS 46.08.060(a) is amended to read:

2 (a) The commissioner shall submit a report to the legislature
3 not later than the 10th day following the convening of each regular
4 session of the legislature. The report may include information con-
5 sidered significant by the commissioner but must include:

6 (1) the amount of money expended under AS 46.08.040 during
7 the preceding fiscal year;

8 (2) the amount and source of money received and money
9 recovered during the preceding fiscal year as specified in AS 46.08.-
10 020;

11 (3) a summary of municipal participation in responses
12 funded by the fund;

13 (4) a detailed summary of department activities in re-
14 sponses funded by the fund during the preceding fiscal year, including
15 response descriptions and statements outlining the nature of the
16 threat; in this paragraph, "detailed" includes information describing
17 each personal services position and total compensation for that
18 position, each contract in excess of \$20,000, and each purchase in
19 excess of \$10,000; and

20 (5) the projected cost for the next fiscal year of monitor-
21 ing, operating, and maintaining sites where response has been com-
22 pleted or is expected to be continued during the fiscal year.

23 * Sec. 24. SURVEY OF SMALL ~~NONCRUDE OIL~~ ^{Refined Hydrocarbon Products} TERMINAL FACILITIES. (a) By
24 January 31, 1992, the Department of Environmental Conservation shall sur-
25 vey, inspect, and prepare an inventory of ~~noncrude oil~~ ^{refined hydrocarbon products} terminal facilities
26 in the state with an effective storage capacity of 5,000 to 10,000 barrels
27 in order to determine for each facility

28 (1) its actual storage capacity;
29 (2) the type of ~~noncrude oil~~ ^{refined hydrocarbon} products stored;

- 1 (3) its age, design, construction, and general condition;
2 (4) the design and construction standards applicable or rele-
3 vant;
4 (5) the presence or absence of containment structures and equip-
5 ment;
6 (6) its ability to respond to a release or threatened release;
7 (7) the environmental sensitivity of the surrounding area and
8 the potential risk to the environment if a release occurs;
9 (8) the presence or absence of surface and subsurface pipelines
10 and storage tanks; and
11 (9) other appropriate information.

12 (b) By January 31, 1992, the Department of Environmental Conservation
13 shall report to the legislature the results of the survey required under
14 (a) of this section and its written recommendations concerning discharge
15 prevention and contingency requirements or design review requirements that
16 should be enacted for ~~new~~ ^{refined hydrocarbon products} terminal facilities with storage capac-
17 ities of less than 10,000 barrels.

18 (c) Upon completion of the survey required under (a) of this section,
19 the Department of Environmental Conservation may

20 (1) notify each facility of the results of the facility's in-
21 spection; and

22 (2) provide each facility with recommendations and technical
23 assistance concerning identified deficiencies.

24 (d) The Department of Environmental Conservation may conduct the
25 inspections required under this section notwithstanding the provisions of
26 AS 46.04.050. The department shall conduct the inspections at reasonable
27 times.

28 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

4/28/90
Rep. Kay Brown

SECTIONAL ANALYSIS CS HB 567 (Finance)

Section 1 - Local Governments and Vessel Traffic Control

Allows a municipality to enter into agreements with the U.S. Coast Guard to develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

Section 2 - Penalty Multiplier for the Discharge of Oil

Increases the fine for a discharge which was grossly negligent and adds language to include prevention requirements in contingency plans.

Section 3 - Cooperative Agreements for Vessel Traffic Control in State Waters

Allows DEC to enter into agreements with the U.S. Coast Guard to prevent oil discharges and develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

Section 4 - Implementation of Prevention and Contingency Plans

Requires that persons may not operate a tank vessel or oil barge without having a prevention and contingency plan and that these plans be properly implemented. Amends language in present law to clarify that a prevention and contingency plan provide for the best available technology at the time the plan was submitted or renewed. Failure to respond to a spill in the "shortest possible time" is a violation of the chapter. Holder of a plan may request, or the department may make on its own initiative, modifications to a plan upon a determination that a change has occurred in the operation of a facility of that the operators discharge experience demonstrates the need for change.

Section 5 - Contingency Plan Approvals

Provides DEC with state authority to approve, revoke or modify or contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires that DEC exercise its powers in a timely manner. Requires an applicant for a contingency plan to plan for the removal of a discharge within 72 hours. Requires that an exploration or production facility contingency plan provide for response to the realistic maximum discharge, an oil terminal facility plan provide for response to a discharge from the largest tank at the facility, and a tanker or barge contingency plan provide for response to a discharge equal to

the capacity of the vessel. Holder of plan must keep equipment within the region except in the case of non-crude terminals or tankers, in which case, out-of-region equipment or resources may be allowed if planning objectives are met. Failure to actually remove oil within the 72 hours does not constitute a failure to implement a plan properly. Defines "properly implement," "maximum realistic discharge" and region of operation."

Section 6 through 8 - Amount of Financial Responsibility Established

(see attached chart)

Section 9 - Defense Standard

It is not a defense from the financial responsibility requirement to argue that the person believed they had satisfied the financial responsibility requirements.

Section 10 - Methods to Demonstrate of Financial Responsibility

Methods for establishing financial responsibility include: self-insurance, insurance, surety, guarantee, letter of credit or "other proof of financial responsibility" approved by the Department. Allows use of "protection and indemnity clubs."

Section 11 and 12 - Conforming Amendments/Letter of Credit

Conforming amendments providing for use of letter of credit.

Section 13 - Certificate for Proof of Financial Responsibility

Provides that the department will formally acknowledge a determination of financial responsibility with a certificate from the department acknowledging that the proof requirement has been satisfied. Adds language that allows use of P&I's to be used and exempts them from direct action requirements if the department is satisfied with the coverage, there is at least \$50,000,000 in coverage and that there is a sworn affidavit provided that the required coverage is not otherwise available.

Section 14 - Financial Responsibility and the CPI

Adjusts the financial responsibility requirement with the consumer price index every three years.

Section 15 - Small Facility Exemption

Exempts crude oil terminal facilities smaller than 5,000 barrels and non-crude oil terminal facilities smaller than 10,000 barrels from the contingency planning and financial responsibility requirements.

Section 16 - Facility Inspections

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

Section 17 and 18 - Prevention Language

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

Section 19 and 20 - Definitions

Defines an exploration and production facility and tank vessel.

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

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

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

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

Section 23 - Oil and Hazardous Substance Release Response Fund Reporting

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

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

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

Section 25 - Effective Date

Immediate effective date.

Financial Responsibility Requirements

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

Financial
Requirements
under Lease (cont.)

These pages
are from
the attached
Bill Van
Dyke
Affidavit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 2, 1990

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

Dear Mr. President:

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

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

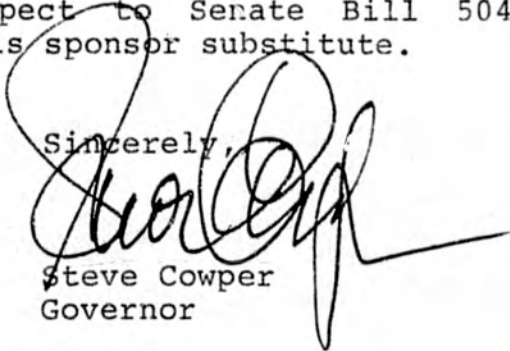
Second, the sponsor substitute proposes to change the financial responsibility requirements for non-crude oil terminals and vessels to make them consistent with available insurance limits and more compatible with the potential risks in each case. For non-crude oil terminals and vessels, the sponsor substitute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

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

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

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

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SSSB 504

PUBLISH DATE : 4/2/90

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	289.0	187.0	187.0	187.0	187.0	187.0
TRAVEL	20.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	348.0	332.0	332.0	332.0	332.0	332.0
SUPPLIES	6.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	30.0	20.0	20.0	20.0	20.0	20.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	693.0	553.0	553.0	553.0	553.0	553.0

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Lynn Kent

Division: Environmental Quality

Phone: 465-2630

Date: 3/30/90

Approved by Commissioner: AD Kyle

Agency: Environmental Conservation

Date: 3/30/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL NUMBER: SB 504/HB 567

PUBLISH DATE: SB 33/HB 76

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	489.8	489.8	489.8	489.8	489.8	489.8
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	376.0	376.0	376.0	376.0	376.0	376.0
SUPPLIES	9.5	9.5	9.5	9.5	9.5	9.5
EQUIPMENT	47.5	47.5	47.5	47.5	47.5	47.5
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	952.8	952.8	952.8	952.8	952.8	952.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

Prepared by: Dan Easton

Division: Environmental Quality

Approved by Commissioner: [Signature]

Agency: Environmental Conservation

Phone: 465-2640

Date: 2/16/90

Date: 2/19/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

SECTIONAL ANALYSIS

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

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

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

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

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

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

Section 6 provides that the Act takes effect immediately.

SB 504

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

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

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

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

Governor's transmittal letter dated February 21:

Dear Mr. President:

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

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

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

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

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

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

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

Sincerely,

/s/
Steve Cowper
Governor

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	156.5					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

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

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

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

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

Distribution (by preparer):

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

Continuation of fiscal note analysis

FY91 Line Itemization -

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

EXPLANATION

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

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

February 15, 1990

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

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

SENATE BILL 504
QUESTIONS FOR DISCUSSION
2/28/90

1. Section 1. AS 46.04.030 Amendments

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

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

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

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

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

2. Section 2. AS 46.04.040

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

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

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

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

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

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

TO: Bill Lamoureaux

DATE: 02-07-90

TIME: 08:51

CC: ATTORNEY GENERALS OFFICE

Bob Flint

Pat Cyr

Dennis Kelso JUNEAU/ADEC

Mike Mansker SERO/ADEC

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

PRIORITY:

ATTACHMENTS:

As per your request, this is an outline of:

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

SCOTLAND - SOLLUM VOE TERMINAL

Total number of T/V visits year: +/- 500 vs. +/- 900 T/V at Alyeska

Storage capacity: +/- 9,000,000 bbls equals Alyeska

Daily throughput: +/- 1,000,000 bbls equals + Alyeska

Storage vs. Throughput compared to Alyeska: 2:1 (twice the storage capacity ratio)

Tidal range: 9.0 feet, 1 knot maximum current

PREVENTION ISSUES

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

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

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

All tankers must stay offshore at least 10 miles.

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

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

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

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

All segregated ballast tested by Port Authority prior to discharge.

CLEANUP PHILOSOPHY

1. Prevention: "NO POLLUTION ALLOWED"

2. Have equipment at terminal for 15,000 bbl spill

3. Additional cleanup equipment located at bases 6, 12, and 24 hours away within Shetland Islands, Scotland. Ornev Island and Great Britain with

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

NORWAY'S TWO LARGES CRUDE TERMINALS:
STURE AND MONGSTAD

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

PREVENTION

27 knot wind restriction for tanker movement and loading.

Two tugs with onboard skimmers provide escort and docking.

Pilots required until four miles offshore.

Dedicated tanker fleet.

CLEANUP

Pre-positioned booms which provide double booming at terminal

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

Maximum response time to their Hinchinbrook Entrance: two hours.

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

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

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

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

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

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

THEY ARE NOT AT RISK TO THE EXTENT WE ARE

Hope this answers your questions.

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

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

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INTRODUCTION

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

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

I doubt that there is anyone who would disagree.

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

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

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

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

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

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

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

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

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

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

INFORMATION OBTAINED

I. NORWAY

A. Regulatory Authority and Responsibilities

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

Figure 1

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

Figure 2

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

Figure 3

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

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

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

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

Figure 4

Figure 5

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

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

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

Figure 6

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

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

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

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

B. The Oil Industry's Attitude

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

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

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

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

C. Offshore Exploration and Production

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

Figure 7

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

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

Figure 8
Figure 9

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

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

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

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

Figure 10

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

Figure 11

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

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

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

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

Wall Map

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

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

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

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

Figure 12

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

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

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

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

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

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

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

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

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

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

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

stressed!

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

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

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

E. "Tactical Oil On Water Exercise"

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

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

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

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

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

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

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

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

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

Figure 13

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

Figure 14

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

Figure 15

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

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

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

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

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

Figure 16

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

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

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

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

II. Scotland's Shetland Islands

A. Regulatory Authority and Responsibilities

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

Figure 17

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

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

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

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

Figure 18

- a. The Sullom Voe Harbor Authority is in direct control of all tanker movements. That control is exercised and monitored from the Port Administration building's Port Control Room which is located on Sella Ness approximately $\frac{1}{2}$ mile directly across from the terminal's docks. It has a clear view of the port and terminal. The control center is staffed by Port Controllers who each hold an unlimited Masters Certificate to command tankers of any size in any waters

At the Port Control Center they:

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

Figure 19

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

B. The Oil Industry's Attitude

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

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

C. The Terminal at Sullom Voe

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

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

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

III. Comments on Additional Spill Response Equipment

A. Agreements Between Countries

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

B. The Bonn Agreement

Figure 20 In the Bonn Agreement, Belgium, Denmark, France, West Germany, The Netherlands, Norway, Sweden and the United Kingdom entered into an agreement to, among other things, share each other's clean up equipment.

Figure 21 Their major cleanup equipment is listed in Appendix B1.2 of the Bonn Agreement. I have taken these lists and penned in the manufactures "nameplate" capacity of the skimmers. I have also totaled the pieces and rated bbls/hr combined skimming capacity. As you can see, there is aggregate 121,012 meters of boom (380,060 feet, 7,198 miles). There are in excess of 262 small/medium/large (0 - 2,000 bbls/hr) and 18 very large skimmers (2,000 - 13,000 bbls/hr) whose aggregate capacity is 250,000 bbls/hr, and over 240 other vessels to support the oil spill combat operation.

Figure 23
Figure 24

Figure 24 In addition, in the western USSR there is a combined skimming capacity in excess of 30,000 bbls/hr by some estimates. Finland also has very large capacity skimmers.

Figure 25

IV. Closing Remarks

Figure 24
Figure 25
Figure 26

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

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

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

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

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

Figure 27

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

Figure 28

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

Figure 29

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

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

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

Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

(907) 465-2600

March 27, 1990

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

Dear Senator Pearce:

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

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

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

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

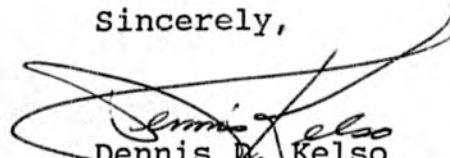
March 27, 1990

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

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

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

Sincerely,



Dennis D. Kelso
Commissioner

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 26, 1990

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

TO: Representative Kay Brown

FROM: Terri Lauterbach *TL*
Legislative Counsel

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

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

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

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

TL:gc
G14/038

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

TO: Denby Lloyd
Special Staff Assistant
Office of the Governor

DATE: March 7, 1990

FILE NO:

TELEPHONE: 465-2400

FROM: Lennie Gorsuch
Commissioner

SUBJECT: Onshore Oil Spill
Plans

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

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

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

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

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

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

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

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

attachments

PROPOSED MITIGATION MEASURES

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

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

Proposed Lease Stipulations

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

Proposed Plan-of-Operations Permit Terms

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

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

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

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

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

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

General:

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

Facilities and structures:

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

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

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

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

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

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

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

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

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

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

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

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

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

[39 FR 31602, Aug. 29, 1974]

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

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

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

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

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

(1) Onshore facilities:

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

(ii) Curbing;

(iii) Culverting, gutters or other drainage systems;

(iv) Weirs, booms or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds;

(vii) Sorbent materials.

(2) Offshore facilities:

(i) Curbing, drip pans;

(ii) Sumps and collection systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The bypass valve is normally sealed closed.

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

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

(D) Adequate records are kept of such events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II—DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 113—LIABILITY LIMITS FOR SMALL ONSHORE STORAGE FACILITIES

Subpart A—Oil Storage Facilities

Sec.

113.1 Purpose.

113.2 Applicability.

113.3 Definitions.

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

113.5 Exclusions.

113.6 Effect on other laws.

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

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

Subpart A—Oil Storage Facilities

§ 113.1 Purpose.

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

§ 113.2 Applicability.

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

§ 113.3 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Aboveground storage.

KEY POINTS OF PREVENTION REGULATION

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

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

Purpose

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

Applies To

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

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

Main Objective of Regulation:

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

Who Prepares the SPCC Plan?

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

General Requirements of the SPCC Plan

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

Specific Requirements

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

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

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

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

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

Time Limits

For Existing Facilities:

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

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

AND

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

For New Facilities:

From time of start-up of the new facility:

Six Months to Prepare SPCC Plan

AND

Twelve Months to Implement

Time Extensions

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

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

Questions Frequently Asked

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

Answer—Non-transportation related facilities which have:

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

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

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

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

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

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

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

Question—Who is required to prepare the SPCC Plan?

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

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

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

Question—What are the requirements for certification?

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

Question—What constitutes an SPCC Plan?

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

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

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

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

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

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

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

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

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

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

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

Question—What is considered to be a harmful quantity?

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

Question—What is considered navigable waters?

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

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

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

Question—What penalties are assessed?

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

THE SPCC PLAN

Basic Concepts

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

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

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

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

Spill Prevention

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

Operational Errors can be minimized through:

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

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

Equipment Failures can be minimized through:

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

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

Containment of Spilled Oil

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

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

Elements of an SPCC Plan

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

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

Type of Facility—This briefly describes the business activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

SPCC Examples

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

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

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

THE REGIONAL CITIZENS ADVISORY COMMITTEE

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

Members of the Committee are:

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

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

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

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

MEMORANDUM

State of Alaska

to Ernst W. Mueller, Commissioner
Department of Environmental
Conservation

DATE: May 13, 1982

FILE NO: J-66-462-82

TELEPHONE NO: 465-3600 x 54

FROM: WILSON L. CONDON
ATTORNEY GENERAL

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

By: 
Douglas K. Mertz
Assistant Attorney General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ernst W. Mueller, Commissioner

May 13, 1982
Page 6

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

Please let me know if you have any other questions.

DKM/jb

April 1990

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

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

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

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

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

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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VIA FACSIMILE

February 20, 1990

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

Re: HB 409

Dear Representatives Goll, Gruenberg, and Davis:

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

I. ACCESS AND INSPECTION AUTHORITY

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

Representatives Goll,
Gruenberg, and Davis

February 20, 1990
Page 2

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

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

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

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

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

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

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

II. ADMINISTRATIVE PENALTIES.

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

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

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

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

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

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

Id. at 538.

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

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

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

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

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

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

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

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

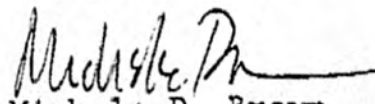
Representatives Goll,
Gruenberg, and Davis

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

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL



Michele D. Brown
Breck C. Tostevin
Assistant Attorneys General

MDB/640.tv
cc: Jeff Bush
John McDonagh

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

*Return
SSSB 504
files*

April 2, 1990

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

Dear Senator Hollings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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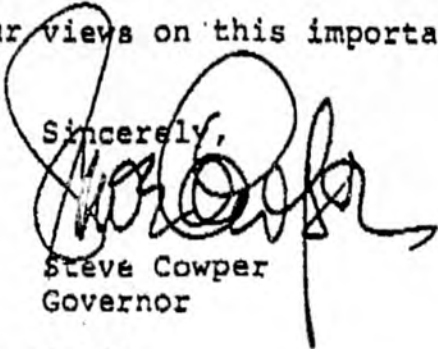
April 2, 1990

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

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

Thank you for considering our views on this important matter.

Sincerely,



Steve Cowper
Governor

cc: National Governors' Association

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

Telephone:
(907) 465-2600

April 2, 1990

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

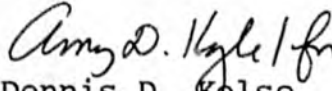
Dear Senator Pearce:

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

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

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

Sincerely,


Dennis D. Kelso
Commissioner

Enclosures

1) Crude Oil Terminals

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

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

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

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

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

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

3) Storage Facilities >10,000 Barrels

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

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

4) Tankers and Barges

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

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

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

Companies using spot charters

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

Revised: March 22, 1990

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Barges in Alaska Trade

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

BARGE NAME: OFFICIAL #: GRT: CAPACITY:

CROWLEY MARITIME CORP.

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

Revised: March 22, 1990

450-11	647827	8923	148,502
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FOSS MARITIME

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

YUTANA BARGES LINES, INC.

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

NORTHLAND SERVICES, INC.

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

UNITED MARINE TUG AND BARGE, INC.

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

ALASKA MARINE CHARTERS, INC.

INVESTIGATOR	638965	1730	16,031 bbl
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Revised: March 22, 1990

BRIX MARITIME (KNAPPTON CORPORATION)

PALMER	286528	1927	6,000 (OIL) bbl 6,000 (caustic)
SITKA	628255	2506	21,750

*Technical info not in c-plan

MOODY'S SEA LIGHTERAGE, INC.

SEALITE I	648341	194	2,976 bbl
ST 20	269612	380	5,476

KUGKAKTLIKE LIMITED (Kipnuk Fuel Services)

CHALIN	611099	206	3,600 bbl
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WHITE PASS TRANSPORTATION

ALASKA SPIRIT	659615	1767	12,828 bbl
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DELTA WESTERN

DW 282 (ex MLC 282)	596502	3365	50,000 bbl
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SMITH LIGHTERAGE CO., INC.

SKIP I	(c-plan coming)	98	1,768 bbl
RAY 'SONS			

The following companies listed barges are included in their financial responsibility documents, but we do not have them listed in the company's contingency plans. Companies listed below only do not have any contingency plan for barge operations.

CROWLEY MARITIME CORP.

Revised: March 22, 1990

250-10
 UT-10
 SATCO 10
 SATCO 20
 SATCO 21
 S.T. 22
 S.T. 23
 NAPAMUTE
 EEK
 ORCA #2
 OIL #1
 14
 17
 450-10
 500-2
 16
 18
 254
 DB 300

UNITED MARINE TUG AND BARGE, INC

MLC 332	648909
MLC 333	653764

SEASpan INTERNATIONAL

SEASpan 822	1765	31,000 bbl
SEASpan 824	2124	37,000
SEASpan 870	2945	52,000

TRIDENT SEAFOODS CORP.

NC-S-1
 J-S-1

TEXACO MARINE SERVICES, INC.

PENNSYLVANIA
 TEXAS

EXXON CORPORATION

EXXON BARGE #502

SAMSON TUG & BARGE

Revised: March 22, 1990

ANAHOOTZ

BOYER TOWING INC.

CALLAPOOYA
KOOTZNAHOO

1,192	21,000 bbl
312	5,000

KUGKAKTLIKE LIMITED (Kipnuk Fuel Services)

KANGITSUK

BERING MARINE CORPORATION

KC-4
KC-251

BERING SEA FISHERIES, INC.

KING SALMON

BRICE INC.

OBS-4000

SUMMARY:

There are a total of 115 individual barges covered by financial responsibility requirements for state operations through June, 1990. 78 are listed in company contingency plans, 37 are not. 9 companies have no contingency plans on file.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 6, 1990

SUBJECT: Inspection of Tankers by DEC
(SSSB 504)

TO: Senator Drue Pearce, Chair
Senate Special Committee on Oil & Gas

FROM: Terri Lauterbach *TL*
Legislative Counsel

You have asked for a discussion of the scope and legality of the power of the Department of Environmental Conservation to inspect tank vessels and oil barges under AS 46.04.060, as amended in SSSB 504.

As amended in SSSB 504, AS 46.04.060 empowers DEC to

at reasonable times enter and inspect...tank vessels and oil barges within the territorial jurisdiction of the state in order to

- (1) ensure compliance with the provisions of [AS 46.04]; or
- (2) examine the structural integrity of tank vessels and oil barges.

As noted in the language underlined above, DEC's inspection power is not an unqualified or unlimited power. It is limited to "reasonable times" and applies only to vessels "within the territorial jurisdiction of the state." Furthermore, an inspection must be for one of the two specified purposes.

In addition to the limitations contained in AS 46.04.060, there are further limitations contained in AS 46.04.070, which is not amended in SSSB 504. AS 46.04.070 provides:

The department shall adopt regulations which are necessary to carry out the purposes of this chapter and which do not conflict with and are not preempted by federal law or regulations.

In my opinion, the requirement of AS 46.04.070 that the department adopt implementing regulations that are not in conflict with or preempted by federal law applies to the regulations that the department may adopt to implement its inspection power under AS 46.04.060. Thus, the provisions of AS 46.04.070 ensure that AS 46.04.060 is not intended to violate the supremacy clause of the United States Constitution or any federal statutory law.

In addition to the constraints contained within the language of AS 46.04.060 and 46.04.070, it should also be noted what language is not contained in AS 46.04.060. There is no language that requires the owner or operator of a vessel to submit to inspection. There is no penalty for failure to allow inspection. There is no requirement that a vessel have a state certificate of inspection in order to operate. Even if an inspection is consented to, the statute does not describe any consequences that attach to the outcome of the inspection authorized under AS 46.04.060(2).

Given the qualifications contained in the language of AS 46.04.060, as amended in SSSB 504, the limiting instruction contained in AS 46.04.070, and the absence of enforcement language describing any consequences that attach to the inspections, I have no grounds for doubting the legality of the inspection power that is granted in SSSB 504.

The actual scope of the inspection power will be determined as DEC develops the regulations to implement the section. When developing the regulations, DEC will be guided by the instruction in AS 46.04.070 to avoid conflict with federal law and to avoid exercising powers preempted by federal law.

In my review of federal laws, I have found no laws prohibiting state inspection of vessels. If there is a limitation on the state's power in this area, it would have to come from an inference of federal preemption.

This brings us to a discussion of the parameters of DEC's inspection power under the supremacy clause of the United States Constitution. The key judicial opinions in this area are Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) and Chevron U.S.A., Inc. v. Hammond, 726 F.2d 483 (1984).

Under the precepts of the Ray case, it is clear that DEC inspection of vessels could not be for the purpose of enforcing state design or construction specifications.

After discussing federal laws relating to inspection of vessels, the Ray court concluded that

This statutory pattern shows that Congress, insofar as design characteristics are concerned, has entrusted to the Secretary the duty of determining which oil tankers are sufficiently safe to be allowed to proceed in the navigable waters of the United States. This indicates to us that Congress intended uniform national standards for design and construction of tankers that would foreclose the imposition of different or more stringent state requirements. In particular, as we see it, Congress did not anticipate that a vessel found to be in compliance with the Secretary's design and construction regulations and holding a Secretary's permit, or its equivalent, to carry the relevant cargo would nevertheless be barred by state law from operating in the navigable waters of the United States on the ground that its design characteristics constituted an undue hazard. Ray, at 163 - 164.

In light of Ray, it is clear that DEC could not inspect vessels for the purpose of imposing state design or construction standards. However, the type of inspection authorized under SSSB 504 does not imply the enforcement of state design or construction standards. SSSB 504 only authorizes inspections to enforce AS 46.04, which does not impose design or construction standards, and to examine the structural integrity of the vessels. While examinations of structural integrity could involve design and construction standards, there are no such standards in SSSB 504, nor could there be such standards in DEC's regulations because of the limitations of AS 46.04.070. I do not know the purpose of the examinations of structural integrity contemplated under AS 46.04.060, but their purpose clearly is not to enforce design and construction standards, so they don't appear to be prohibited under Ray.

The Ray court acknowledged that states could have other purposes for regulating vessels and that these purposes were not foreclosed by its holding pertaining to design and construction standards. After its strong language on design and construction standards (quoted above), the Ray court went on to state

We do not question in the slightest the prior cases holding that enrolled and registered vessels must con-

form to "reasonable, nondiscriminatory conservation and environmental protection measures..." imposed by a State. (Citations omitted.) Similarly, the mere fact that a vessel has been inspected and found to comply with the Secretary's vessel safety regulations does not prevent a State or city from enforcing local laws having other purposes, such as a local smoke abatement law. Ray, at 164.

Under this aspect of Ray, it appears that DEC inspections to enforce AS 46.04 are authorized because the inspections would be for a purpose other than to enforce design and construction standards. And as long as the examinations of structural integrity are not for the purpose of imposing design or construction standards, they are not prohibited under Ray either.

The idea in Ray that there is still room for state regulation relating to vessels, notwithstanding the fact that there is federal regulation of vessels, was further underscored in the second case cited above, the Chevron case. In that case, the Ninth Circuit upheld Alaska's ballast water discharge law even though there are also federal laws relating to ballast water discharges.

The Chevron court found that Congress did not intend complete occupation of the field of regulating pollution from oil tankers within a state's territorial waters and that, "for the most part local environmental regulations can co-exist...with federal regulations without impinging on the exclusively federal concerns of vessel design and traffic safety." Chevron at 493. It also noted that a chief aim of the Ports and Waterway Safety Act was to prevent pollution and that the court would be reluctant to infer preemption when state regulations were designed to achieve that purpose. Chevron, at 496 and 497. Since it was not impossible to comply with both the federal and state law relating to ballast water discharge and there was no state attempt to interfere with design or construction of the tankers themselves, the court found that, as an environmental regulation, Alaska's ballast water discharge requirements were valid.

The inspection power of DEC under SSSB 504 is not as clearly an environmental regulation as Alaska's ballast water discharge statute. As mentioned above, there is no stated purpose for the inspection of structural integrity of the

vessels. However, it would not be difficult for the state to argue that inspection of structural integrity would be used to prevent pollution from flawed vessels, or to give information to the state to help plan for responses to discharges, or for some other reason relating to environmental protection. So long as the inspection authority is implemented in a way that does not make it impossible to comply with federal inspection requirements or other federal laws, such as those relating to traffic safety, the inspection authority would probably be upheld under Chevron.

Taking both Ray and Chevron into account, I conclude that AS 46.04.060, as amended in SSSB 504, and as limited by AS 46.04.070, is designed to be an inspection power that will survive scrutiny under Ray and Chevron. It is limited to vessels in state waters. It is limited to reasonable times. It is not coupled with design or construction standards. And there are no penalties either for failure to allow an inspection or for failing to "pass" an inspection. While the purpose of the inspections is unclear, it does not seem to be a purpose that would invalidate the inspection power. The actual scope of the inspection power will be determined by DEC regulations that implement the section within the constraints of AS 46.04.070.

I hope you find this discussion helpful. Please let me know if I can be of further assistance.

TML:lmb
L10/052

503-501 J2 - bill files

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREVENTION

PREPAREDNESS

RESPONSE

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREVENTION

VESSEL TRAFFIC SYSTEMS

TANKER DESIGN AND CONSTRUCTION

MANNING STANDARDS

IMPROVED RADAR

PILOTS

SUBSTANCE ABUSE TESTING

VESSEL ESCORTS

UNLIMITED LIABILITY

RESTRICT MOVEMENTS DURING BAD WEATHER

PENALTIES THAT PROVIDE INCENTIVES

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREPAREDNESS

STATE EMERGENCY RESPONSE COMMISSION

LOCAL EMERGENCY PLANNING COMMITTEES

INTERSTATE COMPACTS

RESPONSE PLANNING

TRAINING

DRILLS

INSPECTIONS

FINANCIAL RESPONSIBILITY

RESPONSE FUNDING

RESPONSE CORPS

RESPONSE DEPOTS

LOCAL AGREEMENTS

OIL DISCHARGE CONTINGENCY PLANS

STATE EMERGENCY RESPONSE PLANNING ORGANIZATION

Role:

(1) Develop State and
Regional Oil and Hazardous
Substance Discharge
Contingency Plans

(2) Implement the federal
Emergency Planning and
Community Right to Know
Act (SARA Title III)
-fact sheet attached

(3) Preparedness

STATE EMERGENCY RESPONSE COMMISSION (SERC)

Chair - DEC
Vice-chair - DES

Members:

DPS
DOT&PF
DHSS
DCRA
Oil Industry Representative
Municipality of Anchorage
Kenai Peninsula Borough
Fairbanks N.S. Borough
Alaska Fire Chiefs Ass'n.
Rural Representatives
Public Interest Group
DNR*
ADF&G*
DOL*

Role:

(1) Develop Local
Emergency Response
Plans

(2) Spill Response
Preparedness

LOCAL EMERGENCY PLANNING COMMITTEE

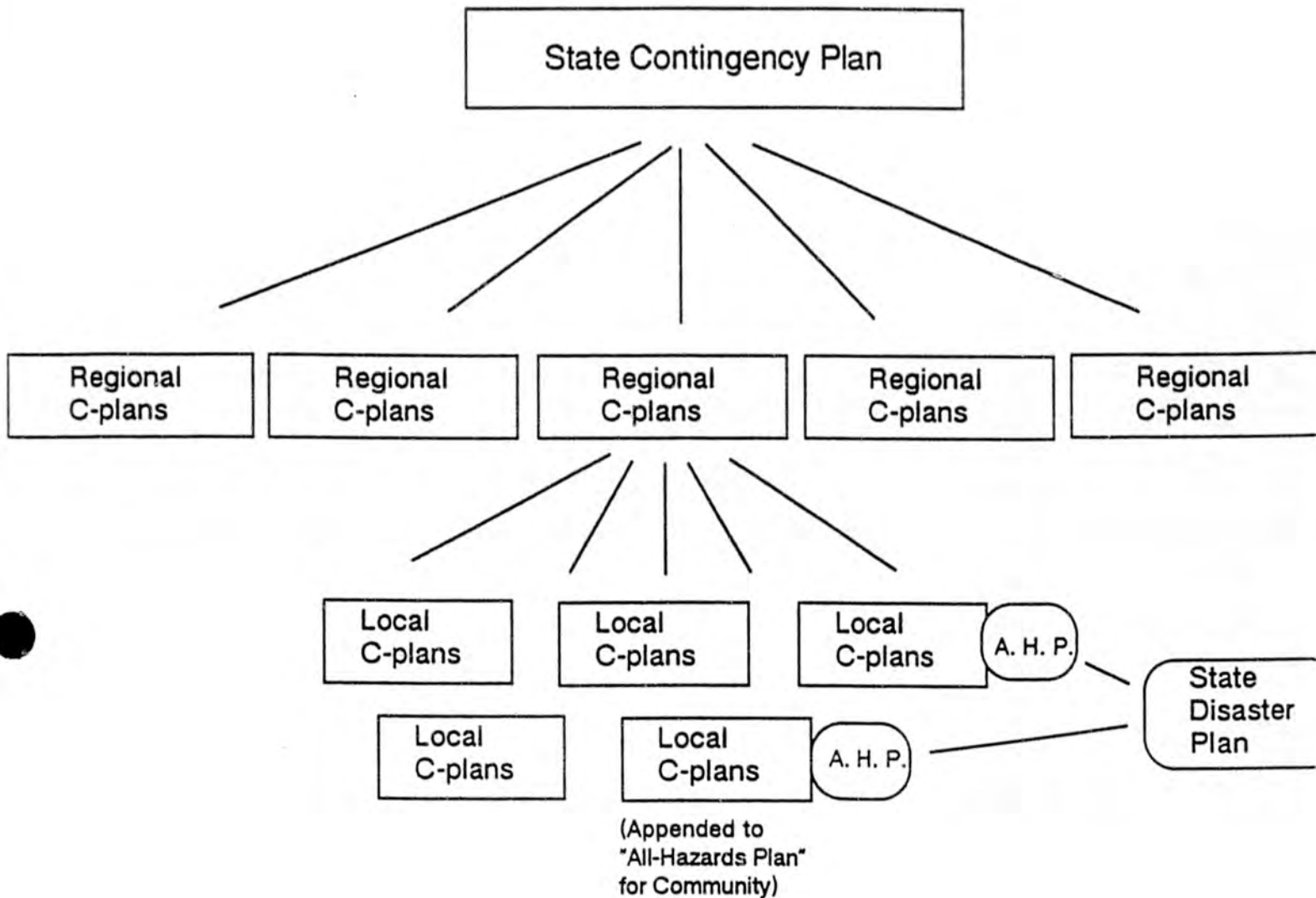
Chair: Elected Official

Members:

Law Enforcement
Civil Defense /
Emergency Management
Firefighting
First Aid
Health
Hospital
Local Environmental
Transportation Personnel
Broadcast and Print Media
Community Groups
Owners / Operators of
Applicable Facilities
Other

* To be added to the SERC

CONTINGENCY PLANS



- (1) Local plans are appended to the regional oil and hazardous substances contingency plans
- (2) Regional oil and hazardous substances plans are appended to the state oil and hazardous substances contingency plan
- (3) Community "All Hazards" plans are appended to the State Disaster Plan

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

RESPONSE

DEC-STATE ON SCENE COORDINATOR

INCIDENT COMMAND SYSTEM

UNIFIED COMMAND STRUCTURE

SAFETY

PUBLIC INFORMATION

RESPONSE DEPOTS

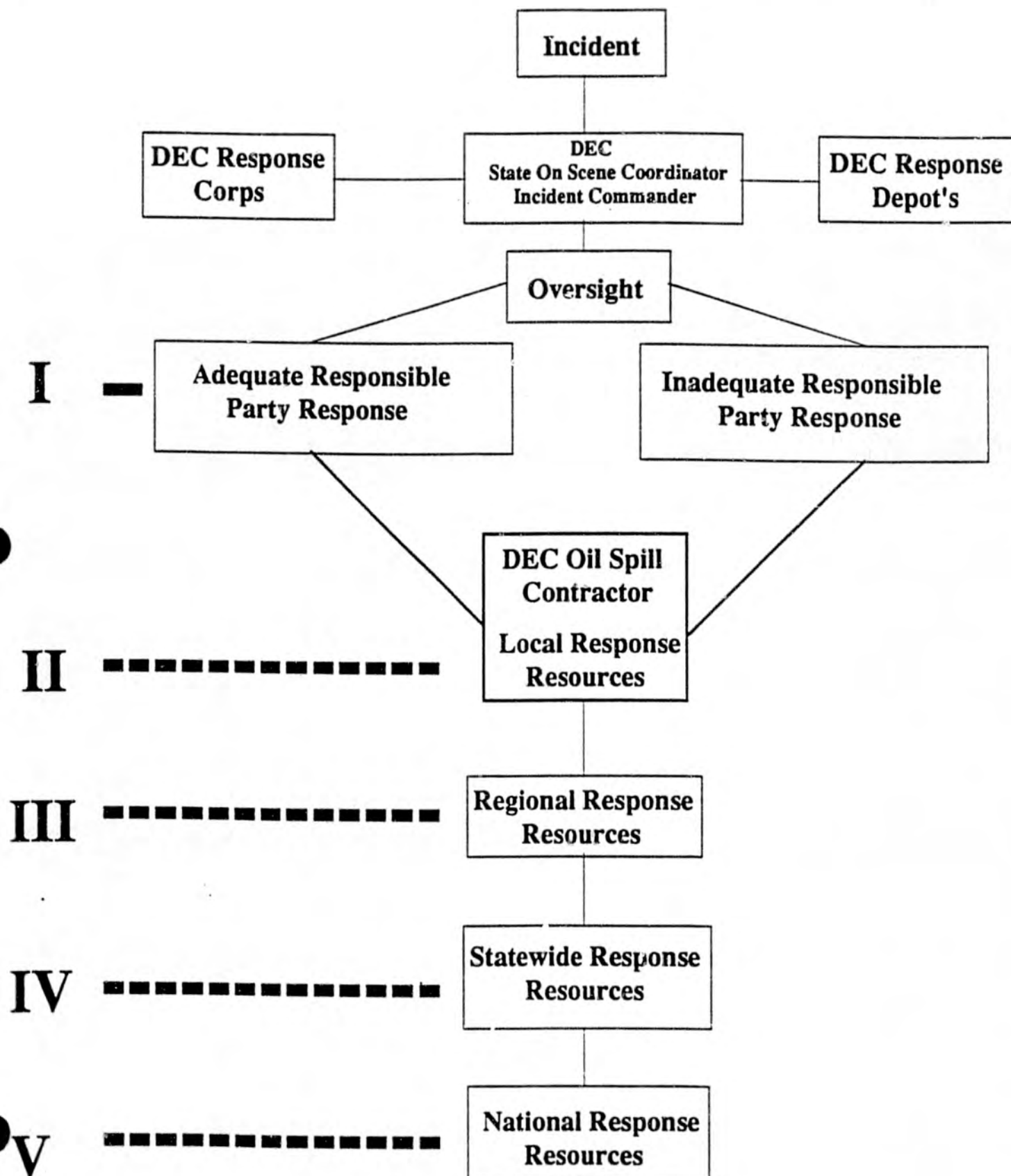
DEC RESPONSE OFFICE

OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS

**COORDINATION WITH LOCAL, REGIONAL, STATE, FEDERAL
AND PRIVATE PARTIES**

DEC CONTRACTOR MOBILIZATION

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY



**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO PREVENTION

Prior to 1989

- o Oil pollution prohibited
- o Ballast water discharge prohibited
- o Criminal penalties
- o Civil penalties for discharge of oil
 > 18,000 gallons...up to \$10/gallons
 five times multiplier for negligence
- o Liability limit of 100,000,000 for oil
- o Strict Liability
- o Recovery of costs to state for oversight,
 cleanup, damages, restoration
- o Detention of vessels as security for damages
- o Emergency powers
- o Injunctive powers

1989

- o Increased civil penalties for crude oil spills
 > 18,000 gallons...\$8 for first 420,000 gallons
 \$12.50 > 420,000 gallons
 Four times multiplier for negligence
 Credit applied for amount of oil recovered
 in first 36 hours
- o Liability limit of \$500,000 for crude oil spills

1990

- o Strengthen financial responsibility requirements

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO PREPAREDNESS

Prior to 1989

- o Oil Discharge contingency plans required
 - Terminals > 10,000 bbls
 - Offshore exploration or production facilities
 - Tank vessels
 - Oil Barges
- o Proof of Financial Responsibility
- o Inspection Authority
- o Compacts authorized
- o Contracting Authority
- o Perform DES role in declared disaster emergencies

1989

- o State Master Oil and Hazardous Substance Discharge and Prevention Contingency Plan
- o Regional Master Oil and Hazardous Subsurface Discharge and Prevention Contingency Plan
- o Unannounced spill drills
- o Spill technology research
- o Response corps training

1990

- o Use of response fund during declared disaster emergencies.
- o Expand role of Division of Emergency Services
- o Establish State Emergency Response Commission and Local Emergency Planning Districts and Committees
- o Extend the requirement for Contingency Plans
- o Strengthen inspection authority to include structural integrity of tank vessels

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO RESPONSE

Prior to 1989

- o Discharge notification required
- o Provide for containment and cleanup of discharges of unknown origin
- o Require maximum practicable use of private services and resources
- o Ensure cleanup is initiated and adequate
- o Identify source, cause and responsible party

1989

- o Established response office for spills that present a grave and substantial threat
- o Established response corps
- o Established response depot

1990

- o Define "realistic maximum oil discharge"

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802-1217
Phone: (907) 586-7689
Staff Symbol: m

16711
10 Apr 90

The Honorable Drue Pearce
Alaska Senate
P.O. Box V
Juneau, Alaska 99811

Dear Ms. Pearce:

Thank you for your invitation to address the Senate Special Committee on Oil & Gas on Tuesday, April 10. I regret to inform you that there will not be a Coast Guard representative at the meeting. However, I will try to answer the questions, concerning the inspection of vessels, contained in your letter of April 6, 1990.

Before answering your questions I feel it is appropriate to give you a brief overview of the Coast Guard marine inspection program. Every vessel that carries a Coast Guard Certificate of Inspection (COI) is followed by the Coast Guard from cradle to grave. Beginning with plan review, the Coast Guard is involved at every stage of construction of a vessel. Coast Guard inspectors are present during the construction of the vessel, witness the testing of critical systems and accompany the vessel on sea trials. These inspectors make sure that the vessel is constructed in accordance with the Coast Guard approved plans, that critical systems are installed and operate properly and that the vessel as a whole operates as designed. The Coast Guard also establishes the manning level of the vessel using the vessel manning regulations. The officers and seaman that operate the vessel obtain their documents and licences from the Coast Guard and action against those licenses and documents can be initiated by the Coast Guard if warranted.

After the vessel begins operating the Coast Guard inspection program follows the vessel for the rest of its life. Routine inspections ensure the continued safe operation of the vessel. Any repairs made to the vessel must be approved and witnessed by Coast Guard inspectors.

The following information is in response to the questions contained in your letter. The information provided is basic and not all inclusive. There are many variables when inspecting a vessel such as how much time the vessel spends in fresh versus salt water, the type of construction and the route of the vessel. Therefore, I have tried to provide you with information that would generally apply to vessels operating in Alaska.

Your first question asks which Coast Guard Department/Division is in charge of actual compliance with the Coast Guard inspection program. Beginning with Headquarters in Washington, the Merchant Vessel Inspection and Documentation Division heads up the inspection program. It is here that regulations are developed and nationwide policy is formulated. The next level in the marine inspection program is at each Coast Guard district office. The Marine Safety Division in each district office is headed up by a senior Coast Guard officer with an extensive background in all phases of the marine safety program. The final level is the individual Marine Safety Offices. These are the field units that are responsible for actually carrying out the various inspections on commercial vessels.

Your second question asks who inspects the non-crude oil carrying commercial vessels in Alaskan waters. The same people who inspect the tank ships and tank barges also inspect the other commercial vessels that are required to have Coast Guard inspections. These are the Marine Inspection personnel attached to each Marine Safety Office (MSO) and Marine Safety Detachments (MSDs) (a sub-unit of a MSO).

Your third question asks what are the inspection schedules for these vessels. This is a very broad question as there are many types of inspections conducted on the vessels you mentioned. A detailed discussion of each inspection would be very confusing, so I will try to touch briefly on each type of vessel you mentioned and hopefully this will provide you with a basic understanding of the inspection program.

Small Passenger Vessels: This category of vessel is broken down into two groups. These are S and L vessels. S vessels are those that admeasure less than 100 gross tons (GT), are less than 65 feet in length and carry more than 6 passengers. L vessels admeasure less than 100 GT, are over 65 feet long and carry more than 6 passengers. Both S and L vessels that carry more than 150 passengers are subject to additional regulations, similar to that found on the Alaska Marine Highway System vessels. S vessels are issued a new (COI) triennially and reinspected annually. L vessels are inspected and issued a COI every year. These vessels also have drydock inspections every 18 months.

Cruise Ships: The cruise ships in Alaska are without exception foreign passenger vessels. The Coast Guard conducts annual Control Verification examinations on these vessels to ensure that they are in compliance with the International Convention on the Safety of Life at Sea, International Convention on the Prevention of Pollution from ships and certain Coast Guard regulations (for instance, marine sanitation device and oil pollution prevention regulations). These vessels are also examined quarterly to update their control verification inspection and ensure continued compliance with all applicable conventions and regulations.

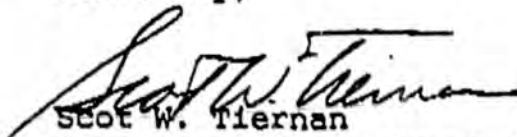
Passenger Vessels: These are passenger carrying vessels that are more than 100 GT. You did not specifically mention this type of vessel but I have included it since this class of vessel includes the Alaska Marine Highway vessels. These vessels are inspected annually and reinspected quarterly. They are drydocked twice in five years with no more than 36 months between drydock inspections. Vessels over 20 years of age and that have accommodations for overnight passengers are required to be drydocked every 18 months. Additionally, if the passenger vessel engages in international voyages, the vessel is drydocked annually.

Fuel Barges: Fuel barges are on a biennial inspection schedule. They receive a new COI every two years and a reinspection between the 10th and 14th month after receiving the COI. They are also drydocked on either a 2 1/2 year or 5 year cycle. The construction of the barge determines when drydocking occurs. If the barge is single skinned, it is drydocked and an internal inspection is conducted every 2 1/2 years. If the barge has a double hull and is internally or externally framed, the drydocking interval is 5 years. If the barge is internally framed, the framing members are on the interior of the cargo tank walls, the barge has an internal inspection every 2 1/2 years, including the interior of the cargo tanks. Double hulled tank barges with external framing, framing members are on the exterior of the cargo tanks, have the area between the two hulls examined every 2 1/2 years and the internal structure of the cargo tanks examined every 10 years. There are minor variations to this inspection schedule for certain cargos, e.g. asphalt, that extend the period between internal examinations. There are also some different drydocking and internal inspection requirements for single hulled barges that carry cargo in independent tanks.

Finally you asked if the work is done by Coast Guard personnel. All Coast Guard inspections are conducted by Coast Guard personnel. These are generally military personnel but there are a few civilian employees of the Coast Guard who conduct inspections. These civilian personnel, for the most part, are ex-military marine inspectors who have chosen to resign or retire from the Coast Guard and have been hired as civilian marine inspectors.

If I can be of any further assistance, or if you need additional questions answered please call me.

Sincerely,



Scott W. Tiernan
Commander, U. S. Coast Guard
Regional Response Team Coordinator
By direction of the District Commander

ALYESKA - HOW MUCH MORE?

CURRENT: 15,000 BBL/HR SKIMMING CAPACITY

CURRENT: 1,080,000 BBL IN 72 HR

HB 567: 1,800,000 BBL IN 72 HR

HOW MUCH MORE SKIMMING CAPACITY? 40 PERCENT

CONCLUSION: THESE COMPANIES DO BUSINESS IN BOTH NORTHERN EUROPE AND ALYESKA - BP, EXXON, AMOCO, MOBIL, PHILLIPS. THEY CAN AFFORD TO OPERATE AT HIGHER STANDARDS AND WITH MORE CLEAN UP EQUIPMENT IN NORTHERN EUROPE.

WHY NOT IN ALASKA?

AT RISK --

NORTHERN EUROPE VERSUS ALASKA

	<u>SCOTLAND</u>	<u>NORWAY</u>	<u>ALASKA</u>
NO. TANKERS	1 / 2	1 / 3	1 (900 / YR)
STORAGE (BBL)	1	1	1 (9 MILLION)
THROUGHPUT BBL/HR	1 / 2	1 / 3	1 (2 MILLION)

CONCLUSION: ALASKA PUMPING OIL TWO TO THREE TIMES FASTER THAN MAJOR TERMINALS IN NORTHERN EUROPE.

	<u>NORTHERN EUROPE</u>	<u>ALASKA</u>
SKIMMING CAPACITY BBL/HR	500,000	15,000
DEPOTS	40	2
LARGEST SKIMMER BBL/HR	13,000	25,000 PROPOSED

CONCLUSION: IN A GEOGRAPHIC AREA THE EQUIVALENT ALASKA, NORTHERN EUROPE HAS 35 TIMES MORE CLEAN UP EQUIPMENT ON HAND THAN ALASKA.

Financial Responsibility Requirements

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	HB 567 (Resources)	HB 567 (Finance) Proposed CS
Crude Oil Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$1 million up to \$50 million @ \$25/bbl. capacity	Same as the Resources version
5 to 10,000 bbl.	None	None	None
Offshore exploration and production facilities			
	\$35 million	\$50 million	\$50 million
Onshore exploration and production facilities			
	None	\$20 million	\$20 million
Crude Oil Tank Vessels and Barges			
	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$100 million + @ \$300/bbl. capacity
Non-Crude Oil Tank Vessels and Barges			
	Tank Vessels = \$20 million, Barges = \$1 million	\$1 million up to \$35 million @ \$100/bbl. capacity	Same as the Resources version

EXAMPLE OF EFFECT OF HB 567/SB504 ON DEMONSTRATION OF FINANCIAL RESPONSIBILITY

1. CURRENT STATUS:

1. Financial responsibility met via self-insurance evidenced by corporate assets.
2. Also maintains primary and excess liability insurance coverage in excess of the statutory requirements with insurance pool consisting of 15 underwriters and over 100 insurance entities.
3. Provisions of AS 46.04.040(e) [regarding requirement for insurance companies providing party evidence of financial responsibility to be subject to "direct action" in Alaska courts, appoint an agent in Alaska, and be authorized by the Division of Insurance] have not been of concern to due to the self-insurance.

2. PROPOSED STATUS:

1. Tesoro expects to carry as much as \$200 Million to cover largest tanker that may be chartered for transport of ANS royalty crude oil.
2. Tesoro can not self insure to the level of \$200 Million.
3. The insurance industry registered in Alaska does not have the capacity to underwrite \$200 Million in pollution liability requiring the majority (projected to be all amounts in excess of \$25 Million) to be obtained via the insurance pools whose members will not register for service in Alaska or any other state.
4. In the absence of a waiver, or little change in the level of financial responsibility requirements it is unlikely that Tesoro Alaska's insurance coverage will meet the requirements called for in these bills.
5. Compliance with this statute is a prerequisite to maintaining a permit to operate.

*Example of Tesoro Alaska Petroleum Company

 **SORIERO &
SEFFENS** INC.

April 18, 1990

Mr. Gene Burden
Tesoro Alaska Petroleum Company

Re: Insurance Companies admitted in Alaska

Dear Gene:

In light of recent proposed legislation in Alaska that may require evidencing financial responsibility for Pollution Liability we discussed the following:

1. Number of separate underwriters required on a given account;
2. Number of insurance companies licensed to conduct business in Alaska; and
3. Direct action by Alaskan government against underwriters.

We previously discussed the number of underwriters on any given large commercial account. Please refer to my letter of April 12, 1990, wherein I advised that a substantial number of underwriters are required in order to subscribe to any account needing high levels of insurance protection.

The main theme behind this letter is to focus on if Alaska requires evidence of financial responsibility which could be addressed by the procurement of insurance, whether the subscribing underwriters are admitted in Alaska, and would accept direct action against them.

As respects the number of insurers that are "admitted", which effectively means licensed to conduct business in Alaska, I consulted A.M. Best Company's Key Rating Guide for Property-Casualty Insurers and can confirm that there are a substantial number (over one hundred) of companies licensed in Alaska. Most of these are standard stock companies underwriting Automobile Liability, Workers Compensation and General Liability Insurance subject to Insurance Services Organization (ISO) forms. ISO is a national firm designed to promote uniformity in rating and policy wordings between states and insurers. Most companies subscribe to their rating structure and policy wordings as these have been tried and tested in court and provide a common ground for comparison.

Pollution Liability would be considered a coverage afforded under a General Liability placement but, unfortunately, the ISO form has a specific exclusion whereby coverage for Pollution Incidents is virtually excluded. As such, this impedes our ability to obtain Pollution coverage from the standard stock companies.

Some companies, though, may delete this exclusion subject to an additional premium but then we are back to the dilemma of obtaining adequate capacity. I would suspect that sole use of these carriers would enable an insurance buyer to purchase only 25 Million in coverage. Consequently, the buyer would be required to access "non-admitted insurers". These underwriters offer abundant capacity but would not be amenable to direct action by the state.

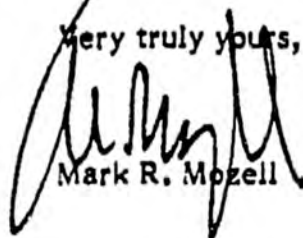


Mr. Gene Burden
April 18, 1990
Page 2

A direct action statute would be onerous for the buyer because underwriters typically will not agree to this since liability policies are written on an indemnity basis. In other words, the underwriters will reimburse the Assured once the Assured has paid the claim. By having direct action the underwriters effectively take the place of the insured and this violates the principal of indemnification. Ultimately, a direct action statute will reduce the number of underwriters that a buyer can access for Pollution Liability whereas to the contrary, if there is no direct action statute, adequate capacity for Pollution Liability will exist.

Gene, the above is a brief summary of the difficulties involved in obtaining Pollution coverage and agreement from underwriters for direct action. If you or any members of the House committee would like to discuss this further, I would welcome the opportunity to meet with you or them, or at least call them to hear their concerns.

Very truly yours,



Mark R. Mozell

MRM:dg

MRM-1727

EXXON COMPANY, U.S.A.

POST OFFICE BOX 196601 • ANCHORAGE, ALASKA 99519-6601

March 26, 1990

The Honorable Drue Pearce, Chair
Senate Special Committee on Oil and Gas
P. O. Box V
Juneau, Alaska 99801

Dear Senator Pearce:

This is in response to your recent request for information on vessel structural inspection procedures employed by Exxon Shipping Company (ESC), the U.S. Coast Guard, and the American Bureau of Shipping (ABS). The following information was provided by ESC.

The Coast Guard requires drydocking of tankers twice every five years, at which time all tanks are gas-freed and internal structural inspections made. These inspections are conducted by Coast Guard officers, ABS surveyors, and ESC and shipyard inspectors. The inspectors and surveyors are professionals, most with extensive structural inspection experience.

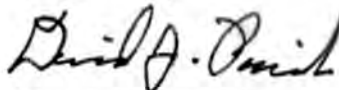
Between drydockings, the Coast Guard and ABS also require annual inspections, at which time a few critical tanks may be designated for inspection. If warranted by the findings in examined tanks, additional tanks are also inspected.

More frequent inspections are made by ESC inspectors who document any deficiencies found and have any necessary repairs made. Individual tanks are opened and gas freed for inspection. The tanks are filled with water at varying levels, and inspectors use a raft to inspect the internals. This is done on the U.S. West Coast, usually when other repairs on the vessel are being accomplished and where shoreside craftsmen with the necessary repair skills are available. Coast Guard inspectors and ABS surveyors frequently participate in these inspections.

Ship officers also inspect for structural problems when tanks are entered for other purposes.

These vessel inspection procedures are conducted by professionals and have proven to be very satisfactory. We believe the U.S. Coast Guard and the American Bureau of Shipping are in the best position to determine the type and frequency of inspections, particularly in view of their broad knowledge acquired in the inspection of thousands of vessels, both U.S. flag and foreign. If the state has concerns about the structural integrity of vessels, we strongly recommend they be resolved in cooperation with the Coast Guard, and not through an independent and costly effort by the state.

Sincerely,



David J. Parish

COMMENTS OF EXXON COMPANY, U.S.A.

TO

SENATE SPECIAL OIL & GAS COMMITTEE

ON

SB 503 AND SB 504

MARCH 6, 1990

GOOD EVENING. MY NAME IS MICHAEL SMITH AND I AM THE ALASKA AREA ATTORNEY FOR EXXON'S ALASKA OPERATIONS. I WELCOME THE OPPORTUNITY TO PROVIDE EXXON'S COMMENTS TONIGHT REGARDING SB 503 AND SB 504. ALTHOUGH THESE BILLS ARE BOTH PART OF THE ADMINISTRATION'S PACKAGE, THEY ARE IN REALITY QUITE DIFFERENT FROM ONE ANOTHER IN PURPOSE AND EFFECT. EXXON SUPPORTS REASONABLE LEGISLATION AIMED AT PREVENTION OF OIL SPILLS. WE ALSO SUPPORT IMPROVING THE STATE'S ABILITY TO EFFICIENTLY RESPOND TO ANY EMERGENCY.

THE ALASKA OIL SPILL COMMISSION STATED, IN ITS FINAL REPORT, THAT THE STATE'S RESPONSE TO THE EXXON VALDEZ ACCIDENT WAS MARRED BY BUREAUCRATIC CONFUSION. SENATE BILL 503 APPEARS INTENDED TO IMPLEMENT SOME OF THE COMMISSION'S RECOMMENDATIONS TO CORRECT THIS.

SB 503 PROPOSES CHANGES IN THREE MAIN AREAS: GIVING THE GOVERNOR SPENDING AUTHORITY OVER THE HAZARDOUS SUBSTANCE RELEASE FUND, GIVING THE DEC THE LEAD ROLE IN RESPONDING TO EMERGENCIES, AND STATUTORILY AUTHORIZING THE ALASKA STATE EMERGENCY RESPONSE COMMISSION.

WHILE THESE ARE OBJECTIVES THAT MAY NEED TO BE ADDRESSED, SB 503 IN ITS PRESENT FORM RAISES SOME QUESTIONS. OUR MAJOR CONCERN WITH THE BILL IS THAT IT UNFORTUNATELY LEAVES CONSIDERABLE ROOM FOR CONFUSION AS TO THE RESPECTIVE ROLES OF THE DEC AND THE DEPARTMENT OF MILITARY AFFAIRS, DIVISION OF EMERGENCY SERVICES. IN AN EMERGENCY, IT IS CRITICAL THAT ALL OF THE PARTIES INVOLVED, BOTH PUBLIC AND PRIVATE, UNDERSTAND WHO IS IN CHARGE OF WHICH ASPECTS OF THE RESPONSE EFFORT. THE OIL SPILL COMMISSION INVESTIGATION AND OTHER SOURCES HAVE DISCUSSED THE CONFUSION, AND TENSION THAT EXISTED BETWEEN DEC AND DES DURING THE VALDEZ EMERGENCY. THE

COMMISSION RECOMMENDS THAT DES, UNDER THE DEPARTMENT OF MILITARY AFFAIRS, HAVE THE CLEAR LEAD AUTHORITY IN THESE MATTERS. UNFORTUNATELY THE CURRENT LANGUAGE IN SECTIONS 3 AND 5 OF SB 503 RAISES A QUESTION AS TO "WHO'S ON FIRST?" HERE. SECTION 3 OF THE BILL SEEMS TO MAKE THE DEC LEAD AGENCY, YET THE LANGUAGE IN SECTION 5 APPEARS TO PRESERVE A SOMEWHAT INDEPENDENT ROLE FOR DES AND STATES THAT THE DEC SHALL COORDINATE ITS RESPONSE TO A CATASTROPHIC OIL DISCHARGE WITH THE DES EMERGENCY RESPONSE. THERE ARE NO GUIDELINES AS TO HOW DEC AND DES SHALL "CONSULT AND COORDINATE" IN EMERGENCY SITUATIONS. THUS, THERE IS STILL THE POTENTIAL CONFLICT BETWEEN THESE AGENCIES. EXXON BELIEVES THAT A CLEARLY DEFINED SINGLE LEAD STATE AGENCY OPERATING UNDER THE DIRECTION OF THE GOVERNOR IS THE APPROPRIATE METHOD TO DIRECT THE RESPONSE OF THE STATE TO AN EMERGENCY. IF IT IS AN ENVIRONMENTAL MATTER, THE DEC WOULD CERTAINLY HAVE A ROLE AS A SCIENTIFIC ADVISOR.

WITH REGARD TO THE GOVERNOR'S AUTHORITY OVER THE HAZARDOUS SUBSTANCE RELEASE FUND, THERE IS NO INDICATION IN SB 503 AS TO WHAT ROLE, IF ANY, THE LEGISLATURE SHOULD PLAY IN AUTHORIZING OR REVIEWING THE USE OF FUNDS. WE MERELY RAISE THIS POINT AS AN AREA WHICH THE COMMITTEE MAY WISH TO ADDRESS.

OVERALL SB 503 PRESENTS QUESTIONS WHICH ARE CRITICAL TO THE PROPER MANAGEMENT OF AN EMERGENCY. WITH SOME THOUGHTFUL CHANGES THIS LEGISLATION COULD SIGNIFICANTLY ENHANCE THE STATE'S RESPONSE CAPABILITY AND ALLOW IT TO WORK CONSTRUCTIVELY WITH ALL OTHER PARTIES INVOLVED. AS WRITTEN IT WOULD ONLY MAKE EMERGENCIES MORE DIFFICULT.

UNFORTUNATELY, SB 504 WILL NOT BE AS EASY TO REPAIR. THE APPROACH ADOPTED IN SB 504 IS FUNDAMENTALLY FLAWED. THE AVOWED GOAL IS PREVENTION OF POLLUTION, HOWEVER, IN REALITY THE ONLY WAY THAT THIS BILL MIGHT REDUCE THE RISK OF OIL SPILLS IN ALASKA IS BY DRIVING SOME OPERATORS WHO HANDLE OIL TO FORSAKE THE OPPORTUNITY TO DO BUSINESS IN THIS STATE. TAKEN AS A WHOLE, THIS BILL IS ENTIRELY UNREALISTIC. WHILE WE RECOGNIZE THE NEED FOR REASONABLE OVERSIGHT AND ENFORCEMENT AUTHORITY TO PROTECT THE ENVIRONMENT, SB 504 IS PATENTLY EXCESSIVE. EVEN THE LARGEST OPERATORS WILL BE UNABLE TO COMPLY WITH SOME OF THE PROPOSED REQUIREMENTS. IN ADDITION, OTHER SMALLER COMPANIES THAT PROVIDE VITAL SERVICES TO MANY OF THE STATE'S COMMUNITIES COULD FIND IT FINANCIALLY IMPOSSIBLE TO CONTINUE OPERATIONS.

WE HAVE FOUR SPECIFIC AREAS OF MAJOR CONCERN WITH SB 504. THE FIRST IS WITH THE VAGUENESS OF ITS LANGUAGE AND THE LACK OF MEANINGFUL DEFINITIONS IN THE BILL. THE SECOND IS THE SWEEPING POWER HANDED TO DEC WITHOUT EITHER LIMITS OR CLEAR LEGISLATIVE GUIDANCE. THIRD, IT SETS UNREALISTIC GOALS WHICH ARE VIRTUALLY IMPOSSIBLE TO ATTAIN, AND FINALLY, IT CONTAINS FINANCIAL RESPONSIBILITY REQUIREMENTS UNRELATED TO RELATIVE RISKS WHICH WOULD BE IMPOSSIBLE FOR MANY CURRENT SHIPPERS AND SUPPLIERS TO PROVIDE. WITH YOUR INDULGENCE, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO BRIEFLY POINT OUT SOME OF THE PARTICULARLY TROUBLESOME PROVISIONS.

THE BILL WILL REQUIRE THAT ALL OPERATORS MAINTAIN ON HAND SUFFICIENT CLEANUP AND RESPONSE EQUIPMENT TO "RAPIDLY CONTAIN A REALISTIC MAXIMUM OIL DISCHARGE AND TO REMOVE THAT DISCHARGE WITHIN THE SHORTEST POSSIBLE TIME."

"MAXIMUM DISCHARGE" IS CAPABLE OF BEING VERY BROADLY DEFINED. FOR EXAMPLE, UNDER THE PROPOSED LANGUAGE THE DEC COULD DETERMINE THAT A REALISTIC MAXIMUM DISCHARGE FOR THE VALDEZ TERMINAL, FOR EXAMPLE, WOULD BE TEN OR MORE TIMES GREATER THAN THAT WHICH OCCURRED LAST YEAR. THERE IS SIMPLY NOT ENOUGH OIL SPILL RESPONSE EQUIPMENT IN THE ENTIRE WORLD TO SATISFY THAT REQUIREMENT. MOREOVER, EVEN IF THERE WAS THAT MUCH EQUIPMENT IN THE WORLD OR IF YOU DETERMINE THERE SHOULD BE, IT IS UNREALISTIC TO REQUIRE A STOCKPILE OF SUCH MAGNITUDE AT EVERY POINT WHERE SUCH A SPILL MIGHT OCCUR. THIS BILL WOULD REQUIRE THAT.

THE PROPOSED STANDARD IS MORE THAN UNREALISTIC; IT SIMPLY CANNOT BE ACHIEVED. WORST CASE SITUATIONS CAN ALWAYS BE ENVISIONED, AND SHOULD BE REASONABLY PLANNED FOR, BUT SOCIETY COULD NOT FUNCTION IF REQUIREMENTS SUCH AS THESE WERE IMPOSED IN EVERY ASPECT OF OUR LIVES. THE OIL SPILL COMMISSION FOUND THAT "PREVENTION IS THE ONLY WAY TO PROTECT THE OCEANS AND COASTLINES FROM OIL SPILLS." THE PROPOSED BILL CONTRIBUTES ABSOLUTELY NOTHING TOWARD THE GOAL OF PREVENTING AN OIL SPILL, INSTEAD IT DEMANDS CLEANUP AND RESPONSE CAPABILITIES WHICH CANNOT BE MAINTAINED. OTHER ASPECTS OF THE BILL ARE SIMILARLY FLAWED. THE DEC ALREADY HAS MORE THAN AMPLE AUTHORITY REGARDING THE APPROVAL AND MONITORING OF CONTINGENCY PLANS, INCLUDING THE AUTHORITY TO REVOKE APPROVED PLANS UNDER APPROPRIATE CIRCUMSTANCES. WE SUGGEST THAT ATTENTION SHOULD BE DIRECTED TOWARD ENCOURAGING AND ASSISTING DEC IN THE PERFORMANCE OF ITS EXISTING DUTIES, NOT GRANTING IT ADDITIONAL UNWIELDY AND VIRTUALLY UNLIMITED POWER AS SECTION 1 OF THE BILL WOULD DO.

THE LOGIC BEHIND THIS PROPOSAL IN SECTION 4 THAT THE DEC BE GIVEN AUTHORITY TO INSPECT TANK VESSELS FOR "STRUCTURAL INTEGRITY" IS DIFFICULT TO UNDERSTAND. THE DEC HAS NO CAPABILITY OR EXPERTISE IN THIS AREA. IT WOULD HAVE TO HIRE SEVERAL ADDITIONAL EXPERTS, INCLUDING STRUCTURAL ENGINEERS AND NAVAL ARCHITECTS. A MEANINGFUL INSPECTION PROGRAM FOR THE STRUCTURAL INTEGRITY OF TANKERS, FOR EXAMPLE, ALSO WOULD REQUIRE DRYDOCK FACILITIES WHICH CURRENTLY DO NOT EXIST IN ALASKA. PERHAPS MORE SIGNIFICANTLY, AS REGARDS TANKERS, THIS AREA IS CURRENTLY WITHIN THE EXCLUSIVE JURISDICTION OF THE UNITED STATES COAST GUARD. THE COAST GUARD DOES HAVE THE NECESSARY EXPERTISE. MOREOVER, THIS INSPECTION BY DEC, WHILE IT WOULD BE COSTLY, LARGELY REDUNDANT, DISRUPTIVE AND TIME CONSUMING, WOULD CONTRIBUTE NOTHING TOWARD PREVENTING OIL SPILLS.

FINALLY, THE FINANCIAL RESPONSIBILITY REQUIREMENTS PROPOSED IN SECTION 2 DO NOTHING FOR PREVENTION, AND THE COSTS COULD BE PROHIBITIVE FOR CERTAIN SHIPPERS, CARGO OWNERS, AS WELL AS THE LOCAL SUPPLIERS AND BARGE OPERATORS THAT PROVIDE CRITICAL SUPPLIES TO MOST ALASKAN COMMUNITIES.

THESE ARE BUT A FEW OF THE MORE NOTABLE REASONS WHY SB 504 SHOULD NOT BE PASSED INTO LAW. TAKEN AS A WHOLE, THE BILL OFFERS NOTHING WHICH WOULD ACCOMPLISH THE PRIMARY GOAL IDENTIFIED BY THE OIL SPILL COMMISSION - PREVENTION. EXXON AGREES WITH THE COMMISSION THAT PREVENTION IS THE BEST AND MOST REALISTIC WAY TO AVOID ENVIRONMENTAL DISASTERS. WE ARE WILLING TO WORK WITH ALL APPROPRIATE GOVERNMENTAL AUTHORITIES TO ACHIEVE THAT COMMON GOAL.

1-23-90 Testimony of Daniel Lawn
Before the House Resources Committee

Mr. Chairman

In 1973 I received a Bachelor of Science degree in environmental resources engineering from the University of California at Humboldt.

In the fall of 1973, I joined Fluor Engineers and Constructors, the prime design and engineering management contractor for the Valdez Marine Terminal. After spending a year in the civil design and project engineering section in the LA area, I was one of the 1st two people Fluor sent to Valdez as their construction start up team.

From May 4, 1974 to March 1977, I was a field engineer/civil supervisor for Fluor at the Valdez Marine Terminal. My primary responsibilities included oversight of construction activities of the prime Earth work contractor.

I joined the Department of Environmental Conservation as an Environmental Engineer III in August of 1977, shortly after oil began flowing through the Trans-Alaska Pipeline System.

As requested; I am prepared to give you my impression from a field perspective of the Valdez Office's role in the oversight of

the Alyeska Marine Terminal. Our basic experience has been that the harder we worked, the more we found, the more difficult access to the terminal became. But let me first give you some background.

In the early days, my chief duties were the development and implementation of the field activities as they related to the Tanker Inspection Program at Valdez. In addition, I responded to most of the oil spills at the Valdez Marine Terminal, where I observed Alyeska's Contingency plan in action. I documented, analyzed and reported on the adequacy of their response.

At that time, the Prince William Sound District Office was a regional office with as many as 5 field positions and 1 clerical position.

As I recall, two positions were sole Alyeska oversight with reimbursable funding. Two other positions covered other Departmental programs and the regional supervisor's position which primarily interfaced with Alyeska Management, the several community leaders in Prince William Sound area, and other department oil program development, management and administrative functions.

In 1979 with the demise of Alaska's tanker safety program some planned positions for Valdez never became a reality. The Prince

William Sound Regional Office was downgraded to a District Office and one position was transferred to Anchorage; and the other was never filled.

Since that time, the Valdez District Office has had 3 field and one clerical position.

In addition, funding sources changed and all the positions started working in all program areas (DW, WW, AQ, SAN, OIL, etc). There was no position dedicated solely to Alyeska oversight, so oversight of Alyeska suffered and became almost non-existent or cursory at best.

In 1981 I was appointed the District Engineer/District Supervisor which was an additional work load.

In 1982 during an Alyeska Contingency Plan review, field staff used the first 5 years of oil spill response and clean up observations to say Alyeska's cleanup response was inadequate and their skimmer capacity highly overrated.

In 1984, I wrote two memos which described in some detail a general "disemboweling" of the Alyeska trained cleanup team and documented broken down clean up equipment.

From 1977 up to this period, 1984, Valdez field staff had

relative easy access to the Terminal although not enough time or energy to spend much time there.

In 1985 the Department began responding to allegations that there were serious problems at the Valdez Marine Terminal.

A good portion of the Valdez Field staff's workload was reassigned and increased so that we had an increased presence at the Terminal. I became the Department's principal investigator in Valdez.

This investigation has taken place over several years and covered many topics. One of which was a monumental undertaking of reviewing thousands of pages of reports and documents concerning the ballast treatment plant. The Valdez field office staff's knowledge and understanding of the system allowed us to evaluate some of these reports. Our work helped the Department set new discharge limits in the NPDES permit.

Also during this time the Department undertook another review of the Alyeska Contingency Plan. This review was hampered by the resistance of Alyeska to make changes in their plan and to drastically improve implementation of the plan. This delaying and resistance turned a few week process into an 18 month exercise.

Since 1983 when the Department began to investigate these several allegations, it seemed to all the Valdez field staff that the harder we worked, the more we found, the more we found, the more difficult access to the terminal became. The restricted access delayed entry onto the terminal to a point that on some occasions field staff were unable to carry out inspections.

I can give you some examples:

In 1986, Valdez field staff documented access problems over a 16 day period. During that time the staff made over 70 phone calls to Alyeska to schedule the 28 trips to the terminal. About 1/3 of the trips were for unannounced compliance sampling, 1/3 for spill response, and 1/3 related to oversight of the Ballast Water Treatment Tank cleaning sludge removal process.

Department staff lost almost two man days trying to contact Alyeska to schedule visits. After the visits were scheduled, we lost 1/2 day waiting at the gate. We lost another 1 1/2 days being taken or directed to go somewhere other than where we needed to go.

In addition, on several occasions we were prevented from inspecting certain activities for several hours (2-4) and in one case that delay was over 20 hours. On more than one occasion the delay actually prevented the inspection due to other commitments.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

17 April, 1990

MEMORANDUM:

TO: Senator Drue Pearce, Chair
Senate Oil and Gas Committee

FROM: Senator Fred Zharoff *FZ/P.T.*

I have recently spoken with a number of oil terminal facility operators who have very serious concerns about the financial responsibility requirements contained within SSSB 504. As your committee continues its deliberation on this measure, I trust you will consider the potential financial burdens this bill, as presently written, would impose on the industry. For your review I have included a copy of a fax I recently received from Nushagak Electric Cooperative explaining their perspective on this proposal.

Thank you for your consideration of this matter.

**ALASKA****NUSHAGAK ELECTRIC CO-OPERATIVE, INC.**

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

TO: Senate Oil and Gas Committee

FR: *David F. Bouker*
David F. Bouker, General Manager

DT: April 9, 1990

RE: SSSB-504

My name is David F. Bouker. I am the general manager of Nushagak Electric Cooperative, Inc., a small non-profit electric utility serving the Bristol Bay communities of Dillingham and Aleknagik.

The part of this bill that gives cause for concern is that section which modifies AS 46.04.040 titled, "Proof of Financial Responsibility."

At this time, an oil terminal operator of a facility with 10,000 barrels of storage, or greater, is required to show ability to self insure or to have an insurance policy of \$1 million to indicate proof of financial responsibility for a spill during transfer operations. Our plant capacity is 25,333 barrels. The policy vehicle we currently have in force is written by Lloyds of London and costs us over \$21,000 per year.

The proposed bill would increase the required coverage from \$1 million to \$10 million. An increase of tenfold. We had extreme difficulty in obtaining the existing policy because no U.S. carrier would touch it. Our net worth is less than \$2 million, and I do not believe that we are insurable for anything over that amount.

We are located north of Dutch Harbor and this means that we can only receive fuel during the summer months. Therefore, we have to have the storage capacity to carry us through from September to May or June. Other communities such as Naknek, Bethel, Nome, and Kotzebue are in much the same position. This bill would also impact the local wholesale distributors. If the insurance coverage requirements increase tenfold, you can be assured that the attendant costs of that insurance will mean substantial increases in cost of power (which the state may help finance through Power Cost Equalization), heating fuel, and gasoline to those rural communities already beset by extremely high cost of living standards relative to the railbelt area.

Senate Oil and Gas Committee Memo
David F. Bouker
Page 2
April 9, 1990

I would like to propose several alternatives:

1. Keep the financial responsibility requirements at their present level for small isolated communities. They have not contributed to the Prince William Sound spill but are seemingly being penalized for it.
2. Increase the exemption or floor to 50,000 barrels of refined products so that the impact of increased financial responsibility on rural areas could be minimized.
3. Establish a state-run financial responsibility pool whereby all terminal operators would have to contribute, and this would help to mitigate impact of increased costs to small communities while building a reserve to cover emergencies. This would seem to make a lot more sense than requiring local communities to put up substantial sums of cash in order to purchase insurance from some foreign entity.

Last, but not least, SSSB-504 requires (lines 24, page 5) that each barge carrying from 10,000 to 49,999 barrels of non-crude oil carry \$1 million of financial responsibility insurance. What this means is that the local communities are required to go out and purchase ten times the insurance that is required of the barges that bring us our fuel. We get two barges a year and the greatest amount of exposure is limited to the transfer operations from the barges to our tanks. From our perspective, it does not appear that the \$10 million insurance requirement is really equitable.

Therefore, we would appreciate your critical review of this bill.

Thank you.

(lwb:reports\SB504)

504 file w/ Jones' memo

TO: Senator Pearce, Chair
Special Committee on Oil & Gas

FROM: Walter B. Parker, Chairman
Alaska Oil Spill Commission

SUBJECT: Letter to Senator Jones from Boyer Towing
of March 9, 1990 on SB504 and SB432

In reference to the comments on SB504 the administration failed to interpret our recommendation 14 correctly. We call for the state to "renew and strengthen its authority to conduct inspections and spill response drills in vessels calling at Alaska ports and marine terminals." The administration focussed on structural integrity for reasons not known to me. We intended that the state would have the right to inspect vessels as necessary as they did in the period 1977-79. This is to back up Coast Guard inadequacies in those areas as we point out in our explanation.

Structural inspections are a part of this which it may or may not be necessary to implement, but it is necessary for the state to have that right. Our record indicates as I have submitted in oral and written testimony to your committee a dismal failure on the part of the coast Guard on the Valdez traffic for many reasons. Our perception is that the industry is substantially underregulated and under inspected and has been since 1982.

This item is the single most important part of all three of the Governor's bills. Everything we found in the record since 1977 substantiates this. It is intended to focus on Valdez where 95% of the oil movement in the state is located. The other 5% can be left to the normal workings of the Coast Guard and DEC for now. It is not the problem. We need the four inspectors back in place in Valdez. I would look to early retirees from the Coast Guard or the Merchant Marine for initial recruitment.

Regarding SB432 I do not recall us making any recommendations that address the freezing of assets in the event of a spill. The nearest we came is probably recommendation 21 which would require insurance policies to name the State of Alaska as an additional insured or named beneficiary.

ALASKA STATE LEGISLATURE

MAR 19 1990

While in Ketchikan
352 Front Street
Ketchikan, AK 99901
907-225-9675



While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

MEMORANDUM

FROM: Senator Jones *LJ*

TO: Senator Pearce, Chair, Special Committee on Oil & Gas
Senator Fahrenkamp, Chair, Resources Committee
Senator Faiks, Chair, Judiciary Committee
Senator Uehling, Co-Chair, Finance Committee
Senator Binkley, Co-Chair, Finance Committee

DATE: March 16, 1990

RE: A letter with information on SB 504 and SB 432.

Enclosed is a letter with a few important points regarding two pieces of "oil spill" legislation. Boyer Towing is a maritime transportation company with a good reputation for service in Southeast Alaska and I hope that you will consider this letter when deliberating on this legislation.

BOYER TOWING INC.
P.O. BOX 8000
KETCHIKAN, ALASKA
99901
907-225-2090

March 5, 1990

Senator Lloyd Jones
P.O. Box V
Juneau, AK 99811

Dear Senator Jones

I have recently reviewed several pieces of pending legislation related to oil spills, spill contingency planning, spill liabilities, etc., to determine how they will impact our company. In reviewing these proposals, I find myself taking particular exception to SB 432 in its entirety and to a provision of SB 504 which would assign authority to a state agency to "examine the structural integrity of tank vessels and oil barges."

I will speak first to SB 504. My specific objections to state agencies being allowed to "examine" oil vessels for structural integrity are that it is patently unfair to one segment of the marine industry, and it exposes one type of already heavily inspected and regulated watercraft to the dubious expertise of state inspectors, while ignoring the potential for environmental disaster from other maritime sources.

As you may know, tank vessels and barges under the U.S. flag are currently one of the most heavily regulated and thoroughly inspected classes of vessels in the world. For example, Boyer Towing owns and operates two relatively small tank barges hauling refined oil products. Both of these barges are inspected by the U.S. Coast Guard and the American Bureau of Shipping at least annually. Frequently, because of the myriad of rules governing these vessels, they end up being examined by these two entities on a more frequent than annual basis. As part of the regulatory processes established by these organizations, our oil barges are under continuous technical evaluation as to their structural integrity and operational condition.

The single sentence establishing the examination requirement in SB 504 will, of necessity, require the state to hire new personnel with the professional competence to make judgments as to naval architecture, naval engineering, and vessel dynamic stability. With the exception of a few employees of the Marine Highway, none of the above currently exist in any state agency, and especially not within the Department of Environmental Conservation.

Both the Coast Guard and American Bureau of Shipping use inspectors with these kinds of qualifications, yet both encounter difficulty in attracting and retaining people with these credentials despite their ability to provide broad experience, a wide variety of work locations, and highly refined technical support and training. It is laughable to think that the State of Alaska, with its ever declining resources, would be able to attract and retain inspectors with equal or greater competence to those in the Coast Guard and ABS. Consequently the State of Alaska would saddle industry with inspection personnel of lower competence than those already inspecting our vessels, with a net lack of any gain in vessel safety or reliability.

Additionally, this requirement will mandate that the state expend ever reducing revenues to create entirely new regulations for the guidance of both "inspectors" and industry. It will also require establishing procedures and logistics for conducting these "examinations".

I believe that there are significant threats to the environment posed by other vessels which are not proposed to be "examined". To illustrate, let me compare one of these classes of vessel to our barges. The ~~foreign flag passenger vessel~~ **ROTTERDAM** travels upon the territorial waters of Alaska at least as frequently as our oil barges. Unlike our barges, the ROTTERDAM's activities are concentrated during the seasons of highest marine traffic activity when the risk of collision and grounding is highest.

The **ROTTERDAM** carries more oil onboard than both of our barges combined. The ROTTERDAM carries huge quantities of "heavy marine fuel oil". This oil is environmentally more dangerous than the diesel oils and gasoline carried aboard our barges. The crew of ROTTERDAM is made up of a small nucleus of highly skilled Dutch officers who oversee a very large number of low skilled, poorly trained, and poorly paid crew members, most of whom are from third world nations, many of whom cannot speak English. ROTTERDAM, like all foreign flag vessels, is not subject to standards of inspection equal to those applied to U.S. flag vessels. Finally, ROTTERDAM is operated by the same company and in the same manner as another famous Alaska maritime disaster, the PRINCENDAM, which would have become an environmental disaster had the owners succeeded in its badgering the Coast Guard for permission to tow the sinking hulk into Sitka Sound.

In my professional opinion, foreign flag cruise vessels carrying thousands of barrels each of heavy fuel and other oils, operated by foreign interests using marginally competent crews, pose a much larger threat to the environment than any of our barges.

In spite of the obvious threat to the environment posed by foreign flag cruise ships, as well as other classes of vessels such as the rapidly growing fleet of unregulated and uninspected large fishing ships using our waters, the state proposes "examining" only tank vessels and oil barges. This targeting of one class of watercraft completely ignores the potential serious threats posed by other types of vessels, and is an obviously short sighted "knee-jerk" reaction to the EXXON VALDEZ disaster.

I would be the last person to trivialize the dangers posed by tank vessels. I have seen enough during my career in the maritime industries to be fully aware of the health, safety, and environmental threats inherent in transportation of oil. However, establishing "examinations of the structural integrity" of tank vessels by state agencies is discriminatory, expensive, impractical, and a needless attempt to usurp the existing responsibilities of other organizations legally charged with establishing standards for maritime safety.

It makes no sense to me that the state would waste so much time and treasury in order to accomplished only an impediment to one segment of maritime commerce with virtually no reduction in the total threat to the environment posed by the industry as a whole.

In speaking to SB 432, I can't quite comprehend how this measure would be fairly applied in the event of an accident, especially, given the current belligerent attitude of elected and appointed state officials toward those of us transporting oil products by sea.

I believe that if SB 432 were currently law and our company were to suffer an accidental oil spill, the present ~~administration would very quickly move to freeze our assets~~ with little if any justification or logic, and no regard for potential impacts to our customers or our ability to continue in business. This may not be the case under a different administration, but I believe that this proposal would only serve as a weapon to be wielded wildly by the current administration.

Being a realist and recognizing that accidents can happen, I have to assume that our company may eventually experience an accident resulting in a discharge of oil. This being said, I must also state that our company is a good corporate citizen of this state which does not shirk it's obligations. We take precautions to prevent accidents, maintain our vessels in excellent condition, employ the most reliable people we can find, comply with requirements for contingency planning, and impose very conservative operating restrictions on our vessels, with a view toward safety rather than speed.

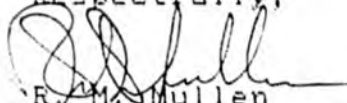
Unfortunately, the political atmosphere in this state is such that if we were to suffer an accidental release of oil, I have no doubt that ~~we would be treated as criminals~~ regardless of any actions we have taken to prevent accidents, from happening or any actions we would take in mitigating the effects of an oil spill.

With all of the other increases in penalties, fines, prohibitions, and insurance levels contained in the other pending legislation I have reviewed, SB 432 conveys the impression that the state is establishing a punishment system which will get the attention of the oil companies. However in it's attempts to send a message to the "big bad oil companies" the state is removing all incentive for a company like ours to continue providing our traditional oil delivery service. Additionally, the state is removing incentives we may have had to upgrade our existing fleet with newer and more sophisticated oil barges.

Simply said, we are receiving the message that the State of Alaska seems to be sending. That anyone engaged in the transportation of oil should automatically be considered as a criminal before the fact so that circumstances surrounding an oil spill will not get in the way of predetermined punishment.

~~I encourage you to seek the removal of the "examination"~~
provision of SB 504 and to work toward the defeat of SB 432.

Respectfully,



R. M. Mullen
Marine Superintendent

OIL SPILL RESPONSE PLANNING

OIL SPILL RESPONSE PLANNING

1. What Standard of Performance Should be used for Spill Response Planning?

The State of Alaska is preparing a standard that would require ports and facilities throughout the state to have available enough equipment to remove the total contents of a vessel or tanker, from the water within 72 hours.

This paper demonstrates, by comparing Alaska's proposed requirements with those established in Norway, that these proposed standards would place a crippling financial burden upon all communities in the state and will, in the case of Prince William Sound, require so much equipment to be on site that it could not all be deployed in the event of a spill.

2. A Methodology to Compare Various Spill Contingency Plans.

To compare oil spill contingency plans all items of equipment must be considered, i.e., skimming capacity attendant boats and tugs, storage capacity for recovered oil, boom, manpower, etc.

Skimmers are normally rated by their "nameplate capacity". The actual quantity of oil a skimmer will pick up depends upon weather, encounter rate with the oil, temperature age of the oil, etc. For planning purposes 30%-35% of the nameplate capacity is a good indication of actual recovery rate.

Alyeska Pipeline Service Company has analyzed the private and government spill response organization in Norway. Using the Norwegian "Oil Recovery System" as a standard, the cost and efficiency of the programs proposed by the State of Alaska can be measured.

Frequent comparisons have been made between the Valdez Marine Terminal and Sullom Voe in the Shetland Isles. Statistics from both are included in Appendix I.

3. Analyses of Norwegian Oil Spill Plans.

In Norway the State Pollution Control Authority (SFT) holds oil spill equipment at 12 contingency bases around the Norwegian coast. (See Appendix II)

An oil industry cooperative with 13 members, NOFO, maintains equipment at five coastal locations to deal with off-shore spills in the North Sea production areas. (See Appendix II)

The Standard of Performance set by the Norwegian Government for NOFO to meet is:

- a. Be at scene of spill ready to deploy equipment within 24-48 hours depending upon the area.
- b. Enough equipment must be on-site to remove 8000 tonnes of oil (56,000 barrels) within 24 hours. (See NOFO plan, section 6.2)

Norway requires that NOFO have the capability of getting four independent "Oil Recovery Systems" to the oil spill in order to meet the Government's Standard of Performance.

Each Oil Recovery System consists of a large tug/oil field work boat, a smaller tug, oil storage capacity, 2000-foot boom, and a Transrec skimmer.

(The Transrec skimmer is state-of-the-art design and is designed for use in Northern waters.)

4. Estimated Performance and Cost of a Complete "Oil Recovery System".

Using the Norwegian Government's figures the "Oil Recovery System" will recover and store 42,000 barrels of oil in 72 hours.

The estimated cost of each "Oil Recovery System" for operation in Alaskan waters using Jones Act shipping:

- a. Capital cost Transrec unit \$1 million
and 2000 feet ocean boom,
plus ancillary equipment.
- b. Daily hire payments for \$10,000 per day
one large off-shore tug,
one smaller tug and a 60,000
barrel oil storage barge
(including cost of 20-man
crew to operate tugs and
system).

Note: The daily hire costs may be reduced if the tugs and barges can be used for other tasks.

5. Proposed Alaskan Standards.

The standards proposed by DEC in SB504 would require a facility to have sufficient oil spill equipment available to clean up the total contents of the largest vessel within 72 hours.

Using the Norwegian System as a unit of clean-up capacity, terminals in Alaska would have to have the following equipment available:

Area Ports	Largest Tank Barge (barrels)	Number of Oil Recovery Systems	Number of Men	Estimated Cost	
				Capital (\$ million)	Annual Operating (\$ million)
Southeast & Western Alaska	100,000*	2+	40	\$2.0	\$7.3
Cook Inlet	420,000	10+	200	\$10.0	\$36.5
Valdez	1,800,000	40+	800	\$40.0	\$146

* Largest vessel capacity for carriers ranges from 48,000 bbls to 148,000 bbls.

It is submitted that this level of equipment and cost is far in excess of what was envisaged by the drafters of the proposal.

The Norwegian equipment used for this comparison is one of the largest swimming systems available. Although there have been discussions of very large skimming units such as ARCO's Big Gulp, these units are not yet constructed and their technology has yet to be proven. There are many questions to still be answered before such a large skimmer is shown to be superior to existing ones, especially when maneuverability and safety in confined waters is considered.

6. An Alternative Standard of Performance.

A standard must be developed that can be used in all ports throughout the state. This standard must reflect not only the amount of skimming capacity, boom and recovered oil storage systems, but must take oil spill prevention measures that have been put in place in that port into consideration.

7. Risk Assessment Study.

It is therefore proposed that a full Risk Assessment for each terminal is undertaken which will reflect the Oil Spill Prevention programs in place at that facility.

From this study, the probable catastrophic oil discharge for the terminal can be calculated. "Probable catastrophic oil discharge" means the largest oil discharge, based on a statistical analysis of historical records, giving proper weight to the results of risk assessments and prevention measures undertaken, that would be expected to occur during the lifetime of the vessel or facility based on the size, location, capacity and operational record of the vessel or facility or on the experience of similar vessels or facilities.

It is this "probable catastrophic oil discharge" figure that should be used in the development of on site equipment requirements for spill plans.

APPENDIX I

Alyeska and Sullom Voe Oil Spill Equipment

TOTAL ALYESKA EQUIPMENT
(in place or on order)

SKIMMERS

Barrels/Hour

SERVS	12 Sea Skimmer 50	4,200
	2 Transrec	4,000
	1 Wierboom	4,500
	1 J.B.F.	1,100
	2 Marflex Arms	4,200
TERMINAL	2 Vikomma 100	1,400
	8 Komara	700
	Various	500
Total		20,600

BOOM

Feet

SERVS Boom (including hatchery storage)	160,000
Terminal Boom	45,000
Total	205,000

Barrels Capacity

RECOVERED OIL STORAGE

450,000

OIL SPILL CONTINGENCY EQUIPMENT

	Alyeska	Sullom Voe
Total Boom (feet)	200,000+	15,700
Nameplate Skimmer Capacity (barrels/hour)	20,000+	2100
Oil Storage Capacity (barrels)	450,000+	11,500
Area of Operation	Prince William Sound	Sullom Voe

NOTE: Nameplate capacity cannot be directly related to actual performance. Clean Up capability is greatly affected by amount of oil, wind, and sea conditions.

APPENDIX II

Norwegian Oil Spill Equipment

APPENDIX II

Norwegian Oil Spill Equipment

	<u>Boom</u>	<u>Skimmers</u> <u>Nameplate</u> <u>Capacity</u>
State Owned	97,000 ft	16,000 bph
Industry Owned	28,000 ft	26,600 bph
Total	125,000 ft	42,600 bph

STATE POLLUTION CONTROL AUTHORITY (SFT)

Address: Statens Forurensingstilsyn
PO Box 8100 Dep
N-0032 Oslo 1
NORWAY

Contact Numbers:

SEE SECTION 1A

Equipment: - 12 contingency bases at coastal locations;
- 10,800 m offshore boom;
- 19,000 m inshore boom;
- 69 skimmer units, 49 separate pump units; *Nominal Skimming capacity = 16,000 bbls/hr*
- SFT owns 10 vessels with oil recovery equipment on board and 4 coastal support vessels;
- 4 large oil recovery vessels (trawlers) under contract;
- agreements with shipping companies re supply vessels, tugs;
- 1 spotter plane.

Personnel: - advisory staff and own operators/vessel crews;
- contract vessel crews.

Mobilization time: - No claims made.

Release of equipment: - If a spill occurred outside Norwegian waters, the SFT would normally only release their equipment in response to a request from another government (eg under the terms of the Bonn Agreement or NORBRITPLAN).

However, if there were a potential threat to the Norwegian coast, the SFT might well permit the release of their own or NOFO resources to assist an oil operator in another sector of the North Sea.

If the SFT were to release equipment, it would normally be operated by their own personnel or contract vessel crews.

SEE FOLLOWING PAGES FOR INVENTORY AS OF SUMMER 1989

IOE/89/870/Annexe

December 1989

(SFT)

Beredskapsplan — Akutt forurensning.

Generell del.

Kap.: 10 VEDLEGG - "02"

Side: 1 av 2

RESSURSER/OV-UTSTYR (Resources/oil recovery equipment)

LENSER (m) (Boom)

TYPE/DEPOT (Bark)	a (m)	1 H	2 K	3 S	4 B	5 A	6 Ø	7 S	8 B	9 L	10 T	11 H	12 V	Tot
Expandi 3000	150	2	2	2	2	2	2	2	2	2	2	2	2	24
Expandi 3000	200	1	1	1	1	1	1	1	1	1	1	1	1	1
Expandi 4300	200	7	2	-	2	2	2	-	2	2	2	-	2	23
NOAS KL 60	200	1	-	-	-	-	-	-	-	1	-	-	-	2
ombygget KL 60	200	2	-	-	-	-	-	-	-	-	-	-	-	2
NOAS KL 80	200	4	4	4	4	5	4	4	4	3	5	4	4	49
ombygget KL 8	200	-	-	-	-	-	-	-	-	1	-	-	-	1
Trailboom 1500 N	110	2	2	2	2	2	1	2	1	1	2	2	1	20
Trailboom 1500 G	110	1	-	-	-	-	1	-	1	1	2	2	1	14
Sea Serpent 2000 N	100	4	7	2	7	8	4	7	4	3	8	7,5	4,5	66
Sea Serpent 2000 G	100	4	-	5,5	-	-	3	-	3,5	-	-	-	2,5	18,5

OPPTAKERE/PUMPER (stk) (Skimmer + pumps)

	å (m ³ /t)	1	2	3	4	5	6	7	8	9	10	11	12	Tot
Foxtail 2-9		1	1	-	-	-	1	-	-	1	1	-	-	5
Foxtail 4-9		2	-	1	1	-	-	1	-	-	1	-	-	6
Foxtail 9-14		2	-	1	-	2	-	-	-	-	-	-	-	5
Walosep W3	80	1	-	1	1	1	-	1	1	-	1	-	-	7
Walosep W1	20	-	1	-	-	-	-	-	-	-	1	-	-	2
Komara mini-skimmer	8	2	1	1	1	1	1	1	2	1	3	1	1	16
OMI Oil mop	10	1	1	-	1	1	-	1	1	-	1	1	-	9
CSI Oil mop	10	1	-	1	-	-	1	-	-	1	-	-	1	5
Sandvik band	50	1	-	1	-	-	-	1	-	-	1	-	-	4
GT 185	40	1	-	-	-	-	1	-	-	-	-	1	-	3
Grabb	-	1	-	1	1	-	-	1	-	-	1	1	1	7
Framo Tk 6	500	2	-	-	-	-	-	-	-	-	1	-	-	3
Framo Tk 5	200	3	-	-	-	-	-	-	-	-	-	-	-	3
Framo Tk 3-4	30	-	-	2	-	-	-	-	-	-	-	-	-	2
Thune Eur.														
CCN 150	500	3	-	-	-	4	-	-	-	-	1	-	-	8
Karmøy pumpe	100	-	-	1	-	-	-	-	-	-	-	-	-	1

* 1 stk. OMI Oil mop på Svalbard.

Utg. no.: 2	Erst. no.: 1	Rev. av: HTH	Gjort. av: KK
Dato: 31.5.87	Dato: 12.9.84		

SFT

DE
STATLIGE
DEPOTER

515
OIL SPILL
CONTINGENCY DEPOTS



Statens forurensingstilsyn

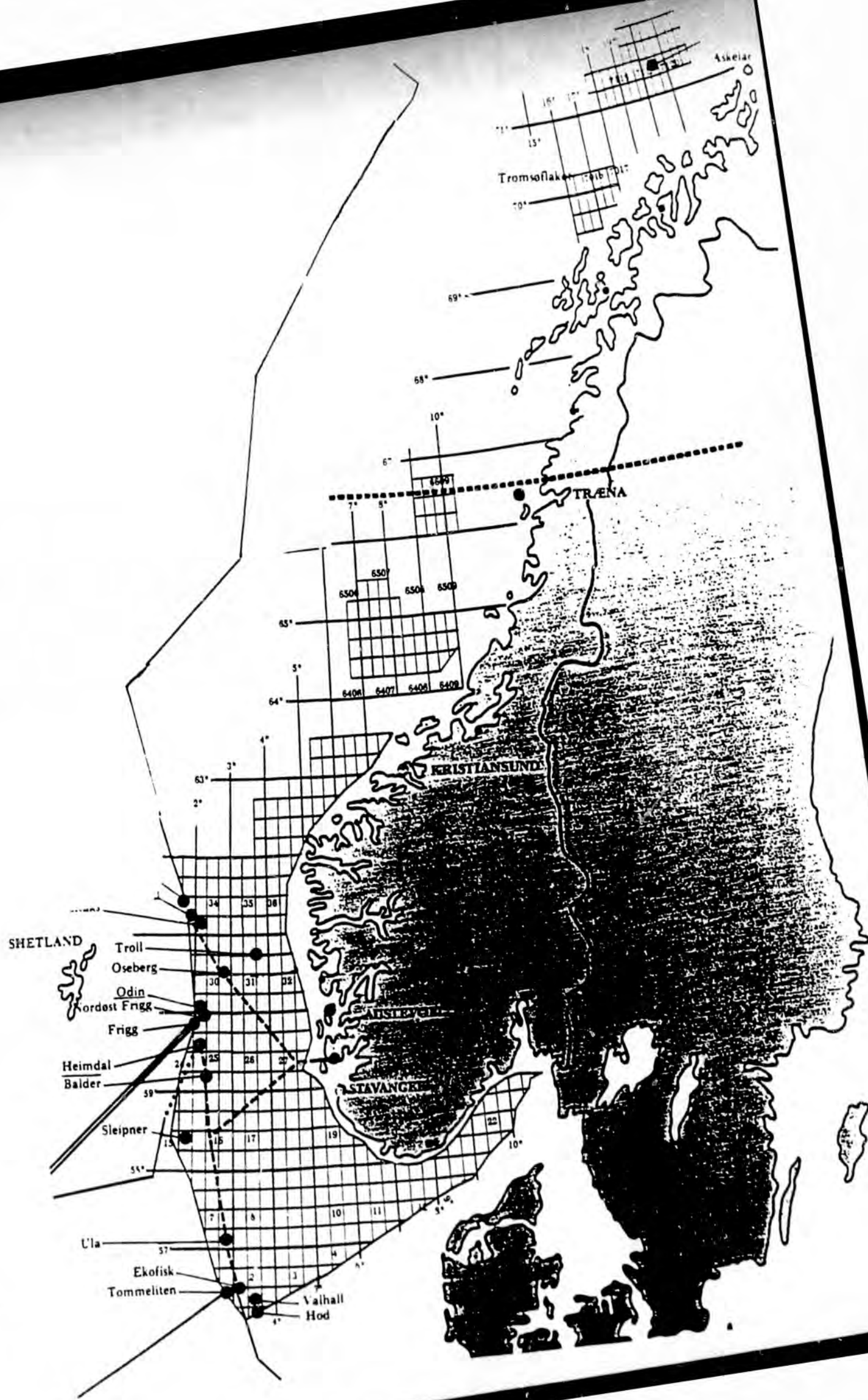


Hovedstasjon for oljevern
HORTEN

Moloveien 7,
Postboks 125
3191 Horten
Telefon (033) 44 161
Telex 21610-SFT-HS-N 70519
Telefax (033) 44-161 44257

NOFO (Norsk Oljevernforening For Operatorselskap)

- Type of organization: - oil industry co-operative with 13 member companies, including BP.
- Address and Contact Numbers: - SEE SECTION 18
- Response capability: - emphasis on mechanical recovery equipment for offshore use;
- 8,000 t/day in Norwegian Sector of the North Sea (in line with government requirements), with 1 vessel/recovery system to be at spill scene within 24 hours and 3 further systems on site within 48 hours.
- Can assist clean-up operation in UK Sector of North Sea subject to SFT/Norwegian government approval.
- Equipment: - held at 5 coastal locations, viz STAVANGER/AUSTEVOLL/KRISTIANSUND/TROENA/HAMMERFEST;
- 8,750 m offshore boom;
- 14 Framo NOFO Transrec combined oil recovery and transfer systems; *Nominal skimming capacity = 26,600 bbls/hr*
- agreements with operating companies covering 14 oil recovery vessels, specially equipped and with minimum tank capacity of 1,000 m³;
- direct contracts to make available 20 towing vessels;
- all equipment is very advanced and well maintained.
- Personnel: - 105, including 85 standby operators/crew.
- Mobilization time: - depends on vessel location, ca 3 hours if vessel at base.
- Release of equipment: - release outside Norwegian Sector must be approved by NOFO members and by the SFT (State Pollution Control Authority).
- SEE FOLLOWING PAGES FOR SPECIFICATIONS OF NOFO EQUIPMENT AND LOCATION OF RESOURCES



APPENDIX III

Oil Spill Equipment From

Other Areas of the World

A NATIONAL AUTHORITIES

Equipment

National Authority Stockpiles	Boom General Purpose (km)	Boom Inshore (km)	Skimmers/ Recovery Systems	Pump Units	Off-loading Systems	Storage Containers >45 m ³	Dispersant (tonnes)
UK	- 20,000+ ft	6.1	25	6	3	-	1,737
NORWAY	10.8 97,000+ ft	19.0	69	49	-	7	-
SWEDEN	2.8 102,000+ ft	28.5	70	-	2	7	-
DENMARK	6.6 69,000+ ft	14.7	47	-	1	9	501
W. GERMANY	1.2 20,000+ ft	5.2	25	-	4	5	-
NETHERLANDS	1.3 13,000+ ft	2.9	19	15	-	1	299
FRANCE	3.5 71,000+ ft	18.4	49	-	4	18	2,261
BELGIUM	0.1 4,000+ ft	1.2	2	-	-	-	37
USSR (Baltic)	3.5 56,000+ ft	13.6	16	?	?	-	100
US COAST GUARD	3.7 12,000+ ft	?	20	?	5	?	?
US NAVY	7.8 25,000+ ft	-	33	21	-	10	?
CANADIAN COAST GUARD	7.5 185,000+ ft	49.0	172	158	-	?	?
AUSTRALIA	6.1 104,000+ ft	25.7	50+	6	-	-	647

B

OIL INDUSTRY STOCKPILES

Equipment

Oil Industry Stockpiles	Boom General Purpose (km)	Boom Inshore (km)	Skimmers/ Recovery Systems	Pump Units	Off- loading Systems	Storage Containers >45 m ³	Dispersant (tonnes)
OSSC - SOUTHAMPTON	5.4	2.9	50+	13	-	1	minimal
BP - DUNDEE	2.0	2.2	17	15	-	-	minimal
UKOOA	-	-	-	-	-	-	390
NOFO (Norway)	8.7	-	14			?	-
GAOCMAO (Middle East)	14.2	11.4	111	26	-	8	?
TARC (Far East)	1.2	-	8	-	2	-	100

Note: For details of personnel, vessels, aircraft, mobilization times and availability of resources see SECTION 3B

US COAST GUARD

Address: USCG
National Response Center
2100 2nd Street South-West
Washington DC
USA

USCG
Atlantic Area Strike Team
Aviation Training Center
Mobile, Alabama 33608-9690
USA

Contact Numbers: SEE SECTION 1A

- Equipment:
- any equipment that might be released internationally is maintained by the Atlantic and Pacific Area Strike Teams in Alabama and California;
 - offshore recovery equipment consists mainly of 20 complete skimmer/boom systems (3,730 m boom in total);
 - cargo transfer is effected by 5 "over the top" offloading systems;
 - equipment is palletized ready for air freight;
 - equipment not as modern as US Navy resources.
- Personnel:
- Atlantic Area Strike Team = 39 personnel
 - Pacific Area Strike team = 26 personnel
- Personnel are all highly trained in the operation of equipment.

Mobilization time: - 8 hours (ready to fly)

Release of equipment: - normally international requests for assistance would be made at government level via the US State Department.

Equipment released would be operated by Strike Team personnel. International experience, but no North Sea precedent. Question of international release a lot more sensitive after Valdez incident.

Payment arrangement would have to be agreed before release took place.

SEE FOLLOWING PAGES FOR SPECIFICATIONS OF EQUIPMENT USED BY USCG

US NAVY (SUPSAL)

Address: Naval Sea Systems Command
Office of Supervisor of Salvage
(SUPSAL)
Washington DC 20362-5101
USA

Contact Numbers:

SEE SECTION 1A

- Equipment:
- most equipment at one of two bases (Virginia/California)
 - more modern equipment than USCG
 - 24 recovery systems comprising
 - 36 foot aluminium hull vessel (weight 11 tons)
 - sorbent conveyor belt skimmer
 - ca 180 m boom
 - 26,000 gallon Dracone
 - there are additional stocks of offshore boom (7,800 m) and cargo transfer pumps.
- Personnel:
- equipment is maintained and operated by private contractors.
- Mobilization time:
- no claims made, estimated at 6-12 hours.
- Release of equipment:
- normally international release would have to be authorised by the US State Department.

If equipment were released, operators would be provided.

SEE FOLLOWING PAGE FOR INVENTORY (OCTOBER 1989)

CANADIAN COAST GUARD

Address: Canadian Coast Guard
Emergencies (AMG)
Canada Building
344 Slater Street
Ottawa, Ontario K1A 0N7
CANADA

Contact Numbers:

SEE SECTION 1A

- Equipment:
- very large amount of equipment, but spread among over 50 bases including inland stockpiles.
 - all equipment is modern, best available
 - ca 7,500 m offshore boom
 - ca 49,000 m coastal boom
 - over 170 skimmers, over 150 separate pumps
 - 50+ pollution control vessels
 - 40+ spraying systems, excluding beach cleaning

- Personnel:
- trained Canadian Coast Guard equipment operators
 - additional manpower can be contracted in if required

- Mobilization time:
- at a national level Coast Guard aims to have all equipment ready for transportation within 2 hours

- Release of equipment:
- will consider all requests for assistance

Judging by Valdez incident, release liable to be slow while back-up systems are considered.

At national level equipment released would be operated by trained Coast Guard personnel. In the event of international release it is thought more likely that a limited amount of technical advisors would accompany the equipment and train others in its use.

The user is charged for equipment damage and loss.

SEE FOLLOWING PAGES FOR:

REGIONAL INVENTORIES (OCTOBER 1989)/HIRE CHARGES/STANDARD REQUEST FORM

GENERAL COMPARISON OF SPILL RESPONSE PREPAREDNESS

SULLUM VOE

Refinery
Sullum Voe, UK & adjacent

Ocean Boom: 13,000 ft
400m Vikoma Deck Reel
920m Roulund Arctic Ocean
992m Roulund Bay Boom
1640m Nordan 600

Other Boom: 2,700 ft
350m Swerback Boom Layer
450m Vikoma Seapack
45m Vikoma Shore Guardian

Skimming: 1,400 bph crude
700 bph heavy oil
1X140bph Dynamic Rope - "Kyrre"
1X Komara 30K
1X Komara 12K
1X Seasidmmer 50
1X Destroll
1X Seawolf
XX Rope Mop Units
1X Jet Vac Unit
1X Egmoles Barge
1X Clam Bucket

Reed Oil Storage: 11,500 bbl
2X1500bbl Barges
2X500bbl Fastank
11X10bbl Containers
10X12bbl Pillow Tanks
3X142bbl Flex Tanks
16X350bbl Site Tanks, fixed
Skimmer offcad jetty

OIL SPILL SERVICE CENTRE

BP Commercial Spill Response
Southampton, UK & vicinity

Ocean Boom: 12,500 ft
3X500m Vikoma Oceanpack
3X500m Vikom Deck Reel
2X200m Nordan Ocean Boom
2X200m Roulunds High Seas Boom

Other Boom: 13,000 ft
4X450m Vikoma Seapack
1X250m Vikoma Coastalpack
150m Hoyle Std 9.5cmx21cm
13x12m Skidmax Shore Barrier
22x25m Hoyle Shore Guardian
500m Hoyle Sea Sentinel
155m Skidmax 15cmx15cm
37x10m Hoyle Figure 8

Skimming: 9000 bph
3X700bph Seasidmmer 100
4X350bph Seasidmmer 50
8X85 Komara 12K Disc
5X(125bph total) Ropemop
2X140bph Toothed Heavy Oil
2X700bph Heavy Oil
1X125bph Egmoles
9X Misc Specialty Skimmers
[1X4200bbl 10Wier Boom Skimmer
on long term lease to Alyseka]

Reed Oil Storage: 4800 bbl
1X700bbl Dunlop Dracone
1X210bbl Dunlop Dracone
10X175bbl Pillow Tanks
10X85bbl Pillow Tanks
17X50bbl Fastank
2X175bbl Hoyle U Storage
1X175bbl Avon Tank
1X210bbl Vikoma Pillow Tank
2X Skidmax Conical Tanks

GENERAL COMPARISON OF SPILL RESPONSE PREPAREDNESS

CLEAN COASTAL WATERS

Private Coop
Long Beach, CA & vicinity

Ocean Boom: 0 ft

Other Boom: 39,000 ft

2X1600ft Vikoma Seapacks
3100ft Goodyear 12x24
5000ft Kepner 20x30
4100ft Kepner Compact 16x23
1500ft Expandl 4300
16,300 ft Expandl 3000
5000ft Kepner 14x16

Skimming: 2500 bph

1X400bph Walosep W3
1X250bph Walosep W1
2X300bph Destroll DS 210
1X Jackson Net Skimmer
1X Cyclonet 050
2X300bph Mark II Catamaran
12X Misc Skimmers, small

Reed Oil Storage: 4250 bbl

4000bbl Response Vessel
3X33bbl Dunlop Dracones
1X60bbl Kepner Bags
3X30bbl Kepner Bags

CLEAN SEAS

Private Coop
Carpenteria, CA & vicinity

Ocean Boom: 6500 ft

2000ft 48x48 Bottom Tension Boom
4500ft Expandl 7000

Other Boom: 30,000 ft

13,600ft Expandl 4300
2700ft Goodyear 14x24
2000ft Goodyear 12x24
1X1600ft Vikoma Seapack
2500ft American Supermax 36"
5700 ft Expandl 3000
2000ft Kepner 16x12

Skimming: 14,000 bph

6X1000bph Offshore Device Adv
1X2650bph CS Catamaran
6X500bph Acme 39T or 51T
2X300bph Mark II Catamaran
3X600bph Walosep W4
2X Ro Comb-Sweep Net
2X100 Oil Mop MKII-9
2X Misc Skimmers, small

Reed Oil Storage: 13,000 bbl

4100bbl 3 Response Vessels
7840bbl Barge
4X120bbl Kepner Bags
5X30bbl Kepner Bags
1X150bbl Dracone
2X60bbl Fastanks

CLEAN SOUND COOPERATIVE

Private Coop
Puget Sound & vicinity

Ocean Boom: 0 ft

Other Boom: 28,200ft

18,200ft Versatech 12x18 Compact
10,000ft Acme 9x24

Skimming: 5500 bph

1X1100bph JBF 6002 (on order)
3X700bph JBF 5001 (incl 2 on order)
1X500bph Bennett Belt
1X850bph Marco Class III
1X400bph Marco ETB
1X150bph Marco Class I
1X300bph Destroll
4X Misc Skimmers, small

Reed Oil Storage: 34,000 bbl

20,000bbl Barge (on order)
12,000bbl Barge
2100bbl 6 Skimmers
2X7bbl Baker Tanks

**Chevron Shipping Company**

555 Market Street, San Francisco, California
Mail Address: P.O. Box 7000, San Francisco, CA 94120-7000

March 14, 1990

Senator Drue Pearce, Chairperson
Senate Oil and Gas Committee
Alaska State Legislature
Capitol, Room 510
Juneau, AK 99811

Dear Senator Pearce:

Enclosed are comments of Chevron U.S.A. as to oil spill legislation which is pending in your Committee. Chevron appreciates the Committee's consideration of the issues addressed by the legislation.

These comments are respectfully submitted for your consideration during the course of the legislative deliberation.

Very truly yours,

Thomas S. Wyman

Thomas S. Wyman, Manager
Government & Public Affairs Division

Attachment

1990 ALASKA OIL SPILL LEGISLATION

Oil Spill Contingency Plans

The legislation would require each tanker or oil barge within State waters to have an approved oil spill contingency which has been implemented. We fully concur with this requirement. However, federal oil spill legislation which is expected to be enacted within the next several weeks contains a similar requirement.

The potential problem is that if Alaska as well as other coastal states each impose their own requirements for vessel specific oil spill contingency plans, the number of plans carried by each vessel could proliferate beyond reason. Furthermore, the vessel Master would, in event of a spill emergency, face the question of whether he should implement the federal or state plan.

We believe it essential that state and federal legislation be compatible and not impose potentially overlapping or conflicting requirements. Thus, we suggest that the State of Alaska accept the existence of a federally approved oil spill contingency plan (which will be specific both as to vessel and locale) as evidence of having fulfilled the requirements of Sec. 46.04.030. This would facilitate the operation of tankers and barges in Alaskan waters and avoid new burdensome requirements.

- 2 -

Proof of Financial Responsibility

The proposal to require that tank vessels and barges have proof of financial responsibility is conceptually sound. However, here again proposed State of Alaska requirements would conflict with Federal requirements. Oil spill legislation now pending before Congress will require each tanker and barge owner to have certificates of financial responsibility to pay cleanup costs and compensate claimants for damages up to a prescribed limit depending on the size of his vessel. This will be a nationwide requirement applicable to both U.S. and foreign flag vessels. If costs exceed the amount available from the vessel owner, then the federal oil spill fund will become available to meet cleanup costs and pay for oil spill damages. The fund will be a one billion dollar plus cash reserve.

There will be formidable problems in developing a uniform basis whereby all vessels in U.S. trades will be able to obtain the requisite certificates and insurance coverage. This problem will be complicated if various states each impose their own proof of financial requirements.

We sincerely believe that coverage under federal laws will fully serve Alaska's interests and additional requirements will simply impede commerce. It should also be recognized that to the extent

- 3 -

the State of Alaska imposes additional financial burdens on producers and transporters of State crude oil, those burdens will serve to make Alaskan crude more costly and less competitive in the South 48.

The specific provisions requiring proof of financial responsibility are deficient in a number of respects:

- a) The amounts required are not a function of vessel size which is a radical departure from long accepted national and international practice.
- b) There is no logic in requiring vessels carrying crude oil to meet a \$500 million requirement when vessels "carrying non-crude oil or other hazardous substance" must have a financial ability of \$20 million. Fuel oil and other petroleum and non-petroleum substances have a polluting potential equal to or exceeding that of crude oil.

Based on the foregoing, we believe that there are good reasons for the State of Alaska to defer legislative action on the provisions which would require tank vessel and barge owners to have proof of financial responsibility.

- 4 -

Vessel Inspection

Sec. 46.04.060 would be amended to allow state representatives to come aboard vessels to "examine the structural integrity of tank vessels and oil barges." The responsibility for conducting vessel inspections has been delegated to the U.S. Coast Guard. We suggest that to the extent the State of Alaska may have concerns regarding a particular vessel or barge, these should be relayed to the U.S. Coast Guard with the request that they conduct an inspection.

It would be poor use of State resources to duplicate federal functions. In addition, various federal judicial decisions have made it clear that vessel inspections are a federal responsibility, and there is no apparent basis for attempting to change this delegation of responsibility. Accordingly, we suggest that this tank vessel and oil barge inspection provision be deleted.

March 14, 1990

MAR 10 1990



SAUPE ENTERPRISES, INC.
P.O. BOX 70510
FAIRBANKS, AK 99707

March 7, 1990

Senator Drue Pearce - Chrmn.
Senate Oil & Gas Committee
Alaska State Legislature
P.O. Box V
Juneau, AK. 99811

Re: SB-504

Dear Senator Pearce:

Enclosed, for your use, is a written copy of the teleconference testimony I offered March 6, and a copy of the letter I quoted from our insurance broker.

Thank you for your consideration!

Sincerely,

A handwritten signature in cursive script that reads "Bernie".

B.H. Saupe'

Bernie Saupe's
Testimony Offered to Senate Oil & Gas
Sub-Committee - via teleconference March 6, 1990

Thank you, Madam Chairman:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years. My testimony will be brief and within the 5 minute guideline. I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It was heartening to me in listening last night to hear that you all share the concern, confusion, and uncertainty that we feel regarding SB-504. I applaud your attempts to identify exactly what the Bill will require, and I share your fear that the regulations will not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "504" include little operations like my Fairbanks bulk plant! In fact, plants as small as $\frac{1}{4}$ our size, along with many river barges, would also be put out of business by "504" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically use only about 5,000 Bbls. at any given time.)

The DEC testimony indicates an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "504" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to spill that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as unlikely a scenario as our being able to meet "504"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone our size to even suggest we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "504" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!

Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "504". It would be sheer hysteria for me to even anticipate \$50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The \$50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the 1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of \$500,000 but the additional premium for just the 1/2 million extra was \$53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received today from my insurance broker: Quote:

"The limit of \$50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!

(Hearing attended by Chairwoman Sen. Drue Pearce, and Sens. Tim Kelly, Paul Fischer and Rick Halford)

BP Alaska Exploration, Inc.
Testimony Before the Senate Oil and Gas Committee
March 5, 1990

Thank you for giving BP the opportunity to comment on Senate Bills 468, 503 and 504. While most of BP's comments will be directed towards this legislation, it is important to understand that oil spill legislation combined with other state and federal actions, will implement Alaska's total oil spill response program. To accurately judge any piece of legislation, the entire program must be viewed as a whole. Therefore, my comments also address the general subject of laws affecting oil spill response.

Concerning the use of the State's disaster response powers and resources to respond to major oil spills, BP supports the use these powers and the dedication of State resources for the response activities. BP, however, recommends that changes be made in the State's administrative structure so that a clear and effective chain of command exists when the State responds to an oil spill.

Senate Bills 503 and 468

Portions of Senate Bill 503 and Senate Bill 468 attempt to implement recommendations made by the Alaska Oil Spill Commission. BP supports the Oil Spill Commission's recommendation that the Division of Emergency Services be given primary responsibility to respond to an oil spill. The Division of Emergency Services, as part of the Department of Military and Veteran's Affairs, uses a military command structure and has experience in dealing with complicated logistics and supply problems. This type of experience and operational command is exactly what is needed in an oil spill response. Experience plus a clear and effective chain of command will promote prompt decisions and a rapid response to a spill.

While the Department of Environmental Conservation has scientific and technical expertise, it is not as well equipped as the

Division of Emergency Services to deal with the logistics of responding to a spill. Consequently, their services should be used to provide the Division of Emergency Services with scientific and technical direction, in coordination with the applicable facility, regional or state oil spill plan as ultimately developed by the DEC. As the Oil Spill Commission recommended, the Division of Emergency Services should be the lead State Agency for oil spill response.

Senate Bill 504

Senate Bill 504 seeks to strengthen oil spill contingency requirements, increase financial responsibility requirements, and give the Department of Environmental Conservation the authority to inspect the structural integrity of tank vessels and oil barges. Viewed in the abstract, these goals are reasonable. However, when the bill is examined section by section, it becomes increasingly apparent that these new provisions are unreasonable as well as impractical.

1. Delays in Reviewing Oil Spill Contingency Plans. In the past, the DEC has not been able to review or approve oil spill contingency plans in a timely manner. For example, since January 1988, BP has had its Prudhoe Bay and Endicott oil spill contingency plans pending before the DEC, with virtually no response from the agency. If SB 504 was enacted tomorrow, both fields would be required to cease operations because the spill contingency plans had not been approved. While the extensive administrative discretion incorporated in SB 504 might permit waivers to be granted by the DEC, essentially SB 504 relinquishes all decisions about the operation of oil terminal facilities, oil and gas exploration and production facilities and tanker vessels or oil barges to the DEC. BP believes that the DEC is not the appropriate agency to exercise such discretion. Further, any legislation which links continued operation of a facility with approval of the oil spill contingency plan should also contain provisions which force approval of submitted plans within a definite time, and which outlines the contents of an acceptable plan.

2. The Cleanup Standard. Subsection (f) of Section .030 requires the permittee to maintain "in its area of operation . . . sufficient oil discharge containment, storage, transfer, and removal equipment, manpower and resources to rapidly contain a realistic maximum oil discharge and remove that discharge within the shortest possible time." A maximum oil discharge is further defined as the DEC's estimate of the maximum and most damaging oil discharge that could occur during the life of a facility. The magnitude of oil produced from North Slope fields and the immense volume of oil transported through TAPS make literal application of this provision impossible. Even though significant changes have occurred in cleanup capability at the Valdez terminal, the concept of maintaining equipment and manpower equal to what was required during the Exxon Valdez disaster along the entire North Slope and along the entire length of the pipeline is simply unworkable.

3. Financial Responsibility. While it is desirable to require proof of financial responsibility for operators of facilities subject to this legislation, the increase in limits and the use of ambiguous language in the legislation combine to make it difficult, if not impossible, to implement the provisions of the bill. For example, the legislation requires that the limits be on a "per incident" basis but the meaning of this phrase is not defined in the bill. The Committee should also be aware that the continued operation of the facilities covered by the legislation is conditioned upon obtaining proof of financial responsibility. Consequently, the feasibility of insurance should be understood before a provision of this nature is adopted.

4. Inspection of Tanker Vessels and Oil Barges. The U. S. Coast Guard currently inspects tanker vessels and oil barges; this legislation would establish a second regulatory regime requiring inspection by the DEC, an agency with no previous experience in this area. Inspection of tanker vessels and oil barges is a specialized, complicated and sometimes dangerous process

requiring entry into the compartments where oil is stored. The legislation provides no guidelines for the methods or frequency of inspections to be provided by DEC. Further there is no evidence of appropriate fiscal or manpower resources within DEC to implement such a program. Rather than renewed testing of the limits of Alaska's jurisdiction in this area, a more constructive approach would be to require close cooperation between the Coast Guard and the DEC concerning the approval of tanker vessels, to establish a specific division within the DEC to monitor available records and inspection reports.

In closing, BP hopes that this committee view the entire oil spill legislative and regulatory program before enacting specific pieces of legislation. BP will continue to help and assist in this process.

MAR 28 1990



1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278-1611, TELEX 090-25-127

March 25, 1990

Senator Drue Pearce
Chairman, Senate Oil & Gas Committee
Room 510, Capitol Building
P.O. Box V
Juneau, Alaska 99811

Re: Inspection of Oil Terminal Facilities

Dear Senator Pearce:

Recently you requested information on the present requirements for inspection of oil transfer facilities and tanker vessels. I am pleased to have the opportunity to provide you with that information. ARCO Marine, Inc. will be providing additional information regarding hull inspections of vessels. Also, to illustrate the limitations of any inspection program to prevent equipment failures, I would like to describe the March 12, 1990, spill at the Valdez Terminal Facility.

Separate inspections of facilities and vessels are presently being conducted by Alyeska, the Coast Guard and Alaska's Department of Environmental Conservation. Each of these programs is detailed below:

ALYESKA INSPECTIONS

Alyeska inspection processes and checklists are set out in the Valdez Port Information Manual (PIM), second edition, October 1988, that establishes the conditions under which a vessel docks and receives oil at the terminal.

Prior to the discharge of ballast from a tanker or the loading of oil to a tanker, an Alyeska Terminal representative and a tanker officer must make a joint safety inspection to ensure that both the tanker and the Terminal Facility are safe for discharge or loading. Checklists supplied by the Terminal are used for this inspection. (See Attachments A and B.) Both parties must sign and initial the form signifying that each item has been inspected. During the time

the tanker is berthed, personnel from the tanker and the Terminal periodically review conditions to ensure that nothing has changed.

If either Alyeska or the vessel personnel believe that the conditions for discharge of ballast or loading of oil are no longer safe on either the tanker or at the Terminal, they have the right to suspend operations.

Among the items subject to the pre-transfer joint safety inspection are vessel moorings, deck scuppers, sea suction and overboard discharge valves, oil transfer lines and couplings, loading arm supports, the dock and water area around the vessel to detect leaks or seepage, mechanisms for containment, reporting and cleanup of a spill, communications systems and emergency shutdown systems. Other than rare, readily apparent visible defects, Alyeska does not evaluate tanker hull integrity.

COAST GUARD INSPECTIONS

The Coast Guard's responsibility to inspect oil transfer facilities and tanker vessels and the scope of the inspection are specified in Title 33 of the Code of Federal Regulations (CFR), Parts 154 (facilities) and 155 (vessels).

Part 154 requires the operator of an oil transfer facility to submit an operations manual to the Coast Guard which reviews it to ensure that it contains details on how to safely handle and transfer oil, procedures for oil spills, procedures for fighting fires, the location of emergency shutdown systems, the communications system and the training and qualification program for responsible persons.

Part 154 also details the facility equipment requirements, including hose assemblies, loading arms, monitoring devices, discharge containment and removal equipment, emergency shutdown systems, communications and lighting. The Coast Guard conducts a physical inspection of the Valdez Terminal Facility every six months to ensure that all of the equipment and operations requirements are being met. If an item needs correction the Coast Guard issues a "CG835 Item," comparable to an automobile equipment defect citation.

Part 155 details the equipment an oil tanker must have, including oil discharge containment equipment, bilge slops, oily-water separation equipment, bilge alarms and monitors, pumping, piping and discharge systems, and communications. The oil tanker must adhere to personnel qualifications and must adopt, and have

available for Coast Guard inspection, oil transfer procedures that comply with the regulations.

Each tanker vessel is set up on a Coast Guard computer schedule for a five year complete cycle of inspection.

Every six months the Coast Guard conducts a "pollution prevention and navigational safety exam" of a vessel as provided in Part 155 and the Marine Safety Manual. In addition to pollution prevention equipment, the Coast Guard reviews fire fighting, life saving and navigational equipment and inspects for general safety and habitation. The six month inspection is conducted while the vessel is at the terminal undergoing the deballasting process and is completed before the oil loading process begins.

In addition to this six month inspection, each vessel also undergoes a "mid-period exam" every 10 to 14 months during which the deck and vessel hull above the water line and all available interior spaces are inspected.

Every two years the vessel undergoes a "certification inspection" where it is raised as high as possible out of the water for an above water hull inspection. The interior of a portion of the cargo tanks must be available for inspection. (Over the five year complete inspection cycle of a vessel the interior of all tanks will be inspected.)

Once every five years the vessel is subjected to a dry dock complete hull and machinery inspection. This five year hull inspection schedule is in accordance with the American Bureau of Shipping standard.

The Coast Guard maintains an inspection record book for each vessel. This inspection book contains the equipment and operations requirements set out in Part 155 and is used by the Coast Guard as the vessel inspection "checklist."

All records of Coast Guard vessel inspections at the Valdez Terminal are available upon request. The DEC periodically requests and receives these vessel inspection records. The most complete dry dock hull and machinery inspection records are available at the location where the vessel is certificated.

Finally, the Coast Guard can and does conduct "spot inspections" of any vessel at any time and can issue a "CG835 Item" at any time.

Whenever the Coast Guard finds that conditions at a facility or vessel are unsafe for the transfer of oil such that a discharge could occur, it may issue an order under Part 156 suspending transfer operations.

ADEC INSPECTIONS

In addition to the oil transfer facility and tanker vessel inspections that must be done by Alyeska and the Coast Guard, Alaska's Department of Environmental Conservation has significantly expanded its routine vessel inspection program in the last year. ADEC's inspection authority is set out in AS 46.04.060. Alyeska Marine Terminal supervisors have assisted ADEC employees in the implementation of their inspection program. ADEC has just recently developed an inspection form, which we hope will be routinely used and shared with Alyeska. ADEC has provided us with a copy of its inspection form. (See Attachment C.)

Besides the vessel inspections, ADEC also has one or more employees at the terminal facility in Valdez approximately three out of every seven days inspecting for possible sources of pollution. There is no set schedule of items to be inspected or times for inspection. Items inspected on a particular day may include the ballast water treatment process, the vapor recovery system or the berth facilities. There is some overlap with the Coast Guard of items which ADEC inspects at the berths, but ADEC's inspections principally focus on pollution prevention.

MARCH 12, 1990, SPILL

The spill that occurred at Valdez on March 12, 1990, was from the vessel "Overseas Boston," berthed at the Terminal. Approximately 10-15 gallons of crude oil was spilled into the water. The spill was caused when a segregated ballast pipeline was fractured at the point where it ran through the cargo tank. The fracture may have been caused by a misaligned coupling or incomplete seal. The ballast pipeline was covered with crude oil and when the segregated ballast was discharged to the Bay, some oil from the cargo tank was mixed into the ballast through the fracture. Based on information presently available, it would not appear that this problem could have been detected or prevented by inspection by Alyeska, the Coast Guard or the Department of Environmental Conservation.

Like all vessels at the Terminal, the "Overseas Boston" was surrounded by containment boom while loading. That boom, supplemented by additional boom, successfully held the oil until

Senator Drue Pearce
March 25, 1990
Page 5

skimmers were deployed and all spilled oil was recovered, with no discernible environmental damage.

Please let me know if I can provide additional information to you.

Very truly yours,



Robert I. Shoaf

cc Senator Kelly
Senator Halford
Senator Fischer
Senator Adams

Attachments

Vessels Are Subject To & Must Comply With Alyeska's Port Information Manual

Vessel:	Start of Transfer Date:
---------	-------------------------

		Vessel Yes	Terminal Yes			Vessel Yes	Terminal Yes
1 Does the vessel have the Second Edition, October 1988 of Alyeska's Port Information Manual? Copies are available from the Marine Supervisor.	☐			21 Will transfer be shut down if oil loss from any system component occurs at rate which will exceed containment system capacity?	☐		
2 Are warnings displayed as required by 46 CFR 35.30?	☐			22 Is there a clear understanding at the terminal and on board ship of the steps to be taken for containment, reporting, and cleanup in the event of an oil spill?	☐		
3 Are Vessel's moorings adequate to hold in all expected conditions of tide, draft, drift, etc. during the transfer?	☐			23 Are both terminal and ship persons in charge aware of Federal, State and local rules which apply to oil transfer and of penalties involved for violation thereof?	☐		
4 Are all deck scuppers effectively plugged?	☐			24 Is ship-to-shore communication system in working order as proven by test?	☐		
5 Are loading arms long enough to allow vessel to move to limits of moorings without placing strain on the arm of transfer piping system?	☐			25 Is the system for achieving emergency shutdown of the transfer understood by the persons in charge and is the equipment associated with the system in place and tested operable?	☐		
6 Will transfer be shut down if vessel movement becomes excessive?	☐			26 Are vessel and terminal lighted adequately if transfer occurs between sunset and sunrise?	☐		
7 Are sea suction and overboard discharge valves closed and lashed?	☐			27 Is there a clear understanding of the watch and shift arrangement?	☐		
8 If it is necessary to open sea suction valves, will this operation be reported to the terminal?	☐			28 Will there be an English speaking person on duty at all times?	☐		
9 Has inspection been made to assure that there are no fires or open flames present on deck or in any compartment which is located on, facing, open and/or adjacent to the main deck of the vessel on which the cargo connections have been made?	☐			29 Will there be a designated person in charge on duty at all times during the transfer operation?	☐		
10 If galley fires are to be lighted, has inspection been made to determine that they may be operated with safety?	☐			30 Will there be a terminal representative on duty at all times to control oil transfer, make inspections, tend loading arms, and take appropriate action in an emergency?	☐		
11 Has inspection been made to determine that ship's boilers may be operated with safety?	☐			31 Will there be sufficient vessel personnel available at all times to properly control safe loading of cargo/discharge fuel, tend mooring lines, and take appropriate action in an emergency?	☐		
12 Has inspection been made to determine whether smoking is to be permitted?	☐			32 Are the transfer systems properly lined up for commencement of the oil transfer?	☐		
13 If smoking is to be permitted, have areas been designated for this purpose?	☐			33 Has a written plan of oil transfer and clear understanding of the plan been established between ship and terminal persons in charge? The plan is to include product identities, sequence of transfers, volumes, flow rates, line clearances. Discussion is to cover name, title and location of each person involved in the transfer, ship-to-shore communications, emergency procedures, particulars of the transferring and receiving systems, transfer shutdown procedures and critical stages of the operation.	☐		
14 Are oil transfer lines in good condition with proper couplings correctly made up?	☐			34 Is transfer system lined up for ballast transfer?	☐		
15 Is loading arm test record available for inspection?	☐			35 Is oil transfer operation ready to begin?	☐		
16 Are loading arms properly supported to prevent strain?	☐			36 Is ballast transfer ready to begin?	☐		
17 Are loading arms properly connected to a fixed cargo piping system on vessel and terminal?	☐			37 Will all transfer operations be secured during an electrical storm?	☐		
18 Are unused cargo/bunker connections blanked or blinded?	☐			38 Is the vessel aware that exhausting black smoke from the stacks is not acceptable and that they are to comply with state smoke emission regulations? Copy received?	☐		
19 Will there be a regular inspection of the dock area and the water area around the ship prior to and during transfer operations to detect any oil leaks or seepage?	☐			39 Has vessel reviewed oil characteristics table on reverse of this form?	☐		
20 Are adequate small discharge containment facilities in place, with scuppers and/or drains closed?	☐						

Attested by Persons in Charge

	Name	Title	Time	Date
For Vessel		Chief Mate		
For Terminal		Marine Supervisor		

Relieving Personnel

For Vessel				
For Terminal				

North Slope Crude Oil Characteristics

Property	Range of Values
Specific Gravity	0.888 @ 60°F.
API Gravity	27.8
Pour Point	+15°F.
Viscosity	73.5 SSU @ 100°F.
Reid Vapor Pressure	About 4.5 to 7.5
Sulfur Content	0.94% by weight
Waxing	85-115°F. begins to precipitate 50-55°F. wax begins to come out of solution
Mercaptan Sulfur	about 20 ppm
Dissolved H ₂ S	less than 0.2 ppm
Loading Temperature	about 80° F. to 120°F.
Flash Point	below -20°F.

0018 (10/88) Back

Vessels Are Subject To & Must Comply With Alyeska's Port Information Manual

Vessel:	Start of Transfer Date:
---------	-------------------------

	Vessel	Terminal		Vessel	Terminal
	Yes	Yes		Yes	Yes
1 Does the vessel have the Second Edition, October 1988 of Alyeska's Port Information Manual? Copies are available from the Marine Supervisor.	☐	☐	21 Will transfer be shut down if oil loss from any system component occurs at rate which will exceed containment system capacity?	☐	☐
2 Are warnings displayed as required by 46 CFR 35.30?	☐	☐	22 Is there a clear understanding at the terminal and on board ship of the steps to be taken for containment, reporting, and cleanup in the event of an oil spill?	☐	☐
3 Are Vessel's moorings adequate to hold in all expected conditions of tide, draft, drift, etc. during the transfer?	☐	☐	23 Are both terminal and ship persons in charge aware of Federal, State and local rules which apply to oil transfer and of penalties involved for violation thereof?	☐	☐
4 Are all deck scuppers effectively plugged?	☐	☐	24 Is ship-to-shore communication system in working order as proven by test?	☐	☐
5 Are loading arms long enough to allow vessel to move to limits of moorings without placing strain on the arm of transfer piping system?	☐	☐	25 Is the system for achieving emergency shutdown of the transfer understood by the persons in charge and is the equipment associated with the system in place and tested operable?	☐	☐
6 Will transfer be shut down if vessel movement becomes excessive?	☐	☐	26 Are vessel and terminal lighted adequately if transfer occurs between sunset and sunrise?	☐	☐
7 Are sea suction and overboard discharge valves closed and lashed?	☐	☐	27 Is there a clear understanding of the watch and shift arrangement?	☐	☐
8 If it is necessary to open sea suction valves, will this operation be reported to the terminal?	☐	☐	28 Will there be an English speaking person on duty at all times?	☐	☐
9 Has inspection been made to assure that there are no fires or open flames present on deck or in any compartment which is located on, facing, open and/or adjacent to the main deck of the vessel on which the cargo connections have been made?	☐	☐	29 Will there be a designated person in charge on duty at all times during the transfer operation?	☐	☐
10 If galley fires are to be lighted, has inspection been made to determine that they may be operated with safety?	☐	☐	30 Will there be a terminal representative on duty at all times to control oil transfer, make inspections, tend loading arms, and take appropriate action in an emergency?	☐	☐
11 Has inspection been made to determine that ship's boilers may be operated with safety?	☐	☐	31 Will there be sufficient vessel personnel available at all times to properly control safe loading of cargo/discharge fuel, tend mooring lines, and take appropriate action in an emergency?	☐	☐
12 Has inspection been made to determine whether smoking is to be permitted?	☐	☐	32 Are the transfer systems properly lined up for commencement of the oil transfer?	☐	☐
13 If smoking is to be permitted, have areas been designated for this purpose?	☐	☐	33 Has a written plan of oil transfer and clear understanding of the plan been established between ship and terminal persons in charge? The plan is to include product identities, sequence of transfers, volumes, flow rates, line clearances. Discussion is to cover name, title and location of each person involved in the transfer, ship-to-shore communications, emergency procedures, particulars of the transferring and receiving systems, transfer shutdown procedures and critical stages of the operation.	☐	☐
14 Are oil transfer lines in good condition with proper couplings correctly made up?	☐	☐	34 Is transfer system lined up for ballast transfer?	☐	☐
15 Is loading arm test record available for inspection?	☐	☐	35 Is oil transfer operation ready to begin?	☐	☐
16 Are loading arms properly supported to prevent strain?	☐	☐	36 Is ballast transfer ready to begin?	☐	☐
17 Are loading arms properly connected to a fixed cargo piping system on vessel and terminal?	☐	☐	37 Will all transfer operations be secured during an electrical storm?	☐	☐
18 Are unused cargo/bunker connections blanked or blinded?	☐	☐	38 Is the vessel aware that exhausting black smoke from the stacks is not acceptable and that they are to comply with state smoke emission regulations? Copy received?	☐	☐
19 Will there be a regular inspection of the dock area and the water area around the ship prior to and during transfer operations to detect any oil leaks or seepage?	☐	☐	39 Has vessel reviewed oil characteristics table on reverse of this form?	☐	☐
20 Are adequate small discharge containment facilities in place, with scuppers and/or drains closed?	☐	☐			

Attested by Persons in Charge

	Name	Title	Time	Date
For Vessel		Chief Mate		
For Terminal		Marine Supervisor		

Relieving Personnel

For Vessel				
For Terminal				

North Slope Crude Oil Characteristics

Property	Range of Values
Specific Gravity	0.888 @ 60°F.
API Gravity	27.8
Pour Point	+ 15°F.
Viscosity	73.5 SSU @ 100°F.
Reid Vapor Pressure	About 4.5 to 7.5
Sulfur Content	0.94% by weight
Waxing	85-115°F. begins to precipitate 50-55°F. wax begins to come out of solution
Mercaptan Sulfur	about 20 ppm
Dissolved H ₂ S	less than 0.2 ppm
Loading Temperature	about 80° F. to 120°F.
Flash Point	below - 20°F.

VESSEL					DATE				
BERTH No.					TIME				
1.	Are smoking regulations being observed?								
2.	Are galley requirements being observed?								
3.	Are naked light requirements being observed?								
4.	Are electric cables to portable equipment disconnected from power?								
5.	Are the vessel's main transmitting aerials switched off?								
6.	Are flash lights of an approved type?								
7.	Are portable R/T sets of approved design?								
8.	Are all external doors and ports in the amidships accommodation closed?								
9.	Are all doors and ports in the after accommodation that are to be closed in fact closed?								
10.	Are ventilators suitably trimmed with regard to prevailing wind conditions?								
11.	Are unsale air conditioning intakes closed?								
12.	Are window-type air conditioning units disconnected?								
13.	Is vessel securely moored and tension winches (if fitted) on manual brake?								
14.	Are all oil drips cleaned and contained?								
15.	Are unused cargo/bunker connections blanked?								
16.	Is stern discharge line (if fitted) blanked?								
17.	Are sea and overboard discharge valves (when not in use) closed and sealed?								
18.	Are scuppers effectively plugged?								
19.	Is the agreed ship/shore communication system working?								
20.	Are all cargo/bunker tank lids closed?								
21.	Are cargo tanks being loaded or discharged open to atmosphere via the agreed venting system?								
22.	Are fire hoses and equipment ready for use?								
23.	Are emergency towing wires correctly positioned?								
24.	Is the vessel ready to move under its own power?								
25.	Is pilot ladder rigged and secured on the offshore side of vessel?								
26.	Others								
Remarks:									
CHECKED BY									
1.	2.	3.	4.	5.					

"White" - Supervisor; "Canary" - Ships Master; "Pink" - File

TANKER DECK INSPECTION

SHIP: _____

DATE: _____

PERSON TALKED TO: _____

CARGO: _____

DESTINATION: _____

PROBLEMS:

1. LOCATION: _____

TYPE: _____

2. LOCATION: _____

TYPE: _____

3. LOCATION: _____

Statement of
Jerry A. Aspland
President, ARCO Marine, Inc.
Before the Alaska Senate Special Committee on Oil and Gas
Senate Bill 504
Juneau, Alaska

March 5, 1990

Madam Chair and committee members. My name is Jerry Aspland and I am President of ARCO Marine, inc., the marine transportation subsidiary of ARCO. I am a graduate of the California Maritime Academy and have spent most of my professional career in the marine transportation business. I appreciate this opportunity to appear before you today to express the views of ARCO Marine on Senate Bill 504, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, are concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel, are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The ~~first is~~ sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management all the contingency plans and equipment can not be utilized most effectively.

Madam Chair, while ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of SB 504 with which we believe compliance is impossible. Section 1 of SB 504, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with proposed SB 504, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity of appearing before you today. ARCO Marine, Inc. stands ready to assist your committee in this effort. I would be pleased to answer any questions you might have regarding my statement or any other related subjects.

STATEMENT OF
MIKE WILLIAMS
Vice President for Environmental Planning & Control
Alyeska Pipeline Service Company
to the
Senate Oil and Gas Committee
on
March 1, 1990

Thank you for inviting Alyeska Pipeline Service Company to describe the Tanker Spill Prevention and Response Plan for Prince William Sound. My name is Mike Williams. I am Vice President for Environmental Planning and Control at Alyeska. Shortly after the EXXON VALDEZ spill, I was transferred by my employer, British Petroleum, to lead the team that developed and implemented Alyeska's new Tanker Spill Prevention and Response Plan that I will describe during my testimony.

My career with BP began in 1958 as an apprentice on board tankers. Ultimately, I earned an unlimited master's license. During the construction of the pipeline, I was assigned to the Marine Department of Sohio.

Alyeska wishes to cooperate with the Legislature in its evaluation and, where appropriate, enactment of the Oil Spill Commission recommendations. We urge, in the process of consideration of any new legislation related to oil spills, that you include comprehensive analysis of federal and state laws. That analysis will be essential to effective, fair and responsible legislation. For the most part, we at Alyeska believe that existing laws provide an adequate framework for prevention and management of oil spills.

Alyeska's goal is to determine and meet reasonable expectations for prevention efforts and response capability in Prince William Sound. We feel compelled to remind you that even as Alyeska achieves that goal, you still must resolve difficult issues such as the appropriate role for state government in Prince William Sound spill response and the appropriate blend of federal, state and private efforts in the rest of Alaska. During the next year, enactment and implementation of comprehensive federal legislation will establish major new components of a national prevention and response system. Also, the State's planning and response capability mandated last year will be developed during 1990. All involved should strive through coordination and cooperation to achieve maximum benefit from the private and public funds expended.

The Alaska Oil Spill Commission has made several recommendations that are addressed by bills before this Committee. My testimony will describe the prevention and response planning under way at the Valdez Marine Terminal and in Prince William Sound. I will also briefly comment on SB 503 and SB 504. Alaska should encourage prevention and response capabilities that are compatible with other state and federal efforts, are based on achievable, economically realistic standards, and are unambiguous and easily understood by all parties. We at Alyeska are prepared to work with the State to meet those guidelines.

The Oil Spill Commission's report provides an appropriate starting point for your policy deliberations. Like the Coast Guard

and the General Accounting Office, the Commission concluded that it is impossible, given existing technology, to remove all of a catastrophic spill. In a study for the General Accounting Office, ECO, which also provided technical support for the Oil Spill Commission, concluded that if all of the recovery equipment and manpower assembled in Prince William Sound by August last year had been immediately available to respond to the spill, only 35% to 45% of the oil would have been recovered. Few people urge that thousands of people and hundreds of skimmers should be positioned in Prince William Sound, Cook Inlet, southeast and western Alaska to respond if another catastrophic spill occurs.

Instead, most agree with the Oil Spill Commission's recommendation, that in light of the limited ability to recover spilled oil, our first priority should be prevention.

Prevention is the only way to protect the oceans and coastlines from oil spills. Once it reaches the water, spilled oil is extremely difficult to contain and collect, even under ideal conditions. And the conditions under which oil is spilled are seldom ideal.

General Accounting Office data suggest no more than 10-15 percent of oil lost in a major spill is ever recovered.

AOSC Executive Summary, p. 11

As initial responder on behalf of tankers in Prince William Sound, Alyeska has developed a Tanker Spill Prevention and Response Plan that is being reviewed by the state and federal agencies and the public, in a series of 19 public hearings. Prevention of spills from tankers is the first priority in the

plan. A comprehensive risk assessment for Prince William Sound, by a contractor to Alyeska, identified the risks that should be addressed by prevention strategies. Independently of Alyeska's risk assessment and planning work, the Commission's technical experts assessed the risks of spills in Prince William Sound and recommended appropriate prevention strategies.

As shown in the following table, Alyeska has implemented ECO's prevention strategies that are directly applicable to Alyeska.

Before describing the tanker plan for Prince William Sound, I would like to make a few additional comments on the Commission's report.

While reviewing legislation based on the Commission's recommendations, you must independently evaluate the direct and indirect costs to the state. During earlier testimony, Commissioners estimated that implementation of all of its prevention recommendations for Prince William Sound would cost six cents per barrel. Alyeska's prevention and response costs already exceed that level. Not counting administrative and capital costs, we are now spending around \$44,000,000 per year, which equals over seven cents per barrel at an average throughput of 1.9 million barrels per day. That cost per barrel will rise with inflation and declining throughput. Many believe that other areas cannot support the level of protection now in place for Prince William Sound. Obviously, important public policy issues are involved as the Legislature establishes standards for industry and makes appropria-

TABLE VI-2. COSTS ASSOCIATED WITH
PRINCE WILLIAM SOUND MARINE TRANSPORTATION SYSTEM
MODIFICATIONS *

<u>SYSTEM MODIFICATION</u>	<u>ALYESKA PREVENTION EFFORTS</u>
GROUP I	GROUP I
1. Mandatory Drug and Alcohol Testing	1. Alcohol testing for Masters and Crew
2. Emergency and High-risk Navigation Area Training	2. Endorse Navigation Committee
3. Port Closure System	3. Endorse Navigation Committee
4. Two Person Watchstanding Requirement	4. Vessel prerogative
5. Improved Loading/Unloading Procedures	5. All vessels boomed at Terminal; booms monitored
6. Local Spill Prevention Involvement	6. Regional Citizens Advisory Committee; Area and Community Response Centers
7. Spill Response Equipment Coordination	7. Incident Command System; predesignated call out, including contracts with fishermen
GROUP II	GROUP II
1. Vessel Monitoring System	1. Support mandatory Vessel Traffic System
2. Traffic Separation Lanes with One-Way Traffic	2. Vessels to stay in lane; reduce speed if encounter ice. One way traffic in Valdez Narrows
3. Designated Anchorage Areas	3. In Spill Prevention and Response Plan
4. Emergency Response Pollution Control Vessels	4. Five ERV's in Valdez. Two vessels escort laden tankers
5. Improved Loading/Unloading Design	5. Will review when full response available
GROUP III	GROUP III
1. Improved Tanker Design	1. Issues for tankers

* Reproduced based on Table VI-2, ECO Report to Alaska Oil Spill Commission

tions for oil spill programs. We hope that before creating new programs, you determine whether existing ones, with adequate funding, can be molded to meet new demands.

Alyeska agrees with the Commission's conclusion that regulation of industry should meet the expectations of Alaska citizens. In our opinion, the best way to achieve this goal is through a constructive professional relationship between industry and its regulators. We agree with Commissioner Parker's testimony last night that liability is not an effective enforcement tool. To establish and maintain a constructive relationship between the state and industry, regulations must be rational, scientifically based, and predictable. It is critical that agencies - especially the DEC - are adequately funded. Without adequate funding, the DEC is unable to develop and implement clear and concise regulations. Without adequate funding, the agency cannot employ enough qualified employees to interpret and enforce these regulations across all walks of industry. Without good, clear, concise and scientifically accurate regulations, it is difficult -if not impossible - for industry to operate free of controversy with an agency. With funding, both sides benefit.

On the subject of our relationship with the DEC, Alyeska desires to establish a constructive relationship consistent with the need for safety and our prerogative to make daily operational decisions. The Commission has expressed concern about DEC access to the Valdez Marine Terminal. During discussions in November 1989 with DEC personnel in Valdez, we renewed our commitment to provide

rapid, escorted access to the DEC in Valdez that would not delay or impede legitimate regulatory processes. Recently, I have discussed access with DEC officials and believe we will agree that DEC employees will be allowed to proceed immediately, without escort, to vessels or to an office on the terminal provided by Alyeska. Escorts to other areas from the DEC office on the terminal will be provided within 10 minutes of the request. In turn, we believe that local and state government agents should conduct an exit interview after inspecting a facility and should, as a matter of course, provide written documents generated as a result of a site visit. We anticipate receiving this cooperation from the DEC in the future.

Alyeska also agrees with the Commission recommendation that the company employ an executive whose principal responsibility is to achieve compliance with environmental regulations. That is my job which Alyeska's new President, Jim Hermiller, created last fall. Alyeska has created a new division, which I head, employing approximately 50 people with an additional 100 people employed under contract as crews on the Emergency Response Vessels and as spill response workers. For the past nine months, I have focused much of my energy on directing the development of a new spill prevention and response plan for Prince William Sound. I am also responsible for environmental compliance company-wide and will provide internal review of contingency planning and preparedness and response to spills.

I would like to summarize the prevention and response systems that I mentioned earlier. State and federal law places liability and clean up responsibility for an oil discharge on the spiller - in this case a tanker owner/operator. As operator of the pipeline, Alyeska has no direct affiliation with tanker owners and operators. However, to centralize prevention and initial response efforts on behalf of those tankers, Alyeska has developed the Prince William Sound plan. Once approved, the Tanker Spill Prevention and Response Plan developed by Alyeska will be incorporated into tanker contingency plans that must be approved by the DEC for each vessel in the TAPS trade. Alyeska will contract with the vessels to provide this service. Those contracts and the vessel plans will prescribe an orderly transition of spill response management from Alyeska to the vessel in the event of a large spill. An overview of the plan is submitted for your reference. One copy of the three volume plan is provided to the Committee.

Alyeska agrees with the Commission that recovery of all the oil from a catastrophic spill is impossible and, therefore, prevention is the first priority. Programs to prevent tanker accidents in Prince William Sound include:

1. Tanker crew members returning from shore leave are tested for alcohol if their conduct or breath odors indicate consumption.
2. Tanker masters are given a breathalyzer test within one hour prior to sailing.

3. Drug testing will be implemented once federal regulations are in place.
4. Alyeska installed new communications sites in Prince William Sound in order to maintain radio contact with tankers in the Sound.
5. Each laden tanker is escorted in Prince William Sound by two vessels that have the capability to tow a fully loaded tanker. This system proved its effectiveness when the vessel Atigun Pass lost power in the vicinity of Bligh Reef and was taken under tow by its escorts.
6. Alyeska supports Coast Guard operation of an appropriate Vessel Traffic System in Prince William Sound.
7. Through its escort system, Alyeska has obtained tanker agreement to abide by traffic rules in Prince William Sound, including a 10 knot speed limit, no deviation from traffic lanes, and a decrease in speed when ice is encountered.
8. Alyeska will not provide escort services if the weather in the Sound would appear to create unacceptable safety hazards for personnel on the ERV. Through this approach, Alyeska is in effect saying tankers will not sail in bad weather. We are building an experience base to determine the safe operating conditions. Presently, if bad weather

develops during the transit of the Sound, the Coast Guard and the masters decide how to proceed.

9. We are working with the Coast Guard to develop rules governing tanker operations in the port area during adverse weather conditions.

Prevention strategies must be backed up by appropriate oil spill response strategies. Alyeska's strategies are based on the assumptions that oil will spread rapidly once it is on water, and that weathering and changing environmental factors make recovery more difficult as time passes. If a spill occurs, our initial strategy will be to control the oil as close to the source as practical. Then we will endeavor to remove the oil quickly, prior to weathering or loss of control due to weather or sea conditions.

To enable these two fundamental strategies, booming and skimming equipment is kept in proximity to laden tankers traveling through the Sound. Under the tanker plan, response capability includes:

1. Rapid response with booms and sea skimmers from at least one of the escort vessels.
2. Additional large scale skimming and lightering capability from vessels anchored in Prince William Sound midway along the tanker route.
3. Additional ocean skimming equipment and response material in Valdez.

4. Pre-positioned equipment and pre-trained spill responders in communities and hatcheries.
5. Larger stockpiles of dispersants and Alaska-based application equipment.
6. Larger stockpiles of fire boom and igniters for in situ burning.

Alyeska's response to a tanker spill will utilize the Incident Command System (ICS), recommended to us by Prince William Sound communities and wholeheartedly endorsed by the Oil Spill Commission. This ICS will be tailored to facilitate coordination between industry and government response efforts and to structure transition of response management from Alyeska to the spiller. Alyeska held its first major desk top drill of the Incident Command System in Valdez the last week of January 1990. Alyeska, shippers and government personnel, along with representatives of potentially impacted communities participated in, and critiqued, the drill. It may be of interest for you to know that BP used the ICS system developed by Alyeska in its successful response to the Huntington Beach spill.

It is essential to note that despite our desire and commitment to prevent an oil spill, or to clean up as much oil as possible after a spill, there can be no guarantee that all accidents will be prevented or all spilled oil recovered. Nonetheless, we believe the prevention and response systems now in place are second to none.

Alyeska is funding and working with an independent citizens advisory committee that represents a cross-section of the concerned communities, to evaluate these new measures and assist our training and diligence. Our goal for Alyeska is to meet our responsibility to the people of Alaska while operating the pipeline efficiently. We are receptive to your suggestions, on behalf of your constituents.

I would like to conclude with a few general comments on SB 503 and SB 504.

SB 503. At the urging of Prince William Sound communities, and with the support of the Commission, Alyeska has developed an Incident Command System to organize its response to tanker spills. The system will be used to manage industry response internally, coordinate it with federal and state response to a spill and establish the capability for rapid, military style decision making. However the state allocates response capability, state responders should be at least as well trained as their industry and federal counterparts and should be prepared to make decisions as rapidly as necessary. This may require making decisions based on limited information or based on tradeoffs that seem appropriate at the time. State and regional plans should be designed to effectively integrate the state response with other efforts. Industry should be encouraged to participate in all of the state's response planning and on commissions that oversee the government effort.

SB 504. Alyeska's primary concern with this bill is what response capability will be required. Last night, Walt Parker, Chairman of the Oil Spill Commission, reiterated that complete removal of a catastrophic spill is an unachievable goal with existing technology. As a result, you must establish a policy that will create achievable standards applicable throughout Alaska. Alaska law should encourage and nurture prevention. After prevention, we would suggest that on hand response capability focus on the most likely spills. In addition, in Prince William Sound, we are preparing for another catastrophic event of 250,000 barrels. Because of numerous variables, neither Alyeska nor the tankers can guarantee removal of all the oil spilled. With the civil and criminal penalties in place, no responsible business would guarantee recovery of a large spill. If legislation requires unattainable performance guarantees, our operation would end and the state would be presented with the difficult goal of meeting its energy needs when businesses are not capable of providing guarantees for movement of refined and crude petroleum.

Rather than seeking unachievable guarantees for worst case spills, the state should require transporters to have realistic crisis management plans that detail equipment and manpower mobilization for response in the event of a worst case spill. Rather than requiring a replication of these large scale mobilization plans for each facility and vessel covered by this legislation, the state's master plan should provide a system to be utilized by all in the state. This could be achieved by a coopera-

tive planning effort between transporters and the state. The final crisis management plan could be incorporated into each individual plan.

After we hear more about this legislation from the administration, we would appreciate the opportunity to comment further on specific issues that are of concern.

Thank you for the opportunity to testify this evening.

TESTIMONY OF WALT SCHLOTFELDT
BEFORE THE SENATE OIL & GAS COMMITTEE
RE: SENATE BILL 504
MARCH 6, 1990

I would like to preface my comments on SB 504 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with SB 504. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from \$2,500 to \$100,000 per day

may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...) appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process

would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring applicants for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its area of operation (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area.

What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and equipment as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez

terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have \$50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a \$50 million risk. We currently have \$1 million insurance.

-- I have highlighted the many concerns I have with SB 504. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under SB 504. Lastly, and most significantly,

please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide input and would be happy to answer any questions now or at my office tomorrow (488-0730).

 **SORIERO &
SEFFENS^{INC.}**

April 18, 1990

Mr. Gene Burden
Tesoro Alaska Petroleum Company

Re: Insurance Companies admitted in Alaska

Dear Gene:

In light of recent proposed legislation in Alaska that may require evidencing financial responsibility for Pollution Liability we discussed the following:

1. Number of separate underwriters required on a given account;
2. Number of insurance companies licensed to conduct business in Alaska; and
3. Direct action by Alaskan government against underwriters.

We previously discussed the number of underwriters on any given large commercial account. Please refer to my letter of April 12, 1990, wherein I advised that a substantial number of underwriters are required in order to subscribe to any account needing high levels of insurance protection.

The main theme behind this letter is to focus on if Alaska requires evidence of financial responsibility which could be addressed by the procurement of insurance, whether the subscribing underwriters are admitted in Alaska, and would accept direct action against them.

As respects the number of insurers that are "admitted", which effectively means licensed to conduct business in Alaska, I consulted A.M. Best Company's Key Rating Guide for Property-Casualty Insurers and can confirm that there are a substantial number (over one hundred) of companies licensed in Alaska. Most of these are standard stock companies underwriting Automobile Liability, Workers Compensation and General Liability Insurance subject to Insurance Services Organization (ISO) forms. ISO is a national firm designed to promote uniformity in rating and policy wordings between states and insurers. Most companies subscribe to their rating structure and policy wordings as these have been tried and tested in court and provide a common ground for comparison.

Pollution Liability would be considered a coverage afforded under a General Liability placement but, unfortunately, the ISO form has a specific exclusion whereby coverage for Pollution incidents is virtually excluded. As such, this impedes our ability to obtain Pollution coverage from the standard stock companies.

Some companies, though, may delete this exclusion subject to an additional premium but then we are back to the dilemma of obtaining adequate capacity. I would suspect that sole use of these carriers would enable an insurance buyer to purchase only 25 Million in coverage. Consequently, the buyer would be required to access "non-admitted insurers". These underwriters offer abundant capacity but would not be amenable to direct action by the state.

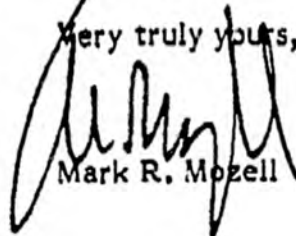


Mr. Gene Burden
April 18, 1990
Page 2

A direct action statute would be onerous for the buyer because underwriters typically will not agree to this since liability policies are written on an indemnity basis. In other words, the underwriters will reimburse the Assured once the Assured has paid the claim. By having direct action the underwriters effectively take the place of the insured and this violates the principal of indemnification. Ultimately, a direct action statute will reduce the number of underwriters that a buyer can access for Pollution Liability whereas to the contrary, if there is no direct action statute, adequate capacity for Pollution Liability will exist.

Gene, the above is a brief summary of the difficulties involved in obtaining Pollution coverage and agreement from underwriters for direct action. If you or any members of the House committee would like to discuss this further, I would welcome the opportunity to meet with you or them, or at least call them to hear their concerns.

Very truly yours,



Mark R. Mozell

MRM:dg

MRM-1727

SECTIONAL ANALYSIS

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

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

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

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

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

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

Section 6 provides that the Act takes effect immediately.

SB 504 ISSUE SHEET

April 6, 1990

1. Proof of Financial Responsibility [Sec. 2 AS
46.04.040(d)]

A. The current version provides for varying levels of financial responsibility for non-crude facilities and transporters; however any transporter of crude oil, irrespective of the size of the vessel, will be required to have \$500 Million proof of financial responsibility. The Assistant Attorney General (McDonough) testified in House Resources that in the event a 50,000 barrel barge was to transport oil from the West Side of Cook Inlet to Nikiski that it would have to have the same \$500 Million proof as would a large tanker travelling from Valdez to the West Coast.

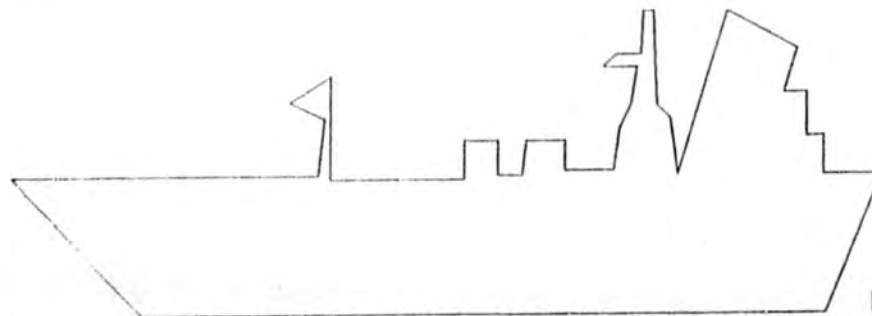
The attached page provides a summary of tanker sizes operating in Alaska and making deliveries to Nikiski. The approximate number of barrels of crude oil per ton is 6.8. The maximum amount presently delivered to Nikiski is less than 400,000 barrels. It is recommended that the provision be modified to account for the difference in tank and barge sizes that are used or may be used in Alaska waters.

B. The current version provides that a "...person may not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer or oil to or from a tank vessel, or an oil barge, unless the person ...[furnishes proof of \$500 M financial responsibility for a tank vessel or barge carrying crude oil]. A change similar to that made in the CS of HB 567 is recommended. That change was as follows:

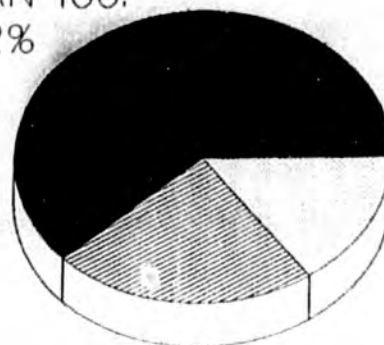
"A person may not operate a tank vessel or an oil barge within the waters of the state or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department ...proof of financial responsibility..."

Gene Burden Tesoro Alaska Juneau Message Number: 586-1715

TANKER VESSEL TRAFFIC IN ALASKA WATERS VESSEL SIZE DISTRIBUTION IN MDWT

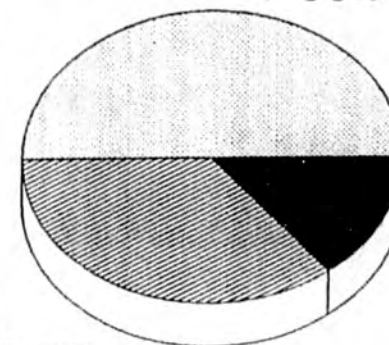


LESS THAN 100:
57 62%



**TOTAL OIL TANKERS
OPERATING IN
ALASKA *1**

UNDER 70:
7 50%



70-80:
5 36%

OVER 80:
2 14%

**OIL TANKER TRAFFIC
TO TESORO ALASKA'S
KENAI REFINERY *2**

Source: House Research Agency Request 89.352; 7-7-89
Tesoro Alaska regarding tanker calls at the Tesoro Refinery

*1

*2

OIL TANKER TRAFFIC ALASKA		
SIZE (MDWT)	NO.	%
OVER 200	14	15%
100 - 200	21	23%
LESS THAN 100	57	62%
Source: House Research Agency Report (89.352, July 7, 1989)		

OIL TANKER TRAFFIC TO TESORO ALASKA NIKISKI REFINERY		
SIZE	NO.	%
OVER 200	0	
100 - 200	0	
OVER 90	0	
OVER 80	2	14%
70 - 80	5	36%
UNDER 70	7	50%
Source: Tesoro Alaska Petroleum Co.		

APR 4 1990

ARCO Alaska, Inc.

External Affairs
Mailing Address: 134 Franklin Street
Juneau, Alaska 99801
Telephone 907 586 3680



Beverly A. Ward
Director, Southeast
Government & Community Relations

April 4, 1990

Senator Drue Pearce
Alaska State Senate
Capitol Room #510
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

On March 28, 1990, you asked us to review a letter written to you by Commissioner Kelso, outlining in some detail what structural integrity inspections of tank vessels, as authorized under SB 504, would entail.

We have reviewed the Commissioner's letter, and we believe that everything proposed by the Department of Environmental Conservation is already being done by the U.S. Coast Guard. To give DEC inspection authority of tank vessels would be a duplicative effort and would add a cost for which there is no benefit.

In addition to deriving dubious benefits from a state inspection program, there may be potential liabilities to the state. We would encourage the Oil & Gas Committee to thoroughly review any provisions included in legislation which would grant inspection authority.

If you have additional questions, please do not hesitate to call.

Sincerely,

Beverly A. Ward
Director Southeast

BAW/lw



Alaska State Legislature

Senator Zharoff &
~~Local Senator & the~~
~~House Resources~~
~~Committee~~
 committee name

Please enter into the record my testimony to the

committee on See below, dated 9 March 90
 bill/subject

SUGGEST:

HOUSE BILL NO. 565 - SECTION 1, AS 46.03.758(a)(2)(1),
 (C) \$50.00 per gallon of oil that enters an unconfined salt-
 water environment . . . (Pg 3, 1)

HOUSE BILL NO. 566

Under Sec 46.13.040 suggest the designee
 for the Department of Environmental Conservation
 be ~~a position~~ in charge of keeping an up to
 date "Emergency Response Plan" up dating
 the Local Emergency Planning Committees with
 changing technologies in the field should also
 fall to this designee.

Thank you for your time.

Signed:

William Brith

Testifier

myself

Representing (Optional)

1516 clmailow PO Box 1398 KODIAK, AK
99615

Address

486-2504 HOME / 486-6760 WORK

Phone No.

Alaska Rural Electric Cooperative Association
Comments Regarding
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain \$50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association
Nome Joint Utilities
Nushagak Electric Cooperation (Dillingham)
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, \$50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for \$1 million. Quotations for pollution liability insurance policies with very restricted coverage have ranged from \$23,000 to \$45,000 per year each.

Nushagak Electric presently maintains a \$1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of \$23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

* Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.

To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than \$2 million, and its annual revenues are about \$2.4 million. Approximately \$2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require \$1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The \$1,000,000 requirement for these very small utilities would be as impossible as the \$50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

TO: Senate Oil and Gas Committee
FR: *David F. Bouker*
David F. Bouker, General Manager
DT: April 9, 1990
RE: SSSB-504

My name is David F. Bouker. I am the general manager of Nushagak Electric Cooperative, Inc., a small non-profit electric utility serving the Bristol Bay communities of Dillingham and Aleknagik.

The part of this bill that gives cause for concern is that section which modifies AS 46.04.040 titled, "Proof of Financial Responsibility."

At this time, an oil terminal operator of a facility with 10,000 barrels of storage, or greater, is required to show ability to self insure or to have an insurance policy of \$1 million to indicate proof of financial responsibility for a spill during transfer operations. Our plant capacity is 25,333 barrels. The policy vehicle we currently have in force is written by Lloyds of London and costs us over \$21,000 per year.

The proposed bill would increase the required coverage from \$1 million to \$10 million. An increase of tenfold. We had extreme difficulty in obtaining the existing policy because no U.S. carrier would touch it. Our net worth is less than \$2 million, and I do not believe that we are insurable for anything over that amount.

We are located north of Dutch Harbor and this means that we can only receive fuel during the summer months. Therefore, we have to have the storage capacity to carry us through from September to May or June. Other communities such as Naknek, Bethel, Nome, and Kotzebue are in much the same position. This bill would also impact the local wholesale distributors. If the insurance coverage requirements increase tenfold, you can be assured that the attendant costs of that insurance will mean substantial increases in cost of power (which the state may help finance through Power Cost Equalization), heating fuel, and gasoline to those rural communities already beset by extremely high cost of living standards relative to the railbelt area.

I would like to propose several alternatives:

1. Keep the financial responsibility requirements at their present level for small isolated communities. They have not contributed to the Prince William Sound spill but are seemingly being penalized for it.
2. Increase the exemption or floor to 50,000 barrels of refined products so that the impact of increased financial responsibility on rural areas could be minimized.
3. Establish a state-run financial responsibility pool whereby all terminal operators would have to contribute, and this would help to mitigate impact of increased costs to small communities while building a reserve to cover emergencies. This would seem to make a lot more sense than requiring local communities to put up substantial sums of cash in order to purchase insurance from some foreign entity.

Last, but not least, SSSB-504 requires (lines 24, page 5) that each barge carrying from 10,000 to 49,999 barrels of non-crude oil carry \$1 million of financial responsibility insurance. What this means is that the local communities are required to go out and purchase ten times the insurance that is required of the barges that bring us our fuel. We get two barges a year and the greatest amount of exposure is limited to the transfer operations from the barges to our tanks. From our perspective, it does not appear that the \$10 million insurance requirement is really equitable.

Therefore, we would appreciate your critical review of this bill.

Thank you.

(lwb:reports\SB504)

G Cathcart Ltd.

MAR 9 1990

First Interstate Bldg. • 520 5th Ave., Suite 323 • Fairbanks, AK 99701 • Phone: (907) 451-6053 • Fax: (907) 451-7945

March 6, 1990

Bernie Saupe
Saupe Enterprises, Inc.
418 Illinois Ave
Fairbanks, AK 99701

Re: Senate Bill 504

Dear Bernie,

I am writing this letter in reference to the above captioned bill. Specifically with reference to the Financial Responsibility language.

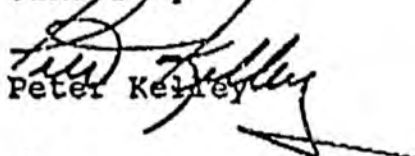
The limit of \$50,000,000 per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."

As you will recall, I had quite a bit of difficulty just obtaining a limit \$1,000,000 for you two years ago.

If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars. (I estimated this by using your premium of \$16,000 for \$1,000,000.

I hope this information can be of help.

Sincerely


Peter Kelley

Precision Insurance For Your Precise Business Needs

Anchorage: PO Box 190548 • Anchorage, AK 99519-0548 • Phone: (907) 258-6240 • Telex: 26-649 • Fax: (907) 258-2411



Alaska State Legislature

Please enter into the record my testimony to the Senate Oil & Gas
committee name

committee on SB 504, dated 3-6-90
bill/subject

I'd like to speak in favor of B.B. 504
Any tools available to the state to drag us into
the 90's as far as protecting the environment
through financial responsibility requirements and
inspection authority will help in accountability

Thank you

Signed: Sheila Dickson

Testifier

P.A.C.E

Representing (Optional)

100 Trading Bay, Suite 4 Kenai, AK 99611
Address

283-7170

Phone No.

1-23-90 Testimony of Daniel Lawn
Before the House Resources Committee

Mr. Chairman

In 1973 I received a Bachelor of Science degree in environmental resources engineering from the University of California at Humboldt.

In the fall of 1973, I joined Fluor Engineers and Constructors, the prime design and engineering management contractor for the Valdez Marine Terminal. After spending a year in the civil design and project engineering section in the LA area, I was one of the 1st two people Fluor sent to Valdez as their construction start up team.

From May 4, 1974 to March 1977, I was a field engineer/civil supervisor for Fluor at the Valdez Marine Terminal. My primary responsibilities included oversight of construction activities of the prime Earth work contractor.

I joined the Department of Environmental Conservation as an Environmental Engineer III in August of 1977, shortly after oil began flowing through the Trans-Alaska Pipeline System.

As requested; I am prepared to give you my impression from a field perspective of the Valdez Office's role in the oversight of

the Alyeska Marine Terminal. Our basic experience has been that the harder we worked, the more we found, the more difficult access to the terminal became. But let me first give you some background.

In the early days, my chief duties were the development and implementation of the field activities as they related to the Tanker Inspection Program at Valdez. In addition, I responded to most of the oil spills at the Valdez Marine Terminal, where I observed Alyeska's Contingency plan in action. I documented, analyzed and reported on the adequacy of their response.

At that time, the Prince William Sound District Office was a regional office with as many as 5 field positions and 1 clerical position.

As I recall, two positions were sole Alyeska oversight with reimbursable funding. Two other positions covered other Departmental programs and the regional supervisor's position which primarily interfaced with Alyeska Management, the several community leaders in Prince William Sound area, and other department oil program development, management and administrative functions.

In 1979 with the demise of Alaska's tanker safety program some planned positions for Valdez never became a reality. The Prince

William Sound Regional Office was downgraded to a District Office and one position was transferred to Anchorage; and the other was never filled.

Since that time, the Valdez District Office has had 3 field and one clerical position.

In addition, funding sources changed and all the positions started working in all program areas (DW, WW, AQ, SAN, OIL, etc). There was no position dedicated solely to Alyeska oversight, so oversight of Alyeska suffered and became almost non-existent or cursory at best.

In 1981 I was appointed the District Engineer/District Supervisor which was an additional work load.

In 1982 during an Alyeska Contingency Plan review, field staff used the first 5 years of oil spill response and clean up observations to say Alyeska's cleanup response was inadequate and their skimmer capacity highly overrated.

In 1984, I wrote two memos which described in some detail a general "disemboweling" of the Alyeska trained cleanup team and documented broken down clean up equipment.

From 1977 up to this period, 1984, Valdez field staff had

relative easy access to the Terminal although not enough time or energy to spend much time there.

In 1985 the Department began responding to allegations that there were serious problems at the Valdez Marine Terminal.

A good portion of the Valdez Field staff's workload was reassigned and increased so that we had an increased presence at the Terminal. I became the Department's principal investigator in Valdez.

This investigation has taken place over several years and covered many topics. One of which was a monumental undertaking of reviewing thousands of pages of reports and documents concerning the ballast treatment plant. The Valdez field office staff's knowledge and understanding of the system allowed us to evaluate some of these reports. Our work helped the Department set new discharge limits in the NPDES permit.

Also during this time the Department undertook another review of the Alyeska Contingency Plan. This review was hampered by the resistance of Alyeska to make changes in their plan and to drastically improve implementation of the plan. This delaying and resistance turned a few week process into an 18 month exercise.

Since 1985 when the Department began to investigate these several allegations, it seemed to all the Valdez field staff that the harder we worked, the more we found, the more we found, the more difficult access to the terminal became. The restricted access delayed entry onto the terminal to a point that on some occasions field staff were unable to carry out inspections.

I can give you some examples:

In 1986, Valdez field staff documented access problems over a 16 day period. During that time the staff made over 70 phone calls to Alyeska to schedule the 28 trips to the terminal. About 1/3 of the trips were for unannounced compliance sampling, 1/3 for spill response, and 1/3 related to oversight of the Ballast Water Treatment Tank cleaning sludge removal process.

Department staff lost almost two man days trying to contact Alyeska to schedule visits. After the visits were scheduled, we lost 1/2 day waiting at the gate. We lost another 1 1/2 days being taken or directed to go somewhere other than where we needed to go.

In addition, on several occasions we were prevented from inspecting certain activities for several hours (2-4) and in one case that delay was over 20 hours. On more than one occasion the delay actually prevented the inspection due to other commitments.

COMMENTS ON SB 502, SB 503, AND SB 504
GOVERNOR COWPER'S OIL & GAS LEGISLATIVE PACKAGE
AND SB 468
PRESENTED TO THE SENATE SPECIAL COMMITTEE ON OIL & GAS

MARCH 5, 1990

MICHAEL S. O'MEARA

P.O. BOX 1125, HOMER, ALASKA 99603

I was very pleased to see the Governor's oil and gas legislative package introduced. It is disappointing, however, that prior to introduction he chose to present the bills to industry alone for critique. This bodes ill for the greater public oversight and participation recommended by the Alaska Oil Spill Commission. Happily, you have taken a step in the right direction by scheduling these teleconferences at a time convenient for the working public. Let me commend you and thank you for the opportunity to express my views.

In a recent presentation to the Homer Chamber of Commerce, Exxon's Don Carpenter explained that it was company policy to comply with the "letter of the law", not the "spirit of the law." High officials from British Petroleum and other corporations have reflected the same commitment on a number of occasions.

If nothing else does, this should bring home the need to reform that body of law governing oil industry operations in Alaska. Some of the legislative reforms which I feel should be enacted are touched upon in the Governor's bills.

1. Increase, broaden, and clarify civil and criminal penalties for parties responsible for chronic and catastrophic spills of petroleum and other hazardous substances.
2. Require effective, coordinated response planning for both industry and government.
3. Require full financial responsibility for operators of oil & gas facilities and vessels.
4. Strengthen and clarify the authority of regulatory agencies to inspect oil & gas facilities and vessels.
5. Improve the ability of regulatory agencies to assure compliance with health, safety, and environmental regulations and lease or permit stipulations.
6. Provide adequate funding for more effective spill prevention and response capabilities.

To the extent that these bills would help realize these reforms, I support them. In reading over them it became obvious that in a number of ways they fall short of doing so, and of course, there are important areas of concern beyond their scope which must be addressed as well. For now I will confine my comments to suggestions regarding the reforms enumerated.

There are a number of important omissions in the Governor's package. At least twelve of the Alaska Oil Spill Commission's recommendations have not been addressed -- as follows:

-- PAGE 3, O'MEARA --

- 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)

-- page 4, O'MEARA --

Another important area that has not been considered in the present bills is the matter of criminal penalties. The State House has done so with HB 315 and HB 316, and ~~is~~ my hope that the Senate will be supportive of this issue.

A major flaw in the liability legislation passed last spring was the exemption of refined products. As far as I can tell, the Governor's bills do not correct this error. It seems vital to me that all spill related law include both crude oil and refined product.

Now to specific bills (2/21/90 -- go00510s, go00520s, go00530s)

SB 502 CIVIL PENALTIES AND DAMAGE PROVISIONS

Page 2, Sec. 2, Lines 24 & 25

The wording "penalties...may not exceed" should be changed to read, "penalties...shall be set at"

At the very least, if a maximum penalty is to be stated, the a minimum penalty should be stated as well. As written, application of penalties in discretionary.

Page 4, Sec. 3, Line 1

I am pleased to see that the language exempting spills of 18,000 gallons or less has been stricken. Penalties should apply to all spills regardless of size.

Page 7, Sec. 8, Lines 20-25

This seems to relate to the same statutes as HB 409. It might be to incorporate language from that bill here -- especially with respect to administrative penalties.

-- page 5, O'MEARA --

**SB 503 AUTHORIZING USE OF HAZARDOUS SUBSTANCE RELEASE RESPONSE
FUND/ROLE OF ADES/ESTABLISHING EMERGENCY RESPONSE
COMMISSION**

The first thing that this bill should do is increase the size of the response fund to a minimum of \$1 billion.

This bill should incorporate language from HB 421, broadening the uses for the fund to cover many of the costs associated with prevention and response preparedness.

Page 1, Sec. 2, Lines 22-25

This language should be clarified to assure that the fund can be used only for prevention of and response to oil and hazardous substance disasters.

Page 2, Sec. 5, Lines 18, 19, 22, & 23

It is unclear exactly what the role and authority of the Alaska Division of Emergency Services is with respect to the A.D.E.C. and other agencies. This needs to be made clear.

Page 2, Sec. 6, Lines 26-28 and on...

Again, this is all very unclear. We need to have a clear understanding of the relative authority, responsibility, and working structure involving:

1. The Alaska Div. of Emergency Services
2. The Alaska State Emergency Response Commission
3. The A.D.E.C. Oil Spill Response Office, its response corps and depots
4. THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

We need to know who is in charge. A single administrative presence with clear authority to direct all response activity is vital. Experience shows that we cannot do this by a committee of peers.

Page 3, Sec. 6, Lines 16-21 and Page 5, Sec. 6, Lines 8-11

Do the "emergency planning districts" correspond to the areas covered by the "regional contingency plans"? Will the commission take over direction of contingency plan and response office development started by A.D.E.C.? This is very confusing and we really need to get it worked out before we have to deal with another emergency.

-- page 6, O'MEARA --

**HB 504 CONTINGENCY PLAN REQUIREMENTS/FINANCIAL RESPONSIBILITY/
INSPECTION AUTHORITY**

Page 1, Sec. 1, Lines 13, 20, and 23

The bill requires a contingency plan for operation of oil terminals, oil platforms, and tank vessels or barges. I would suggest that it should also require such a plan for operation of refineries, pipelines, and onshore facilities.

Page 2, Sec. 1, Lines 11-16

There should a provision for public as well as agency oversight of contingency plan approval or modification. Citizen oversight and advisory councils as suggested on pages 21 and 29 of the Alaska Oil Spill Commission's executive summary could fulfill that role.

Page 2, Sec. 1, Line 22 and Page 3, Line 3

Requiring response to a spill in the "shortest possible time" is a fine idea, but I think we need to have some clarification as to what that means. It would be helpful if we could tie it down a bit more.

Page 5, Sec. 2, Lines 20 & 21

Given the great costs associated with oil spills, it would seem that demonstration of financial responsibility greater than \$500 million is called for. I would suggest raising the minimum to \$1 billion for tank vessels and barges.

Page 6, Sec. 2, Lines 15-17

There are only two ways to be sure of actual financial responsibility -- through bona fide insurance or by posting bond. These should be the only acceptable proofs of financial responsibility. I suggest all other so-called proofs be deleted from this bill.

Page 8, Sec. 4, Line 9

Clarification of rights of access for regulating agencies is very important and I am pleased to see this language. It does seem related to language in HB 409, and I would suggest adding the more comprehensive provisions from that bill here. I would also repeat my previous suggestion that provisions of this bill apply to refineries, pipelines, and all onshore facilities as well as those already cited in the bill.

PLEASE -- NO LIMITS ON "REALISTIC MAXIMUM OIL DISCHARGE"
OIL IS OIL! WE MUST BE PROTECTED NO MATTER WHO IS
INVOLVED. COST SHOULD NOT BE A FACTOR.

-- page 7, O'MEARA --

That concludes my remarks on these bills for now. Thank you again for your effort in bringing them before the public. I would appreciate being kept apprised of further work on these bills as well as introduction of other legislation dealing with oil and gas reform.

P.S. — I JUST GOT A COPY OF THIS BILL, SOOOO...

SB 468 DUTIES OF —
DEPT. OF MILITARY AND VETERANS AFFAIRS
DEPT. OF ENVIRONMENTAL CONSERVATION
IN RELATION TO OIL, ETC.

IT APPEARS THAT THIS BILL IS AN ATTEMPT TO ORGANIZE A VERY CONFUSING SITUATION
PAGE 1, SECTION 1, LINES 13-17 I AM IN FAVOR OF THAT.

THIS IS CONFUSING. IT SAYS THAT ~~DMAA~~
ADES SHALL ESTABLISH THE OIL AND HAZARDOUS
RESPONSE OFFICE — LAST YEAR SB 264 WAS
PASSED CHARGING ADEC TO DO THAT. SB 503
SEEMS TO CHARGE ADEC TO DO THAT ALSO, THROUGH
FORMATION OF THE ALASKA STATE EMERGENCY RESPONSE
COMMISSION. WHO IS IT? WHO IS IN CHARGE. SEE
MY COMMENTS ON SB 503.

PAGE 2, SECTION 3, LINES 11-17

IT SEEMS HERE THAT THE DIVISION OF
EMERGENCY SERVICES IS THE LEAD AGENCY. IS THAT
CORRECT? WHO IS THE ADMINISTRATOR WITH
ULTIMATE AUTHORITY TO DIRECT COORDINATED SPILL RESPONSE?

PAGE 3, SECTION 5, LINES 21 AND 26-28

- GOOD THAT PLANS WILL BE SUBMITTED FOR PUBLIC REVIEW.
- GOOD THAT UNANNOUNCED DRILLS WILL BE REQUIRED

PAGE 4, SECTION 7, LINES 10-27

- GOOD THAT YOU WISH TO EXPAND USE OF FUND
THIS IS SIMILAR TO LANGUAGE IN SB 503 AND
HB 421 — THESE BILLS SHOULD BE COMBINED.
SEE MY COMMENTS ON SB 503.

I WOULD SUGGEST THAT THE FUND MIGHT ALSO
BE USED TO FUND A STAFF OF DEDICATED MONITORING
PERSONNEL.

4AND
PAROS 5, SECTION, 8

Page 8, P. 1¹ mears

THIS SEEMS TO FINE TUNE PROVISIONS IN LAST YEAR'S
SB 264. IS THAT TRUE?

Statement of Annie McKenzie before the Senate Special Committee on Oil and Gas. Senate Bill 504. March 6, 1990.

Madam Chair and committee members. My name is Annie McKenzie. I own a small business in Seldovia and am currently serving as a volunteer for the Alaska Environmental Lobby. I served as volunteer coordinator for the Seldovia Response team during the Exxon-Valdez spill. From that perspective, I'd like to comment on several points recently discussed in this committee.

WHO'S IN CHARGE: My observation during the spill was not conflict between state agencies. The problems I observed arose because of the relationship between the USCG and Exxon. As federal onscene coordinator, the Coast Guard had final authority, but was loath to exercise it. They pleaded lack of authority and continually reminded us of their advisory capacity. Requests for needed materials and equipment were bumped up the line to Exxon, who always very sincerely promised to do their best to deliver, but often did so with incredibly long delays or not at all.

In addition, Exxon often responded to requests by saying they had to get approval from the Coast Guard. Thus they played a pass-the-buck game that lasted throughout the cleanup and foiled the best efforts of sincere people to control the damage. The authority problem must address not just in-state agencies, but must take into consideration federal and industry responsibilities.

EQUIPMENT: Mr. Asplund stated last night that having a plan doesn't mean buying new equipment or hiring new personnel; it means listing what would be needed. Mike Williams stated a key factor in a successful spill response and clean up plan is to "prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment."

These statements make me nervous. Listing available equipment is inadequate. A thorough inventory of equipment necessary to respond to a worst-case spill must be prepared. The equipment must be stockpiled and a mobilization plan completed including training of personnel and on-site drills.

Again let me relate the experience of Seldovia, where the Exxon-

Valdez spill initiated us to the concept of "limited resources." We needed booming materials for Seldovia Bay which is on the southern end of Kachemak Bay in the path of oncoming oil. Alyeska and Exxon had been deployed their small amounts of stockpiled boom in Prince William Sound, and we were told little or no additional boom was available. Areas within Kachemak Bay were prioritized for protection, our bay towards the bottom of the list. Limited resources would leave our bay unprotected. In desperation, we began fabricating boom from logs and seine nets, and as this was reported in the news, we began getting calls from companies with boom for sale. We relayed this information to the industry. They said it was inappropriate boom. Then they said it wasn't really available. Then they said it was too expensive. The industry's inability to provide equipment as fundamental as boom, emphasizes the need for stockpiling of large amounts of emergency materials.

The industry was also unable to provide sufficient tankerage for waste oil collected by our Seldovia team. When Seldovia personnel developed and initiated methods to collect oil from the water, asking industry only to relieve them of the waste collected, they replied that all barges were in use elsewhere. We had to fight through the press and the Coast Guard to get tankerage for this waste.

Obviously, your oversight is needed in seeing that legislation remains strong in its ability to require thorough contingency plans developed for a worst-case scenario.

TANKER INSPECTION: We must have routine comprehensive inspections by qualified personnel. It is common knowledge that the USCG does cursory inspections with inexperienced staff. Perhaps the companies should be required to provide a certificate of inspection for each vessel from an outside source every two years.

SEAL ROCK SOUTH: "Dispersants" as a contingency plan is inadequate. We should have well-placed stashes of equipment and materials in warehouses or barges along the coast with plans for utilization. Weather may not allow use of dispersants.

DISPOSAL OF OIL: All oil-spill contingency plans should have well-developed methods for disposing of all collected waste materials. Exxon-Valdez waste was disposed of in landfills, a method which threatens purity of groundwater, and by incineration, a method which

releases dioxins and furans into the environment. Dioxins and furans are some of the most powerful and deadly toxins known. They cause cancer, birth defects, and immune deficiency responses. They are fat soluble, remaining in the food chain from the smallest organisms up through fish and mammals to humans. Because of this quality, incinerating away from populated areas does not protect humans from their damage. Contaminated fish may travel long distances before being caught and consumed. The oil industry and perhaps the state should be carefully researching waste oil disposal within the state.

In summary, I must say I am disappointed and offended by Mr. Aspland's response to SB 504. He states "the mandate to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time is impossible to achieve" due to "limitations in oil spill response technology." He goes on to say that "eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible." An oil company pleading incapacity with no remedy is unacceptable to the people of this state. Perhaps even more legislation is necessary which would address the need for intensive research in clean-up. We must not again be put in the position of experimenting with our wildlife as we did with hot water washes and bioremediation during the aftermath of Exxon-Valdez.

Obviously the oil industry needs motivation in addressing these concerns. The people of Alaska are watching and working for strong legislation which will help protect us from another oil-spill disaster. In this, we are looking to you, our elected officials, for leadership. In this, you have our full support.



Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No.1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenomenon specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.



Oil Reform Alliance



SB 503 & SB 504

Testimony of Marna Lee Schwartz
Before the Senate Special Committee on Oil and Gas
3/90

Madame Chair, Members of the Committee,

For the record, my name is Marna Schwartz and I am representing the Oil Reform Alliance. In general, we strongly support the intent of SB 503 & SB 504. To make my testimony as brief as possible, I will speak only on Section 1 of SB 504 in which the applicant for an oil discharge contingency plan must be able to (as on page 2, lines 21 through 23) "rapidly contain a realistic maximum oil discharge and to remove that discharge in the shortest possible time" and also be prepared (as on page 3, lines 1 through 5) to deal with the release within "the shortest possible time after discharge and ... that the applicant properly implements the oil discharge contingency plan."

As others have asked over the course of these hearings, I, too, am perplexed by the language in this section. What is a "realistic maximum oil discharge?" How long is the "shortest possible time?" These terms are vague and indefinite, leaving the contents of oil discharge contingency plans open to controversy and deliberation. In order to make the bill as clear as possible for both the regulatory agency and the industry, it is imperative to require that the oil discharge contingency plan for a vessel or facility prepare for a total discharge of contained oil. As Mr. Asplund pointed out last night, "if you don't pre-plan, you can't make good rational decisions." Good rational decisions need to be made when the next catastrophic spill occurs. Furthermore, this pre-planning needs to be used. As in the language of HB321—a bill currently in Senate Labor and Commerce, it is crucial that this plan be implemented "immediately."

According to 46.04.030, oil terminal facilities, offshore oil exploration facilities, and tankers and barges involved with the transfer of oil cannot operate within this state without an approved oil discharge contingency plan. It seemed as though there were references made last night to situations where this was not the case. Is it true that there are as many as fifty vessels and facilities operating which are in violation of this statute? (See FY91, Governor's Operating Budget—Department of Environmental Conservation, p34.) Does the state need the help of its citizens in order to ensure the protection of its resources? Do we need legislation, like HB 558, which allows the public to sue industries that are in violation of the laws which protect our natural resources?

As I brought up in my testimony on SB 359, the Exxon Valdez disaster helped make the citizens of this state aware of the true costs

of oil development. Our sustainable resources need to be protected in order to ensure Alaska's future economic stability. Oil spills are not acceptable. Alyeska's plan which, and I quote Patti Epler in her article of February 27, 1990 in the Anchorage Daily News, "can't guarantee complete containment and clean-up of any spill," forces the state to reconsider the cost of oil transport.

I appreciate this committee's willingness to look at the bills and I hope that you all help pass strong language to ensure the healthy future of the state.



SEA HAWK SEAFOODS, INC.

P.O. Box 151 Valdez, Alaska 99686
Phone: (907) 835-4837 Telefax: (907) 835-4292

APR 23 1990

April 16, 1990

Senator Drue Pearce
Room 510, Capitol
P.O. Box V
Juneau, Alaska 99811

RE: SB502
SB504
HB409

Dear Senator Pearce:

I believe it imperative to request your consideration and support for what are commonly referred to as "the oil spill bills".

I have been publicly supportive of the philosophy that the private sector is indeed responsible for their actions. It would be a wonderful world if every company accepted their legal and environmental responsibilities and fulfilled their promises without legal pressure. There would be no need for guardians.

The EXXON VALDEZ disaster, and later the oil spill commission, shed light that Alaska laws and enforcement authority to protect the environment and public are woefully inadequate. It has become evident that we have serious weaknesses in our enforcement and inspection authority.

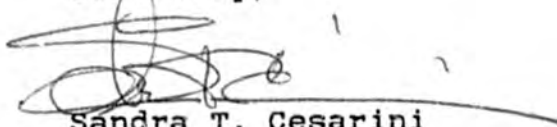
The idea that a state environmental inspector is denied access to the State's largest oil distribution center is reprehensible. The fact that the company had the ability to deny him access is even more outrageous.

The oil spill bills specifically define the States' authority and gives them sufficient muscle to enforce the laws.

The public perceives the State to be the guardian of public safety, health and environment. With your vote, we will have the tools to support that trust.

Thank you for your consideration in this matter.

Sincerely,



Sandra T. Cesarini

STC:alh
SHS1628



SEA HAWK SEAFOODS, INC.

APR 23 1990

P.O. Box 151 Valdez, Alaska 99686
Phone: (907) 835-4837 Telefax: (907) 835-4292

April 17, 1990

Senator Drue Pearce
Room 510, Capitol
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

I respectfully request that as Senate Oil and Gas Committee Chairperson, you consider moving Oil Spill Bills (such as HB504) out of Committee as quickly as possible.

As one of the victims of the oil spill, I have taken a rather personal interest in the action taken by the Legislature on these bills.

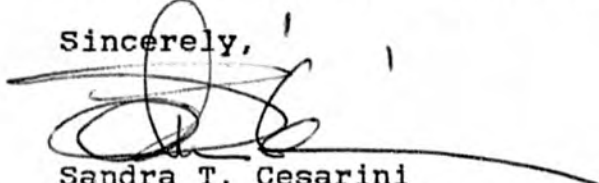
I strongly believe that these issues are for the public good and for the well being of our State.

It is evident that this (and other oil spill legislation) need to be completed this session. We need to know that the Legislature is behind the philosophy of protecting the public good.

Please consider a rapid and successful review of HB504 and all other oil spill legislation. We need your support.

Thank you for your kind consideration to this matter.

Sincerely,

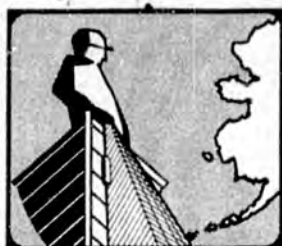


Sandra T. Cesarini
Executive Vice President

cc: Senator Al Adams
Senator Paul Fischer
Senator Rick Halford
Senator Tim Kelly

STC:alh
SHS1632

APR 23 1990



Bering Sea Fishermen's Association

725 Christensen Drive
Anchorage, Alaska 99501
(907) 279-6519

Senator Drue Pearce
P.O. Box V
Juneau, Alaska 99511

April 17, 1990

Re: 1990 Oil Spill Legislation

Dear Senator Pearce,

Bering Sea Fishermen's Association, both as a member of the United Fishermen of Alaska and the Oil Reform Alliance, and as an organization whose fishermen depend upon clean and healthy oceans for their livelihood, urges you to support the bills regarding oil spill legislation which have been introduced this session. We have learned from the spill of the Exxon Valdez that prevention is our best weapon against these disasters. It will only be with strong incentives such as those put forth in these bills that the industry will take all the actions needed to ensure that additional spills will be prevented. Our position on each of the bills follows on a bill by bill basis.

CSHB 409:

BSFA supports this bill as amended by the House Finance Committee. It is derived from the hard work of the state appointed Oil Spill Commission and is a long term analysis of our states' oil spill regulations by its citizens. This bill will recognize the careful study and many hours of work that were performed by the Commission. Administrative penalties, making compliance orders effective upon receipt, environmental audits, and increased access provisions will increase the effectiveness of DEC's regulatory authority.

HB 565/SB 502:

This bill will provide industry with the strong incentives needed to ensure that they take all measures needed to prevent oil spills if it is amended. In addition, it will provide state regulations with consistency in addressing oil spills. BSFA supports the following changes to the bill, which will strengthen the penalties:

1. Remove the liability limit, there should be no cap on liability.

2. Change the penalty structure to \$50/gal for oil spilled into freshwater environments; \$25/gal for oil spilled into confined salt-water environments; and \$10/gal for oil spilled into an unconfined salt-water or onto land of the state.

HB 566/SB 503:

BSFA supports this bill in the form which gives the lead to DEC as the agency in charge of catastrophic oil spills. We do not support CSSB 503, as it will leave many legal questions about who is in charge of cleanups and it will undermine DEC's authority. This substitute bill is in direct opposition to the recommendations of the Oil Spill Commission which was composed of a non-partisan citizens group. The House/Senate conference committee which will iron out differences with the bill should be composed of legislators who will listen to the recommendations of their peers on the Oil Spill Commission and support DEC as the lead agency in charge of cleanups.

HB 567/SB 504:

We need the strength which this legislation will add to the DEC's authority on contingency plans, requiring financial responsibility for shippers, and inspection of production and shipping facilities. BSFA supports this bill and urges legislators to get this legislation moving so it can pass through both houses this session.

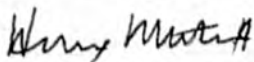
HB 578:

BSFA supports this bill as written. A citizens oversight council on oil spill prevention will ensure that regulatory agencies can and will do their jobs.

We urge you to take action on this legislation **this session**, we've seen the results of slack regulations and the inability of the oil industry to clean up their spills. We need to ensure that spills don't occur, and that if they ever do they are as small as possible, cleaned up as quickly as possible, and the spiller clearly understands their liability.

We appreciate your support.

Sincerely,



Henry Mitchell, Executive Director
Bering Sea Fishermen's Association

4/25/90

FURTHER INFORMATION AFFECTING HE567

Walter E. Parker
Chairman, Alaska Oil Spill Commission

This information is in addition to my previous written and oral testimony on HE567. It provides further information justifying 72 hours in Section 1, proposed AS 46.04.03C(f) and (h). Further information is also provided to justify Section 4, AS 46.04.060, expanding the authority of DEC to enter and inspect terminals, tank vessels, etc.

72 Hours

In my previous testimony to House Resources I defined in some detail how a maximum feasible discharge of 1.8 million barrels could be cleaned up in 72 hours under favorable weather conditions. Since then I have received a video and supporting documents from ARCO which claims a recovery rate for their 70,000 ton skimmer (a converted ARCC PRUDHOE BAY class tanker) of 45,000 barrels per hour rather than the conservative 25,000 barrels per hour which I assigned to this skimmer. This information plus conversations with ARCC indicate to me that they are very firm in this proposal. Tests have been undertaken in a testing basin in San Diego and they are proceeding towards serious engineering evaluations. The work they are doing is very similar to a proposal that was developed for Mobil in 1973 for a large skimmer. The Mobil proposal died because of lack of enthusiasm from both the Coast Guard and the oil industry, not due to engineering problems.

If we accept the new information from ARCO and combine it with the 3,500 capacity for small skimmers in the present Aleyska contingency plan under review (DEC is using a figure of 4,100 barrels per hour in their review) then we have the ability to recover 1.8 million gallons in 37 hours.

A large skimmer can go anywhere a large tanker can go. The argument that they do not have the necessary flexibility to operate in shallow water does not hold for operations in

Prince William Sound where the large skimmer would be making immediate recovery in the vicinity of the grounded or otherwise injured tanker while the smaller skimmers could operate in the near shore areas.

There has apparently been a good deal of discussion about recovery capacity of the various European nations. I would recommend a quick review of our summary on pages 90 to 95 of our main report, Spill: The Wreck of the Exxon Valdez. You must remember that the Bonn Agreement brings all these countries together with a government recovery capacity of 250,000 barrels per hour and an equal capacity from industry. All of the equipment is a maximum of 12 to 24 hours away from the areas of the North Sea and the Baltic covered by the agreement. Our problem is we are 2500 miles from the nearest federal equipment depots in the San Francisco area and must be self sufficient except for what equipment can be airlifted in. The airlift is by necessity limited to small skimmers, the major reason why mechanical recovery is so ineffective in the National Contingency Plan. Therefore, we must have large skimmers on site and must take ARCO and its supporters at their word that they are feasible. It is inconceivable to me that an element of Alaska government would discourage this development, rather we must take all necessary steps to encourage it as rapidly as possible by requiring it as an element of the contingency plan through the 72 hour response requirement. 72 hours is the time under almost all our scenarios at which massive amounts of oil begin to come ashore and the battle is lost.

Without the large skimmers, Alyeska will need 28 skimmers of the type presently in its contingency plan to achieve recovery of 1.8 million barrels in 72 hours. They have 4 at present. The small skimmers are extremely limited in their capacity to recover in sea states above six feet, while ARCO feels based upon present testing they have done that the large skimmer would operate well in much more severe sea states. Lets give them a chance.

Regarding Section 4, the expanded DEC inspection powers, I have stated before that I regard this as the most important element in any of the spill bills. It is the area where the state can have the greatest influence on prevention, because the Coast Guard will not be doing it - not in the next few years at any rate.

Yesterday I received a copy of the in house Coast Guard report, Report of the Tanker Safety Study Group, dated 6 October 1989. This report confirms in spaces everything the Alaska Oil Spill Commission has said about Coast Guard inadequacies and about the problems of the Alaska tanker trade. What a tragedy it is that Admiral Yost chose to hold this information to himself rather than sharing it with the residents of the coasts imperiled by the Alaska tanker trade. I think an apology is due the citizens of Alaska on this one.

Everything I have said in my testimony, in speeches and that the Commission said in its report on aging tankers and the danger of structural failure, on undermanned ships, on the use of automated systems without adequate training or maintenance, on the poor quality of ship inspections, on crew fatigue --- it is all here.

A few quotes from the 45 page document will suffice to give its general tenor:

- p. 13 Fifty two (52.7) percent of the TAPS tankers are experiencing reportable (Class 1 and Class 2) failures compared to fifteen percent (15.8%) of the non-TAPS ships based on 1984-86 records. TAPS ships comprise only 13% of the tanker fleet by experience 52% of the serious structural failures. This is an alarming statistic. (the report goes on to discuss whys and wherefores of structural failures at great length. Suffice to say that it justifies our concern for a high seas structural failure off the coast of southeast Alaska.

- p. 18 As indicated elsewhere in this report, the demands placed on some masters to meet schedules, particularly in the TAPS trade, precludes moderating the vessel speed in heavy sea states, thereby accelerating the fatigue process.
- p. 21 Tanker masters (and those of container ships as well) are under intense pressure from their companies to minimize their at sea and in port time. Many companies use a system of rewards and punishments (bonuses and fines) as an incentive to maintain the schedules set by management, which may require shipmasters to take excessive risks on a routine basis.
- p. 22 In the event of automation failure, the engineer room has to revert to full manning. With an already reduced crew, the additional strain on the engineering crew is considerable. The potential for engineering related causes of marine casualties increases commensurately.
- p. 25 The study group found in general that vessels, both U.S. and foreign are often not prepared for Coast Guard inspections and that the port captain or engineer and crew assigned are spread too thin to assist in the required inspection. The Coast Guard cooperates with the owners and operators by allowing ships to be unprepared for inspections by using the old excuse that we are facilitating commerce.

Based on similar information we discovered, the Commission found the when state inspectors stopped going on board the tankers in Valdez in 1979, after the industry won Chevron vs. Hammond, the whole system began to decay. Rather than filling the gap, the Coast Guard and the industry became more and more lax. That is why this is the most important element in the spill bills.

I was not apprised of your need for this until 9:45 P.M. on 4/24/90. It is now 2:00 A.M. and I am going to bed.

**Testimony before the Alaska Senate
Special Committee on Oil and Gas**

on SB 503 and SB 504

**Walter B. Parker, Chairman
Alaska Oil Spill Commission**

1 March 1990

SB 503

In general, SB 503 reflects several of the major thrusts of recommendations by the Alaska Oil Spill Commission. Mainly, it brings oil spill response into the state's emergency response network and mandates strong cooperation between those state agencies concerned with emergency response to hazardous substances, including crude oil and refined petroleum products. Most important, it concentrates on establishing immediate response at the local level, something addressed by several of the commission's recommendations, most strongly Recommendations 27 and 49.

Section 1, 2 and 4

Recommendations 52 and 53 address the need for an immediately available oil or hazardous substance response fund. Broadening the use of the 470 fund and providing the governor with the flexibility to use those funds in addressing oil spills and other emergencies is directly consistent with the commission's intent in these recommendations.

Section 3

The problem the commission wrestled with in the relationships between the Department of Environmental Conservation and Division of Emergency Services was ultimately the determination of who would be in charge of a catastrophic spill response and at what level the response authority of DES would be implemented. Our recommendation on the use of the Incident Command System (Recommendation 48) is our major response to this problem. The key element is having an on-scene commander in each emergency response district that has the authority to bring the Incident Command System into operation.

The bill recognizes DES expertise in communications, logistics, equipment procurement, manpower and community liaison. This is supported by our Recommendations 50 and 51. DEC expertise in providing measurement and evaluations of environmental conditions is in the bill, but their role in directing initial response and later cleanup is not absolutely clear. The commission believed that use of the ICS would clarify the difference between oversight roles and management roles in a response mobilization at any level. It also would clarify federal and private participation in response, beyond the responsibilities outlined in the district contingency plan. In the best of worlds, each district will have a contingency plan that is absolutely clear on what role each party will play. We found that the Incident Command System does the best job of this.

Each district may have different structures that reflect the differences in state agency structure, federal agency structure, local government capabilities and private capabilities. We felt that maximizing the use of existing governmental and private capabilities through the ICS would be the most cost-effective and efficient way to achieve an oil spill response system that can meet the target of responding to a worst-case situation within 72 hours.

The commission did not address the formation of the State Emergency Response Commission. The SERC does carry out the intentions of Recommendations 27 and 49 on local involvement and Recommendations 45 and 50 on allocation of state response authority. Most importantly, it provides the structure for developing effective regional response plans. These plans are the most critical element of the entire response structure because it is in the region that the ability to respond quickly and effectively must be lodged.

SB 504

Section 1

Our Recommendation 55 should be considered. We feel that contingency plans should be based on the ability to respond to a "worst-case spill" within 72 hours. The language in the bill of a "realistic maximum" oil discharge and to remove that discharge "within the shortest possible time" does not provide a firm mandate for private contingency plans. It does not do enough to mitigate the risk oil shipment imposes on residents of adjacent coasts. It is not in line with our overall policy Recommendations 1, 2 and 3.

The requirement that contingency plans be properly implemented is a longstanding loophole that needs to be closed. If private plans are not implemented the government will have to take up the slack or we will have regional response plans whose effectiveness is as suspect as those that failed last March 24.

Section 2

The commission did not address in its report any amounts for financial responsibility. We did make the point in Recommendation 21 that the state should require the shipping industry to insure the state and its citizens against risk and this section carries out that idea.

Section 4

Providing DEC with the authority to inspect tankers, terminals, exploration and production facilities is, in many ways, the most important regulatory prevention measure that must be undertaken if the system is to truly improve. We address this in Recommendation 14, with other aspects addressed in Recommendations 11 and 13.

Recommendations not contained in SB 502, SB 503 or SB 504

Recommendation 9—Tank farm capacity at Valdez.

Recommendation 12—A citizens advisory council to oversee the safe transportation of oil, gas and other hazardous substances.

Recommendation 16—State licensing of private personnel involved in oil transportation.

Recommendation 25—Harbor Administration.

Recommendation 47—A system for emergency economic maintenance.

Recommendation 57—In-state research institute.

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

Report of the Alaska Oil Spill Commission
Executive Summary

SPILL

The Wreck of the Exxon Valdez
Implications for Safe Marine Transportation

January 1990

Commission Recs. not included in
Governor's Oil Spill Bill

FOREWORD

On March 24, 1989, Alaskans awoke to the shock of disaster. Shortly after midnight, the 987-foot-long supertanker Exxon Valdez had run hard aground on Bligh Reef, spilling 10.8 million gallons of crude oil into the unspoiled waters of Prince William Sound. The worst case had occurred.

This was the threatened tanker catastrophe residents of Prince William Sound had dreaded — but many had come to discount — ever since the trans-Alaska pipeline system was proposed in the late 1960s. A few of those scrambling to cope with the disaster knew something more chilling still. Though nearly 11 million gallons of crude oil already had escaped the fully-loaded *Exxon Valdez*, another 40 million gallons remained on board — and the ship was in considerable danger of capsizing. The spill that became the environmental disaster of the decade easily could have been five times worse.

The system that carried 25 percent of America's domestic oil production had failed. So had the regulatory apparatus intended to make it safe. The promises that led Alaska to grant its rights-of-way and Congress to approve the Alaska pipeline in June 1973 had been betrayed. The safeguards that were set in place in the 1970s had been allowed to slide. The vigilance over tanker traffic that was established in the early days of pipeline flow had given way to complacency and neglect. In the months following the spill, more than 1,000 miles of Alaska's coastline would be sullied by North Slope crude.

Communities touched by the effects of the spill staggered under the damage to land and water upon which they lived or the impact of the massive cleanup mobilization after the spill. Alaskans from walks of life as diverse as the oil industry and subsistence communities struggled with the economic losses, sorrow and dislocations as well as, for some, the opportunities that came with the spill and cleanup. Attitudes toward oil development, the land, the industry and the future were examined and re-examined as Alaskans searched for answers to the question of how things went wrong.

The Alaska Legislature created the Alaska Oil Spill Commission to provide some of the answers. Two months after the spill, the governor appointed an independent panel to study the event and recommend public policy remedies. The commissioners came to their work with broad experience in government and public affairs. Their sole purpose was to learn the causes of this disaster and propose changes that would prevent a recurrence of similar disasters anywhere. The mission was clear: Our report must show a path for Alaska, the United States and the world to a vastly improved system for transporting oil and other hazardous substances in the marine environment.

This disaster could have been prevented — not by tanker captains and crews who are, in the end, only fallible human beings, but by an advanced oil transportation system designed to minimize human error. It could have been prevented if Alaskans, state and federal governments, the oil industry and the American public had insisted on stringent safeguards. It could have been prevented if the vigilance that accompanied construction of the pipeline in the 1970s had been continued in the 1980s.

In 1977, when tanker operations began from Valdez, we thought we had created a system that offered guarantees against most disasters. As chairman of Alaska's Oil Tanker Task Force, I pulled together a team that provided the first full-scale simulation of marine operations ever done for a North American port.

Our simulation model demonstrated to the masters and pilots the conditions that would put their ships on the rocks. Tanker lanes into Port Valdez were set to insure the maximum feasible level of safety in tanker operations. Restrictions were imposed to limit operations in high winds. Agreements between the state, the industry and the Coast Guard established that when ice was encountered, the ships would slow down and proceed at minimum speed in the tanker lanes, rather than proceeding outside the lanes at sea speed, as did the *Exxon Valdez*.

The historical record developed by the commission is clear: The original rules were consistently violated, primarily to ensure that tankers passing through Prince William Sound did not lose time by slowing down for ice or waiting for winds to abate. Concern for profits in the 1980s obliterated the concern for safe operations that existed in 1977.

This disaster could have been prevented by simple adherence to the original rules. Human beings do make errors. The precautions originally in place took cognizance of human frailty and built safeguards into the system to account for it. This state-led oversight and regulatory system worked for the first two years, until the state was preempted from enforcing the rules by legal action brought by the oil industry. After that, the shippers simply stopped following the rules, and the Coast Guard stopped enforcing them.

This past year the Alaska Oil Spill Commission traveled to the coastal towns and villages of Prince William Sound and Southcentral Alaska to hear from the people most affected by the spill. We found communities and individuals whose lives and trust had been destroyed, but who had rededicated themselves to protecting their livelihood on water and land. Walter Meganack, Sr., traditional village chief of the Alaska Native subsistence community of Port Graham offered these words at a conference of mayors from spill-affected communities:

It is too shocking to understand. Never in the millennium of our tradition have we thought it possible for the water to die. But it is true. ... what we see now is death. Death — not of each other, but of the

source of life, the water. We will need much help, much listening in order to live through the long barren season of dead water, a longer winter than before. . . . We have never lived through this kind of death. But we have lived through lots of other kinds of death. We will learn from the past, we will learn from each other, and we will live.

Port Graham is about 250 miles, by water, from Bligh Reef. To get there, the oil had to travel the length of Prince William Sound, past Green, Story, Knight, Montague and LaTouche islands, out into the Gulf of Alaska and along the rocky headlands of Kenai Fjords National Park. It had to round the corner at the end of the Kenai Peninsula, plastering Elizabeth Island and heading into Cook Inlet and the outer reaches of Kachemak Bay. Moving beyond Port Graham and the surrounding area, the oil fouled beaches down the Alaska Peninsula — in Katmai National Park, along the Shelikof Strait, on Kodiak Island and beyond. As the oil spread so, belatedly, did the impact of cleanup and containment efforts, with an army of workers and a navy of boats to move and house them.

To trace on a map the tortured routes of the oil spilled from the *Exxon Valdez* is to appreciate the vulnerability of every coastline on earth as supertankers of 500,000 deadweight tons and more carry crude oil to market. When the Alaska pipeline was being planned and built, the largest tankers in the U.S. flag fleet were about half that size. The world's oil shipping companies, to the benefit of consumers and corporate shareholders, have created a megasystem that carries oil from wellheads in the far corners of the earth to refineries in its major industrial centers. But this megasystem is fragile. It requires careful scrutiny from outside the industry in design, construction and operation. When it fails, as it has in tanker disasters around the world, entire coastlines are at risk. Had a spill the extent of the *Exxon Valdez* disaster occurred off the United States East Coast, the devastation would have stretched from Cape Cod to Chesapeake Bay.

This is not a fictitious risk. Alaskans assume such risks daily as supertankers carry 2 million gallons of North Slope crude through Prince William Sound and out into the Gulf of Alaska. Other Americans on three coasts face just as ominous a threat as the world tanker fleet delivers 43 percent of all U.S. oil consumption daily from overseas.

What will limit these risks? Obviously, the present system, providing minimum penalties for creating massive environmental damage, has not deterred the industry from putting the coasts and oceans of the world at constant hazard. The system calls out for reform. The mission of this commission is to explain what must be done and why.

**Walter B. Parker, chairman
Alaska Oil Spill Commission
January 5, 1990**

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INTRODUCTION

The evidence points to eight fundamental conclusions that form the basis of this report:

- I. Moving oil by sea involves a complex, high-risk megasystem whose breakdown can threaten the welfare of entire coastlines.*
- II. Risk is unavoidable in modern oil transportation. It can be reduced but not eliminated.*
- III. Prevention of major oil spills must be a fundamental goal in the oil trade since cleanup and response methods remain primitive and inadequate.*
- IV. In government as well as industry, enforcement zeal declined, alertness sagged and complacency took root in the years preceding the Exxon Valdez disaster. Prevention was neglected.*
- V. Without continuing focus on the safety of the entire system by government and industry leaders, the oil transportation system poses an increasing risk to the environment and people of Alaska.*
- VI. The State of Alaska has primary responsibility for protecting the resources of the state and the welfare of its people, who bear the risk of unsafe conditions in oil transportation.*
- VII. Privatization and self-regulation in oil transportation contributed to the complacency and neglect that helped cause the wreck of the Exxon Valdez.*
- VIII. The safety of oil transportation demands review and overhaul. Not just new technology, but new institutions and new attitudes in old institutions are required.*

These are the basic premises we believe policymakers should understand in designing remedies for a flawed system of oil transportation.

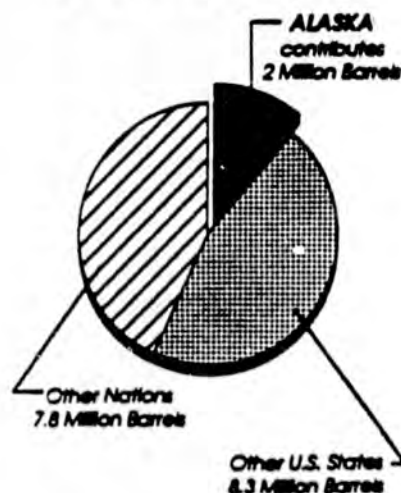
Tankers carrying North Slope crude oil from the Valdez terminal of the trans-Alaska pipeline had safely transited Prince William Sound more than 8,700 times by the time the *Exxon Valdez* left port at 2112 hours (9:12

"I warned the community that the possibility of an oil spill in Valdez was very high. Given the high frequency of tankers into Port Valdez, the increasing age and size of that tanker fleet, and the inability to quickly contain and clean up an oil spill in open water of Alaska, we felt that we were playing a game of Russian Roulette. We knew 'The Big One' was only a matter of time."

Dr. Riki Ott, Cordova District Fishermen United

House Committee on Interior and Insular Affairs hearing, May 1989

America uses 18.1 million barrels of oil every day



p.m., Alaska Standard Time) on March 23, 1989. This experience gave little reason to fear impending disaster. Yet less than three hours later, the *Exxon Valdez* grounded at Bligh Reef, rupturing eight of its 11 cargo tanks and spewing some 10.8 million gallons of crude oil into Prince William Sound.

No human lives were lost as a direct result of the *Exxon Valdez* disaster, and only one life was reported lost in the massive cleanup effort. Indirectly, however, the human and natural losses were immense—to fisheries, subsistence livelihoods, tourism, wildlife. The most important loss, for most Americans who will never visit Prince William Sound, was aesthetic—the sense that something sacred in the relatively unspoiled land and waters of Alaska had been defiled.

Experienced mariners express astonishment that a modern, well-equipped supertanker ran aground at Bligh Reef. The *Exxon Valdez* was traveling through well-charted waters in conditions of moderate weather and visibility. Bligh Reef was a well-known hazard, and all mechanical and navigational systems on the ship were working properly. Coast Guard Commandant Paul Yost engaged in only slight hyperbole when he said after inspecting the accident scene that his 10-year-old son could have steered the tanker safely through the area.

Yet the events leading to the grounding, and the institutions and procedures reflected in them, revealed a situation where the risk of disaster had increased steadily through years of relatively incident-free tanker trade. Success bred complacency; complacency bred neglect; neglect increased the risk—until the right combination of errors finally led to an accident of disastrous proportions.

The wreck of the *Exxon Valdez* was not an isolated, freak occurrence, but simply one possible (and disastrous) result of policies, habits and practices that for nearly two decades have infused the nation's maritime oil transportation system with increasing levels of risk. The *Exxon Valdez* was an accident waiting to happen, the link that broke first in a chain with many unreliable couplings. The specific lapses that permitted the *Exxon Valdez* to run aground on Bligh Reef are being remedied, but similar circumstances easily could be repeated in some other combination to allow some other disaster. What is required now is comprehensive action to reduce the risk in the system.

At one level it is obvious that a combination of human actions and errors led to the *Exxon Valdez* disaster. Many have been scrutinized in the public record, particularly the proceedings of the National Transportation Safety

Board. Not even the root of this disaster—departing from traffic lanes—was unique: The 1967 *Torrey Canyon* grounding off England took place when the captain left the traffic lanes to save time.

Yet behind all human actions in the Valdez tanker trade, supporting the men and women who load and operate the tankers, is a system—one whose design and function clearly failed that night in Prince William Sound.

The system includes hardware in the form of pipelines, terminals, storage tanks, loading facilities, tankers and all the associated gauges, meters and machinery that operate them. It also involves operating instructions in the form of technical and design standards, international protocols, capacity ratings, terminal procedures, loading instructions, contingency plans, pilotage rules, maritime rules of the road, local navigation regulations, vessel traffic monitoring and economic and career pressures on all participants. Finally, the system involves institutional oversight in the form of corporate management, private insurance systems, state inspection and enforcement, local port management and Coast Guard regulation.

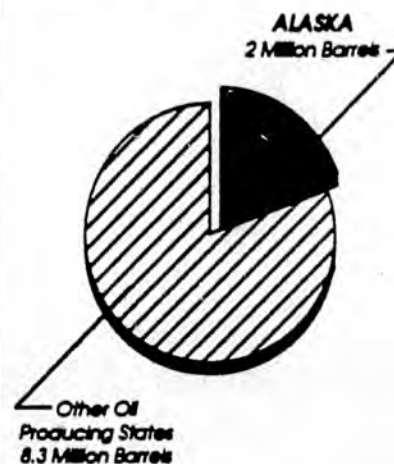
The objective is to move oil safely across the seas regardless of inevitable human error. System design must provide for redundancy—backup systems to prevent error from becoming disaster and overbuilding to provide for wider margins of error. Proper functioning requires constant testing, inspection vigilance, cooperation, discipline, expertise and commitment of organizations at every level of government and industry.

Yet for reasons of maritime tradition, economics, politics, public policy and modern practice, the maritime oil transport system is relatively more error-prone than safety-inducing. Industry tends to measure success as operating the biggest vessel with the thinnest hull and the smallest crew at the highest speed with the quickest port turnaround consistent with meeting minimum government requirements. Efficiency in a competitive world dominated by profit is all important in the oil transportation business, even in the Alaska trade where transportation competition is muted.

A comparison between the nation's passenger air transport system and the maritime transport system is instructive, if not exact. Air transport safety is better reinforced, backed up and institutionally safeguarded than maritime transport.

- Air pilots share responsibility with co-pilots and foster teamwork in the cockpit, while marine masters hold absolute authority,

Alaska produces 2 million barrels of oil every day



"It takes great strength to recognize the reflection in the mirror. Look in the mirror, and dig deep within yourself. Don't create an image that isn't there. Act on what you see. The environment is a reflection of who we are. We can't ignore the reflection we see. We have to live with it—today, tomorrow, and forever."

Dolly Reft, Kodiak native
Alaska Oil Spill Commission
hearing, 8/11/89

*"We in industry cannot
assume that all
regulation is bad; it's
not."*

*Jerry Aspland, President, ARCO
Marine, Inc.*

*Alaska Oil Spill Commission
hearing, 9/1/89*

sharing little command responsibility with other ship officers. Mistakes in the cockpit are more easily challenged than on the bridge;

- Air traffic control is mandatory, and ground controllers share responsibility with air pilots for safety of takeoffs, landings and approaches. There is no equivalent to ground control in marine transport, and vessel traffic systems are typically only advisory;
- The federal government imposes strict standards and enforcement carried out by the Federal Aviation Administration in air transport, while the federal presence is minor and interspersed among other Coast Guard duties in the marine environment;
- Strong international cooperation governs air transport practices, while international cooperation remains weak in the maritime field; and
- Working conditions in air transport are governed by strictly enforced limits on work hours, while overwork and long hours are routinely permitted to create fatigue among crew members in marine transport.
- Airline accident victims are identifiable and directly linked to the business of air travel, while the victims of marine accidents—seamen, fishermen, wildlife—are more likely to be anonymous.

The analogy to air transport is not perfect. The issues described here reflect institutional settings, demands and traditions that go beyond considerations of safety. But two points illustrate the relevance of the comparison.

First, there are approximately 17,000 airline departures per day in the United States. On most days, every single one of these departures safely arrives at its destination. The *Exxon Valdez* was a catastrophic failure—the oil transport equivalent of a major airliner crash. Studies performed for the commission indicate that a catastrophic failure such as the *Exxon Valdez* disaster can be expected to occur in the Valdez tanker trade approximately every 13 years, or about once every 11,600 transits. At a similar rate of catastrophic failure, the air transport system would produce 1.5 airliner disasters every single day, or 550 per year. If an average of 150 people died in each airline crash, such an accident rate would result in the loss of about 82,500 human lives per year—an unthinkable carnage that

is prevented by a tight, safety-reinforcing system of regulation and oversight.

Technological and human systems aren't perfect: Airliners occasionally do crash. But we have built a system that does not tolerate in air traffic anything like the catastrophic failure rate we can expect in the Valdez tanker trade. Because of that system, air travel can be considered safe and reliable. Risk cannot be eliminated, but it can be reduced—if we accept the costs involved.

Second, as vessels carrying oil and other hazardous materials impose higher and higher risks upon the world's oceans and coastlines, the environmental and social costs of marine transport accidents increase. The growth of a massive international system of transportation of oil by sea since World War II has not been accompanied by the development of organizations and active constituencies of those affected by the environmental hazards inherent in the trade. Those stakeholders, however, deserve increasing attention, for the risks they suffer are growing as the world's oil transportation system grows. And the marine transport system must become tighter and more safety inducing as the costs of failure grow more serious and more pervasive.

Alaska, like other states, has long relied on the National Contingency Plan to provide the manpower and resources to handle a catastrophic spill. But the *Exxon Valdez* response illustrated the emptiness of the NCP: It failed to provide the necessary resources, and indeed the record of the past decade shows that the federal government has relied on private industry to contain or clean up a major spill. The government provided no resources of its own to handle even moderate-sized spills adequately. Nor is there any indication that either the Environmental Protection Agency or the Coast Guard, the federal administrators of the NCP, made any effort to determine whether the oil industry actually had the capability to clean up a catastrophic spill.

The proposals in this report aim to revive the commitment of the state and nation to tanker safety and response preparedness. The basic premises behind these proposals are highlighted at the beginning of this chapter. The major recommendations for state, federal and industry actions are then divided by subject into seven sections.

The first section includes general prescriptions concerning prevention as a comprehensive policy goal of maritime oil transportation. It focuses on direct citizen oversight, improved industry and government attitudes,

"I think there's probably going to be reluctance from the management agencies that were involved, both at the state and federal levels, to take a hard look at their performance."

Dr. David G. Shaw, University of Alaska

Alaska Oil Spill Commission hearing, 9/21/89

*"The level of inability
to function in chaos
that's going on out
there is ridiculous. The
amount of money that is
being spent is
obscene."*

Dennis Holan, Cordova fisherman
Alaska Oil Spill Commission
hearing, 6/28/89

knowledge of risk at all levels and regulatory vigilance as primary building blocks to a safer system.

The second section defines some commitments that must be made by the oil industry to provide better environmental protection, just as it would for human safety.

The third section addresses actions the State of Alaska should take to bolster its oil spill prevention and response systems. It provides insights on the state's relationship with the federal government and ideas on focusing the state's position on oil and gas transportation, expanding its regulatory position, creating interstate compacts, and adding greater local input to decision-making.

Recommendations to the federal government in section four, if adopted, would have considerable impact on tanker safety. Tanker design changes, including double hulls, improved traffic control systems and a increased emphasis on proper manning and crew training are the key elements. If adopted, these could decrease spill probabilities of the *Exxon Valdez* size more than four-fold. If further recommendations for increased federal oversight also were carried out, we could expect a five-fold improvement in oil tanker safety—and therefore a substantial decrease in the present devastation of our coasts and oceans.

Section five describes what the commission believes should be the government's posture toward future spills—the response mechanisms of state, federal and local governments, and how they might fit together better to prepare for future spills. The private sector is included as a critical element of response, but not as the governing element. The key to a proper response system is speedy mobilization of manpower and resources immediately after a spill. The next element is to insure protection of key environmental areas if a spill cannot be contained. We recommend that the Incident Command System—currently familiar to many federal agencies for emergency response—be put into use widely to respond to natural disasters.

In section six we make recommendations on how to implement an oil spill response and how to integrate the Incident Command System into existing organizations. Our goal is to show how to use existing government systems in the most efficient manner while avoiding the creation of a separate spill response bureaucracy in every government agency concerned with oil spills. We have also emphasized an increased and structured role for local communities both to insure that local resources are available and that rapid mitigation of spill impacts occurs when

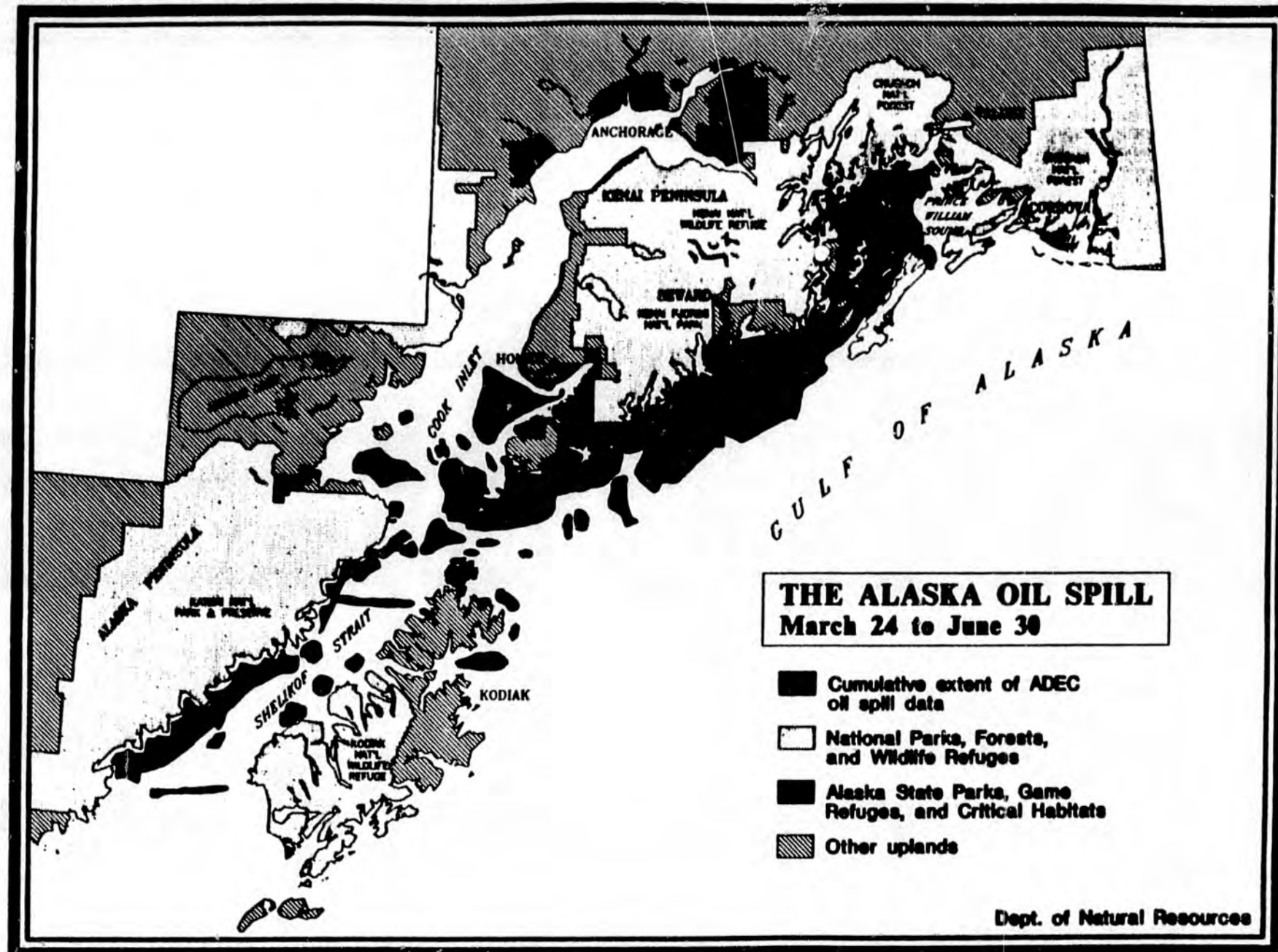
necessary. The role of private contingency plans also is defined in this section.

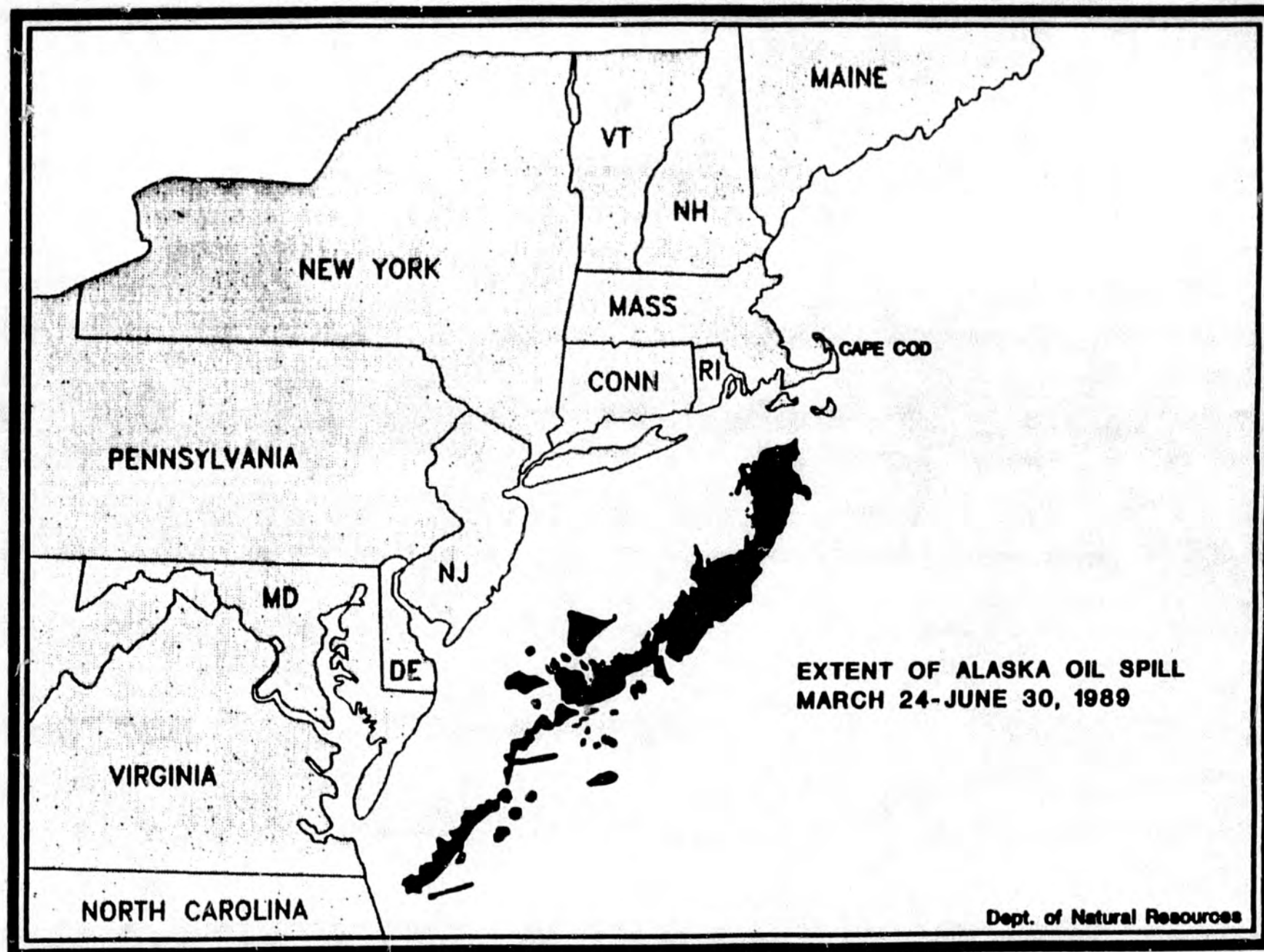
Section seven concludes this report with some ideas for improving research and development efforts toward oil spill prevention and response. We were able to use information gained from around the United States by the General Accounting Office and Office of Technology Assessment in their studies done after the *Exxon Valdez* spill. We also were able to obtain substantial information on advanced technologies in use by the U.S. Navy that were ignored in the *Exxon Valdez* incident. Finally, we have accumulated information on advanced spill response technology in Great Britain, the Netherlands, West Germany, Norway, France and South Africa. Information from the Middle East, the Soviet Union and Japan still remains to be gathered, a task we leave to our successors. In this section we also include our comments on the use of simulators in crew training.

If the commission's labors have been successful, the implementation of its proposals should considerably improve the safety of oil transportation by sea. But implementation rests in forums from the White House to local council halls, corporate board rooms to legislative chambers. Future vigilance rests in the hands of state and federal leaders, industry and public agency officials, terminal operators, tanker officers and crew, technical advisors and, perhaps most important of all, citizens exercising a watchdog presence and role.

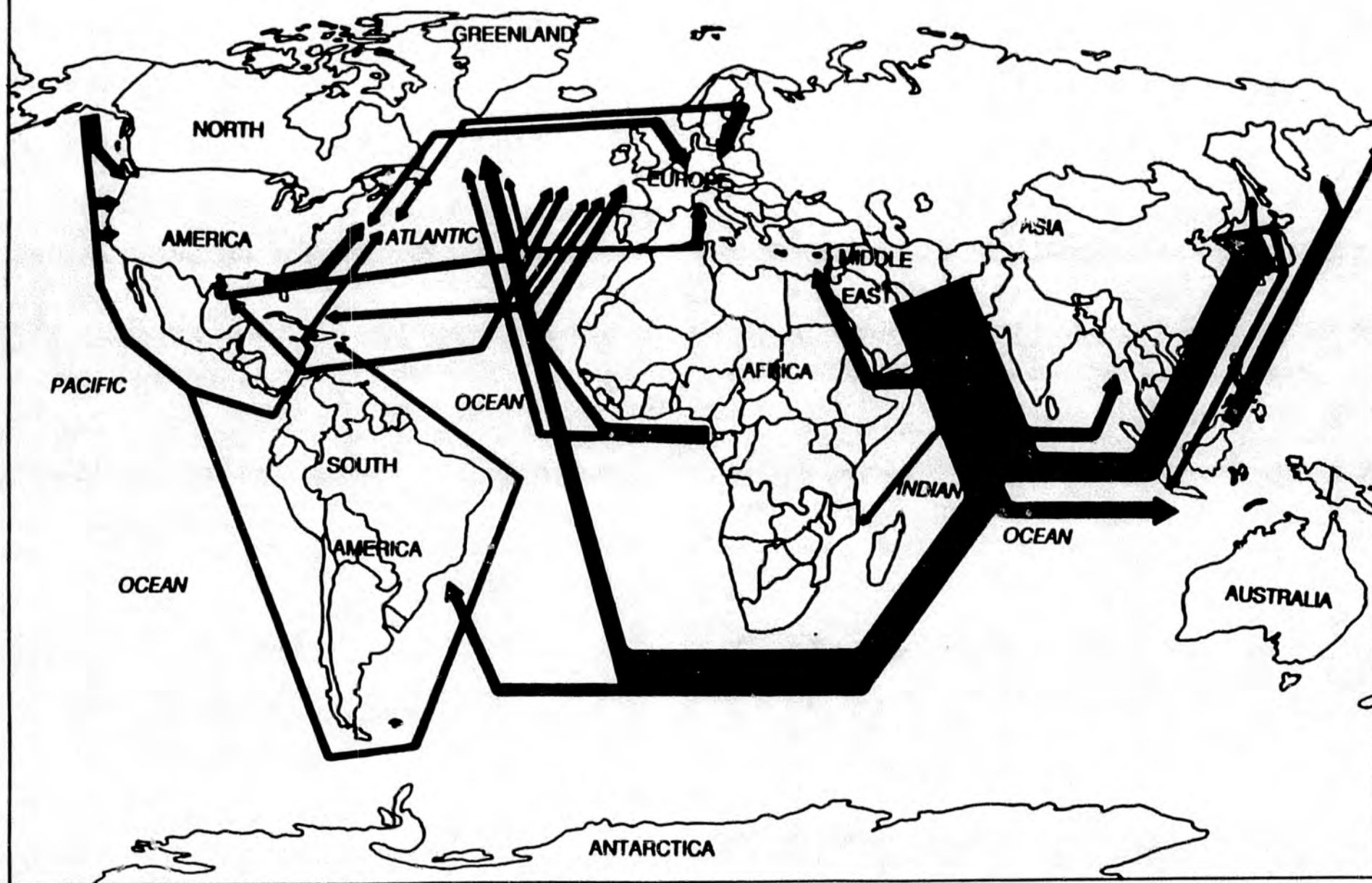
"What I'm afraid of is that the commission could end up being in such a defensive mode that it could end up making the world safe for oil spills."

Mike Milligan, Kodiak
Alaska Oil Spill Commission
hearing, 8/11/89





WORLD OIL TANKER ROUTES BY VOLUME



COMPREHENSIVE PREVENTION POLICY

Prevention is the only way to protect the oceans and coastlines from oil spills. Once it reaches the water, spilled oil is extremely difficult to contain and collect, even under ideal conditions. And the conditions under which oil is spilled are seldom ideal.

General Accounting Office data suggest no more than 10-15 percent of oil lost in a major spill is ever recovered. The Office of Technology Assessment estimates that only 3-4 percent of the oil spilled from the *Exxon Valdez* was recovered, despite Exxon's summer-long beach cleanup and oil skimming effort.

The urgency of establishing strong prevention policies for Alaska is also suggested by computer-assisted simulations done for the Alaska Oil Spill Commission by ECO, Inc., of Annapolis, Md. Its report notes that more tonnage of crude oil is shipped through the Valdez marine terminal than through any other port in the United States. Its simulations show that under typical winds and currents a catastrophic spill any time in Prince William Sound can be expected to coat the beaches of much of the sound and the Kena Peninsula with oil. And its calculations indicate that under policies prevailing at the time of the *Exxon Valdez*, a similar occurrence can be expected in Prince William Sound approximately every 13 years.

Worldwide figures gathered by ECO show that during the past 20 years, tanker spills of the magnitude of the *Exxon Valdez* — more than 10 million gallons — have occurred approximately yearly. Spills of up to 1 million gallons have occurred approximately monthly. As this report goes to print, less than 10 months after the *Exxon Valdez* disaster, the *Khark-5* spill off the coast of Morocco has exceeded 30 million gallons, with the full cargo of 72 million gallons still at risk.

Both the frequency of oil spills and the failure of human capacity to clean them up argue for strong prevention regimes at every level.

"The die is cast, that Prince William Sound is going to recover pretty much at its own rate. And that no matter what we do, the rate isn't going to change a whole lot."

Professor David G. Shaw, University of Alaska

Alaska Oil Spill Commission hearing, 9/21/89

Recommendation 1
Prevention as policy

"The most telling remark, the president of Exxon, Mr. Stevens, said that the contingency plan cannot deal with a spill like this."

*Rep. George Miller, California
House Committee on Interior and
Insular Affairs hearing, May 1989*

Prevention of oil spills must be the fundamental policy of all parties in the maritime oil transportation system.

Worldwide experience has shown repeatedly that containing and collecting significant amounts of oil lost in a spill is beyond present technological capability except for relatively small amounts under optimum conditions. Data collected by the U.S. General Accounting Office suggests that no more than 10-15 percent of all spilled oil is ever recovered. Full repair of environmental and ecological damage caused by a major spill is similarly beyond human capabilities. Cleanup and containment technology remains primitive, although recent research and development initiatives offer promise of some improvement. With present technology, natural recovery often is the most effective recourse after a spill hits shore, but generations may lose the advantages of environmental quality during the recuperation.

These lessons were relearned in the response to the Exxon Valdez spill. Given the increasing capacity of supertankers carrying more and more oil through the world's oceans and the acknowledged shortcomings of cleanup methods, a sharpened focus on prevention is the key to environmental protection and, indeed, the only adequate response to the increasing risk in the system.

Recommendation 2
Changed attitudes

All parties must instill the attitude that spilled oil in the water is unacceptable into the approach of the maritime transportation industry in the United States and abroad.

The shipping industry historically has neglected the environmental costs to the public of oil spills. Maritime losses traditionally are measured only by the financial value of vessel and cargo. Economic calculations have emphasized short-term expenses over long-term protection. Attitudes in regulatory and response agencies, particularly the Coast Guard, tend to reflect a similar disregard for environmental costs. Protecting property has a long legal and practical tradition — witness the Coast Guard's longstanding focus on salvage of vessel and cargo — while protecting the environment still receives too little emphasis. Finally, cost-benefit analyses undertaken by public officials charged with regulating the maritime transportation industry sometimes assume that the costs and benefits accrue to industry alone, thus neglecting the interests of others affected by the risk of accident.

As public concern for environmental protection grows, industry and regulatory attitudes must change. The shipping industry has an incentive

to adopt stronger approaches to prevention as increasingly it is being required to pay for environmental costs previously borne by society.

Because many individuals and communities are placed at risk by modern oil transportation systems, citizens should be involved in oversight arrangements at every level of government.

Shipping oil involves inherent risk. The risk cannot be eliminated, only reduced. Citizens deserve to know and make informed social judgments about what constitutes an acceptable level of risk. Reducing the risk involves costs, both public and private. Citizens may or may not be willing to pay the incremental costs of reducing particular risks, but to make informed choices they should be made aware of the tradeoffs involved. Present federal committees for oversight and policymaking are made up of industry and government representatives. There are no equivalent state committees.

The nation and the state need strong, alert regulatory agencies fully funded to scrutinize and safeguard the shipment of oil.

The notion that safety can be insured in the shipping industry through self-regulation has proved false and should be abandoned as a premise for policy. Alert regulatory agencies, subject to continuous public oversight, are needed to enforce laws governing the safe shipment of oil.

National and state agencies formally vested with responsibility for overseeing the environmental safety of oil transportation frequently have been complacent. Regulatory authority has been weak, and there has been a dramatic decline in vigilance since 1981. State authority has been further impaired by conflict with federal authority. Funding ordinarily furnished to protection agencies has left broad areas of concern without oversight. Between disasters, appropriations have tended to decline. As federal administrations have changed, funding and commitment have fluctuated as well. Missions have been attenuated by the addition of further responsibilities without further funds, as in the case of the U.S. Coast Guard, whose duties have greatly expanded without a commensurate increase in budget.

In such an environment the nation's maritime oil transportation system becomes more, not less, prone to risk of accident. The nation's regulatory agencies must be committed to the safe shipment of oil and other

Recommendation 3 **Citizen knowledge of risk**

"We can't rely on government agencies to be the sole watchdog over industry."

Unidentified witness, Port Graham, Alaska

Recommendation 4 **Regulatory vigilance**

"The best way to keep the oil from becoming a problem is to keep it in the ship, because historically ... we clean up very little of the oil. ... So I guess prevention is one of the things that we certainly would look at as the strongest avenue to avoid having a catastrophe."

Commander Dennis Korne, U.S. Coast Guard

Alaska Oil Spill Commission hearing, 8/31/89

Recommendation 5
Foreign flag spill prevention

"We should look beyond ineffective sticks and consider some carrots as well. I think we should consider paying the industry to stay ready and to stay on top of technology—with their money, of course."

Professor Steve Colt, University of Alaska
Alaska Oil Spill Commission
hearing, 9/21/89

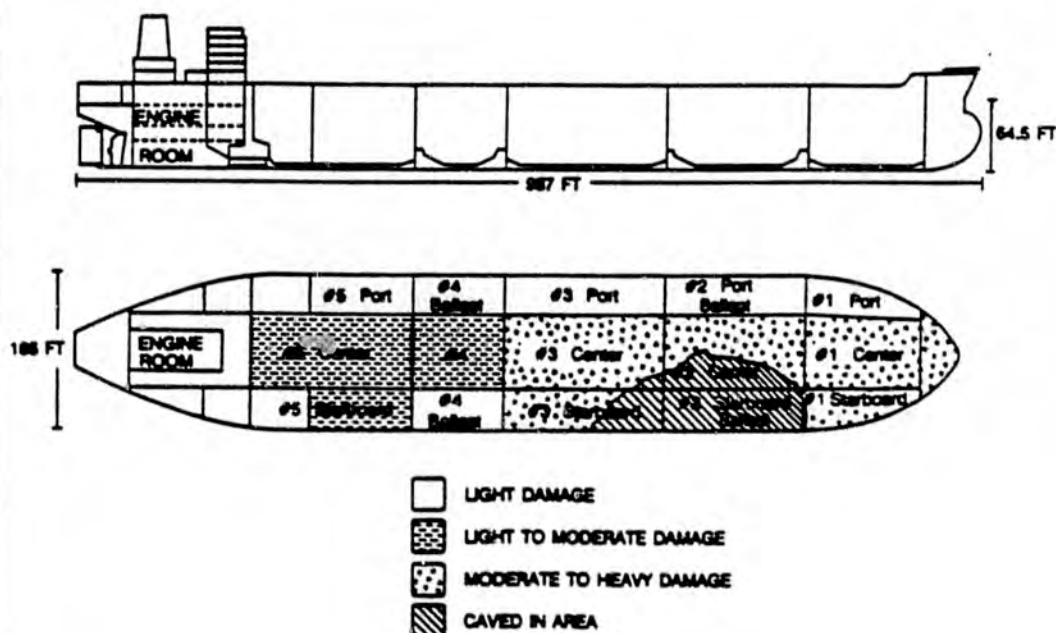
hazardous substances, and they must be encouraged by the regular oversight of citizens who have the greatest stake in the relevant environments. Without such an invigoration of these agencies, accidents such as the Exxon Valdez are bound to increase.

State laws protecting the environment from oil spills should be applied to foreign flag vessels equally with other vessels engaged in the transportation of oil.

The state has been unduly deferential to constitutional limits supposedly restricting a state's ability to impose containment and cleanup planning and equipment requirements on foreign flag vessels. A changing congressional intent will produce revised judicial interpretations of preemption doctrine. While most vessel design features are subject to exclusive federal rule, the state is empowered to protect its environment by all reasonable, non-burdensome means.

Containment and cleanup planning and readiness regimes established under state authority should apply to barge or tanker traffic under any flag in the waters of a state.

EXXON VALDEZ DAMAGE



RESPONSIBILITIES OF INDUSTRY

Public authority can do a great deal to enforce safety standards in oil transportation, but industry promises, policies and practices are typically the starting point for discussion. Industry bears a heavy obligation to operate safely and responsibly, regardless of the regulatory structure imposed by government.

Alyeska Pipeline Service Company has demonstrated a commitment to safer operations since the spill by establishing new procedures, including escort vessels, new spill response equipment, speed limits for tankers and dictates that tankers stay in designated traffic lanes while pushing through ice. Some of these reforms were more sweeping and costly than required by government.

Private industry's task is to carry oil to market responsibly and efficiently. Government's task is to regulate that trade prudently in the public interest. The obligation to protect the safety of the public and the environment is mutual, and shared by both sides.

"I think it's important to begin a process of informing society about the uncertainty, the risks and the tradeoffs that are involved in most human activities and especially in these kinds of large scale resource development activities."

Professor David G. Shaw, University of Alaska

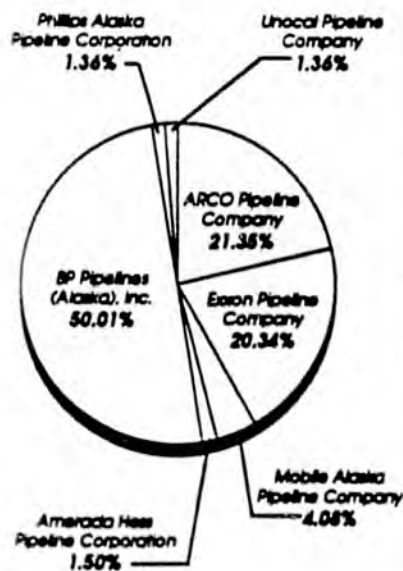
Alaska Oil Spill Commission hearing, 9/21/89

**Recommendation 6
Industry commitment**

"Each of the various interested parties is trying to pass on their own real or perceived costs to everybody else."

Professor Matt Berman, University of Alaska
Alaska Oil Spill Commission hearing, 9/21/89

Alyeska Pipeline Service Company



Source: Alyeska Pipeline Service Company

The nation and the state need a private oil transportation system with management that is committed to environmental safety.

The *Exxon Valdez* incident refocuses attention on industry's obligation to operate safely and responsibly. Decision-making by private industry is the first and, in many ways, most important pressure point for safety in the oil transportation system. Government regulation and public oversight can help safeguard the system, but industry can — and should — move rapidly and effectively on its own to establish procedures to reduce the risk of oil spills.

Response to the *Exxon Valdez* disaster illustrated industry's ability to mobilize quickly after a disaster. Exxon, though unprepared for a spill so large, responded far more swiftly than any government agency. The company committed vast human and material resources and reportedly spent more than \$1 billion to respond to the spill. (Luckily, Exxon was able and willing to bear this expense, but the industry would have had to spend comparatively modest sums to provide stringent prevention measures instead.)

Though the industry's safety record is mixed, by and large it has not been committed to environmental safety. Driven by competition and profit-maximizing goals, the industry has focused on economic efficiency and opposition to government regulation, claiming it could operate with as great or greater regard for safety without regulation. An industry ideology that regulation is a nuisance can drive an industry attitude that the objectives of regulation are also a nuisance.

In addition, maritime liability limits and low levels of accountability for oil spills have led to neglect of the interests of those who are not owners of vessels and cargo but whose exposure to risk makes them stakeholders in the system.

Historically, the industry has "externalized" the costs of environmental degradation — that is, shifted the costs to others. As concern about oil spills increases, however, industry will be forced to "internalize" more of these costs as incentive to protect the environment.

Properly motivated and funded, private industry can move more swiftly and effectively than any regulatory agency to correct deficiencies in the oil transport system. A tenacious commitment to environmental protection by industry could do more, quicker than any government inducement. Management and shareholders should insist that the traditions and operating assumptions of the shipping industry reflect this commitment.

Government and industry should strive to adopt the best available standard technology in establishing performance standards.

Consciousness of the importance of prevention, spill preparedness and corporate responsibility varies greatly among oil carriers. The blurring of responsibility within each oil company and within the Alyeska consortium, coupled with the independence of each shipping company and its owners, argues for uniform application of standards by government authority.

In the past the oil transportation industry has attempted to reduce virtually every performance standard sought, asking that government impose only minimum standards and claiming that most carriers voluntarily will exceed those minimums. But when accidents have occurred, industry representatives have frequently claimed that it has no obligation to go beyond those minimums. The public no longer should tolerate this double standard — and the conflict should be resolved as soon and as much as possible by the adoption of improved standards of performance by industry.

Every company shipping oil through the United States should identify a full-time environmental safety officer empowered to take recommendations to the highest level of the company.

Corporate performance on safety issues can be significantly improved by making safety a specified goal and giving primary responsibility to identified managers charged with increasing awareness at the highest executive level. Such corporate structures operated effectively, for example, during construction of the trans-Alaska pipeline system and should be recreated for operations as the system ages and becomes more prone to risk.

The designated corporate safety officer should be required to report annually to shareholders and the public concerning the safety of the tanker fleet, accidents and near-misses, state-of-the-art technology, and company plans for bringing its fleet into compliance with the most appropriate standards.

Public pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false. These assurances were aided by corporate institutional advertising and a sense of well-being

Recommendation 7
Best available technology

Recommendation 8
Corporate safety executive

"The marine industry needs to revamp all personnel training and development programs to meet today's modern fleet demands."

Jerry Aspland, President, ARCO Marine, Inc.

Alaska Oil Spill Commission hearing, 9/1/89

arising from the flow of oil revenue to Alaska's citizens which encouraged an atmosphere of laxity in state oversight of oil transportation.

A report to the public and corporate shareholders should provide accurate information about each shipper's spill prevention plan and preparedness posture to encourage greater corporate accountability for safety practices.

Recommendation 9
Tank farm

Tank farm capacity at Valdez should be increased to meet the original design requirement for maximum throughput.

Limited storage capacity at the Alyeska terminal can create undue pressure on loading and shipping schedules of tankers calling at Valdez. Shortage of storage capacity could lead terminal operators to load tankers under otherwise marginal weather conditions, for example, to avoid an expensive slowdown or shutdown of the pipeline.

It may be that the cost of tank farm construction is high enough that a slowdown or risk of slowdown is a preferred cost. If that is the case, standards for slowdowns and shutdowns should be clearly stated so that safety is not sacrificed to revenue or pipeline flow considerations.

"In boarding both the Japanese vessel and the Soviet vessel I had no problem getting on those vessels, but yet there was a guard at the door of the VECO office when I tried to enter that door. And I started wondering who is really afraid of me."

*Rita Turner, Seward
Alaska Oil Spill Commission
hearing, 7/14/89*

STATE REGULATION AND OVERSIGHT

The State of Alaska carries primary responsibility for protecting the state's public resources. Neither federal nor local authority and self can take the place of strong state regulation of industries that vitally affect the economic and environmental welfare of Alaskans.

State authority must be exerted to protect fish and wildlife resources, to vouchsafe federal regulation, to oversee industry operations, to inform the public of risk, and to insure proper response capabilities in case of accident. State government was not fully prepared in any of these categories before the *Exxon Valdez* disaster.

Alaskans have benefited strongly from the production and transportation of oil in the state, but they have not invested commensurate resources and attention in regulating and safeguarding the operations of the industry. It is incumbent upon Alaskans, through their elected officials as well as their own efforts, to create workable and effective institutions to protect their interests in the production and transportation of oil in the state.

"If you had an enforcement unit in place, staffed by the people who were solely charged with it and not distracted by some of the other responsibilities, that they would be able to take the time to account for what are our main polluters in the state."

*Sue Libenson, Executive Director
Alaska Center for the Environment
Alaska Oil Spill Commission
hearing, 9/21/89*

Recommendation 10
Obligation to manage and protect

The people of Alaska should recognize they are the stewards of vast natural resources that are the mainstay of their livelihood and a national treasure. Among the obligations of state stewardship is the duty to protect these resources as much as possible from harm.

The State of Alaska has not spent an amount appropriate to the job of natural resource management and protection. There are many reasons for this, including low recognition of the magnitude of the task.

Compare the total amount spent by the people of Alaska to manage fish and game resources to that for overseeing the oil industry. Recognizing the importance of fish and game to the state, the people of Alaska have spent substantial sums on regulation, enforcement, research and development, as well as a statewide system of citizen advisory committees. The amount spent overseeing the oil industry and its safety practices, by comparison, is a fraction of that total.

Recommendation 11
Federal preemption

The state should adopt stringent standards regulating the transportation of oil in its own waters without fear of federal preemption.

Alaska has had unsatisfactory experience with federal preemption in the field of tanker safety and local navigational controls, but Congress no longer intends to override more stringent state regulation.

In 1976 the State of Alaska adopted a law giving broad authority to state agencies to oversee and regulate the safety of tanker traffic to Valdez. In 1977 the oil companies responsible for carrying Alaska's oil initiated a lawsuit (*Chevron, et al. v. Hammond*) challenging the state's right to regulate the safety of marine oil transportation on grounds that congressional action and Coast Guard regulation preempted the field. By 1979 the plaintiff companies had gained both a favorable ruling from the U.S. District Court and negotiated concessions from the state. The result was a gutting of key provisions in the legislation.

Industry encouraged the view that it should be allowed to take care of its own safety matters; that state activity was a needless and obstructionist interference with private prerogative; and that left to its own devices the industry would employ the best available technology with the optimum commitment of resources. This was not remotely the case. The evisceration of the state's regulatory framework and the antiregulatory temper of the times laid a foundation for repeal of the 1976 legislation and a slashing of state budgetary allocations for oversight. As a result, the role of the Department of Environmental Conservation was sharply reduced. The

"I think what's missing here is an attitude among state leaders that the buck stops here, with the people of Alaska and not in Houston or Washington, D.C."

Professor Matt Berman, University of Alaska

Alaska Oil Spill Commission hearing, 9/21/89

department's small staff was overwhelmed by technical licensing and permitting activities, leaving no opportunity for the agency to perform its role as overall environmental policy watchdog. Though the state retained certain powers over water quality, the overall effect of preemption through the federal courts was to reduce or eliminate the state presence in the oversight of oil industry affairs and demoralize state personnel engaged in such activity.

In the absence of the state presence, the already weak federal regulatory presence declined further. In 1990 Congress is likely to adopt legislation that would eliminate any presumption of federal preemption in actions taken by the state with respect to safety and response. Thus the way is open for the state to reassert its historic role in resource protection.

A citizens' advisory council should be established in the office of the governor and given responsibility for overseeing the safe transportation of oil, gas and other hazardous substances.

No state agency has as its primary mission oversight of environmentally safe transportation of Alaska's resources. Regulatory authority over such transportation is spread among several agencies that do not always coordinate information or resources. The only overall view of the system is exercised by the governor, but he has no single designated officer or council to provide information or maintain consistent oversight.

The state should establish a citizens' advisory council, supported by a full-time executive director and small staff, to provide focus to state oversight. Members should be chosen from among the general public, selected for their concern for environmental safety. The council should have power to subpoena information and witnesses, to inspect facilities, to conduct investigations, and to collect information and statistics on safety.

The council's duties should be to:

- Advise the governor and legislature on the environmental safety of the transportation of Alaska oil, gas and other substances posing environmental risks;
- Advise on potential initiatives in state and federal regulations and at the governor's request, represent the state's interests in the development of multistate compacts and national and international policy;

Recommendation 12 Oversight council

"What we have is a system driven by the fact the pipeline is pumping 2 million barrels of oil into the sound, and they have to get it out of here. They choose not to restrict it, turn it off, or anything else. The decision to sail or not to sail is not a dispassionate decision based on weather or traffic."

*Rep. George Miller, California
House Committee on Interior and
Insular Affairs hearing, May 1989*

"What tends to happen is DEC will get dragged into a septic tank argument and it will drain away as many resources as fighting, for instance, the Alyeska ballast water treatment plant. There's a real problem with priorities within DEC."

*Sue Libenson, Executive Director
Alaska Center for the Environment
Alaska Oil Spill Commission
hearing, 9/21/89*

Recommendation 13
Enhanced regulatory strength

- Identify unmet needs and recommend priorities, strategies and obstacles to achieving them;
- Encourage coordination of spill prevention and response programs currently spread among several agencies that cumulatively deserve high priority;
- Make budget and resource allocation recommendations;
- Evaluate programs and recommend elimination of marginal activities;
- Recommend changes based on new technologies and scientific impacts;
- Designate advisory panels, if deemed necessary, including appropriate representation, ex-officio, of appropriate departments of the state and municipalities, regional oil spill authorities, representatives of fishing and environmental groups, and shippers, owners and residential groups on the pipeline route; and
- Issue an annual report and safety assessment. Reports to the governor should include regular statistical and special reports on accidents and near-misses, the status of major risks, the performance of state and federal agencies, and long-term options for improving safety.

The state should expand and exercise its regulatory authority over environmental safety. Measures voluntarily adopted by industry should be backed up by state regulation. Federal technical standards and safety requirements should not preclude more stringent state standards.

The State of Alaska currently does not exercise its full power under the U.S. Constitution to regulate environmental safety. Recent congressional enactments and judicial decisions make it clear that Congress does not intend that states should hesitate to protect local environments with greater stringency than the minimums established under federal law. The state should have the power, for example, to prohibit vessels from entering or departing Alaska ports and waters under unsafe circumstances.

Regulatory effectiveness also should be improved through assessment of administrative and civil penalties to encourage prevention, no preen-

forcement review of compliance orders, environmental audits, stronger criminal penalties, and statutory provision for citizen lawsuits. Private voluntary prevention measures, though commendable, are often ignored as memories fade unless backed up by state regulations.

The state should renew and strengthen its authority to conduct inspections and spill response drills on vessels calling at Alaska ports and marine terminals.

The Valdez tanker fleet, built in the 1970s is approaching obsolescence. Structural weaknesses, technical malfunctions and other equipment problems can be expected to increase in frequency and seriousness.

Inspections and reports, done in cooperation with the Coast Guard or alone, should include examinations for structural integrity and environmental hazards. Inspection duties may be allocated between the harbor administration office proposed in this report and the Department of Environmental Conservation. State authority should include the power to levy substantial summary civil fines for interfering with inspections or failing to cooperate with response drills.

The lack of any quality control or assurance program on tanker operations from Prince William Sound or Cook Inlet allows serious hazards to arise. Coast Guard authorities already perform inspections on tankers calling at Valdez, but state inspection would provide an added measure of safety. In the past, when the state and the Coast Guard both inspected vessels, the two agencies reenforced each other's effectiveness. When the state was stopped from making inspections on the grounds that the activity was exclusively federal, the quality of Coast Guard inspections declined. Inspection by two governments is not needless duplication but needed redundancy, providing a greater measure of safety.

The "two-tier" system of quality control was adopted during construction of the trans-Alaska pipeline. The value of the two-tier system has been reenforced by the National Aeronautics and Space Administration experience with space disasters. The official inquiry into the 1986 Challenger space shuttle explosion found that system capabilities had been stretched to the limit in the winter of 1985-86 to support the flight schedule of the shuttle program. System capabilities for shipping oil from Valdez were similarly stretched to accommodate increasing throughput of the trans-Alaska pipeline to 2.2 million barrels per day without increasing other elements of the system, such as tank storage capacity.

Recommendation 14
Strengthened state inspections

"We are obligated to provide systems which enhance marine transportation safety, and we do it economically."

Jerry Aspland, President, ARCO Marine, Inc.

Alaska Oil Spill Commission hearing, 9/1/89

When systems are stretched thin, redundancy in oversight and inspection is doubly important to reduce the risk of catastrophic failure.

Recommendation 15
State presence at Alyeska terminal

Government agencies should be given space at the Alyeska terminal to carry out their duties.

State inspection efforts at the Alyeska terminal should be situated so as to maintain a continuing presence, instant response and constant vigilance over environmental safety at the terminal and on vessels calling there. Until the Exxon Valdez wreck, various agency personnel were hampered by lack of quick and easy access to the terminal. Alaska Department of Environmental Conservation officials attempting to inspect Alyeska facilities were told they might be required to procure a warrant, a laborious and time-consuming process. A more cooperative posture by Alyeska staff might result if state personnel were seen not so much as an opposing force, but as a normal and integral part of the operation. Office facilities on-site might normalize relations between government and industry officials so that regulatory activities, which on occasion can be adversarial, need not become unnecessarily antagonistic.

Recommendation 16
State licensing of safety managers

A state licensing system should be established for oil transportation system safety personnel, including pipeline pump station and terminal managers.

Oil transportation safety managers should be required to show educational qualifications or equivalent experience and pass examinations reflecting an understanding of environmentally safe resource transportation in Alaska.

Mariners, captains, engineers and ship's pilots, all water-based transportation managers, already are licensed to encourage safety and public accountability. Similar practices should be established to insure that personnel meet a state standard of professionalism for all important managers in the oil transportation system. Few of the managers brought in to oversee contingency plan development or respond to the Exxon Valdez spill had significant prior knowledge of Alaska environmental laws, resources or local capabilities.

Licensing can significantly help assure knowledge of prevention and response capabilities as well as public accountability. For example, regardless of whether particular conduct may be tacitly approved or

tolerated by an employer, a licensee who falsifies a report, bypasses a required procedure or otherwise violates the professional obligations covered by the license can lose his or her opportunity to engage in the employment.

To the extent it does not already have such authority, the state should seek from Congress authority to require and enforce prevention and response regimes on vessels trading in Alaska or adjacent waters.

Spilled oil recognizes no state boundaries. State jurisdiction is necessary because spilled oil may come ashore or ravage important local fisheries hundreds of miles from the point of the spill. The risk of breakup of a tanker or loss of a barge in the Gulf of Alaska is real. Gulf of Alaska shipping routes should be covered by an adequate regional response developed under the National Contingency Plan and backed by capabilities of the state, the Coast Guard, the carriers and other relevant authorities.

The State of Alaska should negotiate interstate compacts with other coastal states and provinces for the development of prevention strategies, storage of response capabilities and to effect coordination of assets in case of another major spill.

The western coastal states and provinces may share common environmental concerns about spilled oil. Compact agreements have the force of federal law and may enable these states to create an appropriate regional administration to oversee oil shipping.

The state should require maintenance and personnel audits at oil transportation facilities to provide information and pinpoint problems in spill prevention.

Accurate, timely information is central to the exercise of the oversight function and must be available to all government actors in prevention and response. The state can gather information on conditions relating to spill prevention through technical maintenance audits, thereby supporting the work of the state advisory council and regulatory agencies. Technical and personnel audits may be done by outside contract.

Recommendation 17
Enforcement in state waters

Recommendation 18
Interstate compacts

Recommendation 19
Maintenance and personnel audits

Recommendation 20
Marine pilot qualifications

Training and experience standards for marine pilots in Alaska should be upgraded to require actual experience in Alaska operations of vessels at thresholds of 60,000 and 150,000 deadweight tons.

Training and experience requirements have been reduced for pilots of large tankers in Prince William Sound and Cook Inlet since the late 1970s, allowing pilots to qualify for very large ship operations on insufficient experience. While no accidents have been caused by this circumstance, a system with multiple thresholds is inherently safer.

Recommendation 21
State as co-insured

Insurance policies should identify the State of Alaska as an additional insured or named beneficiary.

The shipping industry is responsive to economic incentives. Insurance premiums and premium requirements create incentives. The insurance industry is responsive to the needs of co-insureds. Such practices were required during construction of the trans-Alaska pipeline. There is every reason to revive them.

Recommendation 22
Remote spill response

The state should set rigorous requirements for private oil spill prevention and response capability in remote locations. The state also should develop response plans for major spills and articulate a prevention program from the Aleutian Islands to the Arctic.

Despite the state's obligation to respond to major spills, only if private resources are committed to prevention systems and response can an acceptable reduction in risk be achieved.

Marine traffic in arctic Alaska already poses unacknowledged risk. Fuel provisions delivered by sea and vessels fueled by oil create risks of damage in these hazardous and environmentally fragile waters. Spills are usually impossible or much more difficult to contain and collect in arctic waters. Immediacy of response is the key to cleanup if a spill occurs.

Measures should be undertaken to reduce spill risk in the arctic, including better vessel tracking and contingency plan requirements for all large vessels transiting the arctic, and for smaller vessels carrying oil or major fuel supplies.

Given the high risk involved in arctic oil transportation, the options for developing systematic environmental safety protections for this region should be a priority for scientific authorities.

The long-term need to develop environmental safety regimes of great stringency cannot be ignored. Development of arctic oil discoveries dependent on maritime transportation should await the preparation of approved systems of oil transportation using experience gained from the trans-Alaska pipeline system. But any increase in traffic simply to accommodate increases in oil production should be accompanied by a major increase in preventive safety.

The state should establish a task force to review the environmental safety of the trans-Alaska pipeline system independently or in concert with a federal counterpart.

More than enough evidence is available regarding sharply increasing risk of a pipeline breach and raising questions regarding government response capability. On the advice of contractors showing evidence of massive corrosion problems with the pipe, Alyeska already has undertaken a review and reconstruction program of the trans-Alaska pipeline system. The state was intimately involved in oversight of the original design and construction of the pipeline. This pattern of oversight should be renewed to protect the same public interests.

The task force should make recommendations to better oversee the long-term safety of the pipeline and gathering system. Specifically, it should review the environmental safety of:

- the trans-Alaska pipeline and gathering system;
- applicable government and private contingency plans; and
- the response plans and capabilities of government agencies.

The commission endorses the concept of a presidential task force on pipeline safety as proposed by Congress and urges that provision be made for state participation.

Recommendation 23
Arctic prevention research priority

Recommendation 24
Pipeline evaluation

"The community must be imbedded in the bureaucracy because this is the only way oversight is going to happen. It's the only way that continued community involvement is going to happen. And it's the one way to guard against apathy if you don't have another oil spill for 20 years."

Jim Sykes
Alaska Oil Spill Commission
hearing, 9/21/89

Recommendation 25
State harbor administration

The state should create harbor administration offices for Prince William Sound and Cook Inlet to help regulate traffic and navigation and to implement terminal and vessel inspections.

Local oversight of navigation and port operations can improve conditions by bringing local perspectives to bear. A harbor administration office should have the power to:

- Regulate traffic and navigation issues not preempted by Coast Guard regulation to impose more exacting standards in the best interests of the state.
- Advise and oversee the Coast Guard's management of such issues and make recommendations for changes;
- Certify and declare disasters, and order state management of a spill in the port area; and
- Assume functions given under contract by the Coast Guard and participate in joint management arrangements.

The state asserted greater control over harbor activity in the mid-1970s, but conceded its management prerogatives in negotiations leading to a resolution of the Chevron, et al., v. Hammond lawsuit. Pending legislation clarifies congressional intent that the state may undertake safety regulations relating to local harbor conditions, weather and the like, and that the vessel must follow the more stringent rule. Collaboration with federal authority is required to assure that no direct conflict with Coast guard regulations are involved and that optimum safety conditions are observed.

In the event of a spill, the harbor administration at Valdez probably would be the headquarters of the on-scene commander carrying out the governor's delegated emergency authority.

Oil transportation in Cook Inlet, a body of water widely noted for its extreme tides, currents, winds and ice conditions, faces a high risk of spills. Though smaller volumes of oil pass through Cook Inlet than Prince William Sound, similar oversight arrangements should be duplicated there, allowing for appropriate variations in representation and the difference in geographic circumstances.

Research done for the Alaska Oil Spill Commission indicates that a major spill of between 300 and 1 million gallons can be expected in Cook Inlet approximately every 2.2 years, a spill of between 1 million and 9 million

"I would promote that there is a state group that deals with marine transportation, kind of a one-stop shopping group."

Jerry Aspland, President, ARCO Marine, Inc.

Alaska Oil Spill Commission hearing, 9/1/89

gallons about every 24 years, and a spill of 9 million gallons or more about every 66 years. Oversight arrangements should be created to provide appropriate public accountability and awareness of spill risks.

A system of regional advisory councils should be formalized under state authority to oversee harbor administration, state and federal regulation and private safety functions.

**Recommendation 26
Regional advisory
committees**

The people living closest to a danger have the most to risk and are the most likely to insure that readiness and alertness are maintained. As a Prince William Sound resident told the commission, "People take care of the things they love."

Regional oversight councils can both encourage protection of local resources and provide an opportunity to make use of local residents' knowledge of conditions and needs in crafting workable spill prevention and response policies. Regional advisory councils should provide advice to the statewide policy council proposed in this report and respond to its recommendations. A similar council should be considered for permanent oversight of the trans-Alaska pipeline system.

Local governments should be represented on the regional advisory councils and the harbor administration.

**Recommendation 27
Local government
representation**

Local residents complained that their views and knowledge often were ignored. Residents in small villages, in particular, believed they were bypassed despite their great, direct interest in events. Villagers rarely are able to send delegates to advisory boards, even though their lives may be severely traumatized by a spill. Special provisions should be made to assure no neglect of these stakeholders.

FEDERAL REGULATION AND OVERSIGHT

Congress has mandated a comprehensive system to protect the safety of oil and gas transportation, but for lack of enthusiasm and underfunding enforcement has been a failure. The quality of federal oversight of oil transportation in Alaska was typified by the U.S. Coast Guard, whose safety and regulatory efforts gradually declined for most of the decade leading up to the *Exxon Valdez* disaster.

The Coast Guard supported safe traffic monitoring systems and design standards, including double-hulled tankers, when the trans-Alaska pipeline system was approved in 1973. But by 1978, after strong industry opposition to double hulls in international regulatory forums, the Coast Guard backed off its support. The Coast Guard also imposed stringent safety inspections and vessel monitoring practices during the early years of tanker operations after the opening of the pipeline in 1977. Inspection and monitoring efforts waned noticeably after parallel state inspections were stopped in 1979, and gradually thereafter as Coast Guard funding and resources for these activities declined.

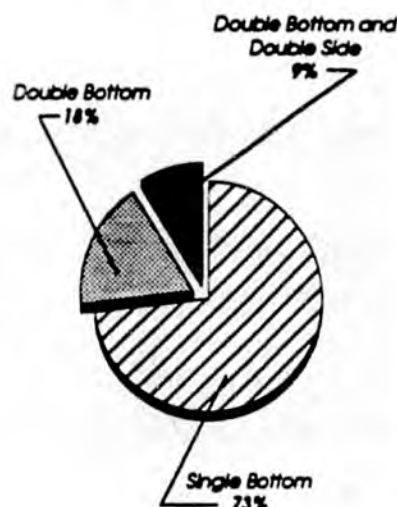
Some federal agencies performed admirably in events surrounding the spill — notably the U.S. Army Corps of Engineers and the U.S. Navy in cleanup response efforts and the Coast Guard itself in successful measures to salvage the ship and the unspilled cargo. As a rule, however, federal authority must be reinvigorated in several ways if it is to provide significant leadership in the safety and oversight of maritime oil transportation.

"Figure out what 25 percent of the nation's oil is worth."

*Rep. George Miller, California
House Committee on Interior and
Insular Affairs hearing, May 1989*

Recommendation 28
Double hulls and vessel design

Hull designs of the 93 tankers registered for Alaska trade.



Recommendation 29
Mandatory traffic control

Double hulls and other technological advances in tank vessel design should be required on an accelerated timetable, including prohibition of nonqualifying vessels, regardless of flag registry, in all U.S. waters.

The loss of oil from the *Exxon Valdez* wreck would have been substantially less if the vessel had had a double hull of appropriate design. A U.S. Coast Guard study undertaken after the accident indicated that up to 60 percent less oil — about 6 million gallons — would have entered the water if the *Exxon Valdez* had been equipped with a double hull. Double hulls already are required for chemical tankers and gas carriers to provide maximum protection to cargo tanks. 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."

Technical measures to reduce risk of accident and oil spillage have been advocated by naval engineers and others over the past two decades, but this advocacy has not produced significant voluntary changes in the way the industry does business. Suggestions regarding multiple screws, horsepower enhancement and other design overbuilding proposals to enhance safety have received only a negative response. Required changes are necessary, particularly as the size and carrying capacity of modern supertankers has increased.

Mandatory traffic control systems should be installed in due course in Cook Inlet, Prince William Sound and all waters of the U.S. where an equivalent or greater risk occurs.

Any of several common practices relating to positive vessel traffic control would have prevented the *Exxon Valdez* from straying so far off course as to run aground on Bligh Reef. The wreck would not have occurred if there had been a traffic control system covering operations to Hinchinbrook Entrance, as was promised by owners of the trans-Alaska pipeline system at the time the system was approved. The wreck would not have occurred if Loran C retransmit or radar had provided reliable coverage to Hinchinbrook Entrance, as was promised by the owners. And the *Exxon Valdez* wreck would not have occurred if the Coast Guard had not, according to regular, informal practice, given permission to the vessel to move outside established tanker lanes.

The *Exxon Valdez* wreck would have been less likely if the vessel had been traveling at lower speed and would not have occurred if the captain had

chosen to push through ice in the traffic lanes at low speeds, as was more common practice in the early years of operation of the Valdez terminal.

A mandatory vessel traffic control system operated by personnel more experienced than those now posted to the advisory system would require strict monitoring of a vessel's position in relation to traffic and known hazards and would prevent corner-cutting to save time, a conspicuous cause of the well-known Torrey Canyon disaster.

Crew levels on tank ships must be established to reflect manning needs under emergency conditions, not just normal operating circumstances, and must reflect the need to avoid fatigue and overtime among those with responsibility for safe navigation.

Crew sizes and fatigue factors have been subjects of investigation since the *Exxon Valdez* accident. A second qualified officer on the bridge would have made the wreck substantially less likely by increasing the likelihood that the bridge would have been alerted to the ship's errant position, the impact of the automatic steering mechanism, or to alternative last-minute navigation strategies for avoiding the reef, in time to avert the accident. Similarly, the wreck would have been less likely if crew members and ship's officers required to do double duty in Valdez harbor during loading operations had not been subject to fatigue.

A 1984 survey indicated that the ability to make schedules is viewed as the single most important factor in a company's evaluation of a captain's performance. Under such circumstances, a captain is strongly motivated to run whatever crew he has as long and as hard as necessary to meet the required schedule, despite formal duty time limitations. National Transportation Safety Board hearings on the *Exxon Valdez* accident showed that several crew members — including Third Mate Gregory Cousins, who was at the helm at the time of the accident — had worked extraordinarily long hours the day of the wreck. This practice is not rare in the trade.

Crew training standards must be strengthened and retraining and reexamination reviews tightened. Physical standards, in addition to those proscribing alcohol or drug abuse, must be met. A captain having a "predictable" heart attack is of no more use than one under the influence.

Recommendation 30
Crew levels

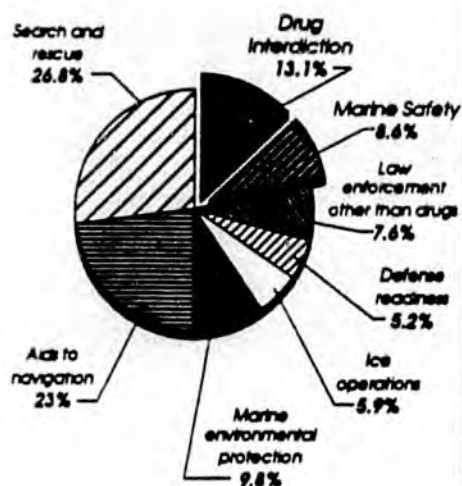
"The tradeoff in risk involved with a double hull is that to carry a given amount of oil, you now have to have 60 percent more tankers, and if you do the arithmetic that's the way it comes out."

Frank Iarossi, President, Exxon Shipping Company
Alaska Oil Spill Commission hearing, 9/1/89

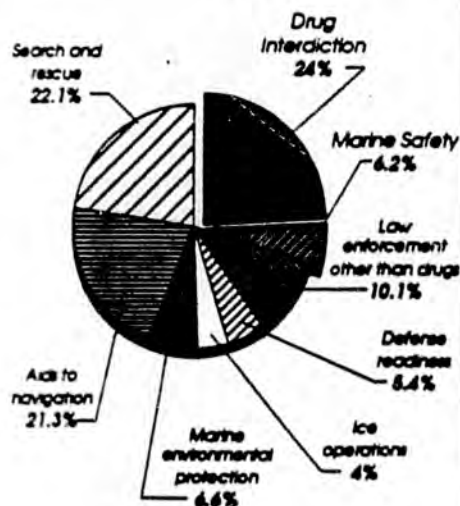
**Recommendation 31
Coast Guard role**

**Coast Guard
Budget Comparisons**

1982



1989



Source: The Seattle Times

The mission of the U.S. Coast Guard to protect the safety of navigation should be defined specifically to include the safe transportation of oil by sea. Sufficient funding, resources and institutional support should be given to insure the strengthening this purpose.

For reasons that include not just underfunding, but also confusion of mission and an unduly friendly relationship with industry, the Coast Guard has failed the American people in providing oversight of the country's oil transportation system. Enforcement must be strengthened and the penalty structure raised to a point where it weighs in the economic calculations of each company.

While various Coast Guard units have operational responsibilities for tanker safety, the Coast Guard's primary mission is not the environmentally safe transportation of oil by sea. There is a general disposition in the agency to keep commerce moving without regard to all environmental or social costs. This disposition may be in conflict with the need to "follow the book" to insure safety. The lack of particular focus on the environmental risks of oil transport was revealed in the system weaknesses that permitted the wreck of the *Exxon Valdez*.

The Coast Guard commandant is selected by the president and accordingly is likely to reflect the philosophical perspective of the times. After President Nixon's declaration of a policy of oil independence, which President Carter pursued through establishment of a Department of Energy, the national mood under President Reagan moved to industrial self-regulation. This mood was reflected in a greater resonance with industry wishes in Coast Guard performance. Relaxed regulation has contributed to a lack of progress in maritime environmental safety. Safety does not do well in a laissez-faire environment.

Underfunding and relaxed attitudes toward regulation increased the likelihood of the *Exxon Valdez* wreck in several ways. The junior Coast Guard personnel posted to Valdez did not think they had the authority to instruct tanker operators in navigation or to require frequent position reporting. Only one Coast Guard employee was on duty at the time of the accident. The wreck would not have occurred if the Coast Guard had prioritized the installation of up-to-date vessel monitoring systems. The wreck would have been less likely if the Coast Guard had exercised strong oversight of crews and manning practices.

The Coast Guard's power to determine required crew levels is of little consequence as exercised. The determination is largely a paper exercise in which the shipper submits a proposal that typically is routinely

approved without inspection, sea trials or a determination of need under foreseeable emergency or unusual conditions.

In the normal course, Coast Guard personnel retire or transfer to the shipping industry in large numbers, particularly at the executive level. It may be that the prospect of working for industry is reflected in the attitude of some Coast Guard personnel. The "revolving door" and the resulting sympathy of interests between regulators and the regulated is a common problem in other areas of government service.

Congress should revisit the antitrust exemption granted to marine industrial insurance to require that premiums reflect design and operational considerations in accident prevention and pollution abatement.

The shipping industry is responsive to economic incentives. Insurance premiums and premium requirements create incentives. Congress has adopted special provisions concerning the conditions under which marine insurance is exempt from antitrust regulation. Various requirements must be observed as a condition of the exemption. These conditions should require additional features affecting premium structure and loss control to encourage design improvements and operational practices that enhance environmental safety in the shipment of oil.

Congress should require corporations transporting oil or hazardous substances to file environmental safety reports as part of their Securities and Exchange Commission 10K filing. These corporations also should include a separate environmental report card in their annual reports to shareholders.

Safety is a factor in long-term profitability that may be neglected in management preoccupation with annual profit. Safety is a factor of cost and accountability. SEC requirements are intended to inform investors of facts needed to assess risk. A company's record and status concerning environmental safety should be available to inform such assessments.

A company responsible for oil transportation should report to its shareholders on the safety of its operations in addition to their profitability. The report should include an account of accidents, close encounters, technological developments, goals and objectives. This information should also be collected for the government's report.

Recommendation 32
Insurance premiums to reflect risk

Recommendation 33
Corporate safety reporting

"A lot of the Coast Guard personnel that came in did not have an understanding or a local knowledge of the area. I think that should be ... Local knowledge is going to be a key ingredient."

*Jim Butler, Kenai Peninsula Borough
Alaska Oil Spill Commission
hearing, 9/7/89*

The meaning of corporate democracy should involve full discussion of all matters shareholders may care about. Environmental responsibility is a large part of corporate social responsibility for most large corporations, and certainly for companies carrying oil or hazardous substances. Shareholders should be kept informed of the corporation's stance toward its environmental record.

Recommendation 34
International action

The United States should pursue an aggressive policy in bilateral and international regulatory forums to demand safety improvements. The practice of deferring to international transportation safety standards in U.S. waters should cease. Environmental regimes established by state or federal government should apply to tanker or barge traffic under any flag in U.S. waters.

U.S. law should provide for the protection of U.S. waters, resources and regulatory standards regardless of whether international standards are consistent with them. Trade with the United States is at a high enough volume that this country should set the standard for environmental safety rather than accept a lower standard set by other nations.

Improvements in international safety standards have not been commensurate with growth in maritime oil transportation. The policy of the United States in international forums has been cautious, and forums have been dominated by U.S.-based multinational corporations to the disadvantage of environmental protection. American policy should be reoriented toward leadership in the establishment and maintenance of rigorous standards of safety and environmental protection. The United States should pursue bilateral agreements with its North American neighbors and its trading partners to provide cooperative standards, enforcement and spill response. The need for international spill response systems is shown dramatically by the 30 million-gallon spill from the Iranian supertanker *Khark-5* off the Morocco coast in December 1989. International standards should be viewed as a floor beneath which U.S. requirements will not fall rather than a ceiling above which they cannot rise.

Recommendation 35
Offshore tanker lanes

Tanker lanes should be established to keep tankers and fuel barges in the Gulf of Alaska and North Pacific trade at least 100 miles offshore.

Time is critical in efforts to protect coastlines from oil spill damage. In the event of tanker collision or breakup at sea, sufficient distance from imperiled coastlines can provide time to prepare defenses for key resources or habitats before oil reaches them.

A system of tracking large vessels in the North Pacific should be developed.

The technology exists at modest cost to take the "search" out of search and rescue by tracking vessels broadcasting a signal on the high seas. Similar systems are required on all commercial air carriers and should be done for vessels. The system would not only enhance the environmental safety of tankers but also for modest marginal cost would enhance life safety systems in one of the most hazardous areas in the world.

Congress should ask the president to require the administrator of the Environmental Protection Agency and the secretaries of Transportation and Commerce to issue a special report on the safety of oil transportation by sea. Annually thereafter, the Office of Science and Technology Policy or the Council on Environmental Quality should report on progress made by all parties, close encounters and accidents during the year, and emerging issues in the field.

No federal agency has as its primary mission oversight of the environmentally safe transportation of oil. The focus provided by a presidential-level report on the safety of maritime oil transportation would help alert the nation and the federal government to shortcomings in the system, as well as emphasizing the importance of safeguarding this system.

The report to the president should include:

- A history of accidents involving oil, gas and hazardous substances;
- An assessment of current risks and safety practices with reference to national energy policy;
- An assessment of prospects for progress in the enhancement of prevention technologies and techniques;
- An account of the activities of all federal agencies with responsibility for maritime safety, including a report on maritime recommendations of the National Transportation Safety Board, actions taken on them and reasons recommendations may have not been followed;
- An account of penalties levied for violations of oil, gas and hazardous substance transportation safety regulations;

Recommendation 36
Tracking vessels in the North Pacific

Recommendation 37
Presidential Report

"The few Coast Guard people that I have met in the field are green. I mean, they reminded me of summer hires. They were kids right out of school, and I can't help feeling that the powers that be are up there telling them to get those guys out of here and get this signed off so we can get this paper work, this paper chase done and get on with our business of running government."

Rich King, Upper Cook Inlet fisherman

Alaska Oil Spill Commission hearing, 9/7/89

- A specific report on the safety of the trans-Alaska pipeline system, the preparation of which should include adequate provision for state participation; and
- An overview evaluation of the effectiveness of private contingency and public response plans to oil spills in U.S. waters.

The Alaska trade is substantially less than a fifth of the maritime oil transportation system requiring national oversight. Either a strengthened Council on Environmental Quality or a more focused new agency as a watchdog over national environmental protection might better serve the nation's interests in reporting on the protection of the marine environment.

"In spills of this kind the Coast Guard has primary jurisdiction, and it is only when, as I understand the law, only when the responsible party either refuses to clean up or fails to do the job that the Coast Guard has the ability to step in."

Dennis Kelso, Commissioner
Alaska Department of
Environmental Conservation
Alaska Oil Spill Commission
hearing, 8/31/89

GOVERNMENT RESPONSE POSTURE

Alaska and other states have depended upon the National Contingency Plan to organize catastrophic spill response, but the *Exxon Valdez* incident illustrated the emptiness of its promises. The NCP provided neither the resources nor the manpower for effective action against a 10.8 million-gallon spill.

What is required in a successful oil spill response is to blend the resources of state, federal and industry response teams into an effective organization, and to provide sufficient manpower and resources to make a significant attack on the spill within 24 hours.

The greatest weakness of the NCP, as revealed in the *Exxon Valdez* incident, was that it failed to establish the firm, predesignated working relationships that are vital to a successful emergency response. Yet if that had been accomplished, it only would have revealed the weaknesses in the rest of the plan: lack of matériel, lack of trained manpower and lack of established common goals.

"What really happened here is that the system failed. We were down to the kicker on the football team making the tackle, and no coach wants that."

Vice Admiral Clyde Robbins, U.S. Coast Guard

Committee on Interior and Insular Affairs hearing, May 1989

Recommendation 38
Government in charge

The spiller should not be in charge of response to a major spill. A spiller should be obligated to respond with all the resources it can summon, but government should command that response.

Response should be a cooperative effort of government and industry under the direction of either the state or federal government, depending on which one has the stronger interest or can marshal resources more quickly and effectively.

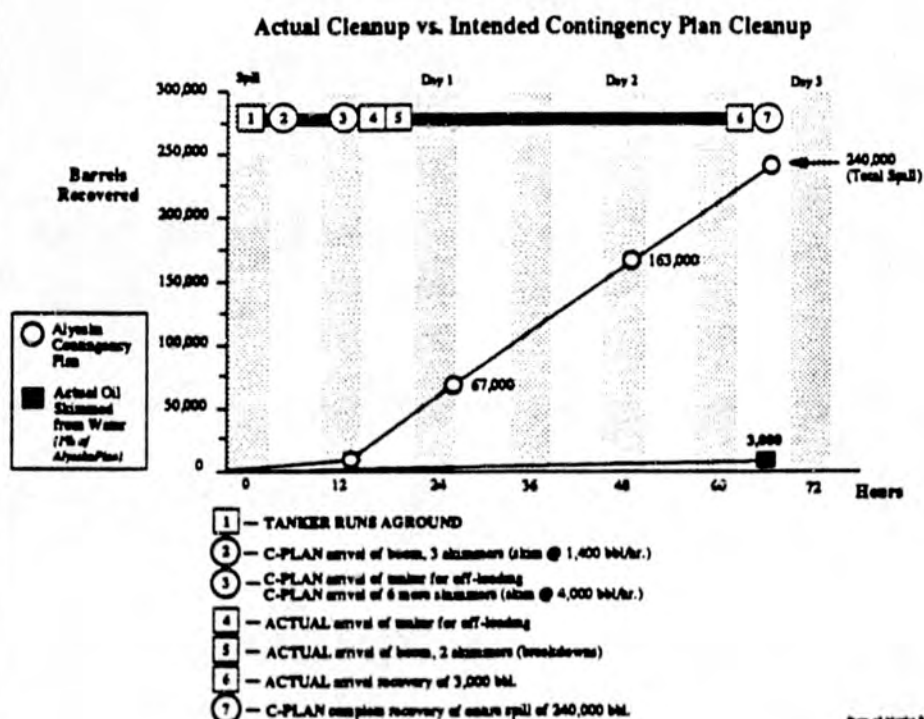
The spiller was obliged to respond to the spill under contingency plans in effect at the time of the *Exxon Valdez* wreck. Neither Alyeska Pipeline Service Company nor Exxon Shipping Company was prepared to respond to a spill of such magnitude. The handoff of spill response authority from Alyeska to Exxon was not anticipated by all authorities and contributed to command confusion. Key decisions, such as the focus on "Corexit," an Exxon dispersant, were unduly influenced by the fact that the spiller was in charge of the spill.

Spill response regimes should provide for government direction of the response effort, with the full participation and resources of both the spiller and government. Small spills, according to DEC regulations, can continue to be handled by the spiller.

"It's just a simple question of who's in charge."

Jim Butler, Kenai Peninsula Borough

Alaska Oil Spill Commission hearing, 9/7/89



Congress should either strengthen the Coast Guard's oil spill response capability or transfer oil spill containment and cleanup responsibilities to the U.S. Army Corps of Engineers.

One of the real and relatively unsung success stories in the response to the *Exxon Valdez* disaster was the work of Exxon and the U.S. Coast Guard in lightering crude oil off the grounded vessel and later moving the ship safely off the reef. That success is a marked contrast to the failure of all efforts to contain and collect the oil that escaped in the accident.

By tradition and practice, the Coast Guard has developed considerable expertise and experience in salvage and rescue, but comparatively little ability in oil spill response. The Coast Guard is seriously underfunded and underdirected in the field of oil spill response. The Coast Guard has been given one mission on top of another—most recently drug interdiction, a critically important task—without proportionate increases in appropriations. Thus the Coast Guard is obliged to do too many things for too many people and is not doing at least this one well.

Corps of Engineers and U.S. Navy equipment and workforces were the largest component of public response to the *Exxon Valdez* spill. There is a long history of cooperation between the Corps of Engineers and the Navy. The Navy has long experience in spill cleanup. Approved career patterns in the Corps of Engineers allow the development of career-long expertise and professionalism in a particular specialty. The Corps of Engineers' dredging capacity (which can be converted to skimming and oil recovery) and its nationwide mission involving the movement of water, soils, the management and preservation of wetlands, give it an unmatched spill response presence in all regions of the country.

Transferring spill response duties to other agencies would allow the Coast Guard to focus on tasks it does well—salvage and rescue—while permitting greater expertise of other agencies to be brought to bear on cleanup. Short of a formal transfer of functions, the Coast Guard should consider entering into delegation agreements for spill response functions.

The Environmental Protection Agency is not adequately funded and staffed for oil spill prevention and response. Unless the agency receives sufficient resources, these functions should be delegated to the states or transferred to agencies better able to perform them.

The Environmental Protection Agency commitment of staff and funding to activities in Alaska does not support the public perception that the

**Recommendation 39
Coast Guard role in
response**

"It's very important that a defined chain of command is recognized. You've got a couple of windows of opportunity in the initial management of a spill. You've got 12 hours, which is one tide cycle, a flood and an ebb. And then you've got, I'd say, four days and then after that it's gone."

*Jim Butler, Kenai Peninsula
Borough
Alaska Oil Spill Commission
hearing, 9/7/89*

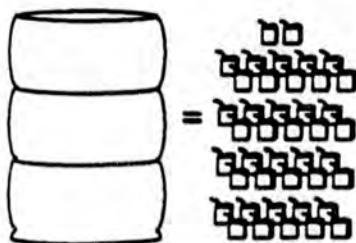
**Recommendation 40
Role of Environmental
Protection Agency**

"One of the big problems in this oil spill situation was that for the first couple weeks probably over 50 percent of management energy was spent in organizational determination and role decision."

Dave Liebersbach, Multagency
Coordination Group
Alaska Oil Spill Commission
hearing, 8/31/89

Recommendation 41 State takeover of oil spills

One barrel of oil = 42 gallons



agency oversees protection of the environment. The EPA has no Alaska presence and is unfamiliar with local conditions. The agency performs its mission in Alaska only by delegation; for example, it has contracted with the Bureau of Land Management for spill response duties in the trans-Alaska pipeline corridor.

The EPA's response to the *Exxon Valdez* disaster was limited, though it did provide expertise in water sampling and environmental analysis. Only a narrow range of approvals and disapprovals of chemical response techniques were asked of the EPA in this incident. But it did not perform well even this limited task due to a lack of adequate testing and a backlog of approval authorization actions.

The EPA had no capacity to propose response strategies to the *Exxon Valdez* wreck, only to pass on the proposals of others. For example, the agency was in no position to propose alternatives to Corexit, Exxon's patented dispersant, or to challenge its use. The causes of this performance lapse include inadequacies in the research and development budget of the agency.

Although it is formally identified as the federal government's lead responder on land spills, the role of the EPA in such events has not been conspicuous. The agency has no capability in Alaska to regulate oil spill prevention or plan for contingencies and has only a limited capacity to respond to a spill by flying people into the state in an advisory role.

The state should empower itself to take over direction of the response to any spill in Alaska waters.

There is no indication the federal government is inherently better suited than the State of Alaska to respond effectively to an oil spill in Alaska waters. Indeed, the state often will have more response resources than the federal government as well as a greater knowledge base concerning local circumstances. The state's resources and expertise generally will be more readily available in the crucial early hours of a spill.

The state has a constitutional obligation to protect its own resources and the primary responsibility to assist its own citizens. Considering the limited capabilities of federal agencies to respond to a variety of contingencies and the industry's conflict of interest, the state can never rely completely on the United States government or on industry to protect the resources of the state, whether on federal or state lands.

The state's authority should include the power to command the spill cleanup, to apportion scarce public and private resources, and to set in motion an emergency procurement process that will bypass the red tape that was a conspicuous element in the response to the *Exxon Valdez* wreck.

Even when the federal government maintains authority over a spill, the scheme for direction and command should permit full cooperation with state authorities.

Recommendation 42
State role under federal authority

Though primary responsibility for the salvage of vessels and the safety of crews should remain with the Coast Guard, pollution abatement may be left to the direction of state authorities indicating a willingness and capacity to do so with the support of federal resources. In particular, the state on-scene commander should be empowered to give binding directions to a spiller concerning particular response strategies. Community impact functions should be left to the standard emergency response command system.

The state should establish community-based response depots under the management of the state Department of Military and Veterans Affairs.

Recommendation 43
State response depots

A major oil spill is in many respects analogous to emergencies such as floods, forest fires and earthquakes. Persons trained in emergency systems to mobilize a large workforce quickly and with the required urgency tend to be better equipped to respond to a major spill. Those specially trained in environmental protection perform better in advice on establishing goals and objectives and in evaluating the impact of the operation.

A state response committee made up of representatives of the appropriate state and federal agencies should be created to review state response plans and participate in periodic drills.

Local volunteer and part-time spill response units should be established, trained and equipped under the direction of the state Department of Military and Veterans Affairs.

Recommendation 44
Immediate local response

Trained volunteer and part-time spill response units, properly trained, supervised and mobilized, should be prepared to protect critical habitat by keeping oil from reaching the shore or protected areas. The work of

Cordova fishing community mobilizing a "mosquito fleet" to protect fish hatcheries after the *Exxon Valdez* wreck is an instructive example. The local experience, knowledge and equipment of a trained volunteer corps should be put to work to help protect local resources.

Recommendation 45
Comprehensive regional response plans

The state should develop regional response plans reviewed by appropriate regional advisory committees. Private contingency plans should be developed that presume and mesh with the regional response plan.

Regional committees should be made up of local community members, state and federal agencies and industry. They will prepare the regional response plans and participate in drills to insure readiness. When a spill occurs this committee makes decisions regarding the region and reports to the on-scene commander. During the aftermath of the *Exxon Valdez* wreck the best example of a coordinated response was the response in Seward. The incident command system was fully employed and was able to carry out a well-managed, organized response.

These committees need to be predesignated before spills so they can participate in the planning process and be even more effective in responding to spills when they occur.

Recommendation 46
Regional response capability

The regional response capability designated in the regional response plan should be able to respond to a major spill with the speed of a fire department to protect habitat and contain, transform, recover or destroy a major spill before it reaches shore.

Time is the critical factor in all attempts to limit the environmental damage in a major spill by keeping oil off the shore. Regional response organizations must perform swiftly and with clear command and control to maintain the hope of keeping oil off the beach.

Recommendation 47
Emergency economic maintenance

The state should sponsor a system of emergency economic maintenance for persons immediately and seriously affected adversely by a spill.

The financial victims of a spill should not be subject to economic pressures to settle their claims quickly. Victims whose injury is indirect also should receive some early relief. The economic maintenance system should follow the pattern of unemployment insurance but would cover all

classes of people injured by a spill, not just insured unemployed. This program should be funded from spill impact funds.

Concern for fish and wildlife resources was the dominant concern in the response of state agencies and federal environmental agencies. Impacts on people were given relatively lighter attention, despite the toll in human misery on those whose livelihood and way of life had been severely disrupted or effectively destroyed for the foreseeable future.

Exxon did set up a system for the early compensation of claims and settled a large number of them, an activity it was not required by law to undertake. A smaller and less financially capable company may not have been willing or able to provide such a system.

Exxon was able to mitigate claims against it by hiring large numbers of people put out of work by the spill in cleaning up after it. The injured and economically benefited, however, were far from congruent groups. The principal economic beneficiaries of the spill were the two corporations hired by Exxon to manage the cleanup.

Many fishers or other injured parties believed they were disadvantaged in dealing with Exxon on claims.

The private system was incomplete in that many people who suffered severe income loss received no compensation because their claims were not against Exxon or were not legally cognizable. For example, seafood processing workers and crews of fishing vessels that were not hired according to their annual expectation were left to their own resources. Some were successful in obtaining employment with Exxon or its contractors. Others were not.

"I can't quantify the losses that occurred because no in-place, quick studies were made as to what was happening to the economy at that time. We have lost the economic history."

*Vince O'Reilly, City of Kenai
Alaska Oil Spill Commission
hearing, 9/7/89*

"EPA classified Alyeska as a nonprofit organization and based their entire permit on that. When operations at Alyeska were compared to other operations including facilities partly owned by the Alyeska owner companies, it becomes readily apparent that the oil industry is operating under a set of global double standards."

*Dr. Riki Ott, Cordova District
Fishermen United*

*House Committee on Interior and
Insular Affairs hearing, May 1989*

IMPLEMENTING THE RESPONSE

Inevitably, a major spill will occur.

Just as inevitably, there will be surprise and chaos. But unpredicted circumstances and the disarray of managers caught off guard can be sharply reduced if a plan is in place that sets out in a coordinated fashion what people should do in emergency circumstances.

The failure of response to the *Exxon Valdez* disaster was made more poignant by the location of the accident. Bligh Reef is in protected waters, only 25 miles from one of the world's major oil terminals. Most of the cleanup equipment in the state was stored at the terminal, and the weather for the first three days after the spill was extraordinarily good.

Command and contingency plan changes contributed to the chaos. When it became obvious that Alyeska's contingency plan was inadequate, the local response commanders — the Coast Guard captain of the port, the Valdez field office chief for the Alaska Department of Environmental Conservation, and the manager of the Alyeska marine terminal — were replaced, even though they were the most familiar with the spill area and the existing contingency plan. Within 48 hours, the spill was being managed by a Coast Guard admiral, the head of Exxon Shipping Company and the commissioner of the Alaska Department of Environmental Conservation, none of whom had particular knowledge of the area or its response planning. Eventually the Exxon worldwide contingency plan took priority, even though it had no specific relationship to Prince William Sound.

Response to the *Exxon Valdez* wreck revealed confusion and unpreparedness on a massive scale. But because plans do not work perfectly does not mean that they don't work at all. There is no reason why the chaos of the *Exxon Valdez* response should be repeated.

"As regards the cleanup effort and the equipment, I think it would stop the average reader just to read that the equipment that was used in most cases was inadequate. In most cases it didn't work. In a lot of cases the equipment was not in place."

Vince O'Reilly, City of Kenai
Alaska Oil Spill Commission
hearing, 9/7/89

Recommendation 48
Incident Command System

"The cleanup effort consisted principally of managers, most of whom knew little about the area or environment they're entrusted to restore, fairly rigidly supervising laborers. These same managers, private and public, have discouraged volunteers with local knowledge from helping in the cleanup effort.

This kind of centralization works for mobilizing heavy equipment and disposing of hazardous waste, ... but I think it's discouraged the flexibility and creativity needed to pick up oil with the primitive technology that we have in remote areas."

Professor Matt Berman, University of Alaska

*Alaska Oil Spill Commission
hearing, 9/21/89*

A formal command structure, known as the Incident Command System, should be used to direct response to oil spills.

The safety of the crew and salvage of the ship and cargo should be left primarily in the hands of the Coast Guard and the owner. The Incident Command System, which is familiar to many state and federal agencies, appears to be the optimum command and control system for other oil spill response functions. The system allows for training and management by state emergency and environmental authorities to cover three major responsibilities:

- Containment and recovery of the spill on water.
- Treatment of beaches and recovery of oil from the intertidal zone.
- Management of onshore impacts, primarily a responsibility of emergency response authorities.

The local on-scene commander can be predesignated under this system. The function of higher officials such as a federal "czar" should be to see that resources are mobilized and provided, not to replace the on-scene commander. Pre-incident agreements and the Incident Command System should guide the allocation of labor and equipment to communities.

A confusion of command and responsibility handicapped response in Prince William Sound, despite the good faith efforts of all parties. Similarly, a confusion of mission resulted in a division between the very successful focus on the safety of the crew and salvage of the vessel and its cargo and the much less effective effort to contain and recover the oil. Shore operations were often marked by chaos, misallocations of resources and neglect of the interests and wishes of residents.

In almost every command structure surrounding the *Exxon Valdez* spill, the individual most knowledgeable about the circumstances of the spill and theoretically charged with response was quickly replaced by a person who may never have read the local contingency plans. The Coast Guard appears to have rotated personnel through Prince William Sound for the experience.

A substantive role should be given to the affected communities in any response system.

Communities in proximity to the spill and in the shadow of the oil were not given a proportionate role in the response system after the *Exxon Valdez* accident. Frequently they were ignored. Often they devised their own strategies for response, for instance acquiring or manufacturing boom by themselves. Yet local interests, local knowledge and experience with the ocean often made the community-based work force the most efficient available.

The state Department of Environmental Conservation should continue to insure spill response capability. For smaller spills this responsibility can be carried out or supported through private contract. In a major spill, where mobilization of private resources and multigovernmental agency response is required, the Department of Military and Veterans Affairs, with the advice of DEC, may determine that the spill be taken over by the state.

Confusion of command in response to the *Exxon Valdez* disaster grew out of the state's failure to focus response activity in a single agency with an operational capacity.

Distinctions were blurred in the *Exxon Valdez* disaster between the system for making decisions and responsibility for carrying them out. DMA is better suited than DEC to carry out operational decisions. DEC is better suited to provide quality assurance auditing functions and to give advice, as is the role of DEC in relation to the private spiller in charge.

Logistic support agencies were not sufficiently utilized in the *Exxon Valdez* spill as a result of a confusion between the decision-making process and execution command.

Responsibility for the management and preparedness of emergency local response activity should be vested in the Department of Military and Veterans Affairs.

Regional depots, now privately controlled under a Regional Response Agreement, should also be managed under the Department of Military and Veterans Affairs or as the department delegates. This may require some redelegation of authority vested in the Department of Environmental Conservation in the last session of the Alaska Legislature.

**Recommendation 49
*Enlarged community role***

**Recommendation 50
*Allocation of state response authority***

**Recommendation 51
*Enhanced role for Department of Military and Veteran Affairs***

Recommendation 52
Emergency response
funding

"There was never a question in my mind about whether to incur a commitment or enter a contract because of worries about funding."

Dennis Kelso, Commissioner
Alaska Department of
Environmental Conservation
Alaska Oil Spill Commission
hearing, 8/31/89

In their professional training the normal professional complement of the DEC consists of persons primarily trained in the measurement and evaluation of environmental quality. Such personnel are not as well trained in the skills of maintenance and mobilization of a workforce and equipment, communications, procurement and the like.

The personnel of DMA are primarily trained in emergency response, the mobilization of a workforce and equipment, emergency procurement and similar tasks. DMA's management of emergency response gives the DMA a standing outreach into all Alaska communities including personnel, equipment, a command structure, a work force, buildings, planes, vehicles, etc.

The DEC, a regulatory agency, though far better equipped and staffed than EPA, did not have a disaster response capability sufficient to meet a spill of large magnitude.

An immediate funding mechanism must be available after a spill to allow the earliest commitment of response resources.

Procurement limitation was the first reason the Coast Guard did not take command of the *Exxon Valdez* spill, though other reasons, including presidential directive, followed.

An immediate funding mechanism would permit authorities to contract resources, the mobilization of a workforce, the purchase of supplies, etc. Procurement procedures normally followed to insure accountability make response efforts ineffective under emergency conditions. Until the governor is notified, the on-scene commander should be empowered to authorize the expenditure of funds. When the governor is notified of a spill, the governor should authorize the release of funds and determine their allocations among agencies. Both federal and state contingency fund sources are required for an effective spill response capability.

Public agencies were substantially handicapped by their inability to quickly commit themselves financially. In contrast, Exxon was the most effective responder because its officers on the scene had authority to commit the corporation. The Coast Guard is required to determine whether to federalize a spill based on whether the spiller is doing an adequate job. In fact, the Coast Guard determines whether the spiller can do a more effective job than the Coast Guard. This is almost always the case because the Coast Guard is handicapped by procurement limitations.

The EPA has no significant presence in Alaska capable of responding to a major spill on the uplands, notwithstanding that the response planning assumes the EPA will be in charge. In Alaska, this responsibility has been transferred by contract to the Bureau of Land Management.

A declaration of emergency should trigger the ability of the governor or other appropriate officials to release funds collected from state oil revenues to cover all impact costs, including economic maintenance programs and local impacts which become an extra burden on local services, whether provided by state or local government.

Indirect government service costs can be as important as direct spill expenditures in meeting a spill emergency. Local governments in particular were hard hit by lack of funding for increased burdens which hit everything from phone service to mental health during the crisis following the *Exxon Valdez* spill.

Exxon released some funds to communities for service needs, which it was not obliged to do. But the availability of such funds should not depend on the policy of the spiller.

As a prevention incentive, existing regulations should be broadened to insure that in future spills the state can recapture all expenses directly or indirectly incurred by the state, its subdivisions and private parties to whom the state owes reimbursement or who have benefited under the state's oil spill disaster economic-maintenance program.

Disagreement on reimbursable costs that resulted in an economic loss to the state resulted in the cancellation of a contract by which, on the pipeline route, DEC exercised EPA authority over spills, all to the detriment of environmental protection.

Reimbursability became a criteria for state response in the *Exxon Valdez* spill, to the detriment of the environment and people injured by the spill.

A fund should be created in state government to help local governments cover public spill costs caused by oil and hazardous substance releases that cannot be charged back to responsible parties.

Recommendation 53
Local service impact funding

Recommendation 54
Full-cost reimbursement

Recommendation 55
Private contingency plans

Private parties carrying oil must have a state-approved plan of response to spills of all sizes, including a worst-case scenario, that can be used under either private, federalized or "Alaskanized" spill response.

The state requirement that Alyeska's contingency plan respond to the "most probable" spill, however, put a lid on expectations about response to a worst-case spill. Alyeska did not prepare beyond the state's minimum standard and did not advocate a higher one.

The risk of a catastrophic spill cannot be reduced to zero as long as oil is carried in large quantities. But the interval between spills can be lengthened and the impact mitigated.

Under known and approved technology, it is also incorrect to assume during contingency and response planning that nearly all oil will be recovered. Under extreme circumstances of weather and location, no oil may be recovered. Here the emphasis should be on critical habitat protection.

In reviewing plans for unfavorable circumstances, DEC should determine a standard of "good effort" rather than one based on a fully successful result.

We know of no effective way to prevent major damage once oil reaches the intertidal zone and shore. To be most effective spill response must be immediate to keep oil from spreading or reaching shore and critical habitat. In the case of a spill near shore, it is not the magnitude of the response over time but what is done in the first few hours that offers the most protection.

Exxon Corporation ultimately marshaled an impressive array of resources and spent great sums of money in the *Exxon Valdez* cleanup. As each hour from the time of the wreck passed, however, the worth of each resource commitment and dollar rapidly declined. After two days, the spill managers were effectively incapable of preventing the spill from reaching shore and destroying major habitat areas.

Though containment and cleanup actions were undertaken at great cost and eventually with massive participation by many parties, containment was fundamentally flawed and failed as a result of insufficient resources being applied too slowly to prevent the oil from hitting the beaches.

The lack of resources was compounded by the absence of a standardized system of information transfer in the first few hours and confusion in the

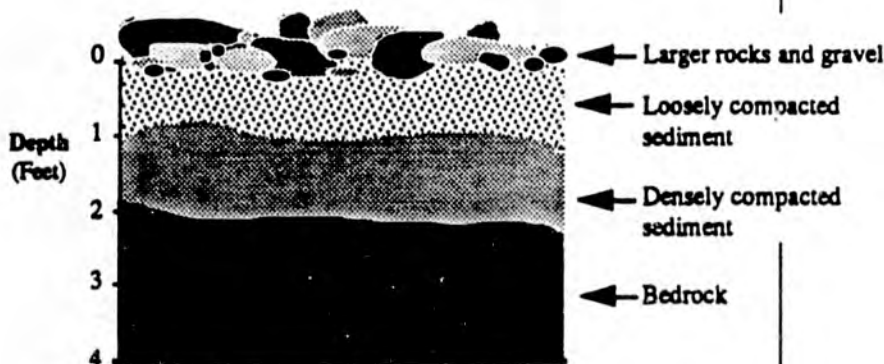
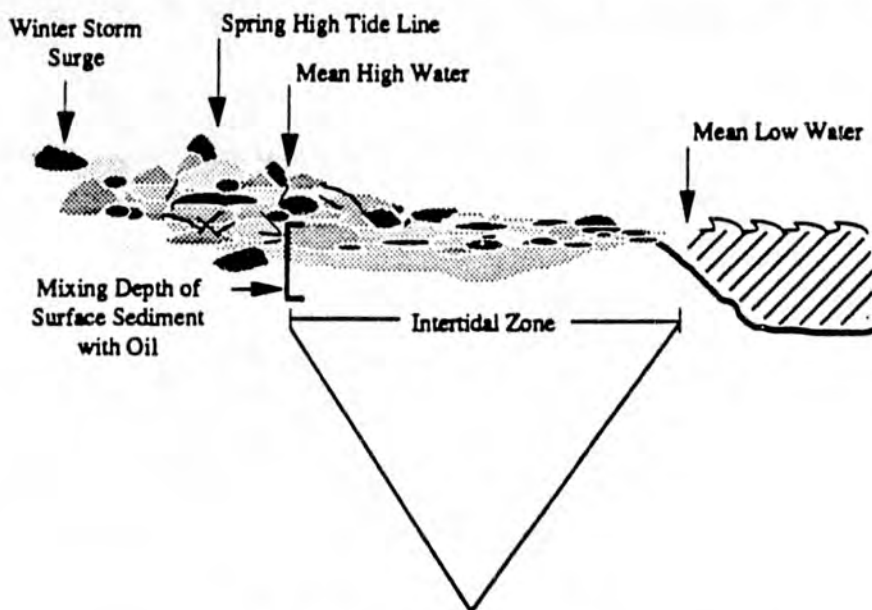
"The seven oil companies who own Alyeska broke a contract with the U.S. government and the people of the state of Alaska. Simply put, Alyeska was unprepared to deal with an oil spill of this magnitude, as they promised they would be, and they failed to react quickly during the critical early hours of the spill to minimize environmental damage, as they are mandated to do."

*Dr. Riki Ott, Cordova District Fishermen United
House Committee on Interior and Insular Affairs hearing, May 1989*

command and response system that resulted in decision-making and mobilization lapses in the first critical hours.

Beach treatment, a major investment by Exxon, was too late to touch more than a small percentage of the spill. Large quantities of oil remain in the substrata of beaches and continue to exact a toll on the biosphere. Technologies used to get large quantities of substrata oil out tend to take a high toll on the environment. Assessment of beach condition in Prince William Sound is problematic since the treatment had a cataclysmic effect, if not on the magnitude of the oil, on intertidal life.

Typical Beach Profile in Prince William Sound



"Clearly from our understanding of what the state expected from us and what the people of the state expected from us, we had a good plan and we executed it. The problem many times is that people automatically assumed that adequacy or inadequacy hinges on being able to pick up 248 or 262,000 barrels before it gets on the shore."

Thao L. Polasek, Vice President of Operations

Alaska Pipeline Service Company

House Committee on Interior and Insular Affairs hearing, May 1989

RESEARCH & DEVELOPMENT

The *Exxon Valdez* disaster has awakened industry, government and public interest in oil spill research. The May 1989 report to the president on the *Exxon Valdez* by Transportation Secretary Samuel Skinner and Environmental Protection Agency Administrator William Reilly bluntly concluded that "oil spill cleanup procedures and technologies are primitive." That view was echoed by the American Petroleum Institute, an industry group that issued a report calling for new private investment in research and development of spill response methods. Federal agencies are preparing research and development initiatives in spill response techniques, technology, training and deployment systems. There is also increasing interest in coordination and collaboration with other countries, particularly Canada, to provide faster progress, faster dissemination of research results, and less unnecessary duplication of effort.

Legislation now pending in Congress provides for the establishment and funding of oil spill research and development programs. One proposal would create a Prince William Sound Oil Spill Recovery Institute to identify and develop the best technology for dealing with spills in arctic and subarctic marine environments. Another would establish a minimum of six regional centers to address research needs.

Government-supported research and development should insure that public priorities are met, that government agencies expected to direct future oil spill response will be knowledgeable about new technologies and techniques, that regulation is appropriate and effective and that up-to-date response capabilities are maintained. Coordination and cooperation in research and development programs is in the interest of all concerned.

Alaska's interests in oil spill research should focus on specific Alaska marine habitats, the characteristics of oil and dispersant methods in arctic and subarctic waters, prevention research and training programs to ensure that Alaska response authorities will be fully prepared to understand and cope with future spills.

"We therefore are guinea pigs within a giant experiment, where facts are made to fit the hypothesis made. In our frustration of our loss, we fight an invisible enemy, and suffocate in the air polluted with politics."

Dolly Reft, Kodiak native
Alaska Oil Spill Commission
hearing, 8/11/89

"It's embarrassing to know that the level of our technology of this great country is what it is when I see out there that the most effective thing is an oil absorbent pad."

Dennis Holan, Cordova fisherman
Alaska Oil Spill Commission
hearing, 6/28/89

Recommendation 56
Knowledge transfer

"Cost avoidance also occurs through the efforts of managers of all agencies to try to control information in order to keep other people from finding out whether you might be able to do a better job. Public policy can improve organizations so that they do what we want."

Professor Matt Berman, University of Alaska

Alaska Oil Spill Commission hearing, 9/21/89

Recommendation 57
State research center

The United States, the State of Alaska and Canada should establish cooperative research programs to develop and disseminate knowledge on oil spill prevention and response.

Despite two decades of rising public concern for the environmental consequences of oil spills, research on the subject is still in its infancy. Prevention systems are haphazard. Spill response technology is untested and underdeveloped. Research investment is low, and institutional commitment to this field is scarce.

For a variety of reasons — including, predominantly, ignorance — the latest technologies were not used in the *Exxon Valdez* cleanup. Much of the available cleanup equipment had not been tested in the various circumstances facing cleanup crews. Due to caution or uncertainty, untested techniques were not quickly implemented.

The response effort was handicapped by the absence of a rapid, accurate and comprehensive system, available to all, for information on local conditions, habitat, fish and wildlife, currents and weather.

The primitive state of development of both prevention and response methods holds out some hope that, given sufficient investment, dramatic strides will be made in a short time.

Research dedicated to improving the state of knowledge in oil spill prevention and response should be undertaken to remedy information gaps. Among the topics that should be pursued are the relevant regional geography, environmental assets, weather, technological systems and basic research on the behavior of oil in water. Information management should be included in the agenda for response and contingency plans. Resources should be committed to ensure adequate information systems and services in emergency response efforts in the future.

The state should establish, in the University of Alaska system, an institute for research on oil spill prevention and response policy, technology, testing and evaluation.

An Alaska-based institute should be created and encouraged to strengthen its programs through consortium agreements with other institutions studying the safe transportation of hazardous substances. Research topics should include locality-specific investigations of marine habitat and the impact of oil, as well as prevention policy and response technology. The

institute also could develop and administer education, training and safety licensing programs for participants in oil transportation and handling. The institute's efforts should be coordinated with similar programs developed under federal authorization. Its functions should include making recommendations to appropriate authorities regarding changes in standards and requirements in oil and gas and hazardous substance transportation.

The research program should be established independently of the that conducted in support of fault-oriented litigation. Research since the *Exxon Valdez* wreck has been noticeably distorted by its litigation orientation.

Authorities responsible for testing and approval of response technologies such as dispersants, coagulants, burning and bioremediation should evaluate and decide whether to preapprove these technologies more rapidly.

Parties responding to the spill were handicapped to varying degrees by a lack of scientific knowledge concerning what was available, the properties and effectiveness of various technologies under varying conditions, and the lack of prior approval of response strategies. Those responsible for containment and cleanup were not fully advised on state-of-the-art methods or regularly provided with appropriate technology.

The system for testing and approving new response technologies is haphazard and slow and should be improved. Many emerging technologies hold promise, but they were untested and undeveloped at the time of the *Exxon Valdez* wreck.

The U.S. Navy's use of coagulants in containing and cleaning up shipboard fuel spills — fully tested for Navy use but no other — was of particular interest to the commission. The commission also was intrigued by reports of proposed vessel-based coagulant systems capable of jelling cargo in the vicinity of a breach and of vacuum-based systems for containing oil in a damaged vessel. Such avenues of development call for early and thorough exploration for possible use.

Key public agencies, notably the federal Environmental Protection Agency and the state Department of Environmental Conservation (both of which are involved in Regional Response Plans and the oversight of industry contingency plans), are charged with approving or disapproving response technologies for oil spill cleanup. A continuing, visible process for study, analysis and application of emerging technology is required.

"There is no mandate to a government body that when an incident like this occurs they shall go gather data. There's no mandate in place and there's obviously no funding for that mandate."

Vince O'Reilly, City of Kenai
Alaska Oil Spill Commission
hearing, 9/7/89

Recommendation 58 Pretesting

"Perhaps for the first time in history, the consequences and costs associated with major failures are greater than the value of the lessons we learn from those failures."

Professor Todd LaPorte, University
of California
Alaska Oil Spill Commission
hearing, 8/4/89

Recommendation 59
Tanker simulator training

"We need to establish a prize for invention of technologies that work. Organized research to produce information that would help achieve the goal of minimizing social costs isn't really being undertaken."

*Professor Matt Berman, University of Alaska
Alaska Oil Spill Commission
hearing, 9/21/89*

"I am skeptical that there will be as much scientific value gotten out of this situation as would otherwise be possible. That's partly because the work is confidential and partly because the work is focused on determining the extent of environmental injury, which is not the same as understanding in ecological or social terms the impact of this event."

*Professor David G. Shaw,
University of Alaska
Alaska Oil Spill Commission
hearing, 9/21/89*

The West Coast states should create a training center using simulators to advance the knowledge of masters, mates, pilots and shipboard bridge crews in the operations of very large vessels in West Coast ports.

There is currently no place on the West Coast where mariners can receive real-time simulation training in the bridge operations of very large ships. Maintaining an adequate pool of ships' officers and pilots fully trained in up-to-date circumstances will enhance safety and efficiency in the maritime industry.

Note: Those who wish to review in more detail the factual circumstances explored by the commission and the options considered and rejected in choosing these specific remedies will find explanations in a longer report still to be published and in the specific studies accepted by this commission from its contractors.

Commission members

Walter B. Parker, chair—Anchorage, a former technical staff director of Alaska's Office of Pipeline Coordinator, currently is president of his own transportation and resource consulting firm and president of the Alaska Academy of Engineering and Sciences. Parker served on the Federal Field Committee for Planning in Alaska and co-chaired the Joint Federal-State Land Use Planning Commission for Alaska 1976-79. He was Alaska Commissioner of Highways and an Anchorage municipal assembly member during the 1970s. He was chairman of the Alaska Oil Tanker Standards Task Force 1975-1977 and served 24 years with the Federal Aviation Administration.

Esther Wunnicke, vice chair—Anchorage, is an attorney who served as commissioner of the Alaska Department of Natural Resources in the early and mid-1980s. She managed the U.S. Department of the Interior's Alaska Outer Continental Shelf Office, co-chaired the Joint Federal-State Land Use Planning Commission for Alaska in the mid- and late 1970s, and served on staff of the Federal Field Committee for Development Planning in Alaska.

Margaret Hayes—Anchorage, is a geologist and former director of the Alaska Department of Natural Resources Division of Land and Water Management. She was employed by the department in various capacities from 1975 through 1988.

Tim Wallis—Fairbanks, is president of Tim Wallis and Associates, a consulting firm. The firm is currently representing a municipality and other interests as a lobbyist in Juneau. Wallis is a former state legislator, past president of Doyon, Ltd., an interior Native corporation, as well as the past president of Alaska Federation of Natives and the Fairbanks Native Association.

John Sund—Ketchikan, is a former state legislator and commercial fisherman who now practices law and operates a fish-processing firm. Sund served on the Resources Committee as a state House member from 1984 to 1988 and from 1981 to 1985 was president and chief executive officer of the Waterfall Group Ltd., a resort operation.

Edward Wenk, Jr.—Seattle, professor emeritus of engineering, public affairs, and social management of technology at the University of Washington, is a former advisor to three presidents and Congress. An expert on the strength of ships, Wenk was a test pilot on the initial deep dive of America's first nuclear submarines and developed a world-class lab on the structural mechanics of submarine pressure hulls. The author of more than 150 papers and books, many on the interaction of technology with people and politics, he holds a master's of science from Harvard University and a doctorate of engineering from Johns Hopkins University.

Michael Herz—Berkeley, Calif., has studied previous oil spills and tanker accidents and is currently baykeeper and executive director of the San Francisco Bay-Delta Preservation Association, a nonprofit corporation that monitors oil and chemical spills. An advisor on oil spill dispersants, waste disposal, and the impact of oil spills on fisheries, Herz studied and produced a major report on the 1984 Puerto Rican tanker spill and has co-written three books and more than 80 technical reports and papers. He holds a doctorate from the University of Southern California, was a postdoctoral fellow at UCLA's Brain Research Center, and has been involved in marine research and policy since 1973.

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

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Esther Wunnicka, Vice Chairman
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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
Chairman

WBP

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	<u>\$ 113,000,000</u>
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	<u>\$ 285,000,000</u>

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.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Preliminary Administration Response
to each Recommendation of the
Alaska Oil Spill Commission

February 20, 1990

In response to the final report of the Alaska Oil Spill Commission, Governor Cowper has initiated several lines of administrative and legislative action. The proposals are intended to encourage and require strengthened preventative measures to guard against further oil spills, to clarify various industry and agency responsibilities, and to enhance citizen involvement in oil spill contingency planning and response.

In 1989 several significant pieces of legislation were passed, others were submitted, and this year several more are being proposed. In addition, regulatory measures are under consideration and advocacy for federal action is being pursued. The following is a summary of the administration's preliminary proposals to address each recommendation of the Oil Spill Commission. These proposals, plus those initiated by the Legislature, must be carefully coordinated to produce a strong but operable body of law to better prevent and respond to spills of oil and other hazardous materials.

Comprehensive Prevention

1. Prevention as Fundamental Policy: This theme underlies several of the specific proposals in the administration's legislative package.
2. Changed Attitudes that Spills Are Unacceptable: Again, this philosophy underlines the specific language drafted in the proposed legislative package. A new approach to these issues must be taken if the lessons of the Exxon Valdez spill are to be learned.
3. Involvement of Citizens in Oversight: The administration is considering re-establishing the Environmental Advisory Board under AS 44.46.030 as a body to provide continuing citizen oversight on key environmental issues. The administration is also strengthening public participation in spill contingency planning at all levels.

4. Regulatory Agencies Fully Prepared to be Vigilant: The administration is addressing this recommendation in two forums. The proposed legislative package contains several tools to enhance the effectiveness of the regulatory process. The budget for the Department of Environmental Conservation proposed by the Governor also includes increases in funding for the oil pollution control program, to bring funding for facility contingency plan reviews up to a core level.
5. Foreign Flag Vessels: Are already covered by state law establishing liability. Proposed legislation to increase the financial responsibility required of tankers operating in Alaska waters will make this more meaningful by ensuring that resources are actually available to pay damages.

Responsibilities of Industry:

6. Industry Commitment to Environmental Safety: The administration will promote and support industry efforts in this regard.
7. Best Available Technology: The administration will encourage industry in this regard. Moreover, the Department of Environmental Conservation has retained an outside consultant to review existing state regulations governing industry contingency plans, with the mandate to update these regulations, consistent with best available technology.
8. Corporate Safety Executives: The administration supports efforts by industry to designate such executives.
9. Tank Farm Capacity to Meet Maximum Throughput: The administration encourages the industry to consider this, but recognizes the possible costs and need to weigh those against likely declines in throughput from TAPS.

State Regulation and Oversight

10. People are Stewards of Natural Resources: The administration recognizes the importance of involving citizens in key decisions regarding the environment. As mentioned above, the administration is considering re-establishing the Environmental Advisory Board to perform this function and is also enhancing public involvement in all areas of contingency planning. The administration has also proposed legislation to strengthen regulatory oversight and to increase funding for the Department of Environmental Conservation.

11. Federal Pre-emption Should Not Block State Regulations Regarding Transportation: The administration agrees that the state should enact legislation that is necessary to protect its resources. The State has been an active player in lobbying Congress to avoid pre-emption of state authorities in oil spill legislation being considered by Congress.

12. Oversight Council: As discussed elsewhere, the administration is considering re-establishing the Environmental Advisory Board.

13. Enhanced Regulatory Strength: The administration recognizes the necessity of equipping regulatory agencies to address the full range of situations that may arise and providing workable remedies to ensure that facilities are in compliance with environmental standards. The proposed legislative package includes key improvements to state statutes for civil penalties, criminal penalties (HB 315), administrative penalties (SB 497/HB 409), the "dollars per gallon" penalties, access to facilities for inspections (SB 497/HB 409), environmental audits (SB 497/HB 409), expedited compliance order proceedings (SB 497/HB 409), and improved requirements for facility oil spill contingency plans.

These, and other proposals would give Alaska the range of tools available in many other states and available to the federal government to assertively enforce environmental laws. The Governor's budget proposal for the Department of Environmental Conservation is also a critical element in strengthening this capacity.

14. Strengthened Inspection and Drill Authority: The administration has included improved inspection authority in its package (SB 497/HB 409) and has included funding necessary to implement regularly scheduled drills in the budget proposal for DEC. (SB 264 authorizes use of the Response Fund for this purpose). In addition, the proposed legislative package includes authority for the State to inspect tankers to ensure their structural integrity. This would be a significant new responsibility for the state.

15. Government Offices at Alyeska: To be arranged with Alyeska.

16. State Licensing of Safety and Response Personnel: Still under consideration.

17. Expansion of State Authorities for Adjacent Waters: The administration will advocate this position in Congressional deliberations. Interstate compacts will also be considered for this purpose.

18. Interstate Compacts for Prevention, Response, Etc: The administration is interested in exploring this in appropriate areas. The State of Alaska is already a participant in an ongoing group formed by the governors of Alaska, Washington, Oregon, California, and the Minister of British Columbia, to work jointly on these issues. An interstate notification process has been developed and adopted.

No specific legislation appears to be required for Alaska to enter into such compacts. However, the administration has recently extended the Alaska Oil Spill Commission, in part to help explore compact opportunities further.

19. Maintenance and Personnel Audits: Proposed legislation to increase access for inspections and to provide for environmental audits (SB 497/HB 409) would address the main points of this recommendation.

20. Marine Pilots Issues: Recommendations are being considered. This issue has not been addressed in the immediate proposed legislation package, but will be reviewed further.

21. State as Co-Insured: The State has a right of direct access to resources identified as satisfying the financial responsibility provisions of existing law. Additional legislation on this point does not seem warranted. However, the administration has proposed legislation to increase the required amounts for financial responsibility.

22. Remote Spill Response: The administration agrees strongly with the need to provide for effective response in all areas, including remote ones. The DEC has contracted with an outside consultant to overhaul state regulations governing facility contingency plans. Regulations will be strengthened after this review. Then, all plans will be called in for review against the new requirements. Moreover, resources for assistance for community response will be provided through the implementation of the provisions in existing laws for response corps and depots. Also, the administration's legislative package establishes an explicit standard for facility oil spill contingency plans to include a response capability for response to a realistic maximum discharge within the shortest possible time.

23. Arctic Prevention Research: The administration will forward these recommendations to the Arctic Research Commission.

24. Pipeline Evaluation: An inter-agency review, headed up by the Department of Natural Resources, has been started on this issue; it is of great interest and concern. The process already initiated will lead to recommendations on the best way to approach this problem.

25. Harbor Administrative Offices: The administration is reviewing this concept to obtain a better understanding of the potential structure and role of the proposed harbor administrative offices.

26. Regional Advisory Committees: The administration's proposed legislation would bring oil spill contingency planning at the state and regional level under the process headed by the State Emergency Response Commission (SERC). This group is designed to establish appropriate coordination procedures between state agencies and local entities for spills of hazardous substances. This is reasonably combined with planning for oil spills. The SERC process establishes Local Emergency Planning Committees (LEPC's) at the local level to do the planning and establish the role of local entities in response. The administration proposes to use this existing mechanism, modifying the LEPC's as necessary to encompass community concerns regarding oil spills.

The administration is also supporting federal legislation for specific citizen oversight and planning in Prince William Sound and Cook Inlet, and commends Alyeska for their recent offer of funding for a Prince William Sound advisory panel.

27. Local Government Representation on Harbor Administration and Regional Councils: Local governments are represented on the SERC. This will provide for full local input in response planning.

Federal Regulation and Oversight

28. Double Hulls and Vessel Design: supporting Congressional action, particularly the position of the House of Representatives to require phase-in of double hull requirements.

29. Mandatory Traffic Control: supporting Congressional action.

30. Crew Levels: supporting federal action.

31. Coast Guard Role: support federal action, including increases in the Coast Guard budget.

32. Insurance Premiums to Reflect Risk: support federal action, also proposing state legislation.

33. Corporate Safety Reporting: support federal action.

34. International Action: support federal action, but remain opposed to international protocols that would result in State pre-emption.

- 35. Offshore Tanker Lanes: support federal action; possible interstate compact.
- 36. Tracking Vessels in the North Pacific: support federal action.
- 37. Presidential Report: support federal action.

Government Response Posture

- 38. Government in Charge: supporting Congressional action, particularly Senate legislative proposal to rest decision on cleanup completion with governor and the President.
- 39. Strengthen the Coast Guard: supporting through advocacy in Washington, D.C.
- 40. Adequately Fund and Staff EPA for Response: supporting federal action.
- 41. State Takeover of Spill Response: Many of the legislative and administrative proposals are designed to enhance the state's ability to take over direction of the spill response. A statutory change is not necessary. Administration approach is to participate in the response with the Coast Guard but to improve preparedness and planning at all levels.
- 42. State Role under Federal Authority: The administration fully supports this recommendation and will advocate this position in Congressional forums and through its participation on the Regional Response Team.
- 43. Community-Based Response Depots and State Response Committee: Community-based depots were authorized by statute last year (SB264). The administration is in the process of implementing that legislation. The development of administrative mechanisms to implement this will occur through the inter-agency State Emergency Response Commission. We would contemplate that some depots may be under the direct management of local communities and municipalities, rather than either DEC or DES. It is important that the response be geared to prevent disasters as much as possible, as well as to respond in those instances when a catastrophic spill occurs.
- 44. Local Volunteer Units under DES: Local response units were authorized by legislation last year (SB264). The administration supports the use of trained local residents in spill response, both in those rare cases of catastrophic response and in the far more frequent cases of non-catastrophic spills. As mentioned

above, the goal of a response is to prevent a disaster. We are encouraged to see Alyeska proposing to integrate local residents and boat operators into its response planning for Prince William Sound. The planning for the appropriate responses by different agencies and local entities will occur under the direction of the SERC.

45. Comprehensive Regional Response Plans: Are already authorized under state law and provisions are enhanced under proposed legislation. The administration supports implementation of this process.

46. Regional Response Capacity: The administration supports this recommendation and will implement it through the process headed by the SERC. Also addressed last year by passage of SB 261.

47. Emergency Economic Maintenance: Still under consideration.

Implementing the Response

48. Use Incident Command System: The administration supports this recommendation and will implement it through administrative action under the SERC and the agencies with jurisdiction.

49. Enlarge Community Role in Response: The administration supports this recommendation. This will occur through implementation of the regional and statewide contingency planning and through the legislative proposal related to the SERC.

50. Allocation of State Response Capability: The administration agrees with the need to clarify and reinforce the appropriate responsibilities of all agencies and other entities involved in a response. The allocation of duties is more complex than can be described in the one paragraph devoted to this subject in the summary report. Consequently, the administration proposes to establish the SERC in statute to oversee planning and establish clear allocations of duties between agencies. Moreover, the proposed legislation explicitly clarifies that the Department of Military and Veterans Affairs conducts its normal responsibilities during oil spills that are disasters. This process will allow definition of a proper role for each agency to be fully defined.

51. Enhanced Role for DMVA: As mentioned above, the proposed legislative package proposes statutory changes to give DMVA a lead role, through the Division of Emergency Services, during a declared disaster.

52. Immediate Funding Mechanism: The legislative proposals would allow the Governor to use the funding in the response fund for any purpose during an oil spill disaster. This would provide an immediate funding source for those activities endorsed by the Governor.

53. Local Service Impact Funding: The administration supports making an appropriate amount of funding available to local governments to help with these functions. We are providing comments to Senator Szymanski on SB 359 to achieve this purpose, and are also including legislative provisions to allow the Governor to use Response Fund monies during declared oil spill disasters.

54. Full Cost Reimbursement: Same as number 53.

55. Private Contingency Plans Must Have Worst Case Scenario: This recommendation is explicitly addressed in the proposed legislative package, but is tempered to reflect the realistic maximum oil spill to be anticipated. The state and regional planning process will lead to integration of all response capability.

Research and Development

56. Knowledge Transfer: The administration recognizes the need for more research. Major funding will be needed for this. The administration is considering the technology review board proposed in SB 421 as a means of determining research needs and articulating these in the appropriate forums.

57. State Research Center: The administration has included funding for this center in the proposed budget for the Department of Natural Resources; SB 421 establishes an Oil and Hazardous Substances Spill Technology Review Commission.

58. Pretesting of Materials: The administration supports this recommendation and intends to follow up through action by the agencies with jurisdiction.

59. Tanker Training Simulators: The administration will discuss this with the Coast Guard.

TANKER SAFETY ISSUES

Senate Special Oil and Gas Committee
Senator Drue Pearce, Chair

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.