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34

THE STATE'S RELATIONSHIP TO RACS

The State and liability

The first point to realize regarding the state's relationship to RACs is that it is itself both a RAC and an employer of RACs. Every time the state sends personnel to respond to a spill, it is a RAC; every time it engages others to respond, whether for pay or as volunteers, it is employing a RAC. So the State encounters most of the same problems as other RACs and other RAC employers.

The State, as a sovereign, enjoys sovereign immunity, that is, immunity from liability because of its status as a sovereign government. Sovereign immunity, however, is more often than not a hollow protection because of the many exceptions to the doctrine. In a nutshell, although the state probably does not have a duty to others to respond to spills³⁰, when it does respond (as it inevitably will with large spills), it has a duty to do so with at least some degree of care. Its own actions in the field which cause injuries are likely to give rise to liability just as they would with a private RAC. But, as with private RACs, the state is not liable except for grossly negligent and intentional misconduct, as long as its actions are taken in response to an emergency. (This limited immunity, given at AS 46.03.822(h), is in addition to whatever immunity the state obtains with other RACs under AS 46.03.825.)

Likewise, a contractor acting as a RAC for the State can cause the state to incur liability, subject to the same rules as for private employers as to respondeat superior and non-delegable duties. The State may attempt to fend off liability from below by requiring RACs it employs to indemnify it for their misdeeds, and it could attempt to require indemnification for its own misdeeds, but it would face the same difficulties mentioned above regarding non-delegable duties of care and with the public policy concern over insulating itself from liability for damages it causes.

As to restricting its liability when it acts as a RAC for another responsible party, the state's quandary is that it becomes most active in field

³⁰ The exception is when the state itself causes a spill, in which case the state is obligated to contain and clean it up like anyone else under AS 46.04.020.

response when there is no clear responsible party and when it takes on a spill response on its own initiative. In such cases there is obviously no way to shift liability for response mishaps to another party.

One other aspect of state involvement deserves mention. When a responsible party engages a RAC, there is usually a provision requiring the client to indemnify the RAC from liability arising from carrying out the orders of an authorized state or federal official. But what of the liability of that official or that government? The likelihood is that the RAC or its client will attempt to shift the ultimate burden of liability onto the government by proving that the government action was itself the cause of the damage. There is no protection or meaningful limitation on such suits, unless the government can convince the court that as a RAC, within the broad meaning of that term in AS 46.03.825, the government comes within the protections of that statute. To our knowledge this possibility was never considered during any of the legislative debate on that statute. Further, it is an open question whether the terms of the statute would be interpreted to apply to the governmental oversight function as well as to actual fieldwork. But neither is there any clear exclusion of the government as RAC from the provisions of Section 825.

In summary, the State is not in any clear way different from any other RAC or employer of a RAC, and would likely share the same legal burdens. It is an open question whether the state can limit its own liability under the terms of AS 46.03.825.

The State and control of response activities

Since holders of contingency plans and other potentially liable spillers of oil have moved toward greater use of independent RACs to perform spill response, there is an obvious concern. Does the State have the same control over a RAC as it would over the RAC's client? In other words, how can the State ensure that a RAC which is an essential element of a cleanup actually takes the field and performs according to an approved plan and under the direction of government authorities? Under existing law most of the State's authority over RACs is indirect and exercise of the authority could be cumbersome if it were resisted. Reexamination of that authority is warranted.

As noted above, the current RAC contracts we have examined are

two-party documents with no participation by the State and few references to either the State or any other governmental authority. The only common reference to governmental oversight -- and it exists in only the more sophisticated contracts -- is a provision requiring the client to indemnify the RAC for liability incurred while carrying out the orders of a governmental authority. This provision may be an implicit recognition that in the field, during the heat of initial response, the RAC will effectively be under the control of whatever governmental official has jurisdiction. But we do not believe it can be taken as a legal concession of that authority, enforceable by the government agency. We perceive no intent in any RAC contract to place the State (or any other government) in the position of a third-party beneficiary, that is, to empower the State to require the parties to the contract to abide by it.³¹ In any case, even if the State were an implied third-party beneficiary, it would require litigation over that point to require a balking RAC to perform, so would not be of benefit in ensuring immediate field response.

Under existing law, the State's authority over a RAC comes from two sources, both problematic. First, the State has authority over the person causing the spill, who has a legal obligation to contain and remove it. AS 46.04.020. This legal requirement would support an injunctive action by the State, i.e., a request for a court order requiring that person to conduct a response. If the spill created an emergency situation there would also be legal authority to require the spiller to take immediate action to abate it. AS 46.03.865. It is arguable that the emergency order authority also permits the State to order a RAC to participate in the response, since AS 46.03.865 does not limit emergency orders to actual spillers, but such an extension of the statutory authority has never been tested and could be found to be lacking as to a person with no preexisting legal obligation regarding the spill. A stronger argument can be made for emergency orders directing RAC participation when the RAC has committed itself by contract to the spiller to perform a response, but the outcome of a legal challenge is far from certain. In any case both injunctive actions and administrative emergency orders have a significant drawback in that they are time-consuming, especially the injunctive action, when a crisis does not permit waste of time. Moreover, although they may be useful in getting a RAC into the field in the first place, they are far too cumbersome to use in directing the daily

³¹ In one of the contracts examined, CISPRI's contract with Chevron U.S.A., the contract explicitly disavows the existence of any third party beneficiaries, both private and governmental.

or hourly field tasks actually performed during a response.

The second existing avenue for State authority over RAC participation in a spill response comes from the contingency plan requirements of AS 46.04.030. That statute puts a clear burden on a potential spiller to have, and to demonstrate upon request of the State, minimum capabilities for responding to a spill. The regulations implementing the statute require, at 18 AAC 75.425(e)(3)(H), that the plan holder who uses the services of a RAC provide detailed information on the RAC, its equipment and services, and its contract. The regulations do not prescribe particular provisions which must be put in the RAC contract, but do state that reliance on a RAC does not relieve the plan holder of its responsibilities. This combination of requirements gives a plan holder a firm incentive to require, in its RAC contract, that the RAC provide the services required of the holder in the manner required of the holder. If the RAC fails to perform the plan holder assumes the significant liability that would attach if the plan holder itself failed to perform a response according to the contingency plan. (We note, however, that none of the RAC contracts we reviewed has any specific provision both tying RAC performance to the specific duties in the contingency plan and putting the RAC in jeopardy of bearing the plan holder's liability for not performing according to the plan, though, as a matter of contract law, the plan holder might be able to shift the liability to the RAC if the RAC failed to perform under the contract without legal justification.) In any case the State now has the authority to require the plan holder to demonstrate, on a regular basis, the ability and willingness of its RACs to perform their role under the contingency plan, and to revoke plan approval if the RAC is unwilling or unable to perform. If properly exercised, this authority places the burden -- and the penalty for failure -- on the plan holder to ensure RAC performance, and it should eliminate most problems regarding RAC ability to perform. However, it does leave a narrow but critical gap as to unforeseen inability or refusal of the RAC to perform after a spill actually occurs. The State's direct authority under the contingency plan laws is over the plan holder, not the RACs, so there is little legal basis for directly controlling RAC performance rather than plan holder performance.

There are several ways in which State authority over field actions by RACs could be strengthened. On the regulation level, the State could require that any contractual component of a contingency plan, such as a RAC, agree in writing that it will accept State authority over its field actions to the same degree

that such authority exists over the plan holder. The regulations could also require that RACs which are components of a contingency plan also agree in writing to be bound by the same requirements put on the plan holder to give immediate notification to the State of inability or unavailability to perform. This requirement could be supplemented by requiring a RAC wishing to terminate a contract to give prior notice, sufficient to permit substitute services to be secured, to both the plan holder and the State. It may also be possible to require that a RAC performing as part of a contingency plan agree in writing to accept joint liability with the plan holder for damages which result from failure to carry out its part of the contingency plan.

There is an obvious danger to imposing such requirements on RACS, namely that the contractors perceive them as so onerous that they simply choose not to enter into the contracts in the first place. While the plan holder would then be obligated to provide the mandated services in some other way, the absence of specialized response contractors could significantly decrease the efficacy of the response.

One other possibility for increasing State control over RACs would be to require RACs -- or at least those RACs which are component parts of contingency plans -- to have a direct contractual relationship with the State before its role in the contingency plan were approved. This option offers little advantage. Although couched in terms of a voluntary contract, such a requirement would in reality be a mandated burden, and to the extent that the burden exceeded the State's direct regulatory authority, would probably be seen as an illegal taking and would require compensation to the RAC itself. The more direct approach of requiring a contingency plan holder to obtain written agreement from the RAC that it accepts the same State authority as exists over the plan holder, would accomplish the same goal in a more direct and more clearly legal way.

IN THE ABSENCE OF A RESPONSIBLE PARTY

Attempts to shift the burden of liability away from RACs may cause public policy concerns, but the concerns are considerably alleviated in the majority of large spills because under AS 46.03.822 and .825, liabilities will merely be shifted to the original responsible party. There will still be a party from whom injured persons can secure redress. But what happens when there is no solvent responsible party? This situation can occur because the original spiller is unknown; because the original spiller is insolvent; because the original spiller has insufficient assets or has, through complex corporate ownership structures, successfully hidden its assets; because the original spiller has successfully limited the extent of its liability under federal admiralty law or other laws³²; or for other reasons. Can there be a situation in which a person is injured by a RAC's actions but finds himself unable to proceed against either the RAC (because it has statutory immunity) or the original responsible party (because it is missing or insolvent)?

At the present time the answer appears to be that such situations will occur, although hopefully not frequently. Just as RACs have the incentive to reduce their exposure, so do the corporations which are likely to be responsible parties, and their insurers. It is openly acknowledged in the field that each of these groups is actively searching for ways to deflect or minimize liability. It may also be, as several of the corporations have suggested, that the answer to the conundrum of injured parties with no one to sue is to rely on compensation funds, such as that created by the Oil Pollution Act of 1990. Such funds -- financed by the industry -- may or not be an adequate answer, since obtaining compensation may be too costly or complicated for the small injured party, and with large spills the total claims may exhaust the funds. Overreliance on compensation funds may also reduce incentives of individual operators to maximize their preventive and safety measures, particularly if combined with immunity provisions or corporate structures that reduce direct liability of responsible parties. The point is simply that anytime consideration is given to further immunities for segments of the oil

³² See the Limitation of Liability Act of 1851, 46 U.S.C. §§181 et seq. This Act, which puts a cap on the amount of liability which can be placed on owners and operators of vessels causing damages in most circumstances, was made inapplicable to vessels subject to the liability scheme of the Oil Pollution Act of 1990. It still applies to maritime traffic in general, however, and could conceivably apply to RAC-owned vessels which cause damage through means other than oil.

transportation or spill cleanup industries, one of the prime considerations must be whether there is an adequate substitute source of compensation for injured parties, and whether securing compensation from that source is so difficult or costly that legitimate claims will in fact go uncompensated. There is a potential, due to the combination of statutory immunities and contractual liability shifting, that some damage claims will not be compensated.

CONCLUSIONS AND RECOMMENDATIONS

Response action contractors are now a necessary part of oil spill response. With advances in technology and continued change in the oil production and transportation fields, specialized response action contractors will become even more important. It is natural and understandable for RACs to want to reduce the potential liability they face for their actions during a spill, just as it is to be expected that the responsible parties will attempt to minimize their own exposure. Compensation schemes for oil spill victims can be expected to evolve in the future, as various parties attempt to use legislation, contractual agreements, and internal restructuring to reallocate the burden of oil spill liabilities. Protection of the public interest requires careful observation and understanding of these adjustments and skillfully working with the segments of the industry to minimize the disadvantage to injured parties from such reallocations. The bottom line must involve balancing the need for fair and full compensation for all spill injuries with the need for a liability scheme that does not discourage response action contractors from acting to prevent spill damages. Achieving that balance will require constant monitoring of both the legalities and practicalities of oil spill liability and compensation.

Beyond those general recommendations, we believe that requiring RACs to exercise due care, i.e., to act without negligence in their response activities, does not place an undue burden on them. The negligence standard includes the recognition that reasonableness must be viewed in light of the circumstances, including whether a crisis atmosphere exists. If the Legislature retains a broader immunity (for all actions not grossly negligent or intentional), it should reconsider the 15 day period now prescribed for immunity. A more rational scheme would replace that arbitrary period with a system that reflects the fact that the initial crisis may last for far fewer days in some cases and far more in others.

Finally, we recommend that the Department of Environmental Conservation revise its contingency plan regulations to require that RAC contracts which are an integral part of an approved contingency plan include an agreement subjecting the contractor to the same degree of governmental authority as the plan holder. ADEC should also prohibit by regulation a RAC from terminating or refusing to carry out its duties under a contract and contingency plan, without substantial prior notice to both the plan holder and the State.

TRANS-ALASKA
PIPELINE
AUTHORIZATION
ACT

TO: Michele Brown
Executive Director, Citizens' Oversight Council on Oil and Other
Hazardous Substances

RE: HB 196 research project: Trans Alaska Pipeline
Authorization Act

FROM: Michael J. Frank *Michael J. Frank*

DATE: January 13, 1992

SUMMARY OF MEMORANDUM

Under the federal Trans-Alaska Pipeline Authorization Act of 1973, a holder of the pipeline right-of-way must control and remove any pollution attributable to the activity of the holder, whether the pollution is within or without the right-of-way. This statutory duty is mirrored in provisions of the U.S. Department of the Interior *Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline* with the holders. The holders, all pipeline companies which are subsidiaries of parent oil companies, have made Alyeska Pipeline Service Company their agent under the agreement. The agreement requires Alyeska to have an approved oil spill contingency plan.

After the flow of oil began through the trans-Alaska pipeline, Alyeska received governmental approval of contingency plans covering spills that might occur from tankers berthed at the Valdez Marine Terminal, or elsewhere in Port Valdez and in Prince William Sound. Alyeska now claims it is a mere "volunteer" when it comes to tanker spill response and spill cleanup, a claim Alyeska first made after the T/V Exxon Valdez oil spill.

Alyeska's current position is inconsistent with previously approved Alyeska contingency plans, with federal law and with the federal *Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline*. It is also inconsistent with the State of Alaska *Right-Of-Way Lease For Trans-Alaska Pipeline*. As long as Alyeska holds to its position, however, there may be grave dangers in relying on Alyeska for an effective spill response and cleanup.

MEMORANDUM

I. INTRODUCTION.

Section 11 of ch. 92 SLA 1991 (HB 196) requires the Citizens' Oversight Council "to review the entire subject of response action contractor civil liability and the status of oil spill contingency plan holders". The purpose of the review is to help the Legislature determine whether "the present State laws that require shippers and owners to hold contingency plans and that enable shippers and owners to contract with response action contractors to carry out contingency plans are adequate to protect the public in the event of an oil spill."

Among the research projects the Citizens' Oversight Council authorized for the HB 196 report was that of reviewing the history of the federal Trans-Alaska Pipeline Authorization Act of 1973 (TAPAA). The purpose of the TAPAA review is to determine if there was any discussion of Alyeska as a "response action contractor" or "responder" for tankers operating in the trans-Alaska pipeline system (TAPS) trade. Before this memorandum begins that review, it will be helpful to set out some definitions and to identify some important considerations.

A. Definitions.

"Response action contractor" is defined in HB 196 [sec. 7, ch. 92 SLA 1991, now codified at AS 46.03.826(15)] as:

(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, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release; 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; and

(c) a person who acts as a volunteer and is engaged in a response action

(Emphasis supplied.) As used in the above quote, the word "person" is defined in AS 1.10.060 to include a natural person, a corporation, such as a cooperative corporation formed under AS 10.15.005 - .360, a firm, company, association, organization or partnership.

"Response action contract" is defined in AS 46.03.826(14) to mean a written contract or agreement with respect to a release or threatened release of a hazardous substance; among others, the agreement may be with "another person potentially liable for the release or threatened release under State or federal law." AS 46.03.826(14)(D).

Finally, AS 46.03.828(5) defines a "hazardous substance" to include oil.

B. Important Considerations.

Given those definitions, two facts about response action contractors (RACs) are important to note.

First, what type of legal entity the RAC is may play a crucial role in determining what assets it places at risk in the event it breaches a contract or commits a tort and is sued by an injured party. For example, a RAC partnership and/or its partners can be sued for the acts of the partnership; the same is true of an unincorporated cooperative, which normally can be sued as a separate entity along with its members. In contrast, ordinarily only corporate assets are at risk in a lawsuit against a corporation; the assets of corporate shareholders, members of the Board of Directors or incorporators are rarely at risk.

Second, unless the RAC has entered into a contract directly with the State of Alaska, during a spill response a RAC is normally not subject to State orders. As of this writing, under Alaska law RACs owe the State no special statutory or regulatory duties. Instead, a RAC's actions are governed by the terms of the RAC's response action contract with whomever it contracts.

In sharp contrast, the holder of a contingency plan must satisfy various duties owed to the State which are imposed by statute and regulation. AS 46.04.030; 18 AAC 75. If the plan holder fails to fulfill statutory or regulatory duties, however, it may be subject to

governmental orders, such as from the Department of Environmental Conservation¹ or from federal agencies. It also may be subject to civil and criminal liabilities. AS 46.03.760 and 46.03.790. During a spill response if a holder's RAC decides to quit working because, for example, the RAC claims that the plan holder has breached their contract, State and federal agencies have no immediate legal recourse against the RAC.² Under State and federal laws the agencies' only clear remedy, short of taking over the spill response, is against the plan holder. Even so, if the plan holder has no labor or equipment at the ready to replace the RAC's, then disaster may result.

Thus, what Alyeska is (a RAC or the holder of a contingency plan or mere volunteer responder) in a particular context determines to whom Alyeska may owe a response duty. It also determines what statutory and regulatory duties Alyeska may have and therefore whether it is subject to governmental orders and enforcement actions. Finally, it determines whether Alyeska's actions are immune from damages liability under AS 46.03.825.

If the TAPAA requires Alyeska to respond to oil spills from tankers at the Valdez Marine Terminal, elsewhere in Port Valdez and in Prince William Sound, the State will obviously benefit, assuming federal enforcement of the TAPAA's requirements.³ Moreover, if it is not deemed a RAC but instead deemed the holder of a contingency plan, Alyeska will be subject to State orders and civil and criminal enforcement actions. And, Alyeska will not be entitled to immunity from damages liability under AS 46.03.825.

C. Balance Of This Memorandum.

The balance of this memorandum will be devoted to an analysis of the TAPAA's history. This first requires a brief review of events that preceded the TAPAA's enactment in 1973. Thereafter this memorandum will (1) review TAPAA's Congressional history, (2)

¹ See, e.g., AS 46.03.850 (compliance orders) and 46.03.865 (emergency orders).

² The governments might be able to claim that they are third party beneficiaries of the contract between the RAC and the holder, and therefore able to enforce it for their own benefit. However, this would undoubtedly call for a judicial determination if the RAC refused to follow governmental orders to stay on the spill.

³ Whether the State of Alaska or a private citizen would have standing to sue Alyeska and a private cause of action against Alyeska under the TAPAA is beyond the scope of this memorandum.

describe how the aforementioned federal *Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline* (hereafter, federal agreement) and state *Right-of-Way Lease For Trans-Alaska Pipeline* (hereafter, State agreement) treated the subject of oil spills, (3) review Alyeska contingency plans and certain other Alyeska documents with respect to the Valdez Marine Terminal, Port Valdez and Prince William Sound, and (4) describe Alyeska's legal posture since the T/V Exxon Valdez oil spill.

II. TAPAA HISTORY.

The TAPAA's pre-enactment, enactment and post enactment history combine to show that Alyeska is required to respond to tanker spills of TAPS oil in Alaska waters.

A. General Background 1967 - 1972.

In late 1967, Atlantic Richfield Co. made its first significant oil discovery at Prudhoe Bay. Oil industry lessees of Prudhoe Bay fields almost immediately began planning for a trans-Alaskan pipeline to Valdez. In 1968, Atlantic Richfield Co., Humble Oil & Refining Co. and British Petroleum Corp. formed the then so-called "Trans-Alaska Pipeline System". It was this entity that first applied for permission to construct an all Alaskan pipeline. *Federal Task Force on Alaskan Oil Development: A Preliminary Report to the President* (1969). In May 1969, the involved companies met with the Department of the Interior and submitted route plans. The companies also made a presentation to the United States Senate's Committee on Interior and Insular Affairs.

On June 16, 1969, formal application for the pipeline right-of-way was filed with the Department of the Interior. In August 1969, the Department of the Interior held public hearings in Fairbanks to determine the adequacy of proposed Stipulations to be imposed with respect to the right-of-way grant. On September 9 and 11, 1969, the pipeline companies made another presentation, this time to the full Interior Committees of the United States Senate and the House of Representatives. 119 *Congressional Record - House*, at 27638 (August 2, 1973, remarks of Representative Martin concerning the history preceding the TAPAA's enactment).

In the fall of 1969, the State held its fourth Prudhoe Bay oil and gas lease sale, netting over \$900 million dollars in lease bonus money. In the meantime, the Secretary of the Interior had proposed to lift the Alaska land freeze (Public Land Order 4582) to allow construction of the pipeline across federal lands. On October 16, 1969 the United States Senate Interior Committee held a public hearing on the Secretary's proposal. Public hearings were also held by the corresponding House committee, on Oct. 21 and 28, and November 11, 1969. Eventually both committees approved the Department of the Interior's proposal to modify the land freeze so that the department could proceed with plans to grant the rights-of-way and permits. Id.

At roughly the same time, Congress began consideration of and eventually passed the National Environmental Policy Act of 1970 (NEPA). The act requires federal agencies to prepare an environmental impact statement (EIS) before taking any major federal action that might significantly affect the environment.

Although industry and governmental planning had begun for an all Alaskan pipeline, some citizens and groups firmly opposed the pipeline's construction, because they favored a Canadian route, because of the TAPS environmental effects, or because of unsettled Alaska Native land claims. (The latter claims were not resolved until the Congress' passage of the Alaska Native Claims Settlement Act of 1971.)

In May 1970, environmental organizations sued the Secretary of the Interior to enjoin his attempt to process the permits and rights-of-way for a trans-Alaska pipeline. Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir.)(en banc), cert. denied, 411 U.S. 917 (1973). On the basis of the Mineral Leasing Act of 1920 and NEPA, the District of Columbia District Court granted a preliminary injunction against the issuance of any permits or rights-of-way. After the District Court's injunction was issued, the Secretary of the Interior set out to satisfy NEPA by preparing an EIS.

In the meantime, on August 14, 1970 Alyeska Pipeline Service Company was incorporated in Delaware by its pipeline owner companies. It filed to do business in Alaska as a non-resident

corporation on September 1, 1970.⁴ As of February 1990, Alyeska's principal owner companies were ARCO Pipe Line Co., 21.4%; Exxon Pipeline Co., 20.3%; and BP Pipelines Alaska Inc., 50.0%.⁵

The Department of the Interior's draft EIS was completed in January 1971. After extensive hearings, the final EIS was issued in March 1972. In May 1972, the Secretary of the Interior announced his decision to grant the necessary permits and rights-of-way to Alyeska for a trans-Alaska pipeline. Subsequently, the District Court in Wilderness Society, supra, dissolved its injunction and dismissed the case against the Secretary of the Interior, setting the stage for an appeal to the District of Columbia Court of Appeals. Id., 479 F2d at 851.

⁴ This information comes from the State Department of Commerce and Economic Development, Corporations Section.

Alyeska was formed by seven pipeline companies, all being subsidiaries of parent oil companies. In 1973 these companies, and their percentage ownership shares in Alyeska, were as follows: Atlantic Pipeline Co., a subsidiary of Atlantic-Richfield, 28.08%; Sohio Pipe Line Co., a subsidiary of Standard Oil Co., 28.08%; Humble Pipeline Co., a subsidiary of Exxon Co., 25.52%; Mobil Pipe Line Co., 8.68%; Phillips Petroleum Co., 3.32%; Union Oil Co. of California, 3.32%; and Amerada Hess Corp., 3%. *Hearings Before the Subcommittee on Public Lands of the Interior and Insular Affairs, House of Representatives*, 93d Cong., 1st Sess., on H.R. 9130, Apr. 11, 18, 19, and 30, May 1 and 2, 1973 (Part 1) (hereafter, *House Hearings*), at 554 (testimony of Mr. Spahr from Sohio Pipeline Co.); *Hearings Before The Committee On Interior And Insular Affairs, U.S. Senate*, 93d Cong., 1st Sess., on S. 1081 et al., Mar. 9 and 27 (Part 1), May 3, 1973 (Part 4) (hereafter, *Senate Hearings*), at 202 (testimony of Alyeska President E. L. Patton). According to December 31, 1990 Federal Energy Regulatory Commission (FERC) Annual Reports, Form 6, for each of the foregoing pipeline owner companies, Atlantic Pipeline Co. has been replaced by ARCO Pipe Line Co., a wholly owned subsidiary of Atlantic Richfield Co.; Sohio Pipe Line Co. has been replaced by BP Pipelines (Alaska) Inc., a wholly owned subsidiary of The Standard Oil Company; Humble Pipeline Co. has been replaced by Exxon Pipeline Co.; Mobil Pipe Line Co. has been replaced by Mobil Alaska Pipeline Co., a wholly owned subsidiary of Mobil Oil Corp.; Phillips Petroleum Co. has been replaced by its wholly owned subsidiary Phillips Alaska Pipeline Corp.; Union Oil Co. of California has been replaced by its wholly owned subsidiary UNOCAL Pipeline Co.; and Amerada Hess Corp. has been replaced by its wholly owned subsidiary Amerada Hess Pipeline Corp. In its Form 6, Exxon Pipeline Co. did not identify its parent company.

⁵ See preceding footnote. The information provided by the Corporations Section was as submitted in a required annual report and was current as of February 5, 1990. Because the ownership of only 5% or more shares in Alyeska has to be identified, the other owner companies were not listed in the annual report.

On appeal, the Court of Appeals reversed and reinstated the injunction. The court held that the Mineral Leasing Act of 1920 gave the Department of the Interior authority to grant a pipeline easement only 25 feet in width instead of the 50 feet needed. The court expressly declined to rule at that time on the adequacy of the final EIS under NEPA. *Id.*, 479 F2d at 884 - 87. Reinstatement of the injunction and concern that later legal challenges to the final EIS would further delay construction of the pipeline prompted the introduction of corrective legislation in Congress.

While the above events occupied federal decision makers, in 1972 the Alaska Legislature passed right-of-way legislation governing State owned lands. The oil industry found the legislation objectionable and sued to overturn it. At the same time, the oil industry threatened to hold up pipeline construction until the State legislation was revised to its satisfaction.⁶

B. 1973 Congressional Deliberations.

(1) Senate.

In 1973, the U.S. Senate saw the introduction of numerous bills dealing with the trans-Alaska pipeline controversy. Four of the bills (S. 1040, 1041, 1056 and 1081) dealt generically with pipeline rights-of-way across federal lands.⁷ S. 1081 was Senator Henry Jackson's proposal, and it became the principal focus of Senate deliberations. While it did not deal directly with the TAPS, it was apparent that the Secretary of the Interior would use the bill, if passed, as authority for granting the appropriate rights-of-way and permits for construction of the TAPS.

While there was much testimony and debate in the Senate hearings about the Canadian vs. Alaska route and about the impact of further delays due to NEPA challenges, there was surprisingly little discussion devoted to the marine transportation of oil.

⁶ The foregoing synopsis of State events is from the Alaska Oil Commission's *Final Report, SPILL - The Wreck of the Exxon Valdez*, at 31 - 35 (February 1990).

⁷ S. 970, introduced by Alaska Senators Stevens and Gravel, would have specifically authorized the Alaska route. S. 991, introduced by Senator Walter Mondale, in effect would have required further consideration of a trans-Canadian pipeline to the midwestern United States. *Senate Hearings*, Part 1, at 2.

Environmental matters were discussed in generalities, usually in the context of pointing out the extensive time and effort the Department of the Interior undertook in preparing the EIS.

Through the EIS process, the Department of the Interior had analyzed the proposed pipeline routes and their possible environmental effects. The final EIS cited heavily to Alyeska-generated documents describing the TAPS. See excerpts from Volume 6 of the final EIS at Exhibit A attached. Included within those documents was Alyeska's *Summary - Project Description of the Trans Alaska Pipeline System, August 1971*, excerpts of which are at Exhibit B attached. Of disasters like the T/V Exxon Valdez oil spill, Alyeska's *Project Description* said that

The probability of a major oil spill is remote. It is recognized, however, that the possibility of any accident will always exist to some small degree. Accordingly, a contingency plan is being developed for coping with any oil spill which might occur at any point along the line or in the waters of Port Valdez or Prince William Sound.

(Emphasis supplied.) *Id.* at 5. See also, *id.* at 59 - 60.

There was one mention of the marine segment of the TAPS in the *Senate Hearings* which is noteworthy. In an April 19, 1973 *Detailed Report On Matters Related To A Trans-Alaska Or Trans-Canada Pipeline* to the Senate Committee, The Standard Oil Company (owner of one of the pipeline owner companies) claimed that "the marine segment of TAPS will have a minimal impact on the environment." Report at 18, reprinted in Part 4 of the *Senate Hearings*, at 190 *et seq.* With reference to contingency plans in particular, the company was succinct: "Newly developed oil spill booms and skimming equipment will be readily available to put contingency clean-up plans immediately into effect in the event of an oil spill." *Id.*

While The Standard Oil Company report made no express reference to Alyeska's responsibility for contingency planning, one must bear in mind that the EIS refers to the above noted Alyeska *Project Description* documents in its analysis of the environmental concerns related to the marine segment of the TAPS oil trade. With reference to oil spills, the EIS declared that "Alyeska (citation to Alyeska document omitted) would attempt to prevent these spills...."

Final EIS, Volume 1, at 65, at Exhibit C attached. The EIS then goes on to describe what Alyeska would have in the way of equipment for a marine spill response (including 10,000 feet of floating containment boom), and how Alyeska would have the use of tugs and launches for spill response. *Id.* at 66. Therefore, it does not appear that anyone doubted but that Alyeska would be responsible for contingency planning with respect to the marine segment of the TAPS oil trade.

Senate Interior Committee markup of S. 1081 began in April, 1973. 119 *Congressional Record - Daily Digest*, at D208, 114, 221 - 222, 228, 269, 274, 281 and 336 (1973). The Committee ordered the bill reported out favorably to the full Senate on May 29, 1973. *Id.* Deliberations over S. 1081 began on the floor of the Senate in late June and ended in July, 1973.⁸ For the purposes of this memorandum, the deliberations were largely uneventful, with a few exceptions.

First, Senator Jackson introduced an amendment (No. 328) to S. 1081 that would have made the TAPS permittees liable, without regard to fault, for any damage suffered by Alaska Natives caused by use of the right-of-way. In doing so, he angrily rejected the Department of the Interior's claim, made in a letter to him, that proposed right-of-way Stipulations would adequately protect Alaska Natives. *Id.* at 23859 - 60. What is interesting about this bit of controversy is the department's assertion that, while it thought Senator Jackson's amending language unnecessary,

(a)t the same time, we are determined to prevent the pipeline from causing harm to any person or to any person's property in Alaska. We are equally determined to prevent harm to the environment of Alaska, including its land and water and its vegetation and wildlife. Should any harm nonetheless occur, we want to insure that the harm will be cured so far as is possible. We intend to impose those obligations on the pipeline owners and those who work for them, and we have drafted proposed permit provisions to this end.

⁸ 119 *Congressional Record - Senate*, at 19133 (S. 1081 reported out June 12 from Interior Committee with S. 93-207), 22611 - 14, 22794 - 810, 22798, 23312, 233543 - 54, 23778 - 79, 23859, 23763 - 64, 23777, 23746 - 83, 23854, 23858 - 64, 23880, 23882 - 83, 23887, 23873 - 90, 23909 -10, 23954 - 55 (June 12 - July 17, 1973).

(Emphasis supplied) Id. Thereafter, the department's letter to Senator Jackson sets out what the department asserted were very broad Stipulations that would require the pipeline owners to abate and repair any damage to the environment "arising out of or connected in any way with the construction, operation, maintenance or termination of all or any part of the Pipeline System...." Id. Senator Jackson's amendment was nonetheless agreed to by the full Senate. Id. at 23859.

Second, Alaska's Senator Ted Stevens made the following comments with respect to the marine segment of the TAPS oil trade:

Much has been said about the danger of oil spills on the Alaska route, particularly on the sea leg. Regarding marine oil spills, again very careful study has been given to this and I am convinced that stringent requirements for deballasting ships at Valdez, new ships built with the latest structural design, and stringent operational procedures to avoid collisions and groundings will all contribute to virtually eliminating oil losses at sea.

Opponents of the trans-Alaska pipeline know that every safeguard is being taken to protect the environmental quality of our waterways....

Some of the operational procedures to be enforced are as follows.... All tankers will take aboard a State pilot in Prince William Sound and all pilotage laws will be observed. Alyeska will provide tugs at Port Valdez and all docking and undocking will be tug assisted.

119 Congressional Record - Senate, at 23782 (July 13, 1973). Senator Stevens went on to quote from a June 1972 statement of the Secretary of the Interior that "Contingency plans for cleaning up oil spills must be continually reviewed and proven to minimize the damage in the event any accidents occur. These will be kept current in light of new technology to assure their maximum effectiveness...." Id.

Third, Maine's Senator Hathaway introduced an amendment (No. 348) which provided for absolute liability of the holder of a right-of-way, or the owner or operator of an oil terminal or vessel, for damages irrespective of fault. Id. at 24294 - 95. Senator Jackson

pointed out, however, that the Senate Interior Committee had considered such language but rejected it in favor of section 104(g) of S. 1081. Section 104(g) authorized the Secretary of the Interior to write regulations designed to protect the United States, but it left other liability questions to State law. Senator Stevens, citing proposed Interior Department TAPS Stipulations from the final EIS, asserted that Stipulation 1.7.1 already required that if "through no fault of the pipeline owners or operators damage were to be inflicted in connection with the construction, operation, maintenance, or termination of the pipeline, the owners and operators will be required to repair the damage." *Id.* at 24296. Senator Stevens, therefore, strongly opposed the Hathaway amendment. In apparent response to Senator Stevens' comments, Senator Hathaway eventually withdrew his proposed amendment. *Id.* at 24297.

Finally, there was a lengthy discussion of a proposed amendment to S. 1081 to exempt the final EIS for the TAPS from further court challenge under NEPA, a proposal that passed by a 49 to 48 vote. *Id.* at 24298 - 316.

On July 17, 1973 S. 1081 as amended passed the full Senate by a 77 to 22 margin. *Id.* at 24294 - 97, 24330.

2. House of Representatives.

When the House Hearings began before the House Interior and Insular Affairs Subcommittee on Public Lands, the subcommittee had no less than twelve bills before it dealing with rights-of-way and other public lands issues. Hearings began April 11, 1973 and ended after a series of full Committee markup sessions in late July, 1973. Subsequently H.R. 9130 was reported out favorably to the House for further deliberations.⁹

As in the Senate hearings, the House hearings focused on the choice between a Canadian versus an all Alaskan route, and on the potential impact of further NEPA-related delays.

⁹ 119 *Congressional Record - Daily Digest*, at D217, 243 - 45, 249, 253, 260, 313, 319, 324, 338, 407, 410, 494, 499, 519, 523 - 24, and 529 (April 11, 1973 - July 24, 1973).

At the House hearings, Representative Dellenback inquired of Alyeska officials about the company's position concerning common carrier status for the TAPS. This status, among other things, would require the owner companies of the TAPS to receive approval from the Interstate Commerce Commission¹⁰ for charges imposed on any shipper using the TAPS. Alyeska, as agent for its pipeline owner companies, indicated that it did not oppose common carrier status. *House Hearings*, Part 1, at 537.

Moreover, in the following exchange with Representative Dellenback, Alyeska's general counsel, John Knodell, explained how the owner companies viewed their legal responsibilities:

Mr. Dellenback: May I ask about the nature of the legal responsibility that any of the 7 petroleum companies might have which make up your pipeline service company? Would there be any legal responsibility in the event damage were extreme? Would any of the basic 7 organizing petroleum companies have any responsibility to carry any portion of that burden?

Mr. Knodell: They would have full responsibility, Mr. Dellenback. Alyeska Pipeline Service Co. acts as an agent for them, and only as an agent for them. So, our actions are their actions; yes, sir.

Mr. Dellenback: Normal corporate shield of responsibility so far as liability is concerned would not pertain in this instance?

Mr. Knodell: That is correct, Mr. Dellenback.

Id. at 538 - 39.

As reported out to the House, sections 201 - 209 of title II of H.R. 9130 dealt specifically with the TAPS. See 119 *Congressional Record - House*, at 27680 - 81 (Aug. 2, 1973), Exhibit D attached. Among other things, title II effectively put an end to any further court challenge under either the Mineral Leasing Act of 1920 or

¹⁰ Interstate Commerce Commission tariff approval functions for pipeline common carriers on federal lands are now performed by the FERC. The State of Alaska Public Utilities Commission (APUC) regulates the carriers' intrastate activities.

NEPA; authorized the Secretary of the Interior to grant the appropriate rights-of-way and permits with terms and conditions to protect Alaska Natives from damages; placed restrictions on the export of the TAPS oil overseas; and defined the TAPS by reference to the final EIS definition.

Section 207 of title II is the most important section, because it dealt specifically with discharges of oil from vessels. Pertinent parts of section 207 follow:

Section 207. (a) Except when the holder of a permit or right-of-way granted pursuant to this title can prove that damages caused by the holder's activities conducted at any point along the route of the proposed Alaskan pipeline were caused by an act of war or by negligence of the United States or other government, such holder shall be strictly liable to all damaged parties...without regard to fault for such damages.

(b)(1) The Secretary shall direct as a term or condition of any permit or right-of-way...that except when the holder...can prove that damages resulting from discharges of oil in violation of section 11(b)(2) of the Federal Water Pollution Control Act...were caused by an act of war or by the negligence of the United States or other government such holder shall be strictly liable without regard to fault to all parties...for all damages resulting from such discharges of oil from, or involving vessels owned, chartered, operated, or leased by or for such holder, affiliate of such holder, shareholder, partner, or other constituent part of the holder, or affiliate of such shareholder, partner, or other constituent part of the holder, where the cargo of such vessel is oil transported by the trans-Alaskan pipeline....

Id. at 27681 at Exhibit D attached. "Affiliate" also was defined in section 207 and was all encompassing. Id.

Representative Dellenback claimed responsibility for section 207, saying:

In order to strengthen H.R. 9130 in this regard, I offered two amendments...which I was pleased to have accepted.... These provisions, which are in the bill before us as section 207, are very tough liability clauses covering both the land and marine

legs of the trans-Alaskan route. Their effect will be to impose strict liability, regardless of fault, on pipeline permit holders for damages resulting from activities related to the pipeline itself or to the marine leg of the route.

We have received assurances from Alyeska and other commercial interests involved in the pipeline that they are convinced the trans-Alaska route can be constructed as to be environmentally safe. The strict liability clauses put the burden on them to prove that their assurances are completely valid....

119 *Congressional Record - House*, at 27644 (August 2, 1973, remarks of Representative Dellenback).

Representative Don Clausen similarly described the impact of section 207, saying

This section imposes similar no-fault liability for damages resulting from discharges of oil...if the oil is discharged from a vessel owned, chartered, operated, or leased by the holder of a right-of-way or permit for the trans-Alaskan pipeline, or its affiliate, or if the cargo of the vessel is oil transported through the pipeline. The word "affiliate" is broadly defined to include, among others, parent and subsidiary companies, the purpose being to bring within the scope of the section the oil companies that own the oil being transported....

Id. at 27635 (August 2, 1973, remarks of Representative Clausen). See also, id. at 27650 (remarks of Representative Saylor) ["Sections 207(b) and 207(c) deal with unlimited liability of the oil companies on the marine leg of the TAPS system."]

Although section 207's language was broad, Representative John Dingell was unsatisfied with it. While he agreed with the foregoing descriptions of the strict liability impact of section 207 on the holders for any marine discharge of TAPS oil, he was concerned that the United States might not be reimbursed for cleanup costs. He said this was because the "the Federal Water Pollution Control Act, which never envisaged spills from the trans-Alaska pipeline...imposes an \$8 million limitation on the liability of an on-shore facility for the cost of cleaning up its oil spill." Id. at 27503

(July 31, 1973, remarks of Representative Dingell). He thus proposed a new subsection (d) for section 207. His amendment read:

(d) If any area within or without the right-of-way granted by this Title is polluted by any operations conducted by or on behalf of the person granted such right-of-way, and such pollution damages aquatic life, wildlife, or public or private property, the control and total removal of the pollutant, whatsoever found, proximately resulting therefrom shall be at the expense of such person including any administrative and other costs incurred by the Secretary or any other Federal agency. Upon the failure of such person to control and recover said pollutant adequately the Secretary, in cooperation with other Federal, State, and local agencies, or in cooperation with such person, or both, shall have the right to accomplish the control and removal at the expense of such person.

(Emphasis supplied.) Id. at 27054.

Representative Dingell's amendment was debated on the floor of the House on August 2, 1973. Representative Dingell pointed out that the language of his amendment was drawn from 43 Code of Federal Regulations § 250.43, the Department of the Interior's regulations governing oil operations on the Outer Continental Shelf(OCS). The OCS was not subject to the Federal Water Pollution Control Act. Representative Dingell explained that the amendment's purpose was to remove the dollar limitation for damages and to provide for reimbursement for the cost of government cleanup. Id. at 27717 (August 2, 1973, remarks of Representative Dingell). There was no comparable language in the Senate bill. Id. (remarks of Representative Dellenback).

Representative Dingell's amendment passed by a vote of 174 to 2. H.R. 9130 as amended then passed the full House by a vote of 356 to 60. Id.

3. House/Senate Conference.

Thereafter the House and Senate appointed conferees to iron out the differences between H.R. 9130 and S. 1081. The House and Senate conferees met in September and October, 1973 before final

agreement on the TAPAA was reached.¹¹ On November 11, 1973, the Senate agreed by a vote of 80 to 5 to the Conference Committee substitute for S. 1081.¹²

The result with respect to section 207 of H.R. 9130 was section 204(a) - (c) of tit. II of Pub.L. 93-153 (TAPAA). In highlighting the conferees' agreement with respect to section 204, Senator Jackson said, in pertinent part:

Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault, and without regard to ownership of the land or resource involved if the land or resource is relied upon for subsistence or economic purposes, for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. Strict liability is limited to \$50,000,000 for any one incident, and liability for damages in excess of that amount will be determined in accordance with ordinary rules of negligence.

Subsection (b) imposes on the holder of the right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

MARINE LEG LIABILITY

Subsection (c) imposes on the owner or operator of a vessel that is loaded with oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel ¹³

(Emphasis supplied.) 119 *Congressional Record - Senate*, at 36809 (Nov. 12, 1973, remarks of Sen. Jackson). Virtually identical language was used in the *Conference Report No. 93-924* to describe section 204 of TAPAA.¹⁴

¹¹ 119 *Congressional Record - Daily Digest*, at D610, 621, 631, 652, 657, 684, 692, 698, 703, 714, 729, 745, 747.

¹² *Id.* at 28477 - 79, 28875, 36808 - 23.

¹³ Senator Jackson went on to describe the TAPS Liability Fund and how it would work.

¹⁴ See a reprint of *Conference Report No. 93-924* in 2 *U.S. Code, Cong. & Admin. News*, *supra*, at 2523 - 2525 (1974).

As enacted in 1973, subsection (b) of section 204 of the TAPAA read:

If any area within or without the right-of-way or permit area granted under this title is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

43 U.S.C. 1653(b). The thrust of this language is not much different than that proposed by Representative Dingell as a new section 207(d) for H.R. 9130, quoted above, and adopted as part of H.R. 9130 as it passed the House.¹⁵ What appears to have happened in Conference Committee was a foreshortening of bill language, but no change in the Congressional goal of the imposition of strict liability for damages and of containment and cleanup responsibility on the holders.

C. Litigation Over The Meaning Of The TAPAA's Section 204(b).

At this point, a short digression from Congressional history to the U.S. Court of Claims informs the analysis of the TAPAA.

In February 1978, a saboteur detonated an explosive charge which breached the pipeline and caused an oil spill. Alyeska cleaned up the spill at a cost of well over \$1 million. Alyeska eventually sued the United States to recover its cleanup costs under a provision of the federal Water Pollution Control Act, 33 U.S.C. § 1321. The act allowed costs recovery from the United States when the organization

¹⁵ However, unlike section 207(d) of H.R. 9130, the TAPAA's section 204(b) did not use the "affiliate" language. Nor was, for that matter, the TAPS defined in the TAPAA as it had been in H.R. 9130's section 210.

cleaning up the spill could prove the spill was caused by the act of a third party.

The United States denied liability. It asserted that the TAPAA, not the Water Pollution Control Act, governed spills from the TAPS. It argued that under TAPAA's section 204(b), the right-of-way holders and their agent, Alyeska, were responsible for spill cleanup. Alyeska Pipeline Service Co. v. United States, 649 F.2d 831, 227 Ct. Cl. 297 (U.S.Ct.Cl.) cert. denied 454 U.S. 964 (1981).¹⁶

Among other arguments, Alyeska and its owners argued that section 204(b) did not apply because the oil discharge did not result from "any activities conducted by or on behalf" [language from section 204(b)] of them, but resulted from the acts of a saboteur. The court rejected Alyeska's argument, holding that the "cause of the breach is immaterial in determining whether the discharge was attributable to the plaintiffs' 'activities.'" 649 F.2d at 832. While the court agreed with Alyeska that Representative Dingell's narrow purpose in his amendment to H.R. 9130 was to remove the Water Pollution Control Act's cap on the amount of cleanup costs the United States could seek reimbursement for, the court found that the "language, intent, and effect of the provision were not so limited." Id. at 833. Instead, the court held that section 204(b) "added to the Pipeline Act a new provision making the pipeline owners and operators responsible for the total clean-up costs without regard to whether they or the United States did the work." Id.

While not in the context of an oil spill occurring in Port Valdez or Prince William Sound, the Court of Claims' broad reading of section 204(b) of the TAPAA is entirely consistent with the thesis that in TAPAA Congress intended the TAPS holders to be responsible for tanker spills. In fact, from the inception of the TAPS until just after the T/V Exxon Valdez oil spill Alyeska undertook the duty to respond to tanker spills, as is explored more fully in sections IV et seq. of this memorandum.

D. OPA 1990 Changes To The TAPAA.

¹⁶ This was not the first time that Alyeska sued the United States in the Court of Claims over the TAPAA. It also sued seeking a refund of fees paid to the Department of the Interior for the government's expenses incurred in processing the permits granted to Alyeska to build and operate the TAPS. Alyeska Pipeline Service Company v. U.S., 624 F.2d 1005 (Ct. Cl. 1980).

In the Oil Pollution Act of 1990 (OPA), Congress altered the TAPAA in various ways. See tit. VIII, § 8001 of Pub. L. 101-380, August 18, 1990, 104 Stat. 564. Of importance here are the alterations to section 204(b) shown in the following quote (additions underlined and deletions bracketed):

If [any area] any area in the State of Alaska within or without the right-of-way or permit area granted under this title is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

43 U.S.C. § 1653(b).

The amendments to section 204(b) derive from title II, section 201(a) of both S. 686 and H.R. 1465 as introduced. The H.R. 1465 provision eventually became section 401 of the House-passed bill. The House report accompanying H.R. 1465 says of the amending language:

This section amends the liability provisions of the Trans-Alaska Pipeline Authorization Act to reflect that oil spilled into or upon the navigable waters of the United States will be covered by the provisions of the new Oil Pollution, Prevention, Response, Liability, and Compensation Act of 1989. The section restricts coverage of the Trans-Alaska Pipeline Authorization Act liability provisions to spills in the State of Alaska for spills occurring from the pipeline. It also repeals the liability provisions for spilling of oil into the navigable waters in order to conform with the new liability provisions in the bill. The Trans-Alaska Pipeline Liability Fund is retained for the payment of claims which arise prior to the date of enactment of this Act.

The Trans-Alaska Pipeline Authorization Act established liability for damages from activities along or in the vicinity of the Alaskan pipeline right-of-way and for discharges of oil from vessels loaded at terminals for the Trans-Alaska pipeline....

H. Rep. No. 101-241 to accompany H.R. 1465, Part 1, 101st Cong., 2d Sess., at 50(1990).

The Senate report to accompany S. 686 said of section 201:

Section 201 makes clarifying amendments to the Trans-Alaska Pipeline Authorization Act(43 U.S.C. § 1653). The amendments in this Act make it clear that the removal liability of the permit holder extends only to activities relating directly to the Trans-Alaska Pipeline. Additional language makes the Trans-Alaska Pipeline Act removal liability provisions inapplicable in those situations where this Act applies. In all other instances, those provisions in the Trans-Alaska Pipeline Authorization Act relating to removal costs and liability remain in effect.

Senate Report No. 101-94, 101st Cong., 2d Sess. at 24 (1990).

The differences between the Senate and House versions of OPA were ironed out in Conference Committee. The resulting Conference Report describes the amendments to section 204(b) of the TAPAA as follows:

Section 401 of the Senate amendment limits the application of section 204(b) of the TAPS Act to removal costs in the State of Alaska which would not otherwise be covered by the regime established by the Senate amendment.

Section 8101 of the House bill exempts the Trans-Alaska Pipeline System (TAPS) (pipeline, terminal and related onshore facilities) from the liability regime established by the Oil Pollution Act of 1990 for similar facilities. Pursuant to section 204(a) of the TAPS Act, the holder of the pipeline right-of-way is strictly liable for all removal costs and strictly liable for up to \$50 million for damages in connection with activities in the vicinity of the right-of-way. Section 8101 of the House bill amends the TAPS Act to remove the cap on strict liability for

damages, to provide that damages must be caused solely by government negligence to provide a defense to strict liability, and to clarify that section 204(b) of the TAPS Act applies to damages caused by activities which are related to TAPS including operation of the terminal.

The Conference substitute accepts the House provision with the exception that section 204(a)(2) of the TAPS Act is amended to hold the right-of-way holder strictly liable for \$350 million in damages. Liability standards under sections 204(a) and (b) of the TAPS Act, as amended, will apply until TAPS oil is loaded aboard a vessel. TAPS Act liability shall apply if oil is spilled during the loading process at the terminal. Any subsequent discharge from the vessel shall be governed by the liability regime established by the Oil Pollution Act of 1990.

(Emphasis supplied.) *H.R. Conference Report No. 653*, 101st Cong. 2d Sess., at 171 (1990).

Liability has been emphasized in the above quote because liability for damages caused by a spill is conceptually different than the allocation of the duty to respond to a spill.¹⁷ Although Alyeska's liability for damages for spills of TAPS oil in marine waters was somewhat limited by the OPA amendments to the TAPAA, the holders' basic responsibility to contain and cleanup a marine spill of TAPS oil was not eliminated. In that regard section 204(b) of the TAPAA was left unchanged, except that now response duties of the holders are restricted to spills of TAPS oil which affect the state of Alaska. The restricted duty presumably extends to any TAPS oil spilled within the jurisdictional limit of Alaska's waters, or which is carried into Alaska waters after its initial discharge.

Thus, for the purpose of Alaska coverage, section 204(b) of the TAPAA is not much different today than it was when enacted in 1973.

¹⁷ For example, while AS 46.04.020 makes the person who discharges the oil responsible for cleaning it up, AS 46.03.822 makes the owner of the same oil strictly liable for the damages the oil causes and potentially liable for civil penalties under AS 46.03.758. Thus, even though the owner of the oil may not have caused the spill or be required by statute to clean it up, the owner may still incur financial liabilities.

IV. THE 1974 AGREEMENTS.

Within months after the TAPAA's passage in 1973, both State and federal governments entered into agreements with Alyeska's owner companies granting rights-of-way across State and federal lands.¹⁸

The federal agreement was executed on January 23, 1974. The very opening paragraphs of the federal agreement declare that the parties to it were "taking into consideration the national authorizations, directives, and policies expressed in applicable legislation, including Section 202 of the Trans-Alaska Pipeline Authorization Act, 87 Stat. 584, *et seq.* (1973)." Federal agreement, at 1. In interpreting the language of the federal agreement, therefore, Congressional intentions in the TAPAA are of great importance.

As the Department of the Interior promised in the final EIS and to Congress, the federal agreement contains express provisions in its Stipulations governing oil spill contingency plans. Stipulation 2.14, at D-45 - 46, Exhibit E attached. Stipulation 2.14 in effect requires Alyeska to submit a contingency plan to the Department of the Interior's Alaska Pipeline Office for its approval; the Stipulation's subsection 2.14.4 requires the total removal and cleaning up of any discharge of oil from "the Pipeline System". *Id.* "Pipeline System" is broadly defined in Stipulation 1.1.1.22 at D-8 with, however, no express mention of vessels. See Exhibit E attached.

The State's agreement was executed May 3, 1974. Like the federal agreement, it also contains Stipulations. Stipulation 2.14 at A-45 requires Alyeska to submit a contingency plan to the Department of Natural Resources for its approval. Exhibit E attached. Like the federal agreement, the State agreement's Stipulation 2.14.4 requires cleanup of any oil discharged "from the Pipeline, the Valdez terminal facility, or any storage or refueling facility or equipment". "Pipeline" is broadly defined at Stipulation 1.1.1.33, again without expressly mentioning vessels. *Id.* at A-8.

¹⁸ As of 1974 the companies were: Amerada Hess Corp., ARCO Pipe Line Co., Exxon Pipeline Co., Mobil Alaska Pipeline Co., Phillips Petroleum Co., Sohio Pipe Line Co., and Union Alaska Pipeline Co. Alyeska became the companies' common agent as was required by the agreements.

Nonetheless, the State and federal agreements contain broad language about the responsibility of the pipeline owner companies to abate pollution. For example, section 22 of the State agreement, at 16, requires that:

Lessees shall prevent or, if the...condition already exists...
abate...any physical...condition, existing or occurring at any
time...

* * * *

(2) that arises out of, or could affect adversely, the...
operation...of all or any part of the Pipeline; and

(3) that causes or threatens to cause...

* * * *

(b) serious harm or damage to the environment....

(Emphasis supplied.) Virtually identical language is in the federal agreement. Federal agreement, section 24A at 17. Although the definition of Pipeline (and Pipeline System) does not expressly mention vessels, clearly marine oil spills might "affect adversely, the operation" of the TAPS.¹⁹

V. CONTINGENCY PLANS BEFORE THE T/V EXXON VALDEZ SPILL.

Under the first and all subsequent Alyeska contingency plans approved before the T/V Exxon Valdez oil spill, Alyeska was required to respond to tanker spills of TAPS oil in Port Valdez and Prince William Sound.

A. The Initial Contingency Plans.

Construction of TAPS started in 1974. With construction startup Alyeska updated its 1971 *Summary - Project Description Of The Trans Alaska Pipeline System* with a new one in September 1974. See Exhibit F attached. The document describes, at 20, planned response to a marine spill "connected with ship loading activities at Valdez." To some extent the updated 1974 *Project Description* varies from the 1971 *Project Description* in that spills from tankers in Port Valdez or Prince William Sound proper are not

¹⁹ To cite one obvious and recent example, the Coast Guard closed the Port of Valdez for a time immediately after the T/V Exxon Valdez oil spill; a slow down of tanker traffic and crude oil flow followed for a number of weeks.

discussed in the 1974 version. In fact, however, Alyeska's first oil spill contingency plans contained components for coverage of spills arising out of tanker loading operations at the Valdez Marine Terminal (VMT) and tanker spills enroute to and from the VMT.

The lengthy history of the submission and approval of Alyeska's first and second contingency plans is set out in the Alaska Oil Spill Commission's *SPILL - The Wreck of the Exxon Valdez, Final Report*, at 37 - 40 (February 1990).²⁰ The Commission's *Final Report* indicates that the submission and approval process was lengthy, and apparently unsatisfactory and confusing to many governmental personnel involved. A few things stand out in this history.

First, Alyeska's "Preliminary Draft" of *Oil Spill Contingency Plan Prince William Sound, March 1977* contemplated tankers "owned, operated or contracted" by Alyeska. See attached Exhibit G. The document asserts in part:

Alyeska Pipeline Service Company and the Owner Companies recognize and assume the liabilities imposed upon them under various Federal and State statutes and regulations, Federal Right-of-way, the State Right-of-Way Lease and the applicable Stipulations incorporated therein. It is to be noted that clean-up operations within the areas of liability and responsibility so imposed be conducted by Alyeska as Agent for the Owner Companies and will be conducted in such a manner to not require assumption of control of such cleanup operations by federal or State officials under applicable statutes, regulations, agreements or stipulations Trans-Alaska Pipeline operations, including spills within the right-of-way or related facilities under the ownership or control of Alyeska or the Owners.

Summarily, Alyeska will direct cleanup operations of spills resulting from:

Marine Terminal at Valdez

²⁰ The Alaska Pipeline Office within the Department of the Interior recently retrieved TAPS related documents from the 1970s which had been stored in the Federal Archives & Records Center in Seattle. It has been beyond the scope of work for this project to review these voluminous documents and others held by State and federal agencies that may be pertinent to the first and later contingency plans.

Operation, involving Alyeska owned, operated, or chartered tankers carrying or destined to carry crude oil transported through the Trans-Alaska Pipeline System, occurring at the Valdez Terminal in Port Valdez, within Valdez Arm, or within Prince William Sound

(Emphasis supplied.) *Id.* at 100-5 - 100-6, Exhibit G attached. Alyeska's 1978 plan as approved, however, read quite differently with respect to contingency plan coverage for tankers:

Alyeska Pipeline Service Company and the Owner Companies recognize and assume the liabilities imposed upon them under various Federal and State statutes and regulations, Federal Right-of-way, the State Right-of-Way Lease and the applicable Stipulations incorporated therein. It is to be noted that clean-up operations within the areas of liability and responsibility so imposed be conducted by Alyeska as Agent for the Owner Companies and will be conducted in such a manner to not require assumption of control of such cleanup operations by federal or State officials under applicable statutes, regulations, agreements or stipulations.

Summarily, Alyeska will direct cleanup operations resulting from:

Trans-Alaska Pipeline operations, including spills within the Right-of-Way or related facilities under the ownership or control of Alyeska or the owners.

Marine Terminal at Valdez

Operation, involving tankers carrying or destined to carry crude oil transported through the Trans-Alaska Pipeline System, occurring at the Valdez Terminal, in Port Valdez, Valdez Arm or Prince William Sound.

(Emphasis supplied.) Alyeska *Oil Spill Contingency Plan General Provisions August 1978*. See Exhibit H at 1-3 attached. Thus, the plan required Alyeska to provide spill response for tanker spills at the VMT, in Port Valdez and in Prince William Sound. Moreover, Alyeska openly construed the State and federal agreements and

applicable laws as requiring it to provide such spill response coverage.

B. Later Contingency Plans.

Subsequent contingency plans, until the T/V Exxon Valdez oil spill, also had response components for spills from tankers berthed at the VMT and from tankers in Port Valdez and Prince William Sound. Alaska Oil Spill Commission *Final Report*, supra, at 37 - 61.²¹

Indeed, Alyeska routinely notified tankers visiting the VMT of that fact. For example, Alyeska's January 1979 *Trans Alaska Pipeline Port Information Manual Valdez Alaska*²² told visiting tankers that "The Terminal has a Contingency Plan for oil spills that occur in Port Valdez and Prince William Sound. This plan will go into effect immediately when a spill occurs." Exhibit I attached, at 19-5, section 19.4. Alyeska's October 1988 *Valdez Port Information Manual (Second Edition)* and its accompanying *Tanker Handbook* indicate the same. Exhibit J attached.

It is significant that for twelve years (1977 - 1989) Alyeska openly shouldered the legal obligation to respond to tanker spills at the VMT, in Port Valdez and in Prince William Sound. This is so because how the parties actually operated in implementation of the federal and State agreements would ordinarily be given great weight

²¹ In 1980, the Alaska Legislature enacted AS 46.04.030. The statute forbids operation in the state of Alaska of an oil terminal or tank vessel (whether or not part of the TAPS trade) unless the owner or operator first secures approval of a oil spill contingency plan from the Department of Environmental Conservation. The statute gave the Department of Environmental Conservation a clearly defined role in the response planning for oil spills, a role that varies slightly from that of the Department of Natural Resources, which enforces the State agreement. The 1980 statute did not say that it was intended to relieve the pipeline owner companies from the contingency planning duties they undertook in the State agreement. Moreover, it could not and did not purport to alter the federal agreement or the TAPAA.

²² The *Port Information Manual*, according to Alyeska, "establishes contractual terms and conditions that vessels accept by calling at the Valdez Marine Terminal." Letter from Alyeska's C.F. O'Donnell, Alyeska Terminal Superintendent, amending the 1988 *Manual*, at Exhibit J attached. While Alyeska imposes contractual conditions on tankers visiting the VMT, it is apparently arguing that tankers at berth are nonetheless not within its operational control and therefore tanker spills at berth are not within its contingency planning responsibility.

by a court in determining their meaning no matter any alleged ambiguities in language used in the agreements.

VI. ALYESKA'S NEW LEGAL STANCE AFTER THE T/V EXXON VALDEZ OIL SPILL.

Since the T/V Exxon Valdez oil spill, Alyeska has publicly denied that it has ever been required to respond to a tanker spill of TAPS oil. Today Alyeska asserts that it will respond to a tanker spill only as a "volunteer".

A. Litigation Between The State And Alyeska And Its Owners Over The State Agreement.

The State sued both Alyeska and its owner companies for damages arising out of the T/V Exxon Valdez oil spill. State of Alaska vs. Exxon Corp., Alyeska Pipeline Service Company et al. Alaska Sup. Ct., 3rd Jud. Dist., 3AN 89 06 852 CIV. The State's *Complaint For Compensatory And Punitive Damages, Civil Penalties and Injunctive Relief* alleges, among other things, that Alyeska and the companies "submitted to the Alaska Department of Natural Resources contingency plans for the prevention, containment and clean up of oil spills, including contingency plans applicable to tanker spills in Prince William Sound" and that they breached their duty under the State agreement in their inadequate response to the spill. *Complaint*, paras. 98 - 100, at 31.

Alyeska and the companies' *Answer* to the *Complaint* admits submitting a contingency plan, but only to the Department of Environmental Conservation.²³ Alyeska denies a breach of any duty in its response to the spill. *Answer*, para. 36 at 7, para. 98 at 13, and paras. 99 - 100 at 13.

²³ Again, it is important to emphasize that under AS 46.04.030(a) (see footnote 21 above), as the operator of an oil terminal facility Alyeska's statutory duty to have a Department of Environmental Conservation approved contingency plan for the VMT is not necessarily coextensive with the contingency planning and cleanup duties Alyeska may have under the State agreement administered by the Department of Natural Resources, under the federal agreement or under the TAPAA.

Significant claims in the State's lawsuit against Alyeska and its owner companies are still pending. While the State's *Complaint* alleges that Alyeska has a duty to respond to tanker spills in Prince William Sound by virtue of the State agreement²⁴, Alyeska's *Answer* makes it apparent that unless and until there is a final judicial ruling or settlement of the issue in the case, a public change in Alyeska's current legal position, determinative federal or State administrative action against Alyeska or a change in existing law, there will remain uncertainty as to Alyeska's status.

B. Alyeska's Current Stance - Only A Volunteer Responder For Tanker Spills.

While in years past Alyeska undertook the duty of spill response for tanker spills, it now takes the position that it is at best a "volunteer" responder when spills from tankers occur, even if a spill occurs from a tanker while it is at berth at the Valdez Marine Terminal. The word "volunteer" is Alyeska's. It is Alyeska's way of claiming that it owes the public no legal duty to respond to tanker spills of TAPS oil.

To understand Alyeska's new legal position, one needs first look at the language of the current contingency plans.

²⁴ The federal government has sued Alyeska and its owner companies in a civil action for events arising out of the T/V Exxon Valdez oil spill and alleges that the companies violated sections 204(a) - (c) of the TAPAA and the federal agreement. *U.S. v. Alyeska Pipeline Service Company et al.*, U.S. Dist. Ct. Alaska, A91-082 Civil. Alyeska has not yet filed its *Answer* to the United States' *Complaint*. It should be noted that recently the U. S. General Accounting Office (GAO) was very critical of the Bureau of Land Management's (BLM) administration of the federal agreement, particularly with respect to the review of contingency plans. *GAO Report to the Chairman, Subcommittee on Water, Power, and Offshore Energy Resources, Committee on Interior and Insular Affairs, House of Representatives, Trans-Alaska Pipeline Regulators Have Not Ensured That Government Requirements Are Being Met*, at 40 (July 19, 1991). As far as is known, since the T/V Exxon Valdez oil spill the BLM has taken no action under the federal agreement to require Alyeska to be prepared to respond to tanker spills of TAPS oil while tankers are in Port Valdez or in Prince William Sound. Since the land on which the VMT sits became State-owned land, BLM also has not concerned itself with a contingency plan for the VMT. On the other hand, while initially the State leased the VMT uplands and tidelands to Alyeska, eventually Alyeska purchased them. Because of this purchase, Alyeska claims that the State agreement no longer applies to the VMT.

1. VMT plan.

Alyeska's current contingency plan for the VMT was approved in the early summer of 1991 by the Department of Environmental Conservation.²⁵ The plan clearly states that Alyeska does not believe it owes a duty to the State (or, presumably, to the federal government) to respond to spills from tankers while at berth or while in transit in Port Valdez. Alyeska states that it will only respond to "small" tanker spills at the VMT, but in any event such spills are not its "responsibility":

The *Valdez Terminal Oil Spill Contingency Plan* addresses Alyeska's spill response on both land and water for spills originating from Terminal facilities, or small spills from tankers.

* * * *

Response to spills from tankers berthed at the Terminal is described in the Valdez Terminal Oil Spill Contingency Plan. Although a spill from a tanker is not the responsibility of Alyeska, Alyeska will provide oil spill response for a discharge from the tanker while it is berthed. Costs incurred in providing this response and cleanup are billed to the spiller.

(Emphasis supplied.) Exhibit K, at 6 attached. Thus, Alyeska does not perceive that it owes any legal duty to the public to undertake cleanup of a tanker spill while the tanker is at berth.²⁶

Alyeska's present denial of cleanup responsibility for VMT tanker spills is inconsistent with the coverage provided by the

²⁵ According to Kevin O'Shea, the department's oil spill contingency plan representative in the State's Pipeline Coordinator's Office, the Department of Environmental Conservation approved the plan after receiving no comments from the Department of Natural Resources. Recently, the TAPS-related functions of the two departments and that of the Department of Fish & Game have been administratively combined within the State's Pipeline Coordinator's Office. That Office now occupies space in downtown Anchorage across the hall from the BLM's Alaska Pipeline Office.

²⁶ For spills that Alyeska calls "significant", Alyeska says that the "personnel, equipment, and organization described in the Tanker Spill Prevention and Response Plan for Prince William Sound will join in the response." *Prince William Sound Tanker Spill Prevention And Response Plan*, section 102.4 at 100-4. More about this plan in the text that follows.

previous contingency plans. It is also inconsistent with TAPAA's section 204(b) and with the federal and State agreements.²⁷

2. Port Valdez and Prince William Sound Plan.

After the T/V Exxon Valdez oil spill and in response to an Emergency Order issued by former Department of Environmental Conservation Commissioner Dennis Kelso, Alyeska established the Ship Escort/Response Vessel System (SERVS) to support and escort tanker traffic in and out of Port Valdez.²⁸

Later in 1989, Alyeska created the *Prince William Sound Tanker Spill Prevention & Response Plan* with SERVS as its core. According to Alyeska, this plan is not its contingency plan for marine spills in Port Valdez or Prince William Sound and it is not the holder of the plan under AS 46.04.030(a) or, presumably, under the State or federal agreements. Instead

(T)his Plan covers oil discharges from vessels calling at the Terminal (hereinafter "spills") whose owners, operators or charterers have entered into a contract with Alyeska to provide oil spill response services in accordance with this Plan ("contracting vessel").

Id. section 101 at 100-1. In other words, for such spills Alyeska claims that it serves only as a RAC and only for those tankers which

²⁷ It is also inconsistent with a reasonable construction of AS 46.04.030(a). Under AS 46.04.030, the Department of Environmental Conservation may not approve an oil terminal facility's oil spill contingency plan unless the applicant proves that it has "access to sufficient resources to...contain, clean up, and mitigate potential oil discharges from the facility...." AS 46.04.030(e). "Oil terminal facility" is defined in AS 46.04.900(11) to include an onshore facility and its "related appurtenances". Presumably Alyeska's argument under AS 46.04.030 is that a vessel tethered to a VMT berth and either deballasting oily water or taking on oil is not a "related appurtenance", and thus the VMT's contingency plan need not include coverage for spills from the tanker. Even if this argument has merit, it would not negate claims under the State and federal agreements and the TAPAA that Alyeska has a legal duty to respond to spills from tankers while they are at the VMT.

²⁸ SERVS is just a name Alyeska uses to describe the assets and labor Alyeska devotes (according to Alyeska, as a volunteer or RAC) to spill prevention and response within Port Valdez and Prince William Sound. SERVS is not a separate formal legal entity, corporation, or cooperative apart from Alyeska itself.

have entered into a response action contract²⁹ with Alyeska. According to Alyeska, the vessel owner, operator or charterer-by-demise is the contingency plan holder, not Alyeska. It asserts:

This...Plan for Prince William Sound has been designed and developed to be included as part of the statutorily required vessel oil spill contingency plans. Alyeska offers to provide initial oil spill response services as described in this plan as a spill response contractor to owners, operators or charterers of vessels picking up North Slope crude at the Valdez Marine Terminal to assist them in meeting their contingency plan obligations under the new State law (AS 46.04.030).

* * * * *

Alyeska developed, in response to the State of Alaska's emergency order in 1989, a "Prince William Sound Tanker Spill Prevention and Response Plan." This plan has been utilized by ship owners to obtain their conditionally approved Oil Spill Contingency Plan.

State and federal law place 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 does not own or operate tankers. However, to centralize prevention and initial response efforts on behalf of those tankers, Alyeska has developed the Prince William Sound plan. Alyeska will contract with vessels to provide the initial oil spill response service. Those contracts and the vessel plans will provide for an orderly transition of spill response management from Alyeska to the vessel in the event of a large spill.

²⁹ It is very important to note that under Article II of the typical Alyeska *Agreement For Oil Spill Response Services*, Alyeska agrees to provide only "initial" oil spill response services and may withdraw its resources from an ongoing spill response on 72 hours notice to the contracting vessel. Moreover, under the standard language of its Article VII, the *Agreement For Oil Spill Response* may be terminated "immediately" by Alyeska for a multitude of reasons, including but not limited to a violation of Alyeska's *Port Information Manual* or a violation of any of a number of listed conditions that might demonstrate to Alyeska the contracting vessel's financial instability. Alyeska asserts that the terms of these agreements with contracting vessels are "strictly a matter of commercial contract" outside governmental control. See the Exhibit and text accompanying footnote 30 below.

Statement of Michael F.G. Williams, Vice President, Environment & Contingencies, Alyeska Pipeline Service Company, Before the Citizens' Oversight Council, January 17, 1991, at 2-3.

Alyeska's position, as set out in Mr. Williams' *Statement*, is bottomed on this non sequitur: because AS 46.04.030 requires a tanker to have a contingency plan in order to operate in the state of Alaska, Alyeska owes no legal duty to respond to a tanker spill of TAPS oil in Alaska waters. Alyeska's position can only be correct if the federal and State agreements and the TAPAA, which were not expressly altered by AS 46.04.030, impose no response duty on Alyeska and AS 46.04.030 does not require an oil terminal facility to respond to a tanker spill while the tanker is at berth.

Very recently, Alyeska's Assistant General Counsel, Robert I. Shoaf, reiterated Alyeska's position that Alyeska owes no legal duty to the public to contain and clean up spills from tankers wherever such spills might occur:

The State of Alaska requires each vessel...to have an oil spill response contingency plan.... Since no one else has stepped forward to offer vessel escort service and initial spill response in Prince William Sound, Alyeska has done so. Nothing prevents others from competing with Alyeska to provide these services. While there has been some debate as to whether, with respect to furnishing these services, Alyeska (a) is obligated under Alaska statute or the federal and State right-of-way grants, or (b) has volunteered (Alyeska believes it is a volunteer), there has never been any suggestion that the services are being furnished pursuant to any common carrier obligations of the TAPS carriers or their agent Alyeska. Thus the Agreement requirements, like all aspects of the response action contract, are strictly a matter of commercial contract.

(Emphasis supplied.) Letter dated November 20, 1991 from Mr. Robert I. Shoaf, Esq., to Ms. Deborah Vogt, Esq.³⁰ at 2, Exhibit L

³⁰ Under contract with the Citizens' Oversight Council, Ms. Vogt analyzed the costs to the State of Alaska in reduced royalties and taxes when Alyeska's pipeline owner companies include in their tariff charges for shipping TAPS oil the costs of spill response. Such costs include tens of millions of dollars spent on SERVS. In his letter, Mr. Shoaf was responding to an inquiry from Ms. Vogt concerning Alyeska's authority to require contracting vessels to

attached. Mr. Shoaf's assertion that "(s)ince no one else has stepped forward to offer vessel escort service and initial spill response in Prince William Sound, Alyeska has done so" is plainly at odds with Mr. Williams' concession, quoted in his *Statement* above, that Alyeska created SERVS in response to the State's Emergency Order.

In any event, at the time of Mr. Williams' *Statement* to the Citizens' Oversight Council, 54 tankers had plans conditionally approved by the Department of Environmental Conservation under AS 46.04.030 and, according to Mr. Williams, six companies had signed response action contracts with Alyeska for it to provide initial oil spill response services. The companies were: "Arco, Exxon, BP, Chevron, Shell, Tesoro". Williams' *Statement*, supra, at 2. (Recall that "ARCO", "Exxon" and "BP" pipeline companies own over 90% of Alyeska. See text accompanying footnotes 4 - 5 above.) According to the Department of Environmental Conservation's Kevin O'Shea, in early December, 1991 about the same number of tankers were visiting the VMT on a routine basis, but there were 23 tanker contingency plans approved by the department, all on an interim basis. All the plans relied on Alyeska as the principal RAC for initial spill response.

VII. CONCLUSION.

When Alyeska purports to act as a RAC it charges no initial fee to the tanker owners, operators or charterers with which it enters into response action contracts.³¹ Because tankers must have contingency plans under AS 46.04.030(c).³² Alyeska is, at least initially, an inexpensive, convenient and well-positioned responder.

These attributes may not, however, entirely explain Alyeska's possible motivation in seeking to be a RAC. Today, as distinct from years prior to the T/V Exxon Valdez oil spill, Alyeska enters into response action contracts with, among others, corporations such as BP

demonstrate their financial capability to hold Alyeska harmless from spill liabilities.

³¹ Alyeska insists on insurance (bonding) as part of an indemnification agreement with a contracting vessel. See also the tariff report, at 19 (analysis of the need for Alyeska to seek FERC approval of its bonding requirement).

³² OPA also forces tankers to have contingency plans as a matter of federal law. The Coast Guard is required to adopt regulations for such plans. The regulations are now in the works.

America, Inc., which in turn have ownership ties with its pipeline owner companies. Even while Alyeska charges third party corporations no fee for being ready to provide spill response services, it spends hundreds of millions of dollars of the pipeline owner companies' money on response preparedness. At first blush, this might seem like a costly and awkward arrangement. It may, however, be attractive because a successful claim of RAC status may insulate Alyeska, its pipeline owner companies and, in turn, their owners from more costly tanker oil spill cleanup responsibilities, which responsibilities might otherwise flow to the owner companies as holders under the TAPAA and as parties to the federal and State agreements.

Moreover, once spent the costs of the arrangement are not forever lost to the pipeline owner companies. In fact, that Alyeska is unlike a truly independent RAC is readily apparent in how the owner companies treat the costs of Alyeska's spill preparedness. As the tariff report to the Citizens' Oversight Council explains, the companies include in their tariff expenses³³ filed with the FERC and the APUC the entire costs of SERVS. See the tariff report. The vast majority of those costs, however, relate to the prevention and cleanup of marine tanker spills which might occur at the VMT, elsewhere in Port Valdez and in Prince William Sound; these costs have nothing to do with spills which may occur from a segment of the pipeline or on the grounds of the VMT. Thus, on the one hand the costs are described as discretionary, i.e., volunteered, but on the other hand they are treated as ordinary common carrier expenses entitled to be included in the calculation of the tariffs charged for transporting oil through the TAPS. The irony is that while the State of Alaska indirectly pays for about 25% these costs,³⁴ as long as Alyeska claims RAC or volunteer status, the State has no real assurance that Alyeska will respond the next time a spill of TAPS oil occurs from a tanker in Alaska waters.

On the other hand, if one assumes that Alyeska's legal position is correct, then under existing statutes and regulations it may be that neither the State nor the federal government can force Alyeska,

³³ According to the tariff report, every dollar Alyeska spends on TAPS spill prevention and response operations reduces the State's receipt of lease royalties and taxes about 25 cents. In effect, therefore, the State pays for about 25% of the costs of the TAPS spill prevention and response program. Tariff report, at 13.

³⁴ Id.

acting as the designated agent of the TAPAA holders, to respond to a tanker spill of TAPS oil in Alaska marine waters.³⁵ Instead, the public will have to rely on Alyeska's volunteerism and good faith in responding.

And that may be a dangerous course to follow in the wake of the T/V Exxon Valdez.

³⁵ Both the State and federal government have various statutory authorities to seize private property for use in the event of a disaster emergency. See, e.g., OPA, § 4201 (authorizing the President to direct and monitor state, local or private removal actions). Even were Alyeska a RAC, therefore, the governments might take over and use Alyeska's SERVS equipment in a spill response. Principles of constitutional law, oftentimes codified in such statutes, would ordinarily require the governments to compensate Alyeska for the seizure if it was not otherwise responsible for cleanup or liable for the spill.

Also, legal arguments can be made that Alyeska's expressed intent to respond could form the basis of a duty to respond. But when a spill response is needed, it is hardly the time to test the merit of such arguments.

***Final Environmental Impact Statement
Proposed Trans-Alaska Pipeline***

VOLUME 6

- **CONSULTATION AND COORDINATION
WITH OTHERS**
- **DISCUSSION OF POINTS RAISED DURING
REVIEW AND PUBLIC HEARING PROCESS**
- **ATTACHMENTS**



**PREPARED BY A SPECIAL INTERAGENCY
TASK FORCE FOR THE FEDERAL TASK
FORCE ON ALASKAN OIL DEVELOPMENT**

**United States Department of the Interior
1972**

EXHIBIT A

Alyeska Pipeline Service Company (APSC), 1971a, Description of marine transportation system--Valdez to West Coast ports: Submission to U. S. Dept. of the Interior, July 21, 1971, 65 p., 15 tables, 11 addenda.

Alyeska Pipeline Service Company (APSC), 1971b, Supplement to description of marine transportation system--Valdez to West Coast ports: Submission to U. S. Dept. of the Interior, Sept. 24, 1971, in response to Dept. of Interior Sept. 9, 1971, letter requesting additional information; 4 p., 6 attachments.

Alyeska Pipeline Service Company (APSC), 1971c, Project description of the trans-Alaska pipeline system: Submission to U. S. Dept. of the Interior, August 8, 1971, 3 v. plus 26 v. appendices.

Alyeska Pipeline Service Company (APSC), 1971d, Summary of the project description of the trans-Alaska pipeline system: Submission to U. S. Dept. of the Interior, Sept. 24, 1971, 64 p.

Alyeska Pipeline Service Company (APSC), 1971e, Supplements to project description and summary of the project description of the trans-Alaska pipeline system: Submissions to U. S. Dept. of the Interior, Oct. 15, 1971; Nov. 1, 1971; Nov. 10, 1971; Nov. 15, 1971; Nov. 19, 1971; in response to Dept. of Interior Oct. 7, 1971, letter requesting additional information.

LIST OF REPORTS SOLICITED FROM GOVERNMENT AGENCIES
AND OTHER SOURCES FOR USE IN PREPARING FINAL STATEMENT 1/

Alaska, State of, 1971, Comments on the proposed trans-Alaska pipeline;

Submission to U. S. Dept. of the Interior, July 30, 1971, 192 p.,

12 fig., 19 tables, 42 exhibits, 26 appendices, Juneau, Alaska

(available from Governor's Office, State of Alaska, Juneau, Alaska).

APSC (Alyeska Pipeline Service Company), 1971a, Description of marine

transportation system--Valdez to West Coast ports: Submission to

U. S. Dept. of the Interior, July 21, 1971, 65 p., 15 tables,

11 addenda.

____ 1971b, Supplement to description of marine transportation system--

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26 v. appendices.

____ 1971d, Summary of the project description of the trans-Alaska pipe-

line system: Submission to U.S. Dept. of the Interior, Sept. 24,

1971, 64 p.

____ 1971e, Supplements to project description and summary of the project

description of the trans-Alaska pipeline system: Submission to U.S.

Dept. of the Interior, Oct. 15, 1971; Nov. 1, 1971; Nov. 10, 1971;

Nov. 15, 1971; Nov. 19, 1971; Dec. 17, 1971; in response to Dept. of

Interior Oct. 7, 1971, letter requesting additional information.

1/ In addition to the sources listed, all of these reports are available for public inspection, Department of the Interior Library, Interior Building, Washington, D. C.

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Summary

Project Description of the Trans Alaska Pipeline System

August 1971

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EXHIBIT B

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UNIVERSITY OF ALASKA

Alyeska pipeline
SERVICE COMPANY

Planning for the trans Alaska pipeline system has been described in a three-volume "Project Description," accompanied by 26 volumes of appendices, filed with the Department of Interior in July of 1971. This booklet is intended to summarize the principal facts set out in the complete Project Description; for further detail the reader is referred to that document.*

General Description

The proposed 48-inch trans Alaska pipeline is intended ultimately to transport approximately two million barrels of crude oil per day from the Alaskan North Slope along a 789 mile route to Valdez, an ice-free port located on an arm of Prince William Sound. At Valdez, oil will be transferred to ocean going tankers. The Alyeska Pipeline Service Company** is responsible for design, construction, operation and maintenance of the system, which includes the pipeline itself, pumping stations, terminal facilities, and communications and control systems.

North Slope producers will transport crude oil through their own feeder pipelines to the northern terminus of the trans Alaska pipeline near Prudhoe Bay. Here the oil will pass through the first of twelve pump stations and enter the pipeline.

The pipeline system will be continuously monitored and controlled from a control center at the Valdez terminal. Local control can also be exercised from pump stations. A combination of automatic and manual control will assure efficient operation of the system and optimum response to all conditions.

**Throughout the Summary, cross-references will be given to appropriate sections of the Project Description. For example, PD-1.4 refers to Section 1.4 of the Project Description; PD-App. B-1.3400 refers to Appendix B-1.3400 of the Project Description.*

***Alyeska is owned by Amerada Hess Corporation, ARCO Pipe Line Company, Humble Pipe Line Company, Mobil Pipe Line Company, Phillips Petroleum Company, Sohio Pipe Line Company, and Union Oil Company of California.*

Pipeline Design

Three basic construction modes will be used along different portions of the pipeline route: buried in the conventional mode of pipeline construction, buried with special systems which reduce or prevent heat transfer to the ground, or placed aboveground on gravel berms or pile bents.

The pipeline is being designed to withstand the combined stresses from internal pressure and from thermal, bending, and seismic forces. At river crossings and in certain flood plains, it will be concrete coated or anchored to prevent flotation. Buried sections of the pipeline will be coated and cathodically protected to prevent corrosion. Aboveground segments will be thermally insulated to slow the drop in oil temperature during a pipeline shutdown, and thereby facilitate restarting of oil flow.

The pipeline will not be the longest ever constructed, nor will it be the only line in an area which is subject to severe climatic conditions. But it will be a major project, encountering arctic phenomena and crossing three mountain ranges, many rivers and streams, and a known active seismic fault. Intensive special studies of these factors by Alyeska, the owner companies, arctic consultants, and Federal and State agencies have been in progress for several years. These, in turn, have utilized more general knowledge accumulated over a much longer period of time.

None of the special arctic problems is mysterious. Permafrost*, for example, is an everyday fact in many parts of Alaska, and buildings, roads, airfields, pipelines and other facilities have been built on permafrost for many years. The pipeline will be designed with due regard to the behavior of permafrost and the need for preserving the integrity of the warm pipeline. Where permafrost conditions exist which could be detrimental, the line will either be elevated or a special burial technique will be used to reduce thawing.

**Permafrost is ground which remains below 32°F for at least two consecutive years. Permafrost material may range from solid rock to pure ice.*

Other special problems are those resulting from the possibility of earthquakes. The system must be designed to withstand direct earthquake effects, including shaking of the pipeline by seismic waves and movement of the earth where the line crosses a known active fault. It must also withstand indirect effects resulting from slumping of the earth supporting the line, liquefaction of the supporting soil, and landslides. However, construction in seismically active areas, including construction of pipelines, is common, and careful planning and sophisticated analysis techniques have been and are being applied, in order to locate and design the pipeline to protect against risks from earthquakes. By careful selection of alignment, the possibility of earthquake damage from seismically induced soil movements or liquefaction will be minimized. In addition, the stress criteria which the pipeline must meet are based in part on earthquake-induced stresses. At the one crossing of a known active fault, the Denali Fault, special design techniques will be employed and remotely operable block valves will be located on both sides of the fault crossing to facilitate isolation of that section of the line if it ever becomes necessary to do so.

The Valdez Terminal

At the southern terminal, the harbor area (Port Valdez) is approximately two and one half miles wide and 12 miles long and offers good protection from winds and the open sea. It is deeper than required to accommodate all tankers for which the loading system is designed. The entrance to Port Valdez is from Prince William Sound through Valdez Arm and Valdez Narrows. At its narrowest point, at Middle Rock, the channel is 3000 feet wide, which is several times wider than the ship channels at New York, Philadelphia, and Houston.

The terminal will extend over approximately 800 acres at a site south of the city of Valdez. The terminal facilities will include a tank farm, docks and the connecting pipeline, valves and controls necessary to transfer oil from tanks to the approximately 20 ships which are ultimately expected to be loaded each week.

The storage tanks and connecting pipelines will be designed so as to be virtually immune to the three possible sources of significant damage—tidal waves, earthquakes and fires. The tanks will be built on competent bedrock and will be designed to withstand, without loss of oil, ground accelerations which might be expected from a Richter magnitude 8.5 earthquake occurring at or near the site. The tank farm elevation will be beyond the reach of the largest tidal waves which might occur in Port Valdez. A fire fighting system will be able to deliver water or foam to fires in any of the terminal facilities or ships in port. To guard against ship accidents, navigational aids will be improved and special operating procedures instituted.

Environmental Protection

The environmental problems are of two kinds—those which could affect the integrity of the pipeline and could therefore conceivably cause oil spills (e.g., permafrost, erosion, possible seismic action, river scour) and those which concern the disturbance of fish, wildlife and vegetation by the construction, or mere presence, of the line. It is essential to deal with both types of problems to assure efficient operation of the line and to fulfill the objective of preserving fish, wildlife, and other environmental resources. The economics of pipeline operation require great concern with oil spills. Any damage to the line which would result in a shutdown of operations and require maintenance procedures would be costly. In this respect, good engineering and good conservation practice coincide.

The amount of technical replanning and the extent of environmental studies undertaken in preparation for this project are unprecedented. The studies made, the materials used, the designs for fabrication into a continuous line, the protective corrosion coating and cathodic protection, the provisions for monitoring and inspection and the intensity of direction and supervision by Federal and State officials exceed all past experience. The result will be a safe line—one which reduces risks to the lowest order and which still brings the North Slope oil to consumers.

The probability of a major oil spill is remote. It is recognized, however, that the possibility of an accident will always exist to some small degree. Accordingly, a contingency plan is being developed for coping with any oil spill which might occur at any point along the line or in the waters of Port Valdez or Prince William Sound. Contingency planning includes: assurance of fast, accurate and sensitive detection of leaks or spills; measures to minimize spill volumes, including placement of valves, studies of drainage, adoption of prompt shutdown procedures, and immediate dispatching of maintenance crews; availability of adequate equipment and personnel for containment and prompt recovery of marine or terrestrial spills; and provision for rehabilitation and restoration of all affected areas.

Throughout this Summary and the Project Description itself, the reader will note that soil analyses and other studies are continuing. Studies and refinement of design will continue until construction is completed. This is the normal construction process; it is not possible—in the arctic or elsewhere—to know in advance the conditions at every location over the length of the line. However, adequate studies have been made to identify the range of soil conditions and other problems which will be encountered and to establish the procedures for applying the proper solution. The work accomplished to date permits accurate assessment at this time of the effects of the proposed project, even though design work is not complete in all details.

Similarly, with respect to potential terrestrial or marine oil spills, contingency planning will continue to and beyond construction. Illustrations of the planning in progress permit assessment of the nature and extent of precautions which will be taken. But, particularly with respect to marine spills, equipment, materials and procedures are being developed and improved so rapidly that contingency planning must not be frozen at this point.

Summary Topics

The following sections contain more detailed descriptions of (I) the pipeline route and criteria for its selection; (II) pipeline design; (III) roads and airfields; (IV) pump stations; (V) the Valdez terminal facilities; (VI) telecommunications; (VII) operations and control; (VIII) construction; (IX) testing, start-up and phases of operation; (X) inspection and maintenance; and (XI) contingency planning.

Section XI Contingency Planning

As indicated throughout this Summary, a principal concern has been to design a secure and virtually leak-proof pipeline system. Special attention has been directed toward the design problems of the Alaskan environment. Examples are: routing to avoid geologic hazards wherever feasible; special design to withstand a variety of earthquake effects, including a substantial movement of the Denali Fault where it intersects the pipeline; special construction techniques in locations where permafrost thaw might result in additional stress on the pipe; burial and concrete coating at river crossings; and provision of special surge pressure relief systems. Provision is also being made for monitoring all essential data and for alarming dangerous conditions or, in some cases, automatically shutting down the line.

Similarly, in designing the marine terminal and related facilities, care has been taken to identify sources of potential oil spills and to incorporate features which either provide an additional margin of safety or facilitate minimization of spillage in the event an accident should occur. For example: design of storage tanks to withstand earthquake action or fire and further provision of concrete-cored, earthquake-proof dikes around the tanks; use of all-metal articulated loading arms to minimize the risk of damage to or leakage from the connection between the dock and a ship; placement of valves at each dock which can be closed either from the dock or the operations control center in the event of an emergency; provision of a closed drainage system on each dock for controlled disposal of loading arm drainage, gasket or packing leaks, drippage, wash down and rainfall in the area surrounding the loading arms and valve manifolds; and provision of a treatment system for oily ballast water. Further, a variety of navigational aids to prevent marine accidents will be established, as described in Section V.

In addition to these measures, at least one year before pumping operations commence, a detailed contingency plan will be submitted, covering specific procedures for response to a leak or spill at any location. This plan will be prepared in consultation and cooperation with governmental agencies, and will incorporate the latest equipment, techniques and know-how. The plan will be continually updated throughout the operational life of the pipeline system. Procedures and equipment for containment and cleanup of oil spills are undergoing rapid development. As a result, the contingency plan in effect at commencement of operations will embrace features not now proven; continuous updating will provide constantly increasing environmental protection. Although details of the contingency plan cannot be given at this time, specific examples of the necessary approach to contingency planning with respect to both terrestrial and marine oil spills, based on existing knowledge and equipment, are included in the Project Description. (PD-9)

The total oil spill control plan for the pipeline system will have the following basic objectives: prevention of oil leaks and spills; fast, accurate and sensitive detection of leaks; minimization of spill volume; containment of spill; maximum recovery of oil; rehabilitation and restoration of affected area; and public safety and prompt notification procedures. (PD-9.1)

Contingency Planning for Spills Along Pipeline Route

Leak detection capability has been discussed under Section VII. As pointed out there, designs and plans include four separate automatic alarming methods based upon pressure deviation, flow deviation, flow balance deviation, and line volume balance. Regular aerial and ground patrols will be made. In addition, investigations are being conducted into other leak detection methods which could further increase leak detection capability.

Actions which would be taken if a leak is detected depend to a large extent on what system data indicate with respect to the size and location of the leak. Generally, however, if an alarm is signalled indicating that a leak may have occurred and the location of the leak is apparent from the data displays, the dispatcher will shut down all stations north of the indicated leak position (see PD-3.5.5.6).

Downstream stations will usually be shut down only when they lose suction pressure, in order to reduce back drainage. When all pump stations are shut down, the dispatcher will isolate the leak between the two adjacent station sites, using the station block valves. He will also close any remotely controlled valves in the area of the leak. The maximum time for pump station shutdown and the valve closures required to stop oil flow will be six minutes. In approximately four more minutes, other remotely controlled valves can be shut. Aircraft will be used to pinpoint the leak and crews will be dispatched immediately to close locally operated valves in the area, stop the leak, contain the spill to the smallest area possible, and begin recovery and repair operations. (PD-9.2.3)

Studies have been made to determine the maximum quantity of oil which could drain out of the line at any point along the pipeline route, and locations of valves have been chosen so as to limit this potential maximum exposure. Location and description of the different types of valves are contained in PD-1.2 and 1.4.4. A table showing valve locations appears in PD-9.2.3. Charts showing maximum drainage potentials (following pipeline shutdown and remote control valve closure) also appear in PD-9.2.3. Maximum drainage at any point on the line due to gravity would be less than 90,000 barrels. Only about two percent of the line would have a drainage exposure in excess of 70,000 barrels, less than 10 percent would have a potential exposure in excess of 55,000 barrels, and more than half of the line would have a potential ranging between zero and 30,000 barrels. The maximums shown on the charts would be reached only in the event of a complete rupture or a leak of such magnitude that drainage would be completed before emergency action could be taken to minimize loss. (PD-9.2.3)

As is for contingency planning, detailed studies will be made of all drainage basins. Determination of the area an oil spill might cover will dictate plans for containment, cleanup and rehabilitation. Studies will include basin delineation, development of estimates of quantities and velocities of surface water runoff for each significant drainage course and tributary stream which the pipeline crosses, and development of estimated quantities and velocities of major stream flow (under various seasonal conditions), to permit analyses of movement of any spillage that might reach such streams. A list of the 38 rivers and major streams for which such analyses are expected to be conducted appears in PD-9.2.4.

Sample drainage studies have already been initiated. A preliminary report has been prepared which discusses drainage from leaks near the Lowe River, Willow Lake and the Koyukuk River. (PD-App. E-3.9002) Another study has been initiated for the Paxson-Summit Lake area. See PD-App. E-3.9011. Some of the methods under consideration for containment and recovery of oil spills are described in PD-App. E-3.9010.

One of the first steps taken by crews arriving at a spill will be to create dikes, pits or other containment structures. Permanent containment dikes may be required at key locations along the route. In general, oil on the ground would either be drained into temporary storage pits or pumped into temporary storage tanks; subsequently, it would be pumped into tank trucks and hauled to the nearest pump station. Oil which cannot be picked up otherwise would be recovered by absorbent materials. In certain circumstances, the line would be tapped so that contained oil could be pumped back into the line. Burning as a disposal method of unrecoverable residual oil may be used under some circumstances if prior approval by the appropriate governmental authority is obtained. (PD-9.2.5)

Oil on surface waters of lakes or rivers may involve confinement by fixed or floating booms and removal by skimming devices, floating absorbents and/or burning. Examples have been prepared of specific suggested containment and recovery methods at five locations along the pipeline route, including estimates of personnel and equipment which would be required. (PD-App. E-3.9002, A-3.1001 and A-3.1002) These locations were selected as being representative of the problems which the contingency plan will be designed to cover. (PD-9.2.5)

Soil rehabilitation activities, which will start as soon as possible, will include aeration, dilution, fertilization and revegetation. Rehabilitation measures will also include the restocking of fish resources in streams or lakes in the event a spill should result in significant damage to those resources. (PD-9.2.6, App. E-3.9000)

Contingency Planning with Respect to Marine Terminal and Tanker Operations

Developing an oil spill contingency plan for a marine terminal requires consideration of many factors. Of major significance are: geographical and topographical elements (for example, slope of shoreline, type of terrain, accessibility of spill site, depth of water); environmental elements (such as temperature of water and air, winds, surface currents, wave action); ecological elements (existence and location of sensitive areas in terms of plants, fish, birds and other life forms); oil elements (characteristics of the oil and changes it undergoes in water); and available equipment and technology (boats, booms, skimmers, absorbents, dispersants, combustion agents, surface tension modifiers, and storage containers). (PD-9.3.2)

1. Port Valdez

The physical characteristics of Port Valdez will facilitate containment of oil spills and minimization of consequent damage. The harbor is about 12 miles long and two and one half miles wide. Average water depth in the harbor and Valdez Narrows is in excess of 750 feet. Sheer cliffs and steep, rocky beaches account for 56 percent of the Port Valdez shoreline; mud or shale tidal flats cover about 19 percent of the shoreline, and sand and gravel beaches, approximately 13 percent. Low to medium profile shingle or shale account for the remainder. (PD-9.3.3.1)

Approximately 50 streams and other waterways discharge into Port Valdez, with major contributions from the Lowe and Robe Rivers and the Shoup Glacier. (The motion of these discharges may be of some assistance in terms of repelling oil from sensitive areas; for example, a current of two to three knots has been observed in proximity to the entrance of the Robe River.) Winds appear to be below seven knots more than 90 percent of the time. Current velocity is generally less than 0.5 knot off Jackson Point; in Valdez Narrows and Valdez Arm, currents are reported to be too weak to be predicted. Wave action does not exceed one to two feet in height most of the time; waves of two to three feet in height have been observed in storm conditions. Temperatures are mild for this latitude. (PD-9.3.3.1)

Taking known geographical, environmental, and ecological factors into account, a list of equipment has been selected which would be expected to provide effective control of an accidental oil spill in Valdez harbor. Included are 10,000 feet of floating containment boom, approximately 25 drums of an acceptable dispersant, 50 drums of an acceptable surface tension modifier, six chemical deployment units, approximately 2,000 bales of straw absorbent, polyurethane in either bulk or liquid form for use as an absorbent, absorbent deployment units and recovery equipment, approximately 1,000 feet of an oil-selective recovery system similar to "oil mop," two types of skimming barges (one of the gravity separating type typified by the "Union-Huskey" skimmer, the other an oil-selective recovery barge for surface skimming), six small floating skimmers, one large floating skimmer similar to the "Medusa," 12 bird repellent guns, one large storage barge with pumps and hoses, one vacuum truck, two fire trucks with high pressure pumps, two high pressure water pumping systems which can be operated from shore, truck or boat deck, one two-ton flatbed truck, one bulldozer, one front end loader, two pickup trucks, two jugs and two mooring launches, and 24 high intensity light sources to permit oil recovery operation in darkness. (PD-9.3.3.3)

Since the oil containment and recovery field is a rapidly developing area of technology, the equipment items listed are not intended to be final or definitive; the most advanced and effective devices will be selected at the time of equipment acquisition. (PD-9.3.3.3)

To provide indication of the manner in which the above equipment would be used in response to a spill, several hypothetical spill situations have been postulated. (See PD-9.3.5) For example, in the unlikely event that during tanker loading operations one or more of the steel articulated loading arms were somehow to break away from the ship, oil could be spilled in the brief period before emergency shutoff valves could be closed and the flow stopped. (PD-9.3.5.2)

Assuming availability of the equipment mentioned above, probable response procedures would consist of: deployment of floating boom around the vessel and floating oil; deployment of floating skimmers within the contained slick to recover the oil and transfer it to a barge or other facilities; dispatch of skimming barges to remove windrows, slicks or other oil that escaped the containment boom. If shoreline areas were threatened by uncontained oil, surface tension modifiers would be spread between the slick and shoreline if use of such chemicals is approved; if not, absorbents could be spread along the shoreline where topography permits. Other booms could be deployed to protect threatened areas, especially those which are ecologically sensitive. After bulk oil has been recovered, surface oil recovery devices (such as the "oil mop") would be used to remove remaining sheen or iridescence. Rocky shoreline areas contaminated with oil would be cleansed by high pressure water jets. Absorbents would be removed. All contaminated water which was recovered would be discharged into the ballast treating system. (PD-9.3.5.2)

A larger spill than the one just described might occur if, for example, there were a collision of some other vessel with a tanker. In such a case, action would be similarly directed toward: containment of oil; protection of shoreline by dispersants, absorbents or booms; recovery of the oil; treatment of oily water recovered; and cleanup of surface waters and shoreline areas. (PD-9.3.5.3)

If necessary to prevent the passage of oil through the Valdez Narrows, through Valdez Arm and into Prince William Sound, Port Valdez could be sealed off. This could be accomplished by use of the two sea-going tugs which operate out of the terminal. The tugs would gather up a minimum of 7,000 feet of boom and tow these to the Narrows. The boom would be deployed across the Narrows, using the banks and Middle Rock as anchor points.

Depending on what further study reveals to be the best strategy, the boom would be anchored in the flats close to the shore, or to special fittings previously affixed for this purpose. (PD-9.3.5.3)

2. Prince William Sound

Prince William Sound is an irregular body of water with an area of about 2,500 square miles. Much of it is quite deep, and the Sound is surrounded by islands of all sizes. Available wind data indicate a median wind velocity of about 12 knots. Winds exceed 30 knots about 10 percent of the time and wind direction is variable. In the track proposed for tanker routes, winds blow in a westerly direction about half the time, which would tend to blow floating oil away from close land masses. Winds blow in an easterly direction about one fourth of the time. Wave heights are six feet or less about 70 percent of the time. Currents are very weak, being measurable only in narrow passages between islands. Temperatures are not severe; however, fog and precipitation frequently impair visibility. (PD-9.3.4)

Due primarily to more severe wind and wave action, recovery and cleanup in Prince William Sound would be more difficult than in Port Valdez. However, most of the equipment described above for use in Port Valdez would be available and effective in the Sound. In the event of a large spill, additional resources from the Coast Guard, oil spill cleanup services or other port cooperatives along the Pacific coast might be required. All available resources will be identified in the final contingency plan. (PD-9.3.4.3)

Anticipated response in a hypothetical example involving a leaking tanker in Prince William Sound is described in PD-9.3.5.4. Essentially, it would involve using seagoing tugs to transport equipment from Port Valdez and air-dropping major equipment items from other sources at the spill site.

Cleanup techniques would be similar to those indicated for Port Valdez. Sea conditions permitting, a large circular boom would be deployed around the leaking tanker and kept in position by a number of boats. Floating skimmers of the heavier duty variety would be deployed to recover as much oil as feasible. Recovered liquid would be transferred to available storage equipment, including barges, other tankers, and collapsible floating containers. Oil would be removed from the tanker to the extent possible. If sea conditions permit, skimming barges would be mustered at the spill site and fitted with sweeping booms. Sweeping operations would be conducted as long as necessary to remove floating oil from the surface of the water. Aerial-spotting would be used to detect and track floating slicks and windrows. Other oil removal systems based on absorption would also be used—straw and foamed polyurethane in calm seas, or a continuous recovery unit such as the "oil mop" in heavier seas. If oil remains on the surface of the water long enough to become tarry, means of recovery such as rakes, shovels, nets and scoops would be employed. Final polishing of the water surface could be accomplished by use of skimming barges, absorbents, surface oil recovery equipment and/or oleophilic materials, depending on prevailing sea conditions. Dispersants could be used if permission is granted. Shoreline protection or restoration, as well as rehabilitation of contaminated birds, would be undertaken to the extent appropriate. (PD-9.3.5.4)

3. Training

Effective response to oil spill emergencies requires advance training. An intensive training program would be involved in final contingency planning, including drills under harsh conditions. Oil spills follow no set plan or pattern, each one being a unique occurrence posing a unique series of circumstances and problems. However, it is possible to provide training in the available procedures; to familiarize personnel with the operation of available equipment; to develop expertise in personnel who might be faced with dealing with such emergencies; and especially to develop experience with the environments presented, which can have a strong influence on the equipment selected and the operations conducted. The result of such a program would be that the most effective response can be mounted in the least amount of time. This is the prime objective of any contingency plan. (PD-9.3.5.4)

Selected Subject Index

	Project Description	Summary	Project Description	Summary	Project Description	Summary
Airfields			Communications (see Telecommunications)		Corrosion Protection (see Pipe)	
Construction sequence	2 7 3	51			Earthquakes	
Permanent	2 2 3.1, 2 4.4, 2 5.4, App. A-3 2001, A-3 2008, Road Drawing D-150 C1, D-151-C1, D-152-C1	28	Construction		Fault crossings (see heading)	
Temporary	2 2 3.2, 2 4.4, 2 5.4	28	Gravel (see heading)		General	1 2 4.9, 1 5 2.16, 8 2 2.1, App. A-3 1002, A-3 1022, A-3 1051
			Field camps	6 2 1.2		
Aboveground Pipeline			Pipeline	1 2 4.16		
Construction	1 7 2, 6 2 1	51	Road	2 6		
Criteria	1 4 2 3	20	Mobilization and support			
Description and basic philosophy	1 4 2 1	17	Airfields	2 7 3		
Design	1 5 2	18, 20	Field camps	6 4, 6 5		
Insulation	1 4 2 1	17, 19	Pipeline	6 2 1		
Location along pipeline	1 4 2 2, Pipeline Drawing AL-00-G6, Sheets 1-138	8-15	Road	6 2 2		
Supports (piles and berms)	1 4 2.3, 1 5 2.7, 1 5 2.8, 1 5 2.9, App. A-2 1006, A-2 1007, A-3 1004, A-3 1015, Drawings D-00-C55, D-00-C70, D-00-C71, D-00-C130	17, 18	Stations	6 2 3		
			Telecommunications	6 2 5		
			Terminal	6 2 4		
			Waste disposal	6 3 3		
			Wildlife	6 3 2		
			Modes	1 4, 1 5		
			Procedures			
			Pipeline	1 7.1, 1 7.2, 1 7.3, App. A-1 1001		
				1 7.5, App. A-1 1001		
Air Quality			River crossings	2 7, App. A-3 2006		
Pump stations	3 3 7, 3 4 2.4, 3 5.3.16		Road	3 7.2, 3 7.3, 3 7.4		
Terminal	4 3 2, 4 4 5.10, 4 5 3.11	43	Stations	5 7.1, 5 7.2, 6 2 5		
			Telecommunications	4 7.1, 4 7.2, 4 7.3, 4 7.4		
			Terminal	3 1.5, 3 7, 6 1, 6 2.3		
Archaeological Surveys	1 2 4.15		Schedule			
Auleis	1 2 4.12, App. A-3 1007		Zone			
			Above ground pipeline	1 4 2.3, 1 5 2.13, Pipeline Drawing C-00-C108		
Buried Pipeline (Conventional)			Buried pipeline	1 4 1.3, 1 5 1.12, 1 5 3.7, Pipeline Drawing D 00 C3		
Construction	1 7 1, 6 2 1	50	River crossings	1 5 5.7, Pipeline Drawing D-00 C37 (Rev. 1)		
Criteria	1 4 1.3	17	Road	2 5.1		
Description and basic philosophy	1 4 1.1	17				
Design	1 5 1, App. A-3 1004, A-3 1015	17, 20	Contingency Planning (also see Spills)			
Location along pipeline	1 4 1.2, Pipeline Drawing AL-00-G6, Sheets 1-138	8-15	Pipeline	9 2		
			Terminal and marine operations	9 3		
Buried Pipeline (Special)			Control System			
Construction	1 7.1, 6 2.1	51	Operations control center	3 4 8.3, 4 5 5.4, App. B-1 3400, C-1 3017		
Criteria	1 4 3 3	20	Pipeline and pump stations	3 4 8.1, 3 4 8.2, 3 4 8.3, 3 5 1.7, 3 5 5.1-3 5 5.10, 8 1.1, 8 1 2.1, 8 1 4.1, 8 1 5.1, 8 1 6.1, 8 1 6.2, App. B-1 3400, B-3 3002, B-3 3003, B-3 3004		
Description and basic philosophy	1 4 3.1	20				
Design	1 5 3	18, 20				
Location along pipeline	1 4 3 2, Pipeline Drawing AL-00-G6, Sheets 1-138					
Thermal considerations	1 5 3.9, App. A-3 1010	20				
Thermal insulation	1 6 5, App. A-1 1003	18, 20				
Cathodic Protection (see Pipe)			Terminal and marine operations	4 2 3.6, 4 4.7.1-4 4.7.6, 8 1 1, 8 1 2.2, 8 1 4.2, 8 1 5.2, 8 1 6.1, App. B-1 3400, Terminal Drawings D-50-E2C		
Climatological Data	1 2 4.7, 3 4 2.1, App. C-3 1010, C-3 1011, C-3 1012					

Project Description			Summary			Project Description			Summary			Project Description			Summary		
Culverts						Buried pipeline						Leased common carrier					
Criteria	2 4 6, App. A-3 2002	28				(conventional and						data circuits					
Design	2 5 6					special)											
Erosion control	2 3 2 3, 2 4 7, 2 5 7					General						Marine radio system					
Yukon River to												Mobile radio system					
Prudhoe Bay												Private microwave					
Construction	2 3 5 1, 2 7 1, 2 7 2, 2 7 3,	51				Soils						system					
	6 2 2, App. A-3 2006					Investigation program											
Criteria	2 2 1, 2 4 1, App. A-3 2001,	28										Telephone system					
Design	A-3 2002											Temporary system					
Erosion control	2 5 1, App. A-1 2002, A-1 2003	28										Leased telephone					
	2 3 1-2 3 3 4, 2 3 4 1, 2 4 7,	28										circuits					
	2 5 7																
General	2 1	28				Laboratory tests						Microwave system					
Gravel (see heading)												Mobile radio system					
Location and	2 2 1, App. A-1 2001, Map	28															
description	Atlas, Livengood to Prudhoe																
	Bay (Road Drawings)																
River crossings						Solid Waste Disposal						Terminal					
(see heading,						Field camps						Air quality (see heading)					
Roads, Bridges)						Pump stations						Ballast treatment facility					
						Terminal											
Road Crossings	1 4 6, 1 5 6, 1 7 6, App.	27										Berthing and mooring					
	A-1 1001, Pipeline Drawing					Solifluction						facilities					
	C-00-C59, D-00-C86					(see Slope Stability)											
Route Selection	1 1, 1 2 1, 1 2 3 1, 1 2 3 2,	6-15				Spills						Buildings					
	Pipeline Drawing AL-00-G6					Detection						Climate					
												Construction					
Scour						Maximum drainage						Control system					
(see River Crossings,						volumes											
Pipeline)						Pipeline and pump											
						stations											
Seismic Design												Criteria					
Above ground pipeline	1 4 2 3, 1 5 2 1, 1 5 2 2, 1 5 2 4,	25				Terminal and marine						Design					
	App. A-3 1050					operations											
Buried pipeline	1 4 1 3, 1 5 1 1, 1 5 1 6	25										Dock facilities					
(conventional)												Fixed docks					
Buried pipeline (special)	1 4 3 3, 1 5 3 1, 1 5 3 4					Start-up											
Earthquakes						Initial											
(see heading)						Restart											
Fault crossings						(see Control System)											
(see heading)																	
General	1 2 4 9, App. A-3 1051,	4, 25				Stress (Pipe)											
	A-3 3020					Above ground pipeline											
Pump stations	3 4 5, 3 5 3 8, App. A-3 3020	35				Buried pipeline											
Terminal	4 4 2 3, 4 5 3 3, App. A-3 1051	43				(conventional and											
						special)											
Settlement						Valves (main line block											
Above ground pipeline	1 4 2 3, 1 5 2 2	25				and check)											
(settlement of pipe																	
supports)						Telecommunications											
Buried pipeline	1 4 1 3, 1 4 3 3, 1 5 1 3, 1 5 3 2,	25				Construction											
(conventional and	App. A-3 1012, A-3 1017,					Criteria											
special)	A-3 1018					Design											
Pump stations	3 5 2 4, App. A-3 3023					Location and description											
Slope Stability						Permanent system											
Above ground pipeline	1 4 2 3, 1 5 2 6					Aircraft navigation aids											
						In-plant radio system											

Final Environmental Impact Statement Proposed Trans-Alaska Pipeline

Report In Six Volumes

1. Introduction and Summary
2. Environmental Setting of the Proposed Trans-Alaska Pipeline
3. Environmental Setting Between Port Valdez, Alaska, and West Coast Ports
4. Evaluation of Environmental Impact
5. Alternatives to the Proposed Action
6. Other Sections and Attachments

Responsible Official:

Rogers C.B. Morton

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Secretary of the Interior



PREPARED BY A SPECIAL INTERAGENCY
TASK FORCE FOR THE FEDERAL TASK
FORCE ON ALASKAN OIL DEVELOPMENT

United States Department of the Interior
1972

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR

FINAL

ENVIRONMENTAL IMPACT STATEMENT
PROPOSED TRANS-ALASKA PIPELINE

VOLUME 1 OF 6

INTRODUCTION AND SUMMARY

PREPARED BY A SPECIAL INTERAGENCY TASK FORCE
FOR THE
FEDERAL TASK FORCE ON ALASKAN OIL DEVELOPMENT
IN
FULFILLMENT OF SECTION 102(2)C
OF THE
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

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an ice-free port, very deep waters, easy accessibility, and ample maneuvering room.

At least 2 tugs, each of 3,500 horsepower, would be available at Port Valdez to assist in the berthing and unberthing of vessels. These tugs would be equipped with fire-fighting facilities capable of pumping foam onto the decks of the largest tankers that would be used. All Coast Guard requirements would be met for loading and discharge operations as prescribed in "Rules and Regulations for Tank Vessels, Subchapter D, Subpart 35.35" (APSC, 1971a, Addendum No. 1.) and in the new U.S. Coast Guard regulations (33CFR parts 154, 155, and 156) dealing with pollution prevention for vessels and oil transfer facilities. Ships would carry 6-inch hoses, but all handling of cargo and ballast would be by steel loading-arms on the dock.

Oil Spill Contingency Plans at Port Valdez

Oil spills may arise from failure of storage tanks caused by earthquakes or fires, failure of the loading system between dock and ship, accidental spillage from docks or ships alongside, leaky valve-fittings, the discharge of oily water from ships, and marine accidents.

Alaska (APSC, 1971a,c,d) would attempt to prevent these spills but some are bound to occur in several years of operation. The section of volume 3 of this statement titled "Marine Transportation" analyzes the available record of oil spills in relation to tankers. Major factors in developing contingency plans are: geography and

and topography (shoreline, terrain, accessibility of spill site, depth of water); environment (wind, and water conditions); ecology; oil properties; and available technology and manpower.

From the contingency planning point of view, Port Valdez has the following favorable features: low winds most of the time, waves rarely above 2 feet in height, weak currents, mild temperatures, and no ice cover. Contingency plans are being developed, based on model studies and assumed situations.

Oil spill control includes containment, oil removal, shoreline protection, shoreline cleanup and restoration.

Containment is usually by floating booms of which many kinds are now available. A boom is a surface dam preventing the spread of oil over the water surface.

Floating skimmers have been most successful for picking up and removing oil contained by booms. They generally employ suction pumps to draw in the oil at a rate of up to several hundred gallons a minute, as they move, or are towed, over the water surface. They cannot operate effectively on thin oil films, however, and other devices, some still in the research stage, are used. They usually involve wiping the oil onto the surface of a disk or a belt moved through the film. The present preferred method of recovering oil is by absorption on straw or other materials that have been spread. Recovery of the oil absorbent materials remains the chief problem. Oil removal by dispersion or by sinking is in the research stage but

these methods have drawbacks. Removal by burning is difficult because the water keeps the oil temperature too low for combustion. Here, too, research is going on with wick systems, etc. Various kinds of containers are available for temporary storage of oil and absorbents removed from the water.

Shoreline protection is an important phase from an ecological point of view. The normal defense is a boom placed between the floating oil slick and the shore. The usual method to accomplish shoreline cleanup and restoration is to spread and retrieve absorbents on beaches, and to use high pressure water or steam jets on rock and concrete.

The following equipment is the contingency plans for Port Valdez:

- 10,000 feet of floating containment boom with positive flotation, superstructure and below-water skirt
- Boom handling gear
- 25 drums of dispersant for final cleanup
- 50 drums of surface-tension modifier
- 6 chemical deployment units
- 2,000 bales of absorbent material; deployment and recovery equipment
- 1,000 feet of oil recovery system
- 2 kinds of skimming barges
- 12 bird-repelling guns
- 1 large storage tank
- 24 high intensity light sources
- Various trucks, fire-fighting equipment, a bulldozer, front-end loader and use of tugs and launches

If necessary to prevent the passage of oil through Valdez Narrows, Port Valdez could be sealed off by tugs deploying 7,000 feet of boom across the Narrows. The Port Valdez equipment and manpower would be available for cleanups in Prince William Sound where the

problem is more difficult, and help could be required from the spill cleanup services of the U.S. Coast Guard integrated system for the Pacific Coast (APSC, 1971a, Addendum No. 2).

Voyage

The State of Alaska is currently evaluating tanker operations in Prince William Sound, and devising a detailed plan for control. The State's plan is based on shore-control radar and a radio net. As noted earlier, Alyeska has also made recommendations.

From Hinchinbrook, the route goes 60 miles toward Middleton Island in the Gulf of Alaska and thence to west coast ports under normal sea operation. Navigation would be assisted by radar and radio contacts with the shore.

There is sufficient depth of water over the route just described but because of uplift in the 1964 earthquake and lack of up-to-date charts, wire-dragging would be desirable so that all possible hazards to tankers of 65 feet draft could be located.

For vessel movements in Valdez Arm, Valdez Narrows and Port Valdez all vessels would take on board a State-licensed pilot at the pilot station just north of Busby Island.

On leaving the dock on the outbound voyage, ships would navigate 8 miles of Port Valdez with visual range of both shores and good radar targets on land. Alyeska has proposed traffic control rules prohibiting two-way traffic through the Narrows (which is about one mile wide). Middle Rock would have a radar marker, fog signals and

APPENDIX
STIPULATIONS
for proposed
TRANS-ALASKA PIPELINE

Stipulations to be made a part of any
permit which may be issued by the
Department of the Interior in connection
with the proposed Trans-Alaska Pipeline

Prepared by:
DEPARTMENT OF THE INTERIOR
and the
FEDERAL TASK FORCE ON ALASKAN OIL DEVELOPMENT
February 1972

the Federal Water Pollution Control Act, as amended in (33 U.S.C. sec. 1161(b)) and the regulations issued thereunder, or in violation of applicable laws of the State of Alaska and regulations issued thereunder is prohibited. Permittee shall give immediate notice of any such discharge to: (1) the Authorized Officer, and (2) such other Federal and State officials as are required by law to be given such notice.

- 2.13.2 Permittee shall give immediate notice of any spill or leakage of oil or other pollutant from the Pipeline, the Valdez terminal facility, or any storage facility to: (1) the Authorized Officer; and (2) such other Federal and State officials as are required by law to be given such notice. Any oral notice shall be confirmed in writing as soon as possible.

2.14 Contingency Plans

- 2.14.1 It is the policy of the Department of the Interior that there should be no discharge of oil or other pollutant into or upon lands or waters. Permittee must therefore recognize its prime responsibility for the protection of the public and environment from the effects of spillage.

2.14.2

Permittee shall submit its contingency plans to the Authorized Officer at least one-hundred and eighty (180) days prior to scheduled start-up. The plans shall conform to this Stipulation and the National Oil Hazardous Substances Pollution Contingency Plan, 36 FR 16215, August 20, 1971 and shall: (1) include provisions for oil spill control 1/; (2) specify that the action agencies responsible for contingency plans in Alaska shall be among the first to be notified in the event of any Pipeline System failure resulting in an oil spill; (3) provide for immediate corrective action including oil spill control and restoration of the affected resource; and (4) provide that the Authorized Officer shall approve any materials or devices used for oil spill control and shall approve any disposal sites or techniques selected to handle oily matter; and (5) include separate and specific techniques and schedules for clean-up of oil spills on land, lakes, rivers and streams, sea, and estuaries.

1/ As used in this Stipulation 2.14.2, oil spill control is defined as (1) detection of the spill, (2) location of the spill, (3) confinement of the spill, and (4) cleanup of the spill.

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2.14.3

Prior to Pipeline start-up, such plans shall be approved in writing by the Authorized Officer and Permittee shall demonstrate its capability and readiness to execute the plans. Permittee shall update as appropriate the plans and methods of implementation thereof, which shall be submitted annually to the Authorized Officer for his written approval.

2.14.4

If during any phase of the construction, operation, maintenance or termination of the Pipeline, any oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such oil or other pollutant, wherever found, shall be the responsibility of Permittee, regardless of fault. Upon failure of Permittee to control, dispose of, or clean up such discharge, or to repair all damages resulting therefrom, the Authorized Officer may take such measures as he deems necessary to control and clean up the discharge and restore the area, including, where appropriate, the aquatic environment and fish and wildlife habitats, at the full expense of Permittee. Such action by the Authorized Officer shall not relieve Permittee of any responsibility as provided herein.

proceeding shall be heard by a three-judge court appointed in the same manner as a three-judge district court appointed under section 2284 of title 28 of the United States Code. Any such action or proceeding shall be assigned for hearing at the earliest practicable date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such three-judge district court. Any review of an interlocutory or final judgment, decree, or order of such three-judge district court by any party to such action or proceeding may be had only upon direct appeal to the Supreme Court of the United States.

Sec. 204. A right-of-way or permit granted under this title II for a road or airport as a related facility of the trans-Alaskan pipeline may provide for the construction of a public road or airport.

Sec. 205. The grant of a right-of-way or permit pursuant to this title II shall grant no immunity from the operation of the Federal antitrust laws.

Sec. 206. Any crude oil transported over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920 shall be subject to all of the limitations and licensing requirements, and penalty and enforcement provisions, of the Export Administration Act of 1969 (Act of December 30, 1960; 83 Stat. 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements of the Export Administration Act of 1969 the President must make and publish an express finding that such exports are in the national interest: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within that time limit passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

Sec. 207. (a) Except when the holder of a permit or right-of-way granted pursuant to this title can prove that damages caused by the holder's activities conducted at any point along the route of the proposed trans-Alaskan pipeline were caused by an act of war or by negligence of the United States or other government, such holder shall be strictly liable to all damaged parties, including but not limited to private persons, Alaska Natives, Native organizations, and Federal and State governments, without regard to fault for such damages.

(b)(1) The Secretary shall direct as a term or condition of any permit or right-of-way issued pursuant to this title that, except when the holder of such permit or right-of-way can prove that damages resulting from discharges of oil in violation of section 11(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1161(b)(2)) were caused by an act of war or by negligence of the United States or other government such holder shall be strictly liable without regard to fault to all parties, including but not limited to private persons and the Federal and State governments, for all damages resulting from such discharges of oil from, or involving vessels owned, chartered, operated, or leased by or for such holder, affiliate of such holder, shareholder, partner, or other constituent part of the holder, or affiliate of such shareholder, partner, or other constituent part of the holder, where the cargo of such vessel is oil transported by the proposed trans-Alaskan pipeline. Any action taken pursuant to this subsection shall be brought in the appropriate United States district court.

(2) For the purposes of this subsection, the term "affiliate" includes—

(A) any person or corporation owned or controlled by the permit holder or by a shareholder, partner, or other constituent part of the permit holder; or

(B) any person or corporation which owns a substantial interest in or controls the permit holder by—

(i) stock interest, or
(ii) representation on a board of directors or similar body, or
(iii) contract or other agreement with other stockholders, or
(iv) otherwise; or

(C) any person or corporation which is under common ownership or control with the permit holder.

(c) The Secretary is directed to require from the holder a bond that shall at all times be maintained and in force and effect in the full principal amount during construction, operation, and termination of the proposed trans-Alaskan pipeline. The amount of said bond shall be adequate to insure the payment of any final judgment recovered against the holder for loss or damage in actions arising under this section.

Sec. 208. (a) The Secretary of the Interior is directed to report at least semiannually to the House and Senate Committees on Interior and Insular Affairs on the progress of construction of the proposed trans-Alaskan pipeline and related facilities and on the implementation of environmental stipulations attached to any permits or rights-of-way for the proposed trans-Alaskan pipeline. The first report shall be made no later than six months from the date of any permit or right-of-way granted pursuant to this title. Further reports shall be made at no greater than six-month intervals from the last prior report made.

(b) The Secretary shall issue a cease-and-desist order to halt construction of the proposed trans-Alaskan pipeline and related facilities at any time whenever he finds that the stipulations attached to permits or rights-of-way issued pursuant to this title are not being implemented or that significant damage to the environment, unforeseen at the time at which permits or rights-of-way were issued for the proposed trans-Alaskan pipeline, may occur if construction is not halted.

Sec. 209. (a) The Secretary of the Interior is authorized and directed to investigate the feasibility of one or more oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that will deliver oil or gas to United States markets. The cost of making the investigation shall be charged to any future applicant who is granted a right-of-way for one of the routes studied. The Secretary shall submit to the Congress periodic reports of his investigation, and the final report of the Secretary shall be submitted to the Congress within two years from the date of this Act.

(b) The President is authorized and requested to enter into negotiations with the Government of Canada to determine (1) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory for the transport of oil and gas from Alaska's North Slope to markets in the United States, and (2) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional oil export commitments from the Government of Canada that would make unnecessary the shipment of oil from the Alaskan pipeline by tanker into the Puget Sound area. The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendation for further action.

(c) Nothing in this section shall limit the authority of the Secretary of the Interior, or

any other Federal official, to grant a gas pipeline right-of-way or permit which he is otherwise authorized by law to grant.

Sec. 210. The words "trans-Alaskan pipeline", wherever used in this title, mean that pipeline system, including related facilities, described in the "Final Environmental Impact Statement, Proposed Trans-Alaskan Pipeline".

Mr. MELCHER (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

Mr. DINGELL. Mr. Chairman, I reserve the right to object, and I will not object.

I make this reservation solely to inquire of the chairman of the subcommittee whether it is his intention at any point to limit debate with respect to title II of the bill? Perhaps I might repeat I have reserved the objection solely to ask my friend, the gentleman from Montana, whether or not it is the intention of him or members of the committee at any time in any way to attempt to limit debate or offering of amendments to title II?

Mr. MELCHER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Montana.

Mr. MELCHER. I thank the gentleman for yielding.

Subject to the will of the House it is my intent to proceed with the amendments, any and all, that will be offered by any Member on the floor today.

Mr. DINGELL. Mr. Chairman, I do not object, and I withdraw my reservation of objection with that understanding from the chairman of the subcommittee that it is not his intention to limit debate.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

There was no objection.

AMENDMENT OFFERED BY MR. DELLENBACK

Mr. DELLENBACK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DELLENBACK: Page 13, line 5. Strike out all of subparagraph (d), insert a new section 203 to read as follows, and renumber the subsequent sections:

"Sec. 203. Proceedings in any United States federal court with respect to any action taken by the Secretary of the Interior in accordance with provisions of the National Environmental Policy Act of 1969 or relating to any right of way to construct the proposed Trans-Alaskan pipeline or to any permit in relation thereto shall be given precedence over all other cases pending therein, and shall be assigned for hearing and determined at the earliest practicable date, and all courts involved shall cause the case to be in every way expedited."

(By unanimous consent, Mr. DELLENBACK was allowed to proceed for 5 additional minutes.)

Mr. DELLENBACK. Mr. Chairman, I will try not to be complex in this, but we are at the heart of what is the major crucial question about the bill which is before us. We have here an amendment which was proposed in the full Committee on the Interior, and in the full Com-

**Federal & State
Stipulations
Governing the
trans Alaska
Pipeline System**

Alyeska pipeline
SERVICE COMPANY

EXHIBIT E

Table of Contents

Section	Page
Exhibit A	
Alaska State Stipulations for the Right-of-Way Lease for the Trans-Alaska Pipeline	A-1
Exhibit B	
Requirements of the Department of Defense Relating to Military Installations.....	B-1
Exhibit C	
Requirements of the Federal Power Commission Relating to Power Sites.....	C-1
Exhibit D	
Federal Stipulations for the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline	D-1
Exhibit E	
Cooperative Agreement Between United States Department of the Interior and State of Alaska Regarding the Proposed Trans-Alaska Pipeline System.....	E-1

EXHIBIT A

Alaska State Stipulations for the Right-of-Way Lease for the Trans-Alaska Pipeline

1.1.1.23. "Notices to Proceed" means more than one Notice to Proceed.

1.1.1.24. "Oil" means unrefined liquid hydrocarbons, including gas liquids.

1.1.1.25. "Operation" means all activities connected with the transportation of Oil through the Pipeline including maintenance of the Pipeline.

1.1.1.26. "Original Lessee" means any one of the Original Lessees.

1.1.1.27. "Owner" means any one of the Lessees.

1.1.1.28. "Owners" means more than one Owner.

1.1.1.29. "Parent" means a Person or Business Entity whose direct or indirect legal or beneficial ownership interest in, or with respect to, a Transferee or Lessee enables that Person or Business Entity to control the Transferee's or the Lessee's management or policies.

1.1.1.30. "Parents" means more than one Parent.

1.1.1.31. "Person" means a natural person.

1.1.1.32. "Persons" means more than one Person.

1.1.1.33. "Pipeline" means all the facilities including Related Facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and including all pipe, pump

or compressor station, tanks, valve airfields, terminal including docks and facilities, operations of the upstream part of the terminal, tanker facilities, and fire protection system used or necessary pipe, taken as a whole for transportation, its enlargement of the

1.1.1.34. "Pipeline" means the authorized representative of the authority and administering a project under the provisions of this Lease. The Commissioner has no responsibility, but may act as the Pipeline

1.1.1.35. "Preliminary" means the establishment of construction, including conceptual design of the project to be constructed. It includes minimum criteria and project of field data used for design criteria; drawings technical requirements data compiled data and preliminary drawings (if any) to support structural analysis of each typical facility proposed. Construction

2.13. Reporting of Oil Discharges or Other Pollution

2.13.1. A discharge of Oil or other pollutant by Lessees in violation of applicable laws of the State of Alaska and regulations issued thereunder, is prohibited. Lessees shall give immediate notice of any such discharge to: (1) the Pipeline Coordinator; and (2) such other State officials as are required by law to be given such notice.

2.13.2. Lessees shall give immediate notice of any spill or leakage of Oil or other pollutant from the Pipeline, the Valdez terminal facility, or any storage or refueling facility or equipment to: (1) the Pipeline Coordinator; and (2) such State and Federal officials as are required by law to be given such notice. Any oral notice shall be confirmed in writing as soon as possible.

2.14. Contingency Plans

2.14.1. It is the policy of the Department of Natural Resources that there should be no discharge of Oil or other pollutant into or upon lands or waters of the State. Lessees must therefore recognize their prime responsibility for the protection of the public and environment from the effects of spillage.

2.14.2. Lessees shall submit their contingency plans to the Pipeline Coordinator at least one hundred eighty (180) days prior to scheduled start-up. The plans shall conform to this Stipulation and shall: (1) include provisions for Oil

Spill Control¹; (2) specify that the action agencies responsible for contingency plans in Alaska shall be among the first to be notified in the event of any Pipeline failure resulting in an Oil spill; (3) provide for immediate corrective action including Oil Spill Control and restoration of the affected resource; (4) provide that the Pipeline Coordinator shall approve any materials or devices used for Oil Spill Control and shall approve any disposal sites or techniques selected to handle oily matter; and (5) include separate and specific techniques and schedules for cleanup of Oil spills on land, lakes, rivers and streams, sea, and estuaries.

2.14.3. Prior to Pipeline start-up, such plans shall be approved in writing by the Pipeline Coordinator, and Lessees shall demonstrate their capability and readiness to execute the plans. Lessees shall update as appropriate the plans and methods of implementation thereof, which shall be submitted annually to the Pipeline Coordinator for his written approval.

2.14.4. If during any phase of the construction, operation, maintenance or Termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline, the Valdez terminal facility, or any storage

or refueling facility or equipment, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Lessees, regardless of fault. Upon failure of Lessees to control, dispose of, or clean up such discharge, the Pipeline Coordinator may take measures as he deems necessary to control and clean up the discharge at the full expense of Lessees. Such action by the Pipeline Coordinator shall not relieve Lessees of any responsibility as provided herein.

¹Oil Spill Control is defined as (1) detection of the spill, (2) location of the spill, (3) confinement of the spill, and (4) cleanup of the spill.

to any Federal Lands that
thdrawn or reserved for
the grant of the Right-of-
dance with the findings of
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ssued on December 6,
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ion of prior rights for
ver development, and sub-
ition that in the event the
ired for such purposes,
nts or structures placed
hall be found to interfere
opment shall be removed
may be necessary to elimi-
ce with reservoir or power
no cost to the United
mittees or licensees.

ees herein shall not be
"permittees or licensees"
ning of the aforesaid find-
eral Power Commission.

EXHIBIT D

Federal Stipulations for the Agreement
and Grant of Right-of-Way for the
Trans-Alaska Pipeline

ction Segment" means
ipeline System that
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y Passage of Title"
is made by the exer-
; primarily for the
; accordance
del or decree of a

court in bankruptcy, eminent domain or
other similar proceedings, or pursuant to
any act or resolution of a sovereign legis-
lative body directing a lawful taking of
property.

1.1.1.14. "Mapping Segment" means a
Construction Subdivision, or any part
thereof, as determined by the Authorized
Officer; *provided, however*, that with re-
spect to a pump station, basic communi-
cation site, remote control valve site, me-
chanical refrigeration equipment site and
any other like Related Facility, a Mapping
Segment means the entire site.

1.1.1.15. "Notice to Proceed" means a
permission to initiate Pipeline System
construction that is issued in accordance
with Stipulation 1.7.

1.1.1.16. "Oil" means unrefined liquid
hydrocarbons, including gas liquids.

1.1.1.17. "Parent" means a Person or
Business Entity whose direct or indirect
legal or beneficial ownership interest in,
or with respect to, a Transferee or Permit-
tee enables that Person or Business Entity
to control the Transferee's or the Permit-
tee's management or policies.

1.1.1.18. "Permittee" means any one of
the Permittees.

1.1.1.19. "Permittees" means the Orig-
inal Permittees, or their respective succes-
sors or assigns holding an undivided owner-
ship interest in the Right-of-Way to the
extent sanctioned by the Secretary in
accordance with the provisions of this
Agreement.

1.1.1.20. "Person" means a natural person.

1.1.1.21. "Persons" means more than one Person.

1.1.1.22. "Pipeline System" means all facilities located in Alaska used by Permittees in connection with the construction, operation, maintenance or termination of the Pipeline. This includes, but is not limited to, the Pipeline, storage tanks, Access Roads, communications sites, airfields, construction camps, materials sites, bridges, construction equipment and facilities at the origin station and at the Valdez terminal. This does not include facilities used in connection with production of oil or gathering systems, nor does it include such things as urban administrative offices and similar facilities which are only indirectly involved.

1.1.1.23. "Preliminary Design" means the establishment of project criteria (i.e., construction, including design, and operational concepts) necessary to delineate the project to be constructed. As a minimum it includes the following: design criteria and project concepts; evaluation of field data used to establish the design criteria; drawings showing functional and technical requirements; reports of all test data compiled during the data collection and preliminary design evaluation; standard drawings (if applicable) or drawings to support structural design concepts of each typical facility or structure; proposed Construction Modes; outline project speci-

fications, the design siting.

1.1.1.24. those structures and sites of which maintenance pipeline,

(1) line p

(2) pump buildings and fence

(3) valve structure

(4) monitoring devices, and

(5) surge containment

(6) bridge

(7) terminals, heliports and fence

(8) a gas lines nec

(9) retaining cuts and trol stru

(10) storage and area equipment

(11) admin

(12) cati

2. ENVIRONMENTAL

2.1. Environmental Briefing

2.1.1. Prior to, and during, construction of the Pipeline System, Permittees shall provide for environmental and other pertinent briefings for construction and other personnel by such Federal employees as may be designated by the Authorized Officer. Permittees shall arrange the time, place and attendance for such briefings upon request by the Authorized Officer. Permittees shall bear all costs of such briefings other than salary, per diem, subsistence, and travel costs of Federal employees. In addition, Permittees shall separately arrange with the State of Alaska for such similar briefings as the State may desire.

2.2. Pollution Control

2.2.1. General

2.2.1.1. Permittees shall conduct all activities associated with the Pipeline System in a manner that will avoid or minimize degradation of air, land and water quality. In the construction, operation, maintenance and termination of the Pipeline System, Permittees shall perform their activities in accordance with applicable air and water quality standards, related facility siting standards, and related plans of implementation, including but not limited to standards adopted pursuant to the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321 *et seq.*

United States, adjoining shorelines, or into or upon the waters of the contiguous zone in violation of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321 *et seq.* and the regulations issued thereunder, or in violation of applicable laws of the State of Alaska and regulations issued thereunder, is prohibited. Permittees shall give immediate notice of any such discharge to: (1) the Authorized Officer; and (2) such other Federal and State officials as are required by law to be given such notice.

2.13.2. Permittees shall give immediate notice of any spill or leakage of Oil or other pollutant from the Pipeline, the Valdez terminal facility, or any storage facility to: (1) the Authorized Officer; and (2) such other Federal and State officials as are required by law to be given such notice. Any oral notice shall be confirmed in writing as soon as possible.

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2.14.2. Permittees shall submit their contingency plans to the Authorized Officer at least one hundred and eighty (180) days prior to scheduled start-up. The plans shall conform to this Stipulation and the National Oil Hazardous Substances Pollution Contingency Plan, 36 F.R. 16215,

August 20, 1971, and shall: (1) include provisions for Oil Spill Control¹; (2) specify that the action agencies responsible for contingency plans in Alaska shall be among the first to be notified in the event of any Pipeline System failure resulting in an Oil spill; (3) provide for immediate corrective action including Oil Spill Control and restoration of the affected resource; (4) provide that the Authorized Officer shall approve any materials or devices used for Oil Spill Control and shall approve any disposal sites or techniques selected to handle oily matter; and (5) include separate and specific techniques and schedules for cleanup of Oil spills on land, lakes, rivers and streams, sea, and estuaries.

2.14.3. Prior to Pipeline start-up, such plans shall be approved in writing by the Authorized Officer, and Permittees shall demonstrate their capability and readiness to execute the plans. Permittees shall update as appropriate the plans and methods of implementation thereof, which shall be submitted annually to the Authorized Officer for his written approval.

2.14.4. If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other

pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Permittees, regardless of fault. Upon failure of Permittees to control, dispose of, or clean up such discharge, the Authorized Officer may take such measures as he deems necessary to control and clean up the discharge at the full expense of Permittees. Such action by the Authorized Officer shall not relieve Permittees of any responsibility as provided herein.

¹As used in this Stipulation 2.14.2., Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

Summary
Project Description
Of The Trans Alaska
Pipeline System
September 1974

TN
879.51
A532

Alyeska pipeline
SERVICE COMPANY

EXHIBIT F

- Pipeline
Pump Stations
Cities



A principal concern of both design and construction has been development of a secure and, as nearly as possible, leak-proof system for the pipeline, pump stations, terminal and all ship-loading facilities.

However, in case of an accident, detailed contingency plans have been prepared for every portion of the system. The plans have seven basic objectives: (1) prevention of oil leaks and spills, (2) fast, accurate and sensitive detection of any leaks, (3) minimization of spill volume, (4) containment of spills, (5) recovery of oil, (6) rehabilitation and restoration of affected areas, and (7) public safety and prompt notification.

To implement the plans, specific response procedures have been developed for spills or leaks on every part of the pipeline system. The procedures will be stored in a computer. And when a spill or leak is identified, the computer will print out a pre-planned response for the area involved, identifying not only crews and equipment required but also the step-by-step procedures to be followed in meeting the emergency.

Pipeline Contingencies

Nature of action taken if a leak is detected in the pipeline will depend largely upon the size and location of the leak, as indicated by the pipeline data system. Typically, however, if an alarm signals a leak and the location of the leak is apparent from the control center data display, the dispatcher will take steps to shut down all stations north (upstream) of the leak position. Downstream stations will then be shut down. When all necessary pump stations are shut down, the dispatcher will then isolate the leak between two adjacent station sites by closing station block valves. He will also close any remotely controlled valves in the area of the leak.

Pump stations can be closed down in six minutes. Other remotely controlled valves can be closed in four minutes more.

Aircraft or ground patrols will then be used to pinpoint the leak. And crews will be dispatched immediately to close locally operated valves, stop the leak, contain the spill in the smallest possible area and begin recovery and repair operations.

One of the first steps taken by crews arriving at a spill will be to create dikes, pits and other containment structures. Where practical in environmentally sensitive sites, permanent dikes may be installed, during construction, to prevent any future possible spill from reaching the sensitive site.

In general, spilled oil will either be drained into temporary storage pits or pumped into temporary tanks for later movement by truck to the nearest pump station or other suitable location for return to the line.

Oil which cannot be picked up will be recovered by sorbent materials. Burning of unrecoverable residual oil may be used in some circumstances but only with prior approval of appropriate government authorities.

If surface waters of lakes or rivers are involved, spilled oil will be confined by fixed or floating booms and removed by skimming devices, floating sorbents and or burned.

Soil rehabilitation including aeration, dilution, fertilization and revegetation will start as soon as possible.

Terminal Contingencies

Prompt action is also planned in dealing with any spills connected with ship loading activities at Valdez.

The physical characteristics of Port Valdez will facilitate containment of oil spills and minimize consequent damage. The harbor is long but narrow. Sheer cliffs and steep rocky beaches account for 56 per cent of the shoreline. Mud or shale tidal flats cover about 19 per cent and sand and gravel beaches account for another 13 per cent. Coarse gravel and shale beaches account for the rest. Average water depth in the harbor is in excess of 750 feet.

Wind speed is below seven knots more than 90 per cent of the time.

Current velocity is generally less than 0.5 knots off Jackson Point. In Valdez Narrows and Valdez Arm, currents are reported at less than a knot. Wave action most of the time does not exceed one to two feet in height. Waves of two to three feet have been observed in storms.

Temperatures are mild for this latitude.

The motion of water discharged from about 50 streams, including the Lowe and Robe Rivers and Shoup Glacier, may be of some assistance in terms of repelling oil from those areas. For instance, a two to three knot current has been observed near the entrance of the Robe River.

However, in event of a spill near a tanker, the contingency response would include deployment of floating booms around the vessel and surface oil; deployment of floating skimmers within the contained slick to recover the oil and transfer it to a barge or other facilities; dispatch of skimming barges to remove slicks and other oil that may escape from the containment booms. In shoreline areas booms could be deployed to protect threatened areas, especially those which are ecologically sensitive.

When work is completed, all containment water which had been recovered would be discharged into the terminal ballast treatment system. Surface oil recovery devices and sorbents would be used to remove remaining sheen or iridescence on the water surface.

If necessary to prevent passage of oil from Valdez Narrows into Prince William Sound, Port Valdez could be closed by diversion booms. Sea-going tugs would tow booms into place.

A large amount of special equipment will be kept at the terminal site to meet contingencies. Included will be floating containment booms, sorbents, sorbent deployment units and recovery equipment, oil skimmers, bird repelling devices, one large storage barge with pumps and hoses, vacuum trucks, fire trucks with high pressure pumps, high pressure water pumping systems which can be operated from shore, truck or boat deck, trucks, bulldozers, a front end loader, tugs and mooring launches and high intensity lights which will permit oil recovery in darkness.