

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2017 SCOMM 78 SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

35

● EXHIBIT G

It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their Agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and if they occur, to minimize environmental damage. Alyeska will comply with relevant pollution laws for the protection and conservation of environmental resources.

Alyeska policy shall comply with State of Alaska Regulations and the National Oil and Hazardous Substances Pollution Contingency Plan, as revised on February 10, 1975, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act, as amended (Public Law 92-500). Alyeska policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way Lease with the United States of America and the State of Alaska, respectively.

Alyeska employees and contractor personnel are expected to take all precautions to prevent oil spills and are to report immediately to their supervisors if they observe any oil spill regardless of size. Failure to report spills and acts of negligence which result in oil spills by employees or contractors will be cause for disciplinary action or discharge.

Alyeska will maintain an Environmental Protection Department to support the Terminal Superintendent and to advise, coordinate, and implement resources protection and conservation activities. This department is also responsible for ensuring that training is effectively conducted and that the updated plans include the most recent information available.

Every effort shall be made to enhance communication and understanding with civic groups, conservation organizations, universities, and the general public through publications, speakers, exhibits, technical demonstrations, and the news media.

The Oil Spill Contingency Plan for Prince William Sound has been developed specifically for rapid and effective response to an oil spill from Alyeska owned, operated, or contracted tankers using the Prince William Sound Vessel Traffic Service operated by the United States Coast Guard from the Marine Safety Office in Valdez. To provide oil spill response, this Contingency Plan has been prepared to:

- Ensure rapid and accurate detection, location, and movement prediction of an oil spill
- Detail specific procedures to minimize spill volume, spill spreading, and shoreline contamination
- Outline steps for maximum oil recovery
- Provide assistance as requested by U.S. Coast Guard to tanker personnel and stricken tanker, if a tanker accident has occurred
- Provide for exclusion procedures to protect environmentally sensitive areas
- Outline effective cleanup, rehabilitation, and restoration procedures for affected areas
- Furnish public safety and notification procedures
- Specify procedures for notification of and cooperation with applicable government authorities

Containment and Cleanup

The containment and cleanup of oil spills on the waters of Prince William Sound will be given highest priority in order to prevent oil from and/or minimize the volume of oil reaching shoreline areas. Exclusion procedures will be utilized to assist in preventing oil slicks from affecting sensitive shoreline areas.

Chemical Treatment

Dispersants will not be used without prior consultation with the appropriate federal and state agencies. Alyeska's policy will be to follow the restrictions on the use of dispersants for oil spill control as given in the *National Oil and Hazardous Substances Pollution Contingency Plan* (January 1973). Specifically, dispersants will be utilized only when their use will:

- Prevent or substantially reduce hazard to human life or limb or substantial hazard of fire to property
- Prevent or substantially reduce hazard to major elements of the populations of vulnerable species of waterfowl, wildlife, and vegetation

- Result in the least overall environmental damage or interference with designated uses

Personnel Training, Emergency Drills, and Field Exercises

Regularly scheduled training programs will be conducted to ensure that all personnel assigned to the Oil Spill Task Force are thoroughly familiar with their duties and the operation of oil spill contingency equipment.

Training and instruction of Oil Spill Task Force personnel, including frequent drills, will be carried out within Prince William Sound to maintain maximum familiarity with all aspects of the Oil Spill Contingency Plan. The objectives of this training program are:

- To ensure that Alyeska Personnel are ready for effective handling of foreseeable oil spill emergencies
- To maintain the Plan as fully operable working documents
- To inform Task Force Team members of their respective duties and communications procedures
- To ensure familiarity with the use of all equipment
- To update the Plan to reflect state of the art in oil spill technology
- To modify the Plan in the light of information gained from the field exercises and actual experiences

Full scale, company wide field exercises will be held at least once per year to ensure overall readiness for response to large scale oil spills and to ensure that communications will be rapid and effective.

Liability, Authority, and Responsibility

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

Summarily, Alyeska will direct cleanup operations of spills 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 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

Alyeska Pipeline Service Company will not assume direction of cleanup operations of oil spills occurring at or from facilities operated by parties not directly involved with the Trans-Alaska Pipeline System, or spills of unknown origin. However, upon becoming aware of such spill(s), Alyeska will promptly notify the proper government agencies of the spill and promptly enter into cleanup operations of spill(s) of other parties or those of unknown origin if the person or agency responsible a) requests assistance in the undertaking of the cleanup operation, b) guarantees payment of all costs, and c) retains direction of the cleanup operations.

Regardless of the source of the spill, however, none of the above instructions will be understood to preclude Alyeska personnel from taking any containment actions necessary to prevent oil from entering a stream, an environmentally sensitive area or a potentially hazardous area when, in the opinion of the supervisor on the scene, such action is necessary to protect the public interest.

Notifying Government Agencies

All oil spills will be reported to the following federal and state agencies:

- United States Coast Guard
- Environmental Protection Agency
- Alaska State Department of Environmental Conservation
- Alaska Pipeline Office (Federal)
- Alaska Pipeline Coordinator's Office (State)

Participation and Assistance

Alyeska Pipeline Service Company will encourage and participate in efforts to form cooperatives to which the proper government agency may direct requests for assistance in cleaning up oil spills of unidentified origin or those declared to be inadequately handled. This assistance may take the form of research and development, advisory and training activities, furnishing of equipment and materials, and actual cleanup of spills.

103 CONCEPT OF PLAN

The Alyeska Oil Spill Contingency Plans consist of the Pipeline Plan, Valdez Marine Terminal Plan, and Prince William Sound Plan. The Pipeline Plan includes the General Provisions and 12 Section Plans. These Section Plans delineate specific response actions for spills detected between pump stations, including Contingency Area Plans within each section which give response actions for pipeline spills within specific drainages. The Valdez Marine Terminal Plan delineates specific response actions for spills detected at the Valdez Marine Terminal and/or Port Valdez. The Prince William Sound Plan delineates specific response actions for spills in Prince William Sound including Valdez Arm.

This manual contains the Oil Spill Contingency Plan for Prince William Sound. This Plan has been developed specifically for rapid and effective response to possible oil spills within Prince William Sound, including Valdez Arm, from Alyeska owned, operated, or chartered tankers carrying or destined to carry crude oil transported through the Trans-Alaska Pipeline System. This Plan covers the entire Prince William Sound from Middle Rock in Valdez Narrows to the southern limit of Hinchinbrook Entrance off Cape Hinchinbrook, as shown on Figure 103-1.

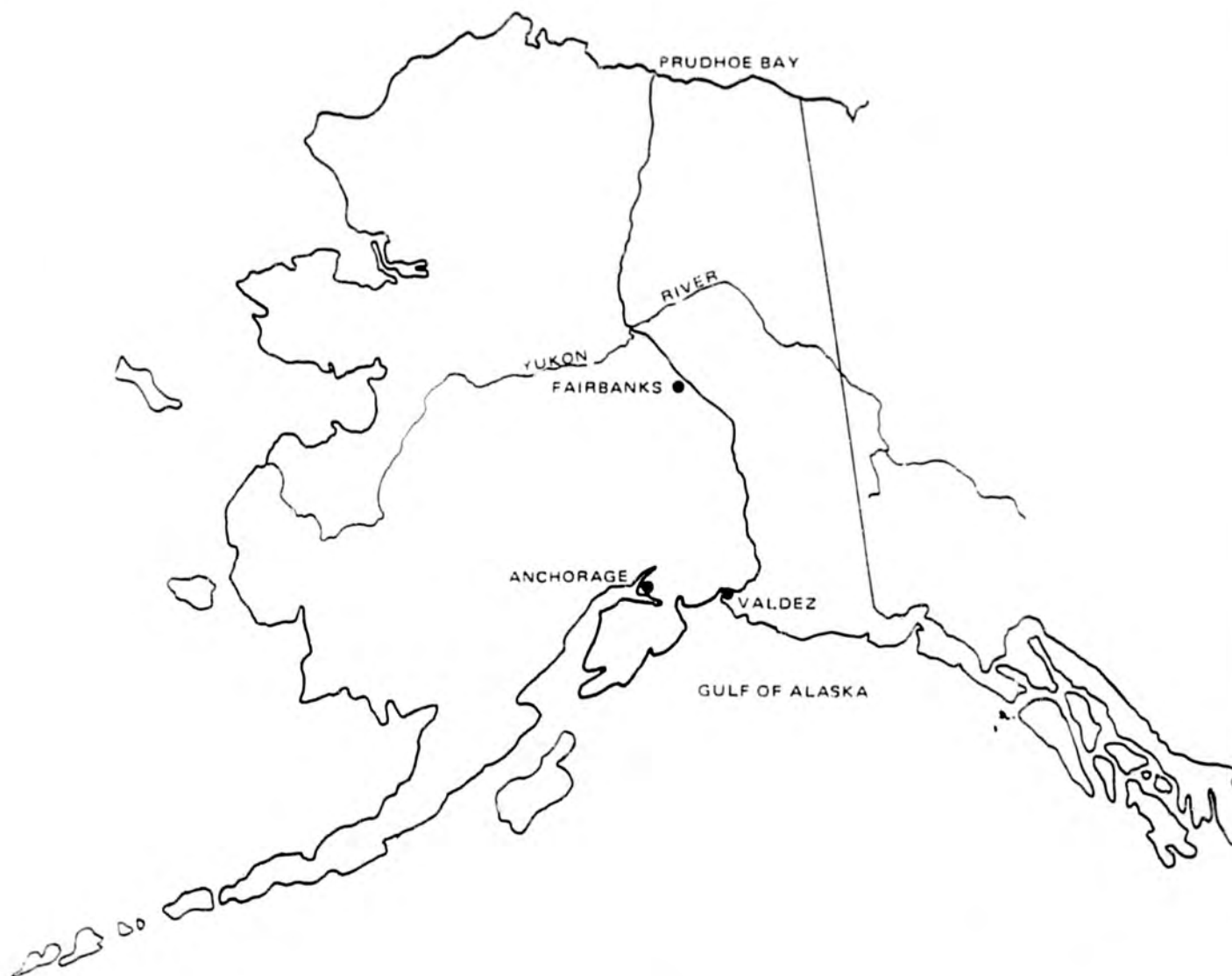
Alyeska's Oil Spill Contingency Plans have been prepared for distribution to supervisory and operating personnel located at the Valdez Marine Terminal. This Plan defines, as clearly as possible, specific immediate response actions to:

- Alert specific Alyeska supervisory personnel located at the Marine Terminal who are assigned specific Oil Spill Task Force responsibilities
- Initiate assessment and reconnaissance actions to determine the exact location and nature of the spill within Prince William Sound

OIL SPILL CONTINGENCY PLAN

GENERAL PROVISIONS

AUGUST 1978



Alyeska pipeline
SERVICE COMPANY

Alaska Pipeline Service Company, 1976

EXHIBIT H

**ALYESKA PIPELINE SERVICE COMPANY
OIL SPILL CONTINGENCY PLAN
GENERAL PROVISIONS**

100 INTRODUCTION

The Alyeska Pipeline Service Company has prepared Oil Spill Contingency Plans which include:

48-inch pipeline from Pump Station 1 to the Valdez Terminal, including associated mainline pump stations and facilities.

Crude Oil Storage and other terminal facilities at Port Valdez.

Prince William Sound including Valdez Arm.

A training program for personnel will be carried out including periodic practice drills. The Plan will be reviewed at least annually to consider improvements developed during training and practice sessions as well as to incorporate new techniques and equipment proven to be worthwhile in the industry.

101 PURPOSE

The objective of the Alyeska Oil Spill Contingency Plans is to minimize damage to environment and assure the safety of the public and employees in the event of an oil spill from company facilities. To accomplish these objectives, the resources of Alyeska Pipeline Service Company are organized in a preplanned manner to ensure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill clean-up technology.

102 ALYESKA POLICY

It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their Agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and if they occur, to minimize environmental damage. Alyeska will comply with relevant pollution laws for the protection and conservation of environmental resources.

Alyeska policy shall comply with Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, as revised on February 10, 1975, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act, as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectively.

Alyeska employees and contractor personnel are expected to take all precautions to prevent oil spills and are to report immediately to their supervisors if they observe any oil spill regardless of size. Failure to report spills and acts of negligence which result in oil spills by employees or contractors will be cause for disciplinary action or discharge.

Alyeska District and Terminal Superintendents will be directly responsible for adopting every reasonable measure for the protection and conservation of land, vegetation, wildlife, air and water resources along the Pipeline corridor and impacted areas. Alyeska will maintain full responsibility and control in the event of an oil spill unless a government agency specifically notifies Alyeska they have assumed responsibility and control. Mutual coordination will be maintained at all levels.

Alyeska will maintain an Environmental Protection Department to support the District and Terminal Superintendents and to advise, coordinate and implement resources protection and conservation activities. That Department is also responsible for ensuring that training is effectively conducted and that the updated plans include the most recent information available.

Every effort shall be made to enhance communication and understanding with civic groups, conservation organizations, universities, and the general public through publications, speakers, exhibits, technical demonstrations, and the news media.

Alyeska Pipeline Service Company has designed the Trans-Alaska Pipeline System for zero spill. However, in order to be prepared for rapid and effective response should any spillage occur, the General Provisions, the Valdez Terminal, Prince William Sound and the Pipeline Section Plans have been prepared to:

- Ensure rapid and accurate detection and location of oil spillage.
- Detail specific operational procedures to minimize spill volume.
- Provide for containment and cleanup procedures to minimize spread of spill.
- Outline effective cleanup, rehabilitation and restoration procedures for affected areas.
- Furnish public safety and notification procedures.
- Specify procedures for notification and cooperation with applicable government authorities.

Containment and Cleanup

The containment and cleanup of oil spills along the Trans-Alaska Pipeline System, at Port Valdez and Prince William Sound will be given priority to prevent and/or minimize the amount of oil reaching sensitive areas.

Chemical Treatment

Dispersants will not be used without prior consultation and approval from the State of Alaska Department of Environmental Conservation and appropriate federal agencies. Alyeska's policy will be to follow restrictions on the use of dispersants for oil spill control as given in the National Oil and Hazardous Substances Pollution Contingency Plan (January 1973). Specifically, dispersants will be utilized when their use will:

- Prevent or substantially reduce hazard to human life or substantial hazard of fire to property.
- Prevent or substantially reduce hazards to major element of the populations of vulnerable species: waterfowl, wildlife, and vegetation.
- Result in the least overall environmental damage by expediting cleanup.

Personnel Training, Emergency Drills and Field Exercises

Regularly scheduled training programs will be conducted to ensure that all personnel assigned to the Spill Task Force are thoroughly familiar with their duties and the operation of oil spill contingency equipment.

Training and instruction of Oil Spill Task Force personnel, including frequent drills, will be carried out at the Anchorage Headquarters, various District Headquarters, Pump Stations, and Valdez Terminal. Personnel will maintain maximum familiarity with all aspects of the Oil Spill Contingency Plans. The objectives of the training program are:

- To assure that Alyeska personnel are ready for effective handling of foreseeable oil spill emergencies.
- To maintain the Plans as fully operable working documents.
- To inform Task Force team members of their respective duties and communications procedures.
- To ensure familiarity with the use of all equipment.
- To update the Plans to reflect state-of-the-art capability.
- To modify Plans in the light of information gained from the field exercises and actual experience.

Full scale, companywide field exercises will be held at least once per year to insure overall readiness for response to large-scale oil spills and to assure that communications will be rapid and effective.

Liability, Authority and Responsibility

Alyeska Pipeline Service Company and the Owner Companies recognize and assume the liabilities and responsibilities imposed upon them under the 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 will be conducted by Alyeska as Agent for the Owner Companies and will be conducted in such a manner as to not require assumption of control of such clean-up operations by federal or state officials under applicable statutes, regulations, agreements or stipulations.

no spillage.
the general
en prepared

Summarily, Alyeska will direct cleanup operations of spills 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.

Alyeska Pipeline Service Company will not assume direction of clean-up operations of oil spills occurring at or from facilities operated by parties not directly involved with the Trans-Alaska Pipeline System, or spills of unknown origin. However, upon becoming aware of such spill(s), Alyeska will promptly notify the proper governmental agencies of the spill and promptly enter into clean-up operations of spill(s) of other parties or those of unknown origin if the person or agency responsible: a) requests assistance in the undertaking of the clean-up operation, b) guarantees all costs, and c) retains direction of the clean-up operations.

Regardless of the source of the spill, however, none of the above instruction will be understood to preclude Alyeska personnel from taking any containment actions necessary to prevent oil from entering a stream, an environmentally sensitive area or a potential hazardous area when, in the opinion of the Supervisor on the scene, such action is necessary to protect the public interest.

Notifying Government Agencies

All oil spills will be reported to the following federal and state agencies:

Alaska State Department of Environmental Conservation
Alaska Pipeline Office (Federal)
Alaska Pipeline Coordinator's Office (State)
United States Coast Guard (Tidewater only)

Spills of 50 barrels or more from the pipeline and pipeline accidents will also be reported to the United States Department of Transportation, Office of Pipeline Safety.

Paragraph 400 gives details of reporting procedure.

Participation and Assistance

Alyeska Pipeline Service Company will encourage and participate in efforts to form cooperatives to which the proper government agency may direct requests for assistance in cleaning up oil spills of unidentified origin or those declared to be inadequately handled. This assistance may take the form of research and development, advisory and training activities, furnishing of equipment and materials, and actual cleanup of such spills.

Oil Spill Prevention

Prevention of oil spills is a prime objective in the design and operation of the Trans-Alaska Pipeline System. To assist in accomplishing this objective Alyeska personnel will periodically:

Review Operating Procedures—All pipeline-operating procedures will be critically reviewed with respect to the prevention of oil spills.

Conduct Inspection of Pipeline Facilities—All pipeline facilities will be inspected periodically to determine potential sources of oil spills and remedial measures to be taken when necessary.

Train Personnel—Pipeline and Terminal operating personnel will participate in formal training sessions to ensure complete familiarity with pipeline facilities, operating procedures, and contingency response procedures and equipment.

Design of New Facilities—Implementation of new facilities and improvement of existing facilities will be examined from an oil spill viewpoint.

103 CONCEPT OF PLAN

The Alyeska Oil Spill Contingency Plan consists of the General Provisions, Valdez Terminal Plan, Prince William Sound Plan and 12 Section Plans. These Section Plans delineate specific response actions for

spills detected between pump stations including Contingency Area Plans within each section which give response actions for pipeline spills within specific drainages. The Valdez Marine Terminal Plan delineates specific response actions for spills detected at the Valdez Terminal and/or Port Valdez. The Prince William Sound Plan delineates specific response actions for spills in Prince William Sound including Valdez Arm.

This manual covers the General Provisions common to each Section Plan, the Valdez Terminal Plan and the Prince William Sound Plan. The Section Plans contain specific information relevant to the individual Sections. A Section may contain one or more Contingency Area further divided into segments representative of specific drainage characteristics within the Contingency Area. The pump stations and any other permanently connected facility to the pipeline are also covered in the Section Plans. The Valdez Terminal Plan and Prince William Sound Plan contain specific information relevant to the areas covered in the individual plans.

Alyeska's Oil Spill Contingency Plan has been prepared for distribution to supervisory, operating, contractor and agency personnel. The Plan defines, as clearly as possible, specific immediate response actions to:

- Alert specific supervisory personnel assigned responsibility for actions.

- Initiate reconnaissance actions to determine the exact location and extent of the spill.

- Initiate control actions to minimize the spread of oil and to prevent oil from reaching sensitive areas.

- Initiate cleanup actions for recovery of oil in conjunction with containment action as required.

Preplanned responses covering certain reconnaissance, operational, control and support actions have been delineated in the individual plans to ensure immediate response to an oil spill. Figure 103-1 diagrams these actions and subsequent actions relative to a spill situation under the Section Plans. Figure 103-2 diagrams similar actions relative to a spill situation under the Valdez Terminal Plan and the Prince William Sound Plan. Although the immediate response actions are preplanned, they will always be subject to review and modification by the Senior on-scene person at the time of an actual oil spill. All actions taken, after the immediate response actions, are controlled by the judgment of the Senior on-scene person.

The spill situations involving the activation of Alyeska's Oil Spill Contingency Plan include:

- A report by Alyeska or contractor personnel of a visual sighting while conducting routine surveillance and/or maintenance.

- A confirmed visual sighting reported by third parties.

- A monitored indication of a loss of oil by the Valdez Operations Control Center.

- A monitored indication of a loss of oil by Alyeska operating personnel.

Specific containment instructions have been prepared for each plan. These are actions which will be taken by response personnel depending on the spill situation.

The Alyeska Oil Spill Coordinator and the field Superintendent involved will initiate additional assessment procedures, if necessary, to assist in determining the appropriate degree of response. The Alyeska Oil Spill Coordinator will call out additional Response, Advisory and Support Oil Spill Task Force members as needed to implement the various response actions. Field Superintendents are responsible for handling all Alyeska spills in their jurisdiction. All spills whether from the crude oil manifold piping, terminal, tankers or other sources (including fuel oil storage) will be handled under the appropriate Contingency Plan. For example, Alyeska spills along the construction pad or highway from other sources besides the pipeline will be handled under the appropriate Section Plan. In subsequent parts of this Plan, detailed procedures have been outlined for each of the response actions to be taken.

PI-25

TRANS ALASKA PIPELINE
PORT INFORMATION MANUAL

VALDEZ, ALASKA

ALYESKA PIPELINE SERVICE COMPANY
1835 South Bragaw Street
ANCHORAGE, ALASKA 99512

Acting as Agent for:
AMERADA HESS PIPELINE CORPORATION
ARCO PIPE LINE COMPANY
BP PIPELINES INC.
EXXON PIPELINE COMPANY

MOBIL ALASKA PIPELINE COMPANY
PHILLIPS PETROLEUM COMPANY
SHELL PIPE LINE COMPANY
UNION ALASKA PIPELINE COMPANY

NOTICE:
THIS DRAWING/DOCUMENT IS THE PROPERTY
OF THE OWNERS OF THE TRANS ALASKA
PIPELINE SYSTEM AND THE DRAWING/DOCU-
MENT AND INFORMATION CONTAINED SHALL
NOT BE DUPLICATED, USED OR DISCLOSED,
EXCEPT AS AUTHORIZED BY THE AGENT.
ALYESKA PIPELINE SERVICE COMPANY

EXHIBIT I

19.3 LOCAL POLLUTION LAWS VALDEZ CITY CODE

Chapter 11, Article II, Section 16 of the Valdez City Code contains the following prohibition:

"No owner, master or managing agent, or other person in charge of the operation of a boat or other vessel using the facilities of the Valdez Harbor, shall throw or otherwise cause to be deposited gasoline, oil, trash, garbage or refuse on any float or into the waters of the boat harbor." The penalty provisions for violation of the Valdez City Code include a fine of \$300 and/or imprisonment up to 30 days.

19.4 OIL SPILL NOTIFICATION

In the event of an oil spill, the procedure for notification as described in Section XVIII shall be followed. 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. A copy of the Port Valdez Plan is located in the berth operator's control room on each berth. An emergency procedures booklet will be issued by the Marine Supervisor when the vessel first calls at the Terminal.

19.5 TRANS-ALASKA PIPELINE LIABILITY FUND

For convenience a copy of Federal Statute (43 U.S.C. 1653(c)) creating the Trans-Alaska Liability Fund is set forth in Section 19.5.3.

19.5.1 Notice to Fund of Discharge

In addition to the other notices required in the event of an oil spill, in the event of a discharge of oil from a vessel which has been loaded at the Terminal with oil transported through the Trans-Alaska Pipeline, the vessel operator shall

Owners and Operators of Vessels Calling at Alyeska's Marine Terminal:

Enclosed with this letter is a copy of the Trans-Alaska Pipeline Port Information Manual (PI-25), second edition. Procedures and rules contained therein are effective November 1, 1988.

This manual is intended to acquaint Owners and Masters of vessels which may call at the Valdez Marine Terminal with general port conditions, terminal facilities, terminal rules and regulations, and some of the applicable laws and regulations which pertain to the Trans-Alaska Pipeline system and the Port of Valdez. The procedures and rules contained in this manual do not relieve the owners or masters of vessels from any other legal obligations.

Listed below is a summary of significant additions or revisions to the old manual. This summary is provided for your convenience, but is not intended to modify or amend actual language in the Port Information Manual.

Operational Requirements: Pg. 7

Vessels shall provide to Alyeska's Marine Superintendent a copy of their oil spill contingency plans for Port Valdez, Valdez Arm and Prince William Sound.

Berthing and Unberthing: Pg. 23

Mooring requirements have been modified to allow vessels capable of an all wire mooring, of at least 12 winch mounted wires, to use this alternative.

Vessels with less than 12 winch mounted wires, are required to moor with a minimum of 16 lines. "Mixed" moorings shall be avoided.

Oil Spill Responsibility: Pg. 53; Appendix C and D (pgs. 71 & 73)

The Port Information Manual clarifies the responsibility of vessels for oil spills:

- As stated in the Preface, the Port Information Manual establishes contractual terms and conditions that vessels accept by calling at the Valdez Marine Terminal.
- Except to the extent a spill is caused by Alyeska, vessels are strictly liable to Alyeska for their spills.
- Vessels must indemnify Alyeska for all cleanup costs of spills from vessels, except those costs caused by Alyeska's gross negligence or willful misconduct during cleanup.
- Vessels agree to arbitrate disputed claims.

Comments concerning this manual are welcomed and may be directed to:

Alyeska Pipeline Service Company
P.O. Box 300
Valdez, Alaska 99686
ATTN: Marine Manager

This manual will be updated as necessary to reflect changes in Terminal practices and rules.

Sincerely,

C. F. O'Donnell

C. F. O'Donnell
Alyeska Terminal Superintendent

EXHIBIT J

Pollution Discharges

Reference in this section of the Valdez Port Information Manual to "pollution discharges" applies to all pollution discharges from any vessel in the TAPS trade in the waters of Port Valdez, the Valdez Arm, and Prince William Sound, including, but not limited to oil and other hydrocarbon spills, from, or caused by, such vessel.

Alyeska's Oil Spill Contingency Plan describes how Alyeska will respond to pollution discharges. Copies of the plan are located in the Emergency Center of the Valdez Marine Terminal.

A Tanker Handbook For Vessels In Trade With Alyeska Pipeline Service Company describing emergency procedures is provided in Appendix C on page 71.

This section of the Valdez Port Information Manual describes in general terms Alyeska's response to pollution discharges and a vessel's responsibility to cooperate with, and pay for, Alyeska's efforts.

Notification

Whenever there is a pollution discharge, the vessel shall take all steps necessary to stop the discharge and shall immediately notify Alyeska of the discharge. The vessel shall follow the notification procedure in the Tanker Handbook For Vessels In Trade With Alyeska Pipeline Service Company found in Appendix C.

If Alyeska detects a discharge before a vessel discovers it, Alyeska shall notify the vessel of the incident.

Cleanup of Discharge

In response to a discharge, Alyeska shall immediately act to:

- Stop the discharge.
- Contain the pollutants.
- Remove the pollutants from the environment.
- Dispose of the pollutants.

The vessel shall fully cooperate with Alyeska's efforts and shall comply with all reasonable requests by Alyeska for purposes of responding to the discharge. Vessels calling at the terminal will use all possible measures to prevent pollution discharges, and in the event a discharge does occur, shall make every effort to contain the discharge on or in the vessel and prevent its entry into the waters of Port Valdez, Valdez Arm and Prince William Sound.

Discharge of Pollutants: Liability

A vessel discharging pollutants, or causing the discharge of pollutants from another source, shall be strictly liable, without regard to fault, to Alyeska for all damages to Alyeska caused by the discharge, including, but not limited to, Alyeska's costs to clean up the discharge. If the vessel can show that a discharge of pollutants was caused by Alyeska's negligence or willful

misconduct, the vessel's liability to Alyeska shall be reduced to the extent of Alyeska's percentage of fault in causing the discharge.

Cleanup Costs: Indemnity

Subject to the preceding limitation on liability, to the extent a vessel discharges pollutants, or causes the discharge of pollutants from another source, the vessel shall:

- Indemnify and hold Alyeska harmless from all claims, damages and costs of defending or recovering claims, and
- Reimburse Alyeska for all costs incurred in response to the discharge, except those costs that result from Alyeska's wanton or wilful misconduct during its cleanup response. "Costs" shall include pre and post award interest at an annual rate equal to the prime rate of interest announced by the First National Bank of Anchorage, which is based on New York prime interest rate, plus one percent, adjusted as changes are announced in that prime rate, unless modified by an arbitration award consistent with sections 6 or 10 of the Rules Of Arbitration For Vessels In Trade With Alyeska Pipeline Service Company, a copy of which is provided in Appendix D on Page 73.

Payment of Costs

After Alyeska has determined the costs resulting from a pollution discharge, Alyeska shall submit a Claim for Payment to the vessel causing the

discharge. At its option, Alyeska may make interim Claims for Payment. The vessel shall make payment within sixty (60) days of receipt of Alyeska's Claim for Payment.

Failure to Pay - Refusal to Dock

If the vessel fails to pay a Claim for Payment within sixty (60) days after its receipt, Alyeska shall notify the vessel that it may not call again at the Valdez Marine Terminal until:

- Full payment is made or
- Arbitration is initiated and the vessel has paid the undisputed amount of the claim and has posted either a bond or an acceptable letter of undertaking in twice the amount of the disputed claim.

Arbitration Procedure

Alyeska and each vessel calling at the Valdez Marine Terminal agree that their sole remedy to resolve their respective liabilities arising out of a pollution discharge shall be binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1 *et seq.* and as set forth herein.

Any controversy or claim between Alyeska and such vessel arising out of or relating to a pollution discharge shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified in the Rules Of Arbitration For Vessels In Trade with Alyeska Pipeline Service Company, published by Alyeska and provided to all vessels. See Appendix D, Page 73.

Judgment the award may be District other courts are four Marine to the panel a United such vessel withdra Marine

Further refuse the Val Alyeska initiate being circum

ie. At its option, Alyeska may
erim Claims for Payment. The
hall make payment within sixty
s of receipt of Alyeska's Claim
ment.

to Pay - Refusal to Dock

essel fails to pay a Claim for
t within sixty (60) days after its
Alyeska shall notify the vessel
ay not call again at the Valdez
Terminal until:

payment is made or

tration is initiated and the vessel
paid the undisputed amount of
claim and has posted either a
d of an acceptable letter of
ertaking in twice the amount of
disputed claim.

ation Procedure

and each vessel calling at the
Marine Terminal agree that their
medy to resolve their respective
es arising out of a pollution
ge shall be binding arbitration
ent to the Federal Arbitration Act, 9
1 *et seq.* and as set forth herein.

ontroversy or claim between
a and such vessel arising out of
ting to a pollution discharge shall
olved by arbitration in accordance
ie Commercial Arbitration Rules of
merican Arbitration Association, as
ed in the Rules Of Arbitration
essels In Trade with Alyeska
ne Service Company, published
eska and provided to all vessels.
ppendix D, Page 73.

Judgment, including maritime liens, on
the award rendered by the arbitrator(s)
may be entered in the United States
District Court, District of Alaska, or any
other court where the vessel or parties
are found. By calling at the Valdez
Marine Terminal, each vessel consents
to the jurisdiction of an arbitration
panel as described herein, and of the
United States District Court, even if
such vessel subsequently is barred or
withdraws from calling at the Valdez
Marine Terminal.

Further, Alyeska reserves the right to
refuse the vessel permission to call at
the Valdez Marine Terminal if, in
Alyeska's sole judgment, any arbitration
initiated pursuant to this section is not
being conducted as expeditiously as
circumstances permit.

Right to Initiate Arbitration

If a vessel wishes to contest Alyeska's
Claim for Payment, within 60 days of
receipt of the claim, it shall notify
Alyeska of the reasons it disputes the
claim, pay the undisputed amount of the
claim, post either a bond or an
acceptable letter of undertaking in twice
the amount of the disputed claim and
initiate an arbitration proceeding to
resolve the dispute. If the vessel fails to
satisfy each of these requirements,
Alyeska may initiate arbitration to
recover its Claim for Payment. If the
vessel fails to pay the undisputed
amount of the claim and to post a bond
or an acceptable letter of undertaking in
twice the amount of the disputed claim,
Alyeska may apply for arrest of the
vessel in any jurisdiction where it is
found, and may bar the vessel from
calling at the Valdez Marine Terminal
until the matter is resolved.

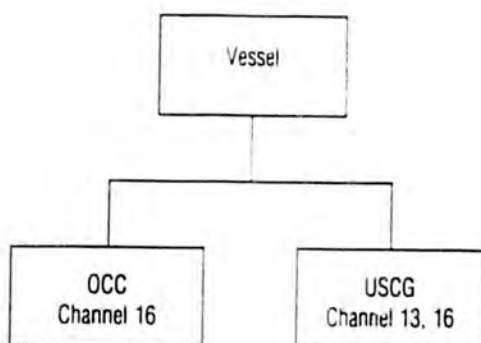
*NOTE: A copy of Alyeska's Rules Of
Arbitration For Vessels In Trade With
Alyeska Pipeline Service Company is
provided in Appendix D on page 73.*

Tanker Handbook

For Vessels in
Trade with
Alyeska Pipeline
Service Company

• Alyeska pipeline

Emergency Contact



Introduction

Alyeska Pipeline Service Company has prepared an Oil Spill Contingency Plan for response to crude oil discharges in the Prince William Sound and Port Valdez. This plan is designed to fully comply with the National Oil and Hazardous Substance Pollution Contingency Plan, and the State of Alaska Regulations. Copies of this plan are maintained at the Emergency Center at the Valdez Terminal.

The intent of this handbook is to provide a mechanism, for vessels in trade with Alyeska's Valdez Terminal, to activate Alyeska's Oil Spill Contingency Plan.

The response organization for Prince William Sound and Port Valdez is staffed by Alyeska operations and maintenance personnel assigned to the Valdez Terminal.

The US Coast Guard and the Alaska Department of Environmental Conservation are to be allowed access to vessels and berths at all times.

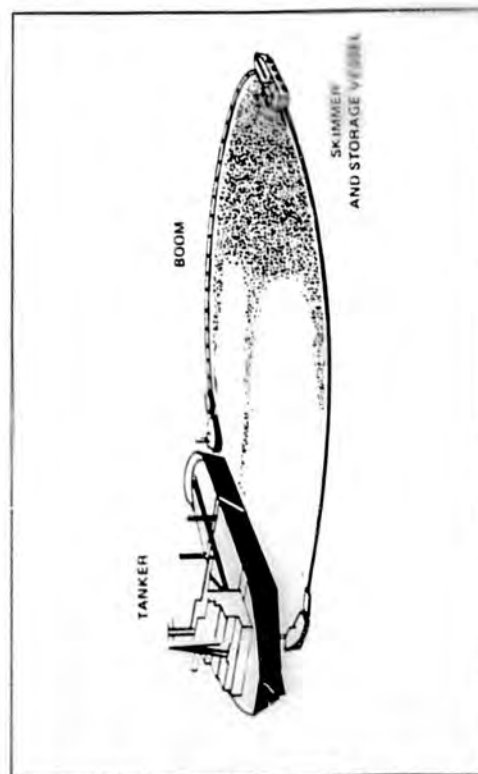
The Alyeska Terminal Superintendent is in charge of all emergencies.

Response Actions

The Alyeska Marine Terminal Superintendent is in charge of all emergencies. In his absence, during normal working hours, the designated superintendent-in-charge will be responsible for all emergencies. At night, on weekends and holidays, the marine shift supervisor will be in charge and responsible for all emergencies.

Upon notification and advice of the spill details, the Alyeska Director of Marine Operations and the Terminal Superintendent (or their delegates) will decide what response equipment will be dispatched. The particular conditions will dictate method of deployment of this equipment. Alyeska maintains an inventory of oil spill containment and recovery equipment at the terminal site. A permanently assigned oil spill cleanup crew is available for immediate response. The vessel should be prepared to assist with lines, hoses, or any other equipment that may be utilized.

Cleanup operations will continue until Federal, State, and Alyeska personnel agree that the effort is complete.



Skimming Contained Oil At Tanker

Tanker Lightering

Lightering may be necessary as part of terminal operations or in response to a spill from a distressed tanker. When a lightering operation is necessary, follow these guidelines:

- In Prince William Sound, the Terminal Superintendent will direct the ship to a US Coast Guard designated anchorage after discussions with the Federal on-scene coordinator (Primary designated anchorage is Knowles Head, however the Coast Guard may designate an alternate area during an emergency).
- The ship to be lightered will install fenders before the lighter ties alongside.
- The Alyeska Director of Marine Operations, US Coast Guard, Alaska Department of Environmental Conservation, and the ship's officers will hold a meeting to discuss the cargo transfer.
- The same precautions and safety regulations that apply to cargo transfer at a berth will be followed.
- The transfer rate will be regulated by the lightering vessel.

-
- The Alyeska Director of Marine Operations will observe all lightering operations.
 - Boom and skimming equipment will be deployed at the lightering vessel and maintained.

Two portable lightering systems, dunlop fenders and a 5300 barrel barge are available at the terminal for emergency lightering operations. Another tanker may be used as the lightering vessel.

In Port Valdez

When a tanker experiences a spill within Port Valdez, lightering may be necessary to minimize the spill size. If the lightering is necessary, the guidelines previously mentioned for lightering in Prince William Sound (with the exception of designated anchorage area) will be followed. Under certain circumstances, it may not be desirable to proceed to a loading berth. The vessel should not move unless directed to by the US Coast Guard and the Terminal Superintendent. Their decision will be discussed with the Alaska Department of Environmental Conservation.

**Trans-Alaska Pipeline System
Valdez Terminal
Oil Spill Contingency Plan**

Document Number CP-35-2 - Second Edition

June 1, 1991

Alyeska Pipeline Service Company
1835 South Bragaw Street
Anchorage, Alaska 99512

Acting as agent for:

Amerada Hess Pipeline Corporation	Mobil Alaska Pipeline Company
ARCO Transportation Alaska, Inc.	Phillips Alaska Pipeline Corporation
BP Pipelines (Alaska) Inc.	Unocal Pipeline Company
Exxon Pipeline Company	

Notice:

This drawing/document is the property of the owners of the Trans-Alaska Pipeline System and the drawing/document and information contained shall not be duplicated, used, or disclosed, except as authorized by the agent, Alyeska Pipeline Service Company.

EXHIBIT K

Second Edition - Revision 0

© Copyright Alyeska Pipeline Service Company 1991

Contents

Valdez Terminal Oil Spill Contingency Plan	1
1.0 Introduction	3
1.1 Purpose and Scope	3
1.2 Summary	3
1.3 Relationship of The Valdez Terminal Oil Spill Contingency Plan to The Pipeline Oil Spill Contingency Plan	4
1.4 Relationship of The Valdez Terminal Oil Spill Contingency Plan to the Prince William Sound Tanker Spill Prevention and Response Plan	6
1.5 Acronyms	6
2.0 Spill Prevention	9
2.1 Introduction	9
2.2 Secondary Containment and Drainage	9
2.3 Additional Oil Spill Prevention Equipment and Procedures	13
2.4 Tank Design Descriptions	14
2.4.1 Crude Oil and Product Tanks	14
2.4.2 Biological Treatment Tanks (BWT)	14
2.5 Pipe Integrity	15
2.6 Spill Prevention at Berths	16
2.7 Personnel Training and Procedures	16
2.8 Security	16
2.9 Radio Communications	17
2.10 Tanker Emergency Towing Equipment	17
2.11 Drug and Alcohol Screening	17
3.0 Response Organization	19
3.1 Introduction	19
3.2 Pre-Spill Planning Organization	19
3.3 Crisis Management Team (CMT)	20
3.4 Examples of CMT Organization	20
3.4.1 CMT for Initial Response	21
3.4.2 CMT for a Land or Marine Spill, Level I	21
3.4.3 CMT for a Controversial Land or Marine Spill, Level II	21
3.5 CMT Responsibilities	21
3.5.1 Incident Commander	25
3.5.2 Terminal Oil Spill Coordinator	26
3.5.3 Legal Officer	27
3.5.4 Safety Officer	27
3.5.5 Public Information Officer	28
3.5.6 Liaison Officer	29
3.5.7 Security Officer	31
3.5.8 Operations Section Chief	32
3.5.9 Planning Section Chief	37
3.5.10 Logistics Section Chief	43
3.5.11 Finance Section Chief	51
4.0 Notification	57
4.1 General	57
4.2 Initial Spill Reporting	57

4.3	Terminal Controller	57
4.4	Terminal Manager	58
4.5	SERVS Manager	58
4.6	Emergency Notification Methods	58
4.7	Valdez Terminal Emergency Center	58
4.8	Notification of Government Agencies	58
4.9	Oil Spill Notification and Reporting Procedure	59
4.9.1	Oil Discharges On Land Only of Less Than 10 Gallons	59
4.9.2	Oil Discharges On Land of 10 Gallons or Greater, Any Oil Discharges On Water, and Hazardous Substance Discharges of Any Quantity on Land or Water	59
5.0	Response Strategies	61
5.1	Introduction	61
5.2	Assessment Actions	61
5.2.1	STEP 1 - Account for All Personnel and Ensure Their Safety	61
5.2.2	STEP 2 - Determine and Control the Source of the Spill	62
5.2.3	STEP 3 - Determine the Quantity of Oil Spilled and the Location(s) of the Impacted Area(s)	63
5.3	Response Resources and Strategies	63
5.3.1	Marine Oil Spills	65
5.3.2	Land Oil Spills	73
6.0	Equipment	83
6.1	Introduction	83
6.2	Vessel List	83
6.3	Self Propelled Skimmer List	83
6.4	Equipment List	84
6.5	Storage Locations	86
6.6	Equipment Specifications	86
7.0	Communications	87
7.1	Introduction	87
7.2	Description of Communications Systems and Equipment	87
7.3	Radio Communications Capabilities	91
7.3.1	Communications Consoles	91
7.3.2	Base Station Facilities	93
7.3.3	Mobile Facilities	95
7.3.4	Telephone Communications Capabilities	95
7.3.5	Data Communications Networks	98
7.3.6	Video Communications Capabilities	98
7.3.7	Supplementary Communications for Sustained Response	98
7.3.8	Logistics	98
8.0	Safety and Health Plan	99
8.1	Purpose	99
8.2	Scope	99
8.3	Implementation	99
8.4	Site Characterization	100
8.5	Safety and Health Considerations	100
8.6	Personnel Training	103
8.7	Hazard Communication	103
8.8	Emergency Contingency Planning	103
8.9	Industrial Hygiene and Monitoring Program	104

needed for a Terminal spill may be brought in as an On-land Division or Marine Group, reporting to the Terminal Operations Section Chief.

1.4 Relationship of The Valdez Terminal Oil Spill Contingency Plan to the Prince William Sound Tanker Spill Prevention and Response Plan

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.

Alyeska has also established the Ship Escort/Response Vessel System (SERVS) to support and escort tanker traffic in and out of Port Valdez. The SERVS base was established as a part of the *Prince William Sound Tanker Spill Prevention and Response Plan* (PWS Plan). SERVS resources are dedicated to Alyeska's role as an initial response contractor in responding to tanker spills in Prince William Sound. The response organization for marine spills from tankers in the Sound is described and discussed in the PWS Plan. The PWS Plan also covers spills from tankers transiting Port Valdez.

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.

Alyeska's spill response organization (CMT) for both the PWS Plan and VMT Plan is based on ICS principles. For a Terminal spill, the Terminal Operations Section Chief directs the response operation, and any SERVS resources needed are brought in as a Marine Group, supervised by SERVS personnel, reporting to the Terminal Operations Section Chief.

Similarly, for a spill in Port Valdez (not at the berth) that is under the scope of the PWS Plan, the Operations Section Chief is the SERVS Manager. If specialized equipment from the Terminal is required, these Terminal resources would be brought in as Marine Group, supervised by Terminal personnel, reporting to the SERVS (PWS) Operations Section Chief.

Under certain circumstances SERVS will provide initial response to major discharges from tankers berthed at the Terminal, in accordance with the PWS Plan. The PWS Plan covers such discharges that threaten to progress into Prince William Sound. If the Incident Commander determines that a spill from a tanker berthed at the Terminal is so large or that other conditions are so adverse that the spill threatens Prince William Sound, response activities will fall within the scope of the Prince William Sound Plan. In that event, SERVS will act as a spill response contractor to the vessel's owners/operators/charterers, and provide the response services described in the PWS Plan.

1.5 Acronyms

The following acronyms are used throughout this Plan:

- ADEC - Alaska Department of Environmental Conservation
- ADNR - Alaska Department of Natural Resources
- AEC - Anchorage Emergency Center
- ARTS - Alyeska Radio Telephone System

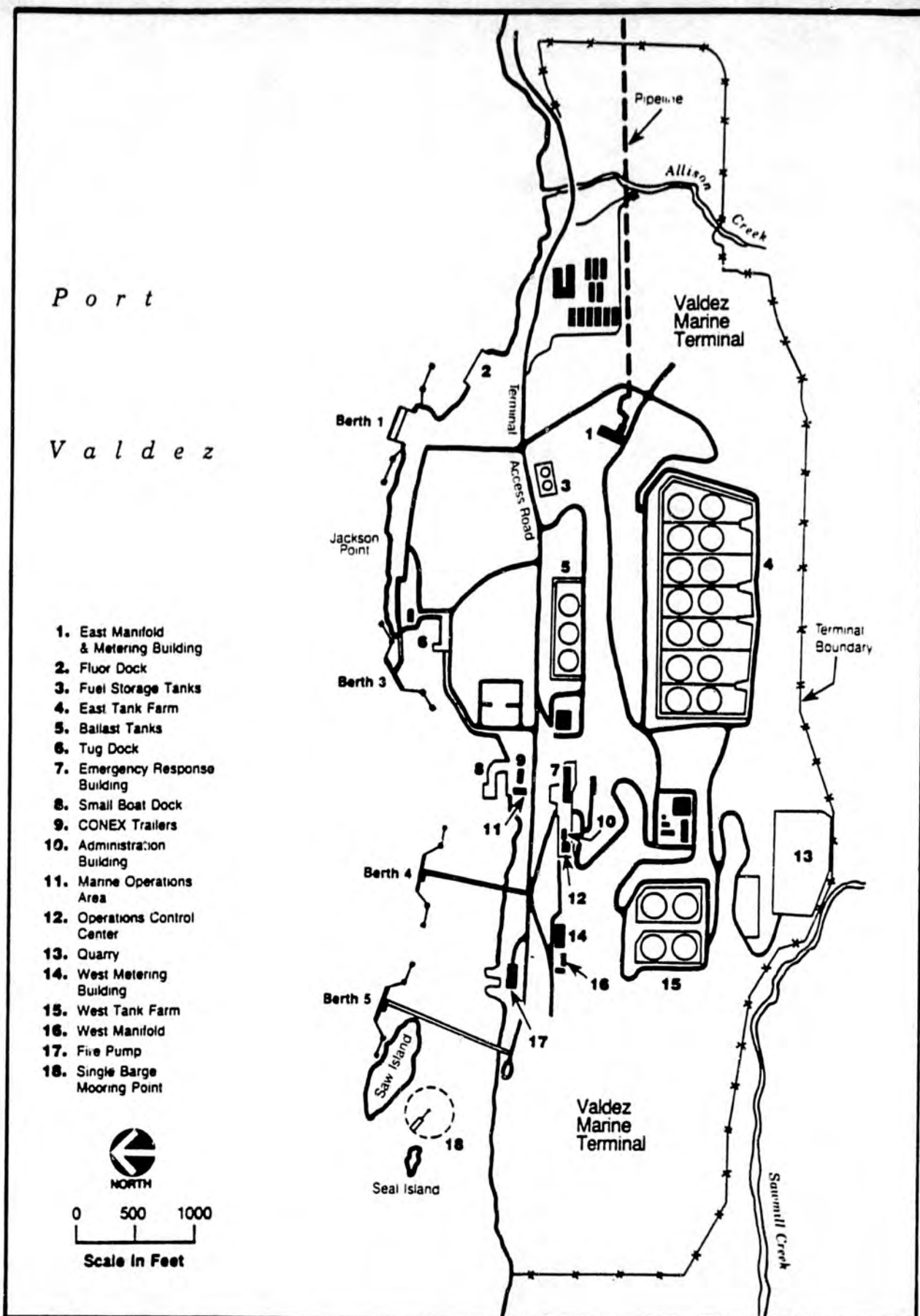


Figure 1. Plan Area

Alyeska pipeline
SERVICE COMPANY

1635 SOUTH BRADAW STREET, ANCHORAGE, ALASKA 99512. TELEPHONE (907) 278-1811. TELEX 200 25

November 20, 1991

BY FACSIMILE

Deborah Vogt, Esq.
P.O. Box 1065
Juneau, Alaska 99802

Re: Alyeska Oil Spill Response Services in
Prince William Sound

Dear Ms. Vogt:

Mike Williams has asked me to reply to your October 30, 1991 inquiry about Alyeska's authority to require "contracting vessels" to demonstrate its capability to hold Alyeska harmless from certain potential liabilities associated with initial oil spill response in Prince William Sound. You also have asked whether Alyeska pays oil and gas property tax on its oil spill response equipment.

**Alyeska Oil Spill Response Services Agreement:
Requirements for Financial Responsibility or Insurance**

As a Response Action Contractor, Alyeska provides oil spill prevention and initial response services to TAPS trade vessels in Prince William Sound. To establish a contract for these services, Alyeska uses an Oil Spill Response Services Agreement with entities ("Contracting Vessels") that either own, charter or operate those vessels. Those Agreements require Contracting Vessels to demonstrate their capability to meet contractual obligations by meeting financial responsibility or insurance requirements described in the Agreements. You have asked what authority allows Alyeska to impose those requirements on Contracting Vessels.

The Trans Alaska Pipeline System is owned by seven common carrier oil pipeline companies. Interstate transportation of petroleum by the carriers is regulated by the Federal Energy Regulatory Commission, and intrastate transportation of petroleum by the Alaska Public Utilities Commission. Alyeska Pipeline Service Company operates TAPS as the carriers' agent. Each TAPS carrier through its tariffs offers to transport a shipper's (i.e. a customer's) petroleum from origins on TAPS to destinations on TAPS, and if the destination is Valdez, to load it on board vessels furnished by the shipper.

EXHIBIT L

Deborah Vogt, Esq.
November 20, 1991
Page 2

No carrier ever owns the petroleum carried in its space on TAPS. It merely provides transportation service for petroleum owned by others. All shipments on a carrier's space in TAPS are upon the terms and conditions and for the prices set out in the carrier's tariffs. A shipper accepts a carrier's offer by tendering petroleum to the carrier in accordance with the carrier's tariff requirements. A contract then exists between the shipper and the carrier for the carriage of petroleum from an origin on TAPS to a destination on TAPS. The carrier undertakes no obligation in its tariffs for the transportation of petroleum after it leaves TAPS.

Thus, under each TAPS carrier's tariffs, the shipper is responsible for its petroleum after it is loaded on board a vessel at Valdez and has the responsibility to furnish a vessel to carry the petroleum by water from Valdez to the petroleum's next destination.

The State of Alaska requires each vessel furnished by the shipper to have an oil spill response contingency plan, which must provide, among other things, for personnel and equipment to escort the shipper's vessels and to respond to a spill in Prince William Sound within a short period of time. 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. Alyeska needs no authority from any regulatory statute or regulatory agency to require financial responsibility or insurance in conjunction with the provision of response action contractor services.

As we discussed yesterday, the TAPS carriers include the costs of Alyeska's Prince William Sound effort in tariff charges for oil delivered to Valdez. This equitably distributes the costs of those services among their beneficiaries.

I also described to you Alyeska's reliance on its Prince William Sound capabilities to meet oil spill response planning standards imposed by AS 46.03.040 on the Valdez

Deborah Vogt, Esq.
November 20, 1991
Page 3

Marine Terminal. Meeting these requirements is a part of the TAPS Owners' common carrier obligations.

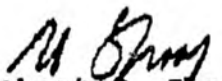
Oil and Gas Property Tax

Alyeska owns a large amount of oil spill response equipment, intended for use in Prince William Sound, at the Valdez Marine Terminal and along the pipeline. Alyeska pays the state's oil and gas property tax levied on that equipment.

Alyeska does not pay the state tax on marine vessels that it charters from various companies to assist spill prevention and response in Prince William Sound and Port Valdez.

Please call me at (907) 265-8585 if I can be of further assistance.

Sincerely yours,


Robert I. Shoaf
Assistant General Counsel

smk

cc: M.F.G. Williams

STATE OF ALASKA'S
PARTICIPATION IN
SPILL RESPONSE
AND PREPAREDNESS
IN THE STATE

THE STATE OF ALASKA'S PARTICIPATION
IN SPILL RESPONSE AND PREPAREDNESS IN THE STATE

Prepared by:
Deborah Vogt
Attorney at Law
Juneau, Alaska

Prepared for:
Citizens Oversight Council
on Oil and Other Hazardous
Wastes

This report summarizes the indirect expenditures that the State of Alaska is currently making for oil spill response and preparedness in the state. The primary expenditure that the state makes is the loss in wellhead value -- and therefore in state royalties and severance taxes -- incurred when spill response expenditures are included in the transportation costs used to arrive at wellhead value. The summary does NOT include direct budget expenditures such as those incurred by the Department of Environmental Conservation for contingency plan development and review.

I. THE STATE'S ROLE IN CRUDE OIL PRODUCTION AND TRANSPORTATION IN ALASKA

The State of Alaska occupies two distinct roles with respect to oil production. On the one hand, the state is unique among oil producing states in that it is the owner of almost all of the land from which oil currently is produced. The state's role as landowner is a proprietary role. The state is in the same position as would be any private entity that owned the land. It is through this proprietary interest that the state retains a royalty interest in oil produced from leases on state land.

On the other hand, Alaska, like every other oil producing state, exercises sovereign power over activity within the borders of the state. It is through this sovereign power that the state levies taxes, like the severance tax, and exercises regulatory control, like requiring contingency plans, over activities.

Because almost all oil production in Alaska has been from state leases, the state's sovereign interest and its proprietary interest are often considered together and, as a result, confused. But the powers, rights and responsibilities flowing from these two roles are very different. If oil development occurs on federal lands, such as in the Arctic National Wildlife Refuge, Alaska may see the first significant production within its borders in which the state does not have a proprietary interest.¹ Thus, it is important to understand and consider the differences between the two roles.

A. The State's Proprietary Interest in Oil Production.

Oil and gas leases on state lands -- like virtually all oil leases in the United States on public or private land -- are written to include a royalty obligation to compensate the landowner for its ownership. Royalty obligations vary on different leases; the state has generally offered its leases on a straight percentage of the oil produced, but has occasionally leased oil on a net

¹The land in the Refuge is federally owned. Under current law, the federal government would be required to share royalties from production on federal leases within the Refuge with 90% going to Alaska and the federal government retaining 10%. Thus, if the federal leases provide for a 12.5% royalty, the state's share would be 11.25%. However, Congressional proposals to open the Refuge to leasing have considered changing or eliminating this split.

profit share basis. Table I sets out the royalty obligation for the oil fields in Alaska, and the amount of production from each field. As can be seen from the table, almost of the oil currently being produced in Alaska carries a 12.5% royalty obligation. Two producing fields in Cook Inlet are on federal leases; federal law provides that the state receive 90% of the 12.5% royalty on these leases. At Milne Point, on the North Slope, most of the leases carry a 20% royalty, as do some leases at Endicott.²

The state's role as landowner on state leases is exactly the same as it would be if the state were a private party. The state enjoys no particular advantage over private parties in the same position. Thus, when the state litigates over royalty obligations, it is a contractual dispute in which the state enjoys no presumptions in its favor.

Table I shows that the total annual production of oil in Alaska in 1990 was 647.3 million barrels. The state's average royalty percentage of this oil is 12.7%. Thus, 82.21 million barrels produced in 1990 belonged to the state as royalty owner. The state may take its royalty oil "in kind" or "in value". That is, the state may take possession of the actual barrels of oil and dispose of them itself, or it may require the producer to pay the state the value of the royalty oil. The state takes almost all of its oil in value, but does take some in kind, which it sells to

²Approximately 80% of the oil produced at Milne Point carries a 20% royalty obligation. The remainder carries a 12.5% obligation. The average royalty at Milne Point is 18.3%. At Endicott, about 25% of the oil carries a 20% royalty, with the remainder at 12.5%; the average royalty is 14.4%.

local refineries. When the state does take its royalty in kind, its actual physical possession of the barrels exists for only an instant. When oil is produced, it is assumed that the royalty obligation will be satisfied in value. Thus, if a producer produces 100 barrels, theoretically all of the 100 barrels "belong" to the producer, but each barrel is encumbered by a 12.5% value obligation to the state. If the state then notifies the producer that it will take certain of its royalty barrels in kind, it does so only after having arranged for the disposal of those barrels. The state takes possession of the barrels at the lease automatic custody transfer (LACT) meter; it simultaneously transfers the oil to the royalty purchaser at that moment. Thus, the state is never in actual physical possession of the oil, so as to expose the state to liability if the oil spilled.

Even though the state never actually physically possesses royalty oil, the state's royalty interest places it in substantially the same position as any other producer of oil. Policy makers may want to consider the state's ownership of this oil when reviewing the impacts on state revenue of spill prevention expenses. It may be seen as appropriate that the state absorb the costs associated with spill preparedness commensurate with its ownership interest.

B. The State's Sovereign Interest in Oil Production.

The state is exercising its sovereign powers when it taxes and regulates oil production and transportation activities in the state. This power extends to the borders of the state,

regardless of the status of land ownership. Thus, oil produced from federal or private lands within the state is taxed the same as oil produced from state lands.³ Similarly, the state may exercise its police power to regulate all oil activities within the state, regardless of ownership. However, offshore oil produced outside the three mile limit is not subject to the state's sovereign power to tax or to regulate, except as offshore activities have near shore or onshore impacts.

The taxes applicable to oil activities in the state are:

1) the Oil and Gas Properties Production Tax (AS 43.55) (the severance tax) which includes the Conservation Surcharge; 2) the Oil and Gas Conservation Tax (AS 43.57); 3) the Corporate Income Tax (AS 43.20); and 4) the Oil and Gas Properties and Pipeline Transportation Property Tax (AS 43.56).

1. The Oil and Gas Properties Production Tax (AS 43.55).

Alaska's production tax, or severance tax, is levied on value at the point of production.⁴ For most fields, the nominal tax is 15% of value.⁵ This nominal rate is reduced by the Economic Limit Factor (ELF), which is a formula that is sensitive to well and

³On federal leases, the state taxes the oil produced by the private leaseholder. It may not, of course, tax the federal royalty.

⁴ The severance tax has a cents-per-barrel "floor" that becomes the tax if it exceeds the percent of value amount. The cents-per-barrel tax is also subject to the ELF. However, prices have never fallen to the point that the cents-per-barrel alternative was used, although they approached the point in 1986.

⁵ The nominal rate is 12.5% in a new field for the first five years.

field productivity. The higher the field productivity the closer the severance tax approaches the nominal rate of 15%. The actual severance tax rate for oil producing fields in Alaska is set out in Table I. This rate is levied against the non-royalty production in the field. In 1990, oil and gas producers paid \$972.3 million in severance taxes. State Department of Revenue, "Revenue Sources Book" Spring 1991, p. 50 (hereafter, Revenue Sources Book).

The severance tax includes a "conservation surcharge" of \$.05 cents per barrel on the same barrels taxed by the severance tax. AS 43.55.200. The legislature may appropriate the proceeds of the surcharge to the Oil and Hazardous Substance Release Fund; if the amount in the fund exceeds \$50 million, the surcharge is suspended. AS 43.55.210-240. Since its inception in 1989, the surcharge has not been suspended. In 1990, oil and gas producers paid \$26.9 million under this tax. Id.

2. The Oil and Gas Conservation Tax (AS 43.57). The conservation tax is 4 mills (\$.004/bbl) on the same production taxed under the severance tax. Conceptually, the tax pays for the Alaska Oil and Gas Conservation Commission. In 1990, \$2.4 million was collected under this tax from oil and gas producers. Id.

3. The Corporate Income Tax (AS 43.20). The corporate income tax rate is 9.4% for income above the threshold level of \$90,000. Every corporation organized for profit in the state is subject to the tax. Corporations that do business in more than one taxing jurisdiction apportion their income to Alaska for tax purposes by use of the apportionment formula set out in AS 43.19 (the

Multistate Tax Compact). An apportionment formula estimates in-state income by starting with the entity's overall income, and then apportioning a part of that income to the state through the use of formula indicators of business activity (such as payroll, property and sales). Overall income is multiplied by the average percentage of the factors in the state to arrive at taxable state income. Corporations engaged in the production or pipeline transportation of oil use a special formula set out in AS 43.20.072.

Spill prevention and response expenditures are deducted from gross income by every entity that incurs them, if that entity is organized for profit. However, calculating the impact of these deductions on state revenue cannot be done without access to the confidential tax returns of the taxpayers. This is because the use of apportionment formulas makes the relationship between expenditures and impact indirect. If a corporation does business only in Alaska, and deducts a spill related expense, then the revenue impact is simply 9.4% times the amount of the deduction. But most corporations, especially oil companies, do business in many jurisdictions. The spill expense is then deducted from worldwide income, and a fraction of that income is apportioned to Alaska.⁶ Depending upon the magnitude of the corporation's out-of-state activities, the impact of the deduction is diluted to a greater or lesser degree. (At the same time, spill related expenditures in other jurisdictions reduce income tax collections

⁶ In 1991, the legislature repealed "worldwide unitary" apportionment for most taxpayers. HB 12. However, it retained the worldwide unitary approach for oil and gas taxpayers.

in Alaska.) An accurate analysis, or even a rough estimate, of impact cannot be done without access to tax returns.

For this reason, income tax impacts are not analyzed in this report. However, unlike the wellhead value reductions in severance taxes and royalties which reflect only spill expenditures in certain areas of the state, income tax deductions are taken everywhere that they occur. Thus, while Alyeska's expenditures impact severance taxes and royalties and Tesoro's expenditures do not, the expenditures of both Alyeska and Tesoro impact income taxes. Corporate income taxes collected from oil and gas taxpayers in 1990 were \$117.2 million. Revenue Sources Book at 50.

4. The Oil and Gas Production and Pipeline Transportation Property Tax (AS 43.56). The oil and gas property tax is a 20 mill tax levied on the "hardware" associated with oil and gas production and pipeline transportation. Although the tax is a state tax, municipalities are permitted, with certain restrictions, to levy property taxes on the same property. Taxpayer payments to a municipality are a credit against the state tax.

Oil spill equipment that is associated with production or pipeline transportation activities is taxed under this law. Thus, Alyeska's expenditures for pipeline and terminal spill protection are presumable taxed, as are the North Slope producers' expenditures, including those of Alaska Clean Seas. However, because of the set-off provision for municipal taxes, the state receives only a small portion of the revenue produced by this tax. While it would appear at first glance that the state should see

increased revenue as a result of a property tax on pollution equipment, in fact, as described below, the revenue effects can be negative. The state collected \$89.8 million from this tax in 1990. Id.

II. THE NET-BACK METHODOLOGY AND STATE REVENUES

An Alaska oil producer's liability for both the state's severance tax (the Oil and Gas Properties Production Tax (AS 43.55) and the state's royalty is based on the value of the oil at the point of production. Because most Alaska oil is not sold at the point of production, a "net-back" methodology is used to establish this value. Sales in the lower 48 states are netted back to the wellhead by deducting the costs of transporting the oil between Alaska and the market. This calculation generates a value at the point of production. Those sales that are made at the wellhead or elsewhere in Alaska are generally valued by reference to the price received for the oil sold in the lower 48 states.

Use of this methodology means that there is a direct relationship between transportation expenditures (including spill prevention and response expenses) and wellhead value. The revenue effect of transportation expenditures for Alaska North Slope crude (ANS) is approximately 25%. That is, for every \$1.00 deducted by a producer as a transportation cost, state revenues from severance taxes and royalties are reduced by \$.25.⁷ Thus, if spill response equipment and operating expenses are included in the costs of transporting oil, state revenues are reduced accordingly, and the

⁷ Horst (see note 9, post), Table 2, line 36.

state is, in effect, paying 25% of these costs.

A. What goes into the net-back.

Several categories of spill-related expenditures affect well-head value. These include:

1. Conservation Surcharge payments by producers. Department of Natural Resources and industry sources indicate that at least some producers deduct the \$.05/barrel tax in calculating royalty and severance tax liability. If this deduction is uniformly claimed throughout the industry, then the net surcharge is really only \$.0375 per barrel instead of \$.05. Since collections under this tax in 1990 were \$26.9 million, the wellhead revenue impact could be as high as \$6.7 million. It is not clear why this tax is viewed as a transportation charge to be used in the net-back.

2. MPA/MSRC. The Marine Preservation Association (MPA) is a voluntary association of oil companies that assesses dues based on oil transported in the United States. The MPA makes grants to the Marine Spill Response Corporation (MSRC), which intends to provide depots of spill response equipment throughout the United States.

According to Bob Aldag, President of the MPA, the association members pay dues to the association based on the amount of oil shipped. The association looks first to the recipient of the oil -- that is, the entity receiving the oil at a dock or terminal -- for payment. If that entity is an association member, it pays dues on that shipment. If that entity is not a member, the

association next looks to the owner of the receiving terminal for payment. If neither the recipient nor the terminal owner is a member, the association then looks to the shipper.

Theoretically, it would seem that if the charge is paid by the recipient, then it is not a transportation charge and should not be included in the net-back. Much Alaska production is shipped by a producer to the producer's own refinery, so that the same entity is both the shipper and the recipient. Oil company and state sources indicate various treatments of these expenditures -- some say they deduct \$.05/barrel, others \$.005/barrel from wellhead value. Some may not deduct the charge at all. Without access to confidential information, it is impossible to estimate the magnitude of deductions for this charge, and their total impact on wellhead value. Depending upon the treatment of these payments by producers, the wellhead revenue impact could be as high as \$8 million in a year.

3. TAPS tariff charges. The most significant spill-related element in the net-back methodology is the tariff effect of expenditures made by Alyeska. Alyeska's expenditures for spill prevention and clean-up equipment and operation are rolled into the TAPS tariff, and have the effect of reducing wellhead value for both severance tax and royalty purposes.^a Alyeska has provided a summary of its spill-related expenditures, which is attached as

^aAlyeska has provided summaries of its expenditures. Alyeska, of course, does not set the TAPS tariffs; rather, each owner company of the pipeline files its own rate with FERC. For the purpose of this report, it is assumed that all Alyeska expenditures make their way into the tariff of one owner company or another.

Exhibit 1. The summary shows expenditures from 1989 to the present, and projects expenditures through 1997. Total actual costs to date have been \$208.3 million; an additional \$400 million is projected through 1997, for a total of \$608.3. Assuming a 25% state revenue effect, the state's share of these expenditures would be \$152.1 million.

However, capital expenditures are not simply included in the tariff in the year in which they are incurred, but rather are depreciated over time. Using the numbers provided by Alyeska, the Washington, D.C. firm of Horst and Frisch has performed an analysis of the impact on the tariff of these expenditures, and the resulting reduction in state severance tax and royalty revenues.* Their analysis is attached as Exhibit 2 (hereafter, "Horst"). They calculated the net present value of the revenue impact of these expenditures, through 2011, to be \$154.1 million, a number very close to simply taking one quarter of the expenditures.

It should be noted that this number is the net present value of expenditures through 1997, calculated out to 2011. Their Table 2, lines 1 and 2, shows operating expenditures and capital expenditures for each year. Because the summary provided by Alyeska did not project costs beyond 1997, these two lines show no additional expenditures after that year. It is to be expected that there will be operating and capital expenditures in these years; an

*Horst and Frisch, on contract with the State, performs tariff analyses of TAPS. The Department of Environmental Conservation agreed to pay for their time to perform the analysis included in this report.

analysis that included estimates of these expenditures would, of course, show a higher net present value.

The annual revenue impact of Alyeska's expenditures is between \$16.1 and \$19.2 million from 1991 through 1997. Horst, first bar chart and Table 2, line 37. This represents 25% of the \$65 to \$78 million that the TAPS owners will be including in the tariffs each year for Alyeska's expenditures. Horst Table 2, line 35. Thus, the state is, in effect, paying about \$18 million a year for spill response capabilities along the pipeline and in Prince William Sound.

4. AS 43.56 property taxes. Property taxes levied on pipeline and terminal activities -- including spill prevention expenditures -- are incorporated into the tariff. Thus, for every \$1 of property tax collected, the state loses \$.25 in severance taxes and royalties, for a net tax of \$.75. However, because of the set-off provision for municipal taxes (described above) the state does not actually collect the \$1 in property tax that is levied. Rather, the municipality in which the property is located collects the lion's share of the tax. When the municipality's share exceeds 75% (as it does, for example, in Valdez) and when the tax can be included in the tariff, the state actually loses revenue by levying the tax. According to the Department of Revenue, Valdez's share of the proceeds of AS 43.56 is now 81%. Thus, if the state collects \$1.00 in property tax, \$.81 goes to Valdez. But wellhead revenues go down by \$.25 because the tax is incorporated into the tariff. Thus, the state loses \$.06 for every dollar of

tax paid.

According to Alyeska and the Department of Revenue, spill equipment associated with marine transportation is not taxed under AS 43.56. (Municipalities may in some instances tax this property.) Alyeska's figures indicate that it has spent \$23 million in capital expenditures for the pipeline and terminal spill prevention equipment. If this property is assessed at this amount under AS 43.56, then the tax on it would be \$460,000 (\$23 million X 20 mills). At \$.06/\$1.00, the state is losing about \$27,600 a year because of the property tax on spill equipment.¹⁰

B. Marine Transportation or Pipeline Costs?

The expenditure summary that Alyeska provided breaks out expenditures to date into three categories: pipeline, terminal and Prince William Sound. (Projected expenditures were not broken out into categories.) The third category accounts for three fourths of Alyeska's expenditures (\$157.9 million of \$208.3 million, and presumably includes escort vessels, skimmers, barges and the like, as well as the costs to operate those services.

The theoretical basis for including pipeline and terminal costs in the tariff seems clear. It is not so clear that the costs of providing protection in Prince William Sound are theoretically a tariff item as opposed to a marine transportation expense. There are two ramifications of this distinction that should be

¹⁰Some of the pipeline expenditures are no doubt outside the Valdez municipality. Depending upon the municipal tax rate in other municipalities, this number may be reduced. However, the average municipal share of AS 43.56 taxes is 75%.

considered.

1. In a net-back calculation, it is largely irrelevant whether a transportation expense is allocated to pipeline tariff or marine transportation. The cost reduces wellhead value either way. There is, however, one exception to this. Some producers, such as Arco, have settled their dispute with the state over royalty obligations not only for past years but for the present and for future years as well. These settlements use a formula that incorporates, and thereafter ignores, marine transportation costs. That is, the settlements agree upon a Valdez price at a certain point in time: a price that is net of marine transportation costs. This price is then indexed to a market-basket of oils for which there is a known market value. If the index goes up, the royalty value at Valdez goes up by the same degree. Marine transportation costs no longer need be considered. The Valdez price is then netted back to the wellhead using the average actual TAPS tariff.¹¹ In this situation it does make a difference whether the expense is allocated to the tariff or to marine transportation. If it is allocated to the tariff, it will further reduce wellhead value. If it is allocated to marine transportation, it will not. At this

¹¹This methodology has been criticized by some because as the price of oil fluctuates, the presumed transportation costs also fluctuate, in a way that may not reflect reality. For example, suppose the starting price at Valdez were \$10 per barrel, calculated using average marine transportation costs of \$1 per barrel. If the index then raises the Valdez price to \$20, implied transportation costs have theoretically risen to \$2 per barrel, whenever no actual increase in costs may have occurred. Defenders of the settlements have pointed out that if the index falls, implied transportation costs also can fall below actual transportation costs.

point in time, Arco is the only major producer to have made such a settlement; however, such settlements are being pursued by the state and other producers, for both tax and royalty obligations.

In this situation, if costs that are properly considered marine transportation expenses instead go into the tariff, state revenues are being inappropriately impacted. Arco currently produces about 28% of the state's production, with a royalty obligation of 12.5% on that production. Of the \$154.1 million in lost revenue that Horst & Frisch calculate as the net present value of spill costs, about half is royalty and half is tax. Arco's royalty share of that amount ($28\% \times \$154.1 \text{ million} \times .5$) is \$21.6 million. If three quarters of that amount was incurred for marine transportation expenses in Prince William Sound, Arco's royalty payments will have been inappropriately reduced. The net present value of that reduction would be \$16.2 million. If all producers settled using similar formulas, for both tax and royalty, the state would be losing \$115.6 in wellhead reductions that should have been allocated to marine transportation.

2. The second consideration relates to Alyeska's unique and somewhat perplexing role as a response action contractor in Prince William Sound. Alyeska is a consortium of regulated pipeline companies, each of which is a common carrier whose rates are subject to review by the Federal Energy Regulatory Commission (FERC).

When Congress passed the Trans-Alaska Pipeline authorization act in 1973, it included language imposing a strict

liability standard -- up to \$50 million -- for pollution caused by the permit-holder's (Alyeska's) activities. The language establishing this liability was extremely broad:

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, ...

In 1990, as part of the Oil Pollution Act (P.L. 101-380, 104 Stat. 484, this language was amended as follows:

If 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,...

According to Rob Shoaf of Alyeska, the "in the State of Alaska" language was added to limit liability to waters within three miles of shore -- the state boundary. The implication that might be drawn from that amendment is that Congress intended for the permit-holder to be strictly liable for spills out to the three mile limit. If this is so, then Alyeska's role as a response action contractor for spills in Prince William Sound is truly unique; other response action contractors, such as CISPRI, have no such statutory liability.

Alyeska states that it believes its role in Prince William Sound is that of a volunteer -- that its provision of response services there is "strictly a matter of commercial contract" between Alyeska -- and not the TAPS carriers -- and shippers. Letter dated November 20, 1991, attached as Exhibit 3,

at 2. As such, it believes it needs no authority to require financial responsibility or insurance in connection with these services. Presumably, then, it believes its insurance requirements of shippers are not subject to review by FERC. If this is true, then it is difficult to understand why it is appropriate for the TAPS carriers to include the cost of these services in their tariff filings. If the enterprise is strictly Alyeska's, then logically Alyeska should charge for the services; they should not be paid for through the tariff.

Alyeska states that including the costs in the tariff "equitably distributes the costs of those services among their beneficiaries." Id. However, this is not precisely true; while most of the oil shipped out of Valdez does indeed belong to the same companies that are the TAPS carriers, some oil is shipped by non-owner companies. There is no theoretical connection between carrying the oil on TAPS and shipping out of Valdez; theoretically, all of the oil leaving Valdez could be shipped by non-owners companies. If this were the case, then including the costs for Prince William Sound protection in the tariff would not "equitably distribute" the costs among the beneficiaries. Alyeska states that the Prince William Sound "capabilities" are available in the event of a terminal spill at Valdez; in their view, this connection provides some justification for including the costs in the tariff.

Alyeska's approach seems theoretically inconsistent. On the one hand, if the response services are truly an enterprise taken on by Alyeska in which the owner companies are not involved,

then the costs of the services should not be borne by the owner companies, or passed on to the pipeline shippers through the tariff. Alyeska should probably charge shippers for the service (including those shippers who are also owner companies). Alyeska's position that its bonding (insurance) requirement does not require authority or regulatory review is consistent with this approach.

On the other hand, if the costs of marine spill protection in Prince William Sound appropriately belong in the tariff, then the costs are the owner companies' costs. In this case, all of the costs and requirements, including Alyeska's insurance (bonding) requirements would require regulatory authority and would be subject to review by the FERC. Its requirements then must be reasonably necessary and non-discriminatory.

III. COMPARATIVE SPILL COSTS: COOK INLET AND PRINCE WILLIAM SOUND

This section compares expenditures for spill response and preparedness in Cook Inlet (CISPRI) and Prince William Sound (Alyeska), and analyzes state participation in those expenditures. The comparison should be viewed with caution for a number of reasons. First, capital expenditures should be compared, but they are lump sum expenses, providing the basis for response for a number of years. Thus, they cannot readily be analyzed on a per barrel or other volume basis. Second, a per barrel analysis is only one way to look at the risk of a spill. Some would argue that the risk of a spill is more related to the number of voyages than barrels. Finally, while activities in Prince William Sound are limited to the transportation of crude oil, CISPRI provides

response capabilities for transportation of crude, transportation of refined product, and onshore and offshore production.

CISPRI assesses its members based upon a weighting of those activities; offshore production and tanker and barge transportation are given full volume weight while onshore production, pipelines and dock transfers are weighted at one tenth of their volume. See, CISPRI's Quarterly Cost Participation Percentages for 4th quarter 1990 and 1st quarter 1991, attached as Exhibit 4. Since their total costs cover all of these activities, and since CISPRI has apparently incorporated some view of the relative risk of each of these activities into its assessment methodology, it seems reasonable for the purpose of this analysis to use the volumes as weighted by CISPRI.

With these limitations in mind, the following analysis can provide an order-of-magnitude comparison.

	Cook Inlet	PWS
Equipment Expenses (total) ¹²	\$14	\$48.1
Operating Expenses (annual) ¹³	\$6	\$42.5
Volumes (mmbbl) ¹⁴	74.4	654.6

¹² Alyeska's "total" expenditures are those submitted by them for the period March 1989 through September, 1991. CISPRI's total was calculated by adding the total value of the equipment that is used as the basis for determining CISPRI's rental rates to members.

¹³ Alyeska's annual operating costs were determined by averaging the monthly cost for the period covered by their submission, and annualizing. CISPRI's monthly costs were estimated to be \$500,000 by Gene Burden of Tesoro, and by Linda White of CISPRI.

¹⁴ CISPRI's fourth quarter 1990 and first quarter 1990 weighted total volumes, annualized; TAPS throughput (DNR report).

Comparing operating expenses with volumes, it can be seen that CISPRI spends \$.081 per weighted barrel in operating costs while Alyeska spends about \$.065 per barrel. On a volume basis, CISPRI's operating costs are 125% of those of Alyeska. When total equipment costs are compared to annual volume, CISPRI'S ratio is \$.188 per barrel, while Alyeska's ratio is \$.073 per barrel. CISPRI's ratio is 275% that of Alyeska.

As set out above, the state effectively pays one quarter of Alyeska's expenditures, since all (100%) of Alyeska's expenditures go into TAPS tariffs. In Cook Inlet, only part of the activity covered by CISPRI affects wellhead value calculations. Further, the severance tax rate is reduced to zero by the Economic Limit Factor in all Cook Inlet fields. Thus, only royalties are affected by spill response expenditures in Cook Inlet. The average per barrel royalty in Cook Inlet is 12.3%. Table I.

Total production in Cook Inlet is about 11.2 million barrels annually. Table I. Since CISPRI's activities cover both production and tanker transportation, we can assume that each barrel is counted twice in CISPRI's assessment methodology, once when it is produced and again when it is transported. Thus, of the 74.4 million weighted barrels, 22.4 -- or about 30% -- would be production or crude transportation barrels, the spill-protection costs of which would be deducted in arriving at wellhead value for royalty purposes.

We can adjust the costs for Cook Inlet and Prince William Sound to reflect these costs net of state participation. Thus,

Alyeska's costs are reduced by 25% (100% X 25%), while CISPRI's costs are reduced by 30% of the average royalty of 12.3%, or 3.7%. Reducing the costs in the table above by these percentages produces the following table:

	Cook Inlet	PWS
Equipment Expenses (total)	\$13.5	\$36.1
Operating Expenses (annual)	\$5.8	\$31.9
Volumes (mmbbl)	74.4	654.6

Now, comparing operating expenses net of state participation, CISPRI spends \$.078 per barrel, while Alyeska spends \$.049. The ratio of equipment costs to volume is \$.181 for CISPRI and \$.055 for Alyeska. When state participation is netted out, CISPRI's operating expenses are 159% of those of Alyeska, and its equipment-to-volume ratio is 329% that of Alyeska.

Two conclusions can be drawn from this analysis. First, CISPRI, presumably because of its lower volume, spends significantly more on a volume basis for spill protection in Cook Inlet than does Alyeska in Prince William Sound. Second, when the state's participation in these expenditures is factored in, the difference becomes much greater.

TABLE I

SUMMARY OF ROYALTY INTERESTS AND TAX RATES BY FIELD
OIL

	<u>Royalty</u>	<u>Average Severance Tax Rate</u>	<u>Production (MM Barrels) 1990</u>
NORTH SLOPE			
Endicott	25.9% @ 20.0%	9.5%	37.7
	74.1% @ 12.5%		
Kuparuk	12.5%	13.2%	107.2
Lisburne	12.5%	0.1%	14.5
Milne Point	78.4% @ 20.0%	0.0%	6.6
	21.6% @ 12.5%		
Prudhoe Bay	12.5%	14.9%	<u>470.1</u>
Total North Slope			636.1
Average North Slope	12.7%	12.1%*	
COOK INLET			
Beaver Creek	11.25%**	0.0%	.2
Granite Point	12.5%	0.0%	1.5
McArthur River	12.5%	0.0%	4.3
Middle Ground Shoal	12.5%	0.0%	2.7
Swanson River	11.25%**	0.0%	1.9
Trading Bay	12.5%	0.0%	<u>.6</u>
Total Cook Inlet			11.1
Average Cook Inlet	12.3%	0.0%	
TOTAL STATE			647.3
AVERAGE STATE	12.7%	11.9%*	

* The tax rates shown for each field are the nominal rate reduced by the Economic Limit Factor. The tax does not apply to royalty barrels. The average rate shows the effective rate for all production, including royalty.

** Beaver Creek and Swanson River are federal leases, carrying a royalty obligation of 12.5%. The State receives 90% of this royalty, or 11.25%.

Sources: Department of Natural Resources, "Historical and Projected Oil and Gas Consumption", June, 1991; Department of Revenue, Dr. Charles Logsdon.

OIL SPILL RELATED EXPENSES*
(IN MILLIONS)
MARCH 1989 THROUGH SEPTEMBER 1991

	<u>PROJECTS</u>	<u>O & M EXPENSE</u>	<u>TOTAL</u>
TERMINAL			
1989	0	14.6	14.6
1990	1.1	6.1	7.2
1991 YEAR TO DATE	1.7	2.5	4.2
TOTAL TERMINAL	<u>2.8</u>	<u>23.2</u>	<u>26</u>
PRINCE WM SOUND			
1989	17.7	29.8	47.5
1990	17.8	48.1	65.9
1991 YEAR TO DATE	12.6	31.9	44.5
TOTAL PWS	<u>48.1</u>	<u>109.8</u>	<u>157.9</u>
PIPELINE			
1989	0	0	0
1990	1.4	0.6	2
1991 YEAR TO DATE	18.8	3.6	22.4
TOTAL PIPELINE	<u>20.2</u>	<u>4.2</u>	<u>24.4</u>
TOTAL ACTUAL	<u>71.1</u>	<u>137.2</u>	<u>208.3</u>
*NOTE: Does not include legal expenses.			
SUMMARY BY YEAR			
1989	17.7	44.4	62.1
1990	20.3	54.8	75.1
1991 YEAR TO DATE	33.1	38	71.1
TOTAL ACTUAL	<u>71.1</u>	<u>137.2</u>	<u>208.3</u>
EST. FUTURE COST			
10/91 - 12/97	90	310	400
TOTAL ACTUAL & EST	<u>161.1</u>	<u>447.2</u>	<u>608.3</u>

Exh. 1-1

**OIL SPILL RELATED EXPENSES
(IN MILLIONS)
FUTURE YEARS PROJECTION**

	<u>PROJECTS</u>	<u>O & M EXPENSE</u>	<u>TOTAL</u>
EST. REMAINING 1991	14.3	13.2	27.5
1992	23.9		23.9
1993-1997	51.8		51.8
EST PER LONG RANGE PLAN:			
1992		56.3	56.3
1993-1997		240.5	240.5
TOTAL EST. COST	<u>90</u>	<u>310</u>	<u>400</u>

Exh. 1-2

HORST & FRISCH

1133 CONNECTICUT AVENUE NW, SUITE 900
WASHINGTON, DC 20036

TELEPHONE 202/296-4005 FAX 202/296-4008

November 5, 1991

Ms. Deborah Vogt
P.O. Box 1065
Juneau, AK 99802

Dear Deborah:

Enclosed please find an analysis of the State revenue impact of actual (March 1989 through September 1991) and projected (October 1991 through December 1997) oil spill related capital and operating expenditures. The net present value of this impact, computed as of January 1, 1992, is \$154.1 million.

Oil spill related operating expenditures directly affect tariff rates in the year in which they are incurred. On the other hand, oil spill related capital expenditures affect tariff rates over time through the following cost of service elements: (1) depreciation, (2) recovery of deferred return, (3) after-tax margin, and (4) income tax allowance.

The enclosed bar charts reflect (1) the actual State revenue impact of these expenditures through 2011 and (2) the net present value of these amounts through 2011 computed as of January 1, 1992.

Please let me know if you have any questions concerning the methodology employed or the assumptions utilized in this analysis.

Sincerely,

Kenneth A. Timbers

Kenneth A. Timbers

encl.

cc: Robert Loeffler, Morrison & Foerster

Exh 2

TABLE 1: OIL SPILL RELATED EXPENDITURES (1989-1997) (\$M)

Horst & Frisch
11/04/91

	1989	1990	1991	1992	1993	1994	1995	1996	1997
ACTUALS (3/89-9/91)									
Terminal Expenditures									
Projects	\$0.0	\$1.1	\$1.7						
Operations & Maintenance	14.6	6.1	2.5						
Prince William Sound Expenditures									
Projects	17.7	17.8	12.6						
Operations & Maintenance	29.8	48.1	31.9						
Pipeline Expenditures									
Projects	0.0	1.4	18.8						
Operations & Maintenance	0.0	0.6	3.6						
ESTIMATES (10/91-12/97)									
Projects	0.0	0.0	14.3	23.9	10.36	10.36	10.36	10.36	10.36
Operations & Maintenance	0.0	0.0	13.2	56.3	48.1	48.1	48.1	48.1	48.1
TOTAL PROJECTS	17.7	20.3	47.4	23.9	10.4	10.4	10.4	10.4	10.4
TOTAL OPERATIONS & MAINTENANCE	44.4	54.8	51.2	56.3	48.1	48.1	48.1	48.1	48.1
TOTAL EXPENDITURES	62.1	75.1	98.6	80.2	58.5	58.5	58.5	58.5	58.5

Source: Alyeska figures per 10/30/91 fax from Tina Kobayashi

TABLE 2: STATE REVENUE IMPACT OF OIL SPILL
RELATED EXPENDITURES (\$M)

Horst & Frisch
11/04/91

	1989	1990	1991	1992	1993	1994	1995	1996	1997
1 Oil Spill Related Operating Expenditures	\$17.7	\$20.3	\$47.4	\$23.9	\$10.4	\$10.4	\$10.4	\$10.4	\$10.4
2 Oil Spill Related Capital Expenditures	44.4	54.8	51.2	56.3	48.1	48.1	48.1	48.1	48.1
DEPRECIATION									
3 Additions to Depreciable Property	44.4	54.8	51.2	56.3	48.1	48.1	48.1	48.1	48.1
4 Depreciation Factors		21.46%	22.61%	23.45%	23.69%	24.28%	25.36%	24.31%	19.56%
5 Depreciation Base		44.4	89.7	120.6	148.6	161.5	170.4	175.3	180.8
6 Depreciation		9.5	20.3	28.3	35.2	39.2	43.2	42.6	35.4
7 Depreciable Property Balance at Year End	44.4	89.7	120.6	148.6	161.5	170.4	175.3	180.8	193.5
ACCUMULATED DEFERRED INCOME TAX									
8 State ADIT - EoY	(0.2)	(0.1)	0.6	1.5	2.7	3.9	5.2	6.1	6.0
9 Federal ADIT - EoY	(0.7)	0.1	2.9	6.8	11.8	17.1	22.9	27.6	30.1
10 Total ADIT - EoY	(0.9)	0.1	3.5	8.3	14.5	21.0	28.0	33.7	36.1
RECOVERY OF DEFERRED RETURN									
11 Deferred Return Base		0.0	1.9	4.9	7.6	10.6	13.2	15.3	17.4
12 Deferred Return Factors		21.46%	22.61%	23.45%	23.69%	24.28%	25.36%	24.31%	19.56%
13 Recovery of Deferred Return		0.0	0.4	1.1	1.8	2.6	3.3	3.7	3.4
14 Inflation Adjustment Base		34.9	70.8	96.1	119.2	130.3	137.0	144.3	159.4
15 Inflation Rate		5.34%	4.88%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
16 Inflation Adjustment		1.9	3.5	3.8	4.8	5.2	5.5	5.8	6.4
17 Deferred Return at Year End	0.0	1.9	4.9	7.6	10.6	13.2	15.3	17.4	20.4
AFTER-TAX MARGIN									
18 Depreciable Property Balance at Year End	44.4	89.7	120.6	148.6	161.5	170.4	175.3	180.8	193.5
19 Deferred Return at Year End	0.0	1.9	4.9	7.6	10.6	13.2	15.3	17.4	20.4
20 Total ADIT - EoY	(0.9)	0.1	3.5	8.3	14.5	21.0	28.0	33.7	36.1
21 Rate Base at Year End	45.3	91.5	122.0	147.9	157.6	162.6	162.6	164.5	177.8
22 Rate of Return on Rate Base		6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
23 After-Tax Margin		2.9	5.9	7.8	9.5	10.1	10.4	10.4	10.5
INCOME TAX ALLOWANCE									
24 Income Tax Base		2.9	6.3	9.0	11.3	12.6	13.8	14.1	13.9
25 State Income Tax Rate		9.4%	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%
26 Federal Income Tax Rate		34%	34%	34%	34%	34%	34%	34%	34%
27 Combined Rate of Tax		40.2%	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%
28 Income Tax Allowance Factor		0.672	0.672	0.672	0.672	0.672	0.672	0.672	0.672
29 Income Tax Allowance		1.9	4.2	6.0	7.6	8.5	9.2	9.5	9.4
COST OF SERVICE									
30 Operating Expenditures	17.7	20.3	47.4	23.9	10.4	10.4	10.4	10.4	10.4
31 Depreciation		9.5	20.3	28.3	35.2	39.2	43.2	42.6	35.4
32 Recovery of Deferred Return		0.0	0.4	1.1	1.8	2.6	3.3	3.7	3.4
33 After-Tax Margin		2.9	5.9	7.8	9.5	10.1	10.4	10.4	10.5
34 Income Tax Allowance		1.9	4.2	6.0	7.6	8.5	9.2	9.5	9.4
35 Total Cost of Service Effect	17.7	34.7	78.2	67.2	64.4	70.7	76.6	76.6	69.0
36 State Revenue Impact - % [1]	24.03%	25.44%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%
37 State Revenue Impact	4.3	8.8	19.5	16.8	16.1	17.7	19.1	19.2	17.3
38 Interest Rate	10%	10%	10%	10%	10%	10%	10%	10%	10%
39 Discount Period	-2.5	-1.5	-0.5	0.5	1.5	2.5	3.5	4.5	5.5
40 Net Present Value Factor	1.27	1.15	1.05	0.95	0.87	0.79	0.72	0.65	0.59
41 Net Present Value (1/1/92)	5.4	10.2	20.5	16.0	14.0	13.9	13.7	12.5	10.2
42 NPV of State Revenue Impact	\$154.1 =====								

[1] Weighted average production and royalty rates for all crudes for 1989 and 1990; 1991-2011 set equal to 25 percent.

TABLE 2: STATE REVENUE IMPACT OF OIL SPILL
RELATED EXPENDITURES (\$M)

Horst & Frisch
11/04/91

	1998	1999	2000	2001	2002	2003	2004	2005	2006
1 Oil Spill Related Operating Expenditures	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
2 Oil Spill Related Capital Expenditures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DEPRECIATION									
3 Additions to Depreciable Property	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4 Depreciation Factors	11.26%	11.82%	13.49%	14.74%	16.19%	17.06%	18.82%	21.41%	25.25%
5 Depreciation Base	193.5	171.7	151.4	131.0	111.7	93.6	77.6	63.0	49.5
6 Depreciation	21.8	20.3	20.4	19.3	18.1	16.0	14.6	13.5	12.5
7 Depreciable Property Balance at Year End	171.7	151.4	131.0	111.7	93.6	77.6	63.0	49.5	37.0
ACCUMULATED DEFERRED INCOME TAX									
8 State ADIT - EoY	4.7	3.5	2.6	1.8	1.2	0.7	0.3	(0.0)	(0.1)
9 Federal ADIT - EoY	29.0	27.8	26.8	25.6	23.9	21.5	19.1	17.2	16.0
10 Total ADIT - EoY	33.7	31.3	29.4	27.4	25.2	22.2	19.3	17.2	15.8
RECOVERY OF DEFERRED RETURN									
11 Deferred Return Base	20.4	25.7	29.6	31.9	32.7	32.3	30.9	28.6	25.4
12 Deferred Return Factors	11.26%	11.82%	13.49%	14.74%	16.19%	17.06%	18.82%	21.41%	25.25%
13 Recovery of Deferred Return	2.3	3.0	4.0	4.7	5.3	5.5	5.8	6.1	6.4
14 Inflation Adjustment Base	189.8	174.1	156.6	138.8	121.0	104.4	88.1	72.0	56.0
15 Inflation Rate	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
16 Inflation Adjustment	7.6	7.0	6.3	5.6	4.8	4.2	3.5	2.9	2.2
17 Deferred Return at Year End	25.7	29.6	31.9	32.7	32.3	30.9	28.6	25.4	21.2
AFTER-TAX MARGIN									
18 Depreciable Property Balance at Year End	171.7	151.4	131.0	111.7	93.6	77.6	63.0	49.5	37.0
19 Deferred Return at Year End	25.7	29.6	31.9	32.7	32.3	30.9	28.6	25.4	21.2
20 Total ADIT - EoY	33.7	31.3	29.4	27.4	25.2	22.2	19.3	17.2	15.8
21 Rate Base at Year End	163.7	149.7	133.4	117.0	100.7	86.4	72.3	57.7	42.4
22 Rate of Return on Rate Base	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
23 After-Tax Margin	11.4	10.5	9.6	8.5	7.5	6.4	5.5	4.6	3.7
INCOME TAX ALLOWANCE									
24 Income Tax Base	13.7	13.5	13.6	13.2	12.8	12.0	11.3	10.8	10.1
25 State Income Tax Rate	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%	9.4%
26 Federal Income Tax Rate	34%	34%	34%	34%	34%	34%	34%	34%	34%
27 Combined Rate of Tax	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%	40.2%
28 Income Tax Allowance Factor	0.672	0.672	0.672	0.672	0.672	0.672	0.672	0.672	0.672
29 Income Tax Allowance	9.2	9.1	9.1	8.9	8.6	8.0	7.6	7.2	6.8
COST OF SERVICE									
30 Operating Expenditures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
31 Depreciation	21.8	20.3	20.4	19.3	18.1	16.0	14.6	13.5	12.5
32 Recovery of Deferred Return	2.3	3.0	4.0	4.7	5.3	5.5	5.8	6.1	6.4
33 After-Tax Margin	11.4	10.5	9.6	8.5	7.5	6.4	5.5	4.6	3.7
34 Income Tax Allowance	9.2	9.1	9.1	8.9	8.6	8.0	7.6	7.2	6.8
35 Total Cost of Service Effect	44.7	42.9	43.1	41.5	39.5	36.0	33.6	31.5	29.4
36 State Revenue Impact - % [1]	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%
37 State Revenue Impact	11.2	10.7	10.8	10.4	9.9	9.0	8.4	7.9	7.4
38 Interest Rate	10%	10%	10%	10%	10%	10%	10%	10%	10%
39 Discount Period	6.5	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5
40 Net Present Value Factor	0.54	0.49	0.44	0.40	0.37	0.33	0.30	0.23	0.25
41 Net Present Value (1/1/92)	6.0	5.2	4.8	4.2	3.6	3.0	2.6	2.2	1.8
42 NPV of State Revenue Impact	\$154.1 =====								

[1] Weighted average production and royalty rates for all crudes for 1989 and 1990; 1991-2011 set equal to 25 percent.

TABLE 2: STATE REVENUE IMPACT OF OIL SPILL
RELATED EXPENDITURES (\$M)Horst & Frisch
11/04/91

	2007	2008	2009	2010	2011	Explanation
1 Oil Spill Related Operating Expenditures	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	See Table 1
2 Oil Spill Related Capital Expenditures	0.0	0.0	0.0	0.0	0.0	See Table 1
DEPRECIATION						
3 Additions to Depreciable Property	0.0	0.0	0.0	0.0	0.0	Line 2
4 Depreciation Factors	29.10%	35.38%	42.34%	54.43%	100.00%	Per TSM
5 Depreciation Base	37.0	26.2	17.0	9.8	4.5	Previous Line 7
6 Depreciation	10.8	9.3	7.2	5.3	4.5	Line 4 x Line 5
7 Depreciable Property Balance at Year End	26.2	17.0	9.8	4.5	0.0	Line 3 + Line 5 - Line 6
ACCUMULATED DEFERRED INCOME TAX						
8 State ADIT - EoY	(0.1)	(0.0)	0.1	0.1	0.0	TABLE 3: Line 28
9 Federal ADIT - EoY	15.2	14.9	14.9	15.3	(0.0)	TABLE 3: Line 57
10 Total ADIT - EoY	15.1	14.9	15.0	15.4	(0.0)	Line 8 + Line 9
RECOVERY OF DEFERRED RETURN						
11 Deferred Return Base	21.2	16.7	11.9	7.5	3.7	Previous Line 17
12 Deferred Return Factors	29.10%	35.38%	42.34%	54.43%	100.00%	Line 4
13 Recovery of Deferred Return	6.2	5.9	5.0	4.1	3.7	Line 11 x Line 12
14 Inflation Adjustment Base	41.3	27.8	16.6	7.9	0.0	Pr.Line 17+Pr.Line 7-Line 13-Line 6
15 Inflation Rate	4.00%	4.00%	4.00%	4.00%	4.00%	Inflation Rate
16 Inflation Adjustment	1.7	1.1	0.7	0.3	0.0	Line 14 x Line 15
17 Deferred Return at Year End	16.7	11.9	7.5	3.7	0.0	Prev. Line 17 - Line 13 + Line 16
AFTER-TAX MARGIN						
18 Depreciable Property Balance at Year End	26.2	17.0	9.8	4.5	0.0	Line 7
19 Deferred Return at Year End	16.7	11.9	7.5	3.7	0.0	Line 17
20 Total ADIT - EoY	15.1	14.9	15.0	15.4	(0.0)	Line 10
21 Rate Base at Year End	27.9	14.0	2.3	-7.2	0.0	Line 18 + Line 19 - Line 20
22 Rate of Return on Rate Base	6.4%	6.4%	6.4%	6.4%	6.4%	Per TSM
23 After-Tax Margin	2.7	1.8	0.9	0.1	(0.5)	Previous Line 21 x Line 22
INCOME TAX ALLOWANCE						
24 Income Tax Base	8.9	7.7	5.9	4.2	3.3	Line 23 + Line 13
25 State Income Tax Rate	9.4%	9.4%	9.4%	9.4%	9.4%	State Income Tax Rate
26 Federal Income Tax Rate	34%	34%	34%	34%	34%	Federal Income Tax Rate
27 Combined Rate of Tax	40.2%	40.2%	40.2%	40.2%	40.2%	Line 25 + Line 26 x (1 - Line 25)
28 Income Tax Allowance Factor	0.672	0.672	0.672	0.672	0.672	Line 27/(1 - Line 27)
29 Income Tax Allowance	6.0	5.2	4.0	2.9	2.2	Line 24 x Line 28
COST OF SERVICE						
30 Operating Expenditures	0.0	0.0	0.0	0.0	0.0	Line 1
31 Depreciation	10.8	9.3	7.2	5.3	4.5	Line 6
32 Recovery of Deferred Return	6.2	5.9	5.0	4.1	3.7	Line 13
33 After-Tax Margin	2.7	1.8	0.9	0.1	(0.5)	Line 23
34 Income Tax Allowance	6.0	5.2	4.0	2.9	2.2	Line 29
35 Total Cost of Service Effect	25.6	22.1	17.1	12.4	9.9	Sum of Lines 30 thru 34
36 State Revenue Impact - % [1]	25.00%	25.00%	25.00%	25.00%	25.00%	Assumption
37 State Revenue Impact	6.4	5.5	4.3	3.1	2.5	Line 35 x Line 36
38 Interest Rate	10%	10%	10%	10%	10%	Assumption
39 Discount Period	15.5	16.5	17.5	18.5	19.5	Discounting to 1/1/92
40 Net Present Value Factor	0.23	0.21	0.19	0.17	0.16	Previous Line 40/(1 - Line 38)
41 Net Present Value (1/1/92)	1.5	1.1	0.8	0.5	0.4	Line 37 x Line 40
42 NPV of State Revenue Impact	\$154.1					Sum of Line 41

=====

[1] Weighted average production and royalty rates for all crudes for 1989 and 1990; 1991-2011 set equal to 25 percent.

TABLE 3: ADIT CALCULATION

			1989	1990	1991	1992	1993	1994	1995	1996	1997
STATE ADIT											
1	Additions to Depreciable Property		44.4	54.8	51.2	56.3	48.1	48.1	48.1	48.1	48.1
2		1989 5.7143%	2.5								
3		1990 10.7755%	4.8	3.1							
4		1991 9.8247%	4.4	5.9	2.9						
5		1992 9.2107%	4.1	5.4	5.5	3.2					
6		1993 8.5966%	3.8	5.0	5.0	6.1	2.7				
7		1994 7.9826%	3.5	4.7	4.7	5.5	5.2	2.7			
8		1995 7.3685%	3.3	4.4	4.4	5.2	4.7	5.2	2.7		
9		1996 6.7545%	3.0	4.0	4.1	4.8	4.4	4.7	5.2	2.7	
10		1997 6.1405%	2.7	3.7	3.8	4.5	4.1	4.4	4.7	5.2	2.7
11		1998 5.5264%	2.5	3.4	3.5	4.1	3.8	4.1	4.4	4.7	5.2
12		1999 4.9124%	2.2	3.0	3.1	3.8	3.5	3.8	4.1	4.4	4.7
13		2000 4.2983%	1.9	2.7	2.8	3.5	3.2	3.5	3.8	4.1	4.4
14		2001 3.6843%	1.6	2.4	2.5	3.1	3.0	3.2	3.5	3.8	4.1
15		2002 3.0702%	1.4	2.0	2.2	2.8	2.7	3.0	3.2	3.5	3.8
16		2003 2.4562%	1.1	1.7	1.9	2.4	2.4	2.7	3.0	3.2	3.5
17		2004 1.8421%	0.8	1.3	1.6	2.1	2.1	2.4	2.7	3.0	3.2
18		2005 1.2281%	0.5	1.0	1.3	1.7	1.8	2.1	2.4	2.7	3.0
19		2006 0.6141%	0.3	0.7	0.9	1.4	1.5	1.8	2.1	2.4	2.7
20		2007		0.3	0.6	1.0	1.2	1.5	1.8	2.1	2.4
21		2008			0.3	0.7	0.9	1.2	1.5	1.8	2.1
22		2009				0.3	0.6	0.9	1.2	1.5	1.8
23		2010					0.3	0.6	0.9	1.2	1.5
			1989	1990	1991	1992	1993	1994	1995	1996	1997
24	State Tax Depreciation		2.5	7.9	13.2	18.2	22.7	26.4	29.9	33.1	35.9
25	Depreciation		0.0	9.5	20.3	28.3	35.2	39.2	43.2	42.6	35.4
26	State Timing Difference		(2.5)	1.6	7.1	10.1	12.5	12.8	13.3	9.6	(0.6)
27	Cumulative Timing Difference		(2.5)	(0.9)	6.2	16.2	28.7	41.5	54.8	64.4	63.8
28	State ADIT - EoY	9.4%	(0.2)	(0.1)	0.6	1.5	2.7	3.9	5.2	6.1	6.0
FEDERAL ADIT											
29	Additions to Depreciable Property		44.4	54.8	51.2	56.3	48.1	48.1	48.1	48.1	48.1
30		1989 5.0000%	2.2								
31		1990 9.5000%	4.2	2.7							
32		1991 8.5500%	3.8	5.2	2.6						
33		1992 7.6950%	3.4	4.7	4.9	2.8					
34		1993 6.9255%	3.1	4.2	4.4	5.3	2.4				
35		1994 6.2330%	2.8	3.8	3.9	4.8	4.6	2.4			
36		1995 5.9049%	2.6	3.4	3.5	4.3	4.1	4.6	2.4		
37		1996 5.9049%	2.6	3.2	3.2	3.9	3.7	4.1	4.6	2.4	
38		1997 5.9049%	2.6	3.2	3.0	3.5	3.3	3.7	4.1	4.6	2.4
39		1998 5.9049%	2.6	3.2	3.0	3.3	3.0	3.3	3.7	4.1	4.6
40		1999 5.9049%	2.6	3.2	3.0	3.3	2.8	3.0	3.3	3.7	4.1
41		2000 5.9049%	2.6	3.2	3.0	3.3	2.8	2.8	3.0	3.3	3.7
42		2001 5.9049%	2.6	3.2	3.0	3.3	2.8	2.8	2.8	3.0	3.3
43		2002 5.9049%	2.6	3.2	3.0	3.3	2.8	2.8	2.8	2.8	3.0
44		2003 5.9049%	2.6	3.2	3.0	3.3	2.8	2.8	2.8	2.8	2.8
45		2004 2.9525%	1.3	3.2	3.0	3.3	2.8	2.8	2.8	2.8	2.8
46		2005	0.0	1.6	3.0	3.3	2.8	2.8	2.8	2.8	2.8
47		2006	0.0	0.0	1.5	3.3	2.8	2.8	2.8	2.8	2.8
48		2007		0.0	0.0	1.7	2.8	2.8	2.8	2.8	2.8
49		2008			0.0	0.0	1.4	2.8	2.8	2.8	2.8
50		2009				0.0	0.0	1.4	2.8	2.8	2.8
51		2010					0.0	0.0	1.4	2.8	2.8
			1989	1990	1991	1992	1993	1994	1995	1996	1997
52	Federal Tax Depreciation		2.2	7.0	11.6	15.8	19.4	22.3	25.0	27.7	28.1
53	Depreciation		0.0	9.5	20.3	28.3	35.2	39.2	43.2	42.6	35.4
54	Federal Timing Difference		(2.2)	2.6	8.7	12.5	15.8	16.9	18.2	14.9	7.3
55	State Tax Effect	9.4%	0.2	(0.2)	(0.7)	(0.9)	(1.2)	(1.2)	(1.3)	(0.9)	0.1
56	Cumulative Timing Difference		(2.0)	0.4	8.5	20.0	34.7	50.4	67.3	81.3	88.6
57	Federal ADIT - EoY	34%	(0.7)	0.1	2.9	6.8	11.8	17.1	22.9	27.6	30.1
58	Total ADIT - EoY		(0.9)	0.1	3.5	8.3	14.5	21.0	28.0	33.7	36.1

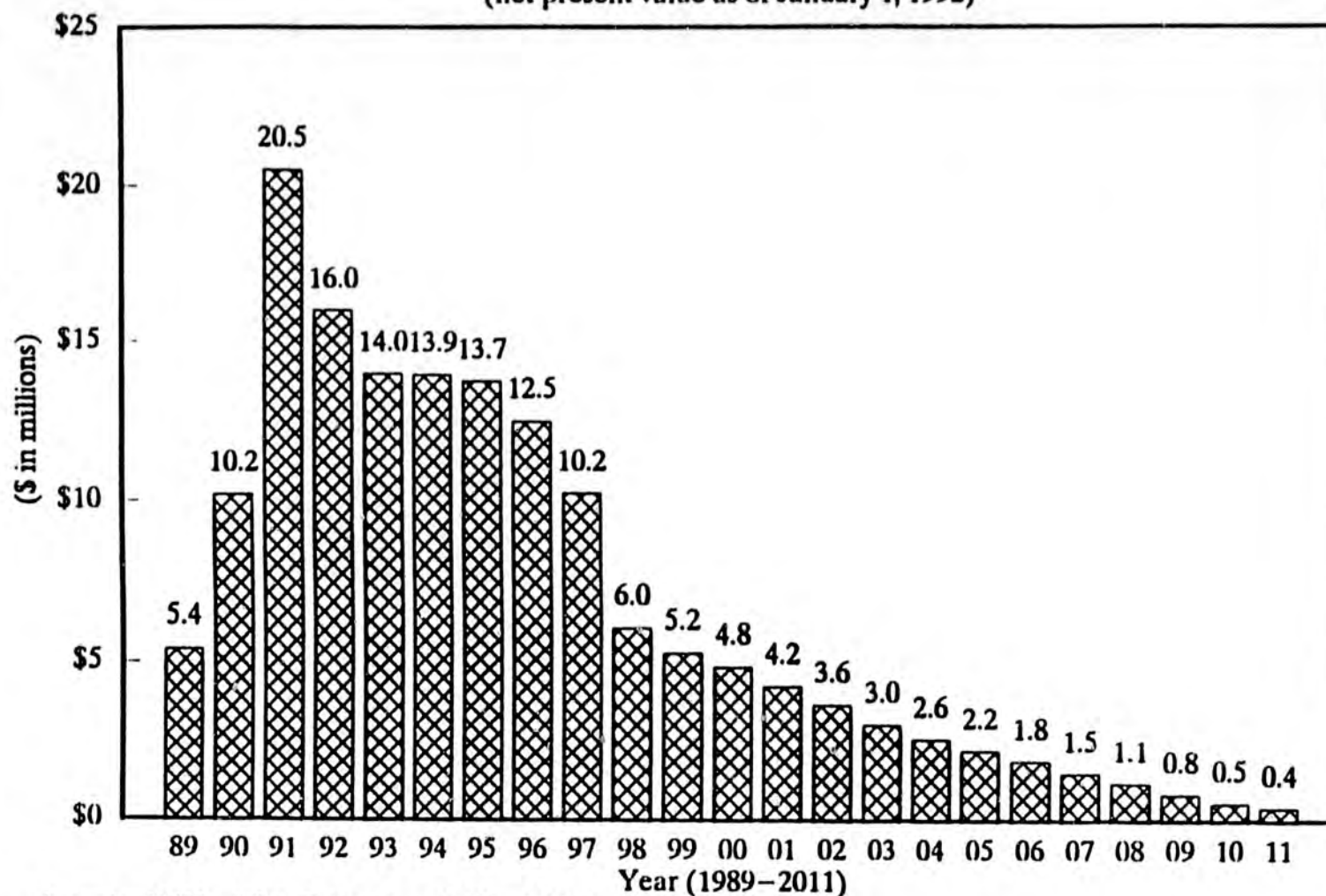
TABLE 3: ADIT CALCULATION

				FACTORS									
STATE ADIT				Total									
1	Additions to Depreciable Property		447.2										
2		1989	5.7143%	2.5									
3		1990	10.7755%	7.9									
4		1991	9.8247%	13.2									
5		1992	9.2107%	18.2									
6		1993	8.5966%	22.7									
7		1994	7.9826%	26.4									
8		1995	7.3685%	29.9									
9		1996	6.7545%	33.1									
10		1997	6.1405%	35.9									
11		1998	5.5264%	35.7									
12		1999	4.9124%	32.8									
13		2000	4.2983%	30.1									
14		2001	3.6843%	27.3									
15		2002	3.0702%	24.6									
16		2003	2.4562%	21.8									
17		2004	1.8421%	19.1									
18		2005	1.2281%	16.4									
19		2006	0.6141%	13.6									
20		2007		10.9									
21		2008		8.4									
22		2009		6.3									
23		2010		4.4									
				1998	1999	2000	2001	2002	2003	2004	2005	2006	
24	State Tax Depreciation		35.7	32.8	30.1	27.3	24.6	21.8	19.1	16.4	13.6		
25	Depreciation		21.8	20.3	20.4	19.3	18.1	16.0	14.6	13.5	12.5		
26	State Timing Difference		(13.9)	(12.5)	(9.7)	(8.0)	(6.5)	(5.9)	(4.5)	(2.9)	(1.1)		
27	Cumulative Timing Difference		49.9	37.3	27.7	19.7	13.2	7.3	2.8	(0.1)	(1.2)		
28	State ADIT - EoY	9.4%	4.7	3.5	2.6	1.8	1.2	0.7	0.3	(0.0)	(0.1)		
FEDERAL ADIT													
29	Additions to Depreciable Property		399.1										
30		1989	5.0000%	2.2									
31		1990	9.5000%	7.0									
32		1991	8.5500%	11.6									
33		1992	7.6950%	15.8									
34		1993	6.9255%	19.4									
35		1994	6.2330%	22.3									
36		1995	5.9049%	25.0									
37		1996	5.9049%	27.7									
38		1997	5.9049%	28.1									
39		1998	5.9049%	26.3									
40		1999	5.9049%	25.1									
41		2000	5.9049%	24.2									
42		2001	5.9049%	23.7									
43		2002	5.9049%	23.6									
44		2003	5.9049%	23.6									
45		2004	2.9525%	22.3									
46		2005		19.3									
47		2006		16.2									
48		2007		13.0									
49		2008		9.9									
50		2009		7.1									
51		2010		4.3									
				1998	1999	2000	2001	2002	2003	2004	2005	2006	
52	Federal Tax Depreciation		26.3	25.1	24.2	23.7	23.6	23.6	22.3	19.3	16.2		
53	Depreciation		21.8	20.3	20.4	19.3	18.1	16.0	14.6	13.5	12.5		
54	Federal Timing Difference		(4.6)	(4.8)	(3.8)	(4.4)	(5.5)	(7.6)	(7.6)	(5.8)	(3.7)		
55	State Tax Effect	9.4%	1.3	1.2	0.9	0.8	0.6	0.6	0.4	0.3	0.1		
56	Cumulative Timing Difference		85.4	81.8	78.9	75.2	70.4	63.3	56.1	50.5	46.9		
57	Federal ADIT - EoY	34%	29.0	27.8	26.8	25.6	23.9	21.5	19.1	17.2	16.0		
58	Total ADIT - EoY		33.7	31.3	29.4	27.4	25.2	22.2	19.3	17.2	15.8		

TABLE 3: ADIT CALCULATION

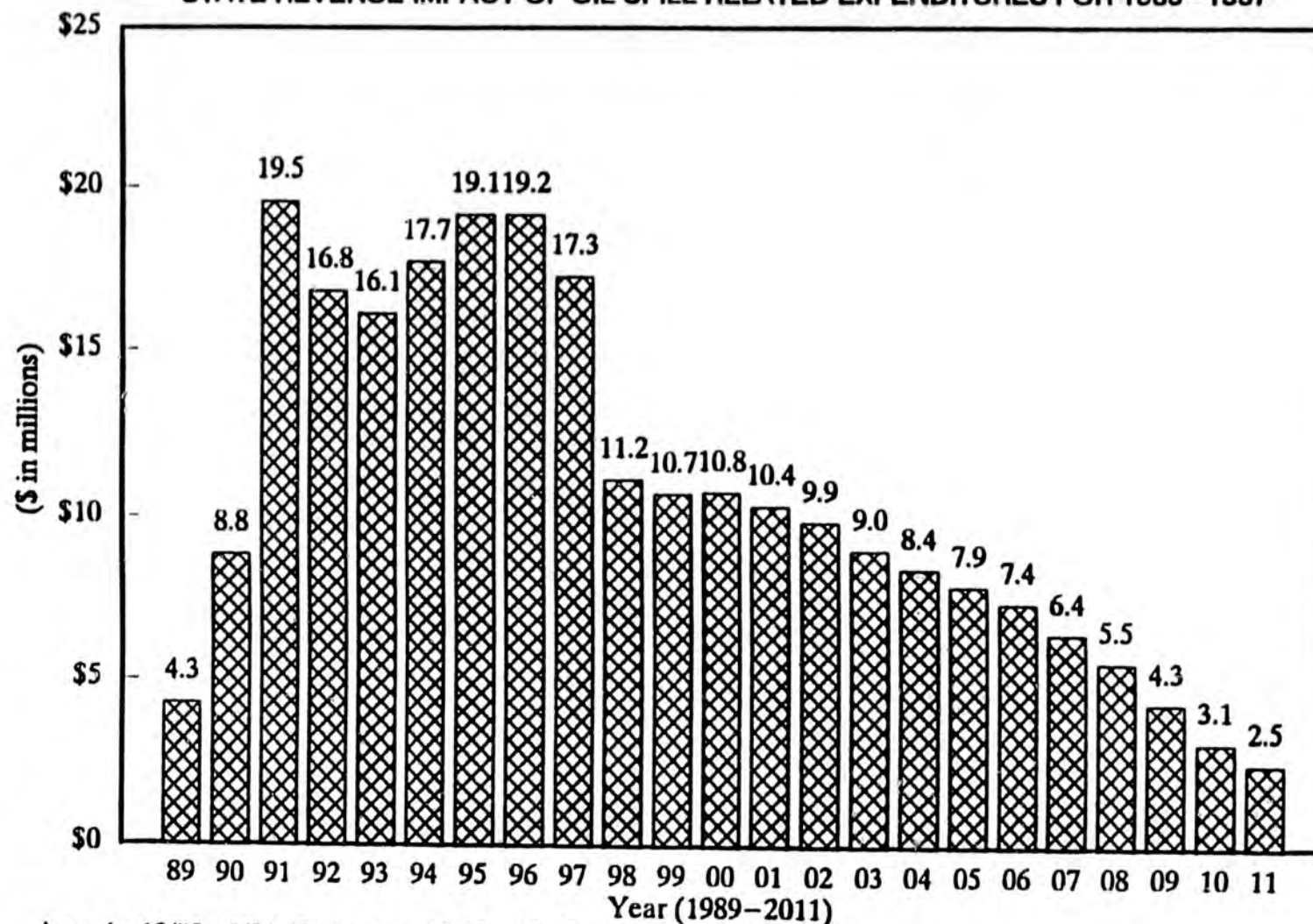
STATE ADIT		FACTORS				
1 Additions to Depreciable Property						
2	1989	5.7143%				
3	1990	10.7755%				
4	1991	9.8247%				
5	1992	9.2107%				
6	1993	8.5966%				
7	1994	7.9826%				
8	1995	7.3685%				
9	1996	6.7545%				
10	1997	6.1405%				
11	1998	5.5264%				
12	1999	4.9124%				
13	2000	4.2983%				
14	2001	3.6843%				
15	2002	3.0702%				
16	2003	2.4562%				
17	2004	1.8421%				
18	2005	1.2281%				
19	2006	0.6141%				
20	2007					
21	2008					
22	2009					
23	2010					
			2007	2008	2009	2010
24 State Tax Depreciation			10.9	8.4	6.3	4.4
25 Depreciation			10.8	9.3	7.2	5.3
26 State Timing Difference			(0.1)	0.9	0.9	(1.4)
27 Cumulative Timing Difference			(1.3)	(0.4)	0.6	1.4
28 State ADIT - EoY	9.4%		(0.1)	(0.0)	0.1	0.1
FEDERAL ADIT						
29 Additions to Depreciable Property						
30	1989	5.0000%				
31	1990	9.5000%				
32	1991	8.5500%				
33	1992	7.6950%				
34	1993	6.9255%				
35	1994	6.2330%				
36	1995	5.9049%				
37	1996	5.9049%				
38	1997	5.9049%				
39	1998	5.9049%				
40	1999	5.9049%				
41	2000	5.9049%				
42	2001	5.9049%				
43	2002	5.9049%				
44	2003	5.9049%				
45	2004	2.9525%				
46	2005					
47	2006					
48	2007					
49	2008					
50	2009					
51	2010					
			2007	2008	2009	2010
52 Federal Tax Depreciation			13.0	9.9	7.1	4.3
53 Depreciation			10.8	9.3	7.2	5.3
54 Federal Timing Difference			(2.3)	(0.7)	0.1	1.1
55 State Tax Effect	9.4%		0.0	(0.1)	(0.1)	(0.1)
56 Cumulative Timing Difference			44.7	44.0	43.9	44.9
57 Federal ADIT - EoY	34%		15.2	14.9	14.9	15.3
58 Total ADIT - EoY			15.1	14.9	15.0	15.4

STATE REVENUE IMPACT OF OIL SPILL RELATED EXPENDITURES FOR 1989-1997
(net present value as of January 1, 1992)



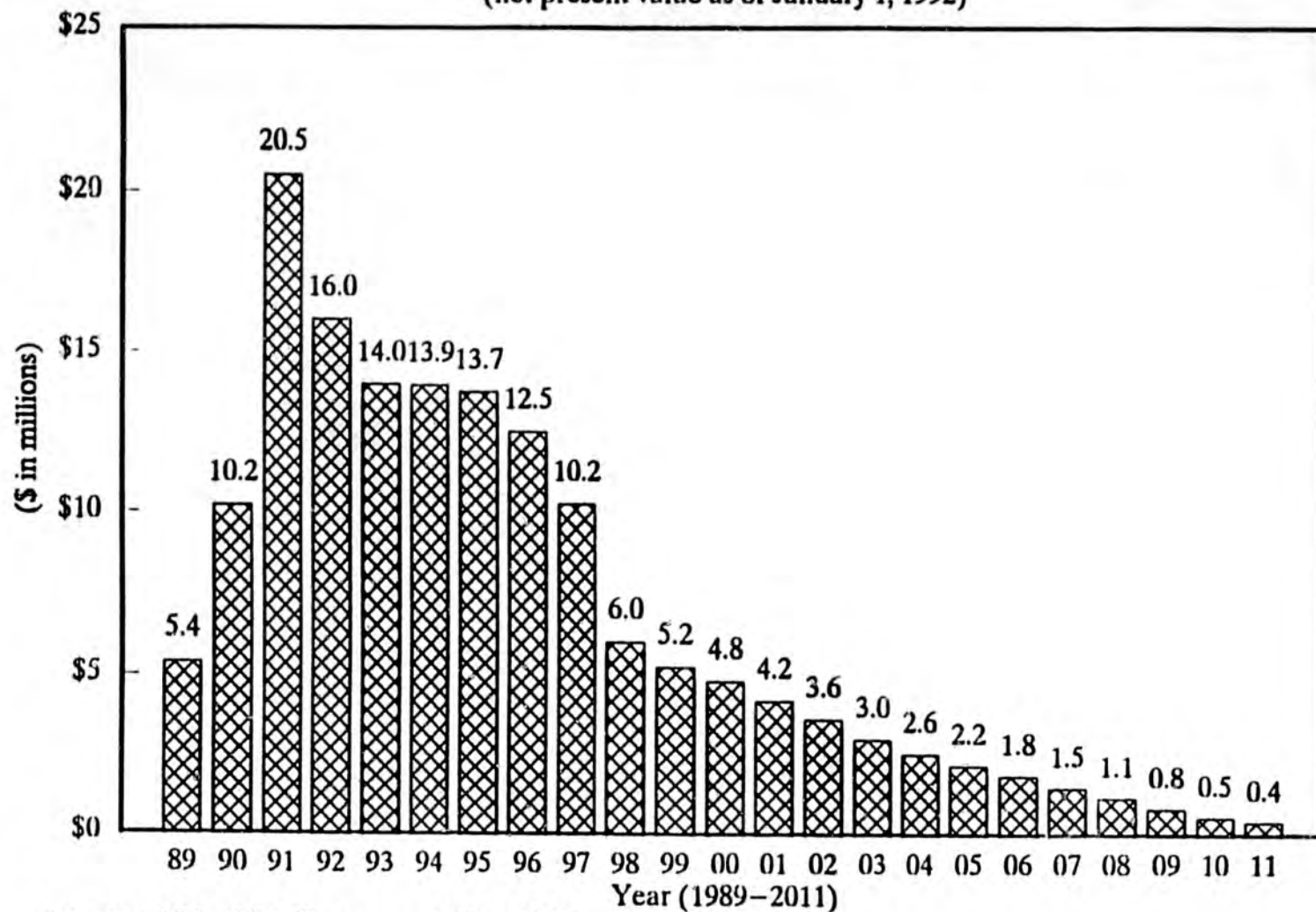
Actuals: 10/89-9/91; Estimates: 10/91-12/97
Horst & Frisch, November 4, 1991

STATE REVENUE IMPACT OF OIL SPILL RELATED EXPENDITURES FOR 1989-1997



Actuals: 10/89-9/91; Estimates: 10/91-12/97
 Horst & Frisch, November 4, 1991

STATE REVENUE IMPACT OF OIL SPILL RELATED EXPENDITURES FOR 1989-1997
(net present value as of January 1, 1992)



Actuals: 10/89-9/91; Estimates: 10/91-12/97

Horst & Frisch, November 4, 1991

November 20, 1991

BY FACSIMILE

Deborah Vogt, Esq.
P.O. Box 1065
Juneau, Alaska 99802

Re: Alyeska Oil Spill Response Services in
Prince William Sound

Dear Ms. Vogt:

Mike Williams has asked me to reply to your October 30, 1991 inquiry about Alyeska's authority to require "contracting vessels" to demonstrate its capability to hold Alyeska harmless from certain potential liabilities associated with initial oil spill response in Prince William Sound. You also have asked whether Alyeska pays oil and gas property tax on its oil spill response equipment.

**Alyeska Oil Spill Response Services Agreement:
Requirements for Financial Responsibility or Insurance**

As a Response Action Contractor, Alyeska provides oil spill prevention and initial response services to TAPS trade vessels in Prince William Sound. To establish a contract for these services, Alyeska uses an Oil Spill Response Services Agreement with entities ("Contracting Vessels") that either own, charter or operate those vessels. Those Agreements require Contracting Vessels to demonstrate their capability to meet contractual obligations by meeting financial responsibility or insurance requirements described in the Agreements. You have asked what authority allows Alyeska to impose those requirements on Contracting Vessels.

The Trans Alaska Pipeline System is owned by seven common carrier oil pipeline companies. Interstate transportation of petroleum by the carriers is regulated by the Federal Energy Regulatory Commission, and intrastate transportation of petroleum by the Alaska Public Utilities Commission. Alyeska Pipeline Service Company operates TAPS as the carriers' agent. Each TAPS carrier through its tariffs offers to transport a shipper's (i.e. a customer's) petroleum from origins on TAPS to destinations on TAPS, and if the destination is Valdez, to load it on board vessels furnished by the shipper.

Exh. 3

No carrier ever owns the petroleum carried in its space on TAPS. It merely provides transportation service for petroleum owned by others. All shipments on a carrier's space in TAPS are upon the terms and conditions and for the prices set out in the carrier's tariffs. A shipper accepts a carrier's offer by tendering petroleum to the carrier in accordance with the carrier's tariff requirements. A contract then exists between the shipper and the carrier for the carriage of petroleum from an origin on TAPS to a destination on TAPS. The carrier undertakes no obligation in its tariffs for the transportation of petroleum after it leaves TAPS.

Thus, under each TAPS carrier's tariffs, the shipper is responsible for its petroleum after it is loaded on board a vessel at Valdez and has the responsibility to furnish a vessel to carry the petroleum by water from Valdez to the petroleum's next destination.

The State of Alaska requires each vessel furnished by the shipper to have an oil spill response contingency plan, which must provide, among other things, for personnel and equipment to escort the shipper's vessels and to respond to a spill in Prince William Sound within a short period of time. 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. Alyeska needs no authority from any regulatory statute or regulatory agency to require financial responsibility or insurance in conjunction with the provision of response action contractor services.

As we discussed yesterday, the TAPS carriers include the costs of Alyeska's Prince William Sound effort in tariff charges for oil delivered to Valdez. This equitably distributes the costs of those services among their beneficiaries.

I also described to you Alyeska's reliance on its Prince William Sound capabilities to meet oil spill response planning standards imposed by AS 46.03.040 on the Valdez

Deborah Vogt, Esq.
November 20, 1991
Page 3

Marine Terminal. Meeting those requirements is a part of the TAPS Owners' common carrier obligations.

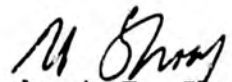
Oil and Gas Property Tax

Alyeska owns a large amount of oil spill response equipment, intended for use in Prince William Sound, at the Valdez Marine Terminal and along the pipeline. Alyeska pays the state's oil and gas property tax levied on that equipment.

Alyeska does not pay the state tax on marine vessels that it charters from various companies to assist spill prevention and response in Prince William Sound and Port Valdez.

Please call me at (907) 265-8565 if I can be of further assistance.

Sincerely yours,


Robert I. Shoaf
Assistant General Counsel

smk

cc: M.F.G. Williams

DISPRI Quarterly Cost Participation Percentages

Updated 2/18/1991

COMPANY	OFFSHORE OIL		REGULATED						TOTALS		%
	PRODUCTION		PIPELINES		DOCK TRANSFERS		TANKERS & BARGES		Actual	Weighted	Participation
	MB/Qtr	x 1.0	MB/Qtr	x 0.1	MB/Qtr	x 0.1	MB/Qtr	x 1.0	MB/Qtr	MB/Qtr	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(B)
ARCO	440.2	440.2		0.0		0.0		0.0	440.2	440.2	2.4%
Onshore (x .1)	510.0	51.0							510.0	51.0	0.3%
CHEVRON		0.0		0.0	0.0	0.0	2,438.8	2,438.8	2,438.8	2,438.8	13.5%
C.I.P.L.		0.0	2,510.6	261.1	2,452.9	245.3		0.0	5,063.5	506.3	2.8%
KPL		0.0	1,216.9	121.7	9,999.8	989.9		0.0	11,115.7	1,111.8	6.2%
MAPCO		0.0		0.0	511.1	51.1	511.1	511.1	1,022.2	562.2	3.1%
MOCO	824.1	824.1		0.0		0.0	0.0	0.0	824.1	824.1	4.6%
MOBIL		0.0		0.0		0.0		0.0	0.0	0.0	0.0%
PHILLIPS		0.0		0.0		0.0		0.0	0.0	0.0	0.0%
SHELL	552.4	552.4	0.0	0.0		0.0		0.0	552.4	552.4	3.1%
TESORO		0.0	2,066.3	206.6	0.0	0.0	7,303.2	7,303.2	9,369.5	7,509.8	41.7%
TEXACO		0.0		0.0	Rig Tenders	0.0		0.0	0.0	0.0	0.0%
UNOCAL	1,461.3	1,461.3		0.0		0.0	2,554.4	2,554.4	4,015.8	4,015.8	22.3%
OTHER **		0.0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	
TOTALS	3,788.0	3,329.1	5,893.8	589.4	12,882.9	1,286.3	12,807.5	12,807.5	35,352.2	18,012.3	100.0%
%		18.5%		3.3%		7.1%		71.1%		100.0%	
** Excluded from participation % calculation.											

** Excluded from participation % calculation.

Exh. 4

CISPRIL Quarterly Cost Participation Percentages

Revised 5/23/91			(Thousands barrels per quarter)						1st Qtr. 1991 Volumes		
COMPANY	OFFSHORE OIL PRODUCTION		REGULATED PIPELINES		DOCK TRANSFERS		TANKERS & BARGES		TOTALS		Participation %
	MB/Qt	x 1.0	MB/Qt	x 0.1	MB/Qt	x 0.1	MB/Qt	x 1.0	Actual MB/Qt	Weighted MB/Qt	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	
ARCO	441.2	441.2		0.0		0.0		0.0	441.2	441.2	2.30%
Onshore (x .1)	461.7	46.2							461.7	46.2	0.24%
CHEVRON		0.0	70.0	7.0	0.0	0.0	2,608.5	2,608.5	2,678.5	2,615.5	13.63%
C.I.P.L.		0.0	2,569.4	256.9	2,694.8	269.5		0.0	5,264.2	526.4	2.74%
KPL		0.0	1,133.5	113.4	8,230.3	823.0		0.0	9,363.8	936.4	4.88%
MAPCO		0.0		0.0	715.8	71.6	715.8	715.8	1,431.6	787.4	4.10%
MOCO	774.3	774.3		0.0		0.0	0.0	0.0	774.3	774.3	4.03%
MOBIL		0.0		0.0		0.0		0.0	0.0	0.0	0.00%
PHILLIPS		0.0		0.0		0.0		0.0	0.0	0.0	0.00%
SHELL	511.1	511.1	511.1	51.1		0.0		0.0	1,022.2	562.2	2.93%
TESORO		0.0	1,554.7	155.5	474.0	47.4	8,158.4	8,158.4	10,185.1	8,359.2	43.56%
TEXACO		0.0		0.0	Rtg Tenders	0.0		0.0	0.0	0.0	0.00%
UNOCAL	1,448.4	1,448.4		0.0		0.0	2,694.8	2,694.8	4,143.2	4,143.2	21.59%
OTHER **		0.0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	
TOTALS	3,636.7	3,221.2	5,838.7	583.9	12,114.9	1,211.5	14,175.5	14,175.5	35,765.8	19,192.1	100.0%
%		16.8%		3.0%		6.3%		73.9%		100.0%	

** Excluded from participation % calculation.

CONTACTS

The following people were kind enough to provide information for this report:

Department of Revenue
Chuck Logsdon
Roger Marks

Department of Natural Resources
Bill VanDyke

British Petroleum
Bob Van Hook
Paul Quesnel
Tom Williams

Arco
Steve Mahoney

Tesoro
Gene Burden

Alyeska
Mike Williams
Rob Shoaf

Marine Preservation Association
Bob Aldag

CISPRI
Linda White

Alaska Clean Seas
Norm Ingram

Horst & Frisch
Ken Timbers

CONTINGENCY PLAN

REQUIREMENTS
UNDER THE
OIL POLLUTION
ACT OF 1990

MICHELE STRAUBE

*Attorney
Environmental Consultant*

239 Dale Drive
Silver Spring, MD 20910

301-589-9247
301-585-2976 (Fax)
380-1114 (MCI mail)

NOV 7 1991

TO: Prince William Sound Regional Citizens Advisory Council
Citizens Oversight Council on Oil and Other Hazardous
Substances
DATE: October 31, 1991
RE: HE 196, Section 11, Report -- Research Project Task 4
Contingency Plan Requirements Under OPA 90

TABLE OF CONTENTS

1. Problem Definition
2. Short Answer
3. Analysis
 - A. Impact of OPA 90 on Oil Spill Response
 - (1) Private Sector Responsibility
 - (2) Liability Provisions and Exemptions
 - (3) Contingency Planning
 - (4) Oil Spill Response
 - B. Federal Attention to Holder-RAC Relationship or RAC Performance
 - (1) Federal Approval of the Holder-RAC Relationship
 - (2) Federal Enforcement of the Holder-RAC Relationship
 - C. Practical Implications for Oil Spill Response
 - D. State Options
Preemption
4. Conclusion

1. Problem Definition

Task 4 describes the following research:

The implementation of the provisions of OPA 90 for contingency plan response standards may have a major impact on both contractor liability and contingency plan holder status. The role of response action contractors in adhering to contingency plan requirements should be a key issue in the National Contingency Plan and may have the effect of superseding or rendering moot the state requirements.

... (1) research OPA 90 legislative history, and (2) investigate the current status and approach of Coast Guard and EPA OPA 90 implementation with respect to the following issues:

- relationship between response action contractor and contingency plan holder status
 - whether OPA 90 has or will address this issue, and if so, whether it has or will effectively preempt different state standards
 - whether the federal government can "enforce" the contract between response action contractor and an unwilling or incapable c-plan holder
- state contingency plans (whether OPA 90 has or will effectively preempt state contingency planning requirements).

Upon review of various documents bearing on the Task 4 issue,¹ and discussions with RCAC and Citizens Oversight Council representatives,² my approach to this research task was to focus on the relationship between the contingency plan holder ("Holder")³ and the response action contractor ("RAC"),⁴ with specific emphasis on RAC accountability in the event of a spill.

¹ 9-23-91 letter from Mike Frank to Sheila Gottehrer; 10-1-91 memo in response from Ann Rothe to Sheila Gottehrer; HB 196.

² Patti Saunders (9-19-91); Michele Brown (9-19-91); Ann Rothe (10-3-91).

³ Referred to by the federal agencies in OPA 90 lingo as the "responsible party".

⁴ Referred to by the federal agencies in OPA 90 lingo as the "cleanup contractor".

My research (and the analysis in this memo) attempt to answer the following questions:

1. What is RAC statutory liability under OPA 90?
2. To what extent will federal contingency plan ("c-plan")⁵ review focus on the Holder-RAC relationship?
3. Does the President have the authority, or will he exercise the authority, to force RAC action in conformance with an approved c-plan in the event of an oil spill?
4. Is the State preempted from imposing RAC liability that differs from OPA 90?
5. Is the State preempted from adopting c-plan requirements, specifically with respect to Holder-RAC relations, that differ from those ultimately adopted under OPA 90?

2. Short Answer⁶

A. What is RAC statutory liability under OPA 90?

Under most circumstances, none. The RAC may be held liable if it is also the owner/operator of the facility or vessel causing the spill, or if the RAC response action causes response costs or damages due to gross negligence or wilful misconduct, or causes personal injury or wrongful death.

⁵ Referred to by the federal agencies in OPA 90 lingo as "response plans".

⁶ The reader should be aware that the analysis in this memo, and therefore these short answers, reflect the current status of OPA 90 implementation as of 10-31-91. Since no c-plan regulations have even been drafted, and the agency working groups are still only at the stage of discussing possible issues for inclusion in proposed regulations, there is no certainty that the current status will reflect the federal government's approach to these issues next month or six months from now.

This does create the opportunity for RCAC and other interests from Alaska to raise their concerns directly with federal agency staff in the hopes of having them addressed when federal regulations are ultimately proposed. Responses to Advanced Notices of Proposed Rulemaking and informal contacts with agency staff should emphasize the importance of these issues, with factual or hypothetical examples of potential problems in the event of another spill in Prince William Sound.

- B. To what extent will federal contingency plan ("c-plan") review focus on the Holder-RAC relationship?

While the federal government will require the Holder to demonstrate that it has a contract with a RAC, the level of scrutiny is unclear. The federal government is considering certifying RACs, in order to guarantee a minimum level of capability and expertise among RACs. It is unclear whether a Holder will have to notify the federal government (or receive new approval) if the Holder-RAC relationship changes.

- C. Does the President have the authority, or will he exercise the authority, to force RAC action in conformance with an approved c-plan in the event of an oil spill?

The federal government will address what it means for the President to "direct" a response action in the proposed changes to the National Contingency Plan ("NCP"). The current thinking is that OPA 90 does not grant the federal government any authority over RAC activities; the only leverage is to order the Holder to take appropriate actions, who in turn presumably would direct the RAC to implement the federal order. If the federal government decides to certify RACs, its position on this issue may change.

- D. Is the State preempted from imposing RAC liability that differs from OPA 90?

Definitely not, since imposing any liability on RACs would expand the existing federal scheme.

- E. Is the State preempted from adopting c-plan requirements, specifically with respect to Holder-RAC relations, that differ from those ultimately adopted under OPA 90?

No, but care should be taken to develop additional requirements which supplement federal c-plan regulations, rather than directly contradicting them. Lack of preemption will be more difficult to support in the situation where the Holder cannot comply with both federal and state c-plan requirements.

2. Analysis

A. Impact of OPA 90 on Oil Spill Response⁷

(1) Private Sector Responsibility

The primary purpose of OPA 90 was to place the financial onus of cleanup on the private sector. It increased liability limits for each oil spill, and clearly identified that the "responsible party" -- namely the owner or operator of onshore facilities and pipelines, or the owner, operator or demise charterer of vessels -- was liable for all removal costs and damages (natural resource and economic) caused by oil discharged into or upon navigable waters from such source.⁸

(2) Liability Provisions and Exemptions

All existing oil spill trust funds were combined into the Oil Spill Liability Trust Fund ("Fund"). Funds expended for oil spill response from the Fund are recoverable from the responsible party, unless limited defenses to liability apply.⁹

Non-owner/ operator RACs are exempt from liability for removal costs and damages resulting from response actions, provided such actions are consistent with the NCP or as directed by the President (delegated to the Coast Guard). The RAC liability exemption does not apply for costs or damages caused by gross negligence or wilful misconduct, or for personal injury or wrongful death.¹⁰ All costs and damages covered by the RAC exemption must be paid by the responsible party.¹¹

⁷ This brief discussion of OPA 90 is included to provide a context for the Task 4 research questions. It is not intended to be a comprehensive summary of the legislation.

⁸ §§ 1002(a) and 1001(32), OPA.

⁹ In addition to acts of God and acts of war, responsible parties can escape liability by proving that the discharge and all resulting costs and damages were caused solely by an act or omission of a third party, and that the responsible party exercised due care and took precautions against all foreseeable acts. §§ 1002(d)(1)(A) and 1003(a)(3), OPA.

¹⁰ §§ 4201(c)(4)(A) and (B), OPA.

¹¹ § 4201(c)(4)(C), OPA.

(3) Contingency Planning

In order to improve government and industry response to oil spills, a variety of contingency plans must be prepared. EPA and the Coast Guard must revise the National Contingency Plan to specify the federal response to any given oil spill. This includes designating On-Scene Coordinators ("OSCs") for all regions of the country, and establishing criteria and procedures for federal involvement in the oil spill response.¹² In particular, the revised NCP should amplify the OPA 90 requirement that the President be prepared to "direct" response activities for oil spills that present a "substantial threat to the public health or welfare of the United States."¹³

A second layer of government-prepared contingency plans is the area contingency plan. The Coast Guard has announced its intent to designate the areas covered by such c-plans; the State of Alaska is one of the areas suggested.¹⁴ The area contingency plans, when drafted, should provide area-specific details for implementing the NCP's general criteria for federal oil spill response. In particular, the area c-plan should identify equipment and personnel available for a federal response in the event of an oil spill within the area c-plan's jurisdiction.

The final layer of contingency planning imposed by OPA 90 is the tank vessel and facility response plans. The owner/operator of each tank vessel or a facility whose location creates a reasonable expectation that an oil spill may occur must prepare a contingency plan and submit it to the federal government for approval.¹⁵ These vessel- or facility-specific plans must identify equipment and personnel available to respond to oil spills. OPA 90 anticipates that much of the equipment or personnel will be provided by RACs, and specifically requires the owner/operator to "ensure by contract or other means acceptable to the President" that oil spill response capability is available to "remove to the maximum extent practicable a worst case discharge."¹⁶ The President must review the vessel- and facility-specific response plans, require amendments where necessary to meet all requirements, approve them, and review the plans periodically for continued feasibility.

¹² § 4201((b), OPA.

¹³ § 4201(b)(2)(I), OPA.

¹⁴ 56 Fed. Register 33481 (7-22-91).

¹⁵ § 4202(a)(5), OPA.

¹⁶ § 4202(a)(5)(C)(iii), OPA.

Finally, OPA 90 directs the federal government to conduct periodic surprise drills (hypothetical spill scenarios) to confirm the effectiveness of the area and vessel tanker or facility c-plans, and the owner/operator's preparedness for oil spill response.¹⁷

(4) Oil Spill Response

OPA 90 gives the President broad authority to determine the extent of federal involvement in response to any oil spill, and to order responsible party participation in the response. It is nevertheless anticipated that the responsible parties will respond in the first instance in accordance with the approved tanker vessel or facility c-plan.¹⁸

In cases where the discharge poses a substantial threat to public health and welfare, however, the President has a mandatory duty to "direct all Federal, State and private actions" in response to the oil spill.¹⁹ This authority is designed to minimize confusion and hesitation in cases where immediate response is required.²⁰

B. Federal Attention to Holder-RAC Relationship or RAC Performance

The Holder-RAC relationship is an issue at multiple stages of the OPA 90 process. First, it is a contingency planning issue. What scrutiny will the federal government give the Holder-RAC relationship when reviewing (and approving) tanker vessel or facility contingency plans?

Second, it is an implementation issue. Will the federal government enforce the Holder-RAC relationship in the event of a spill? Although related to implementation, this issue will probably be dealt with in the NCP revision context.

(1) Federal Approval of the Holder-RAC Relationship

Although OPA 90 requires the Holder to identify, and ensure by contract or otherwise, availability of adequate equipment and personnel for oil spill response, the detail required for

¹⁷ § 4202(a)(7), OPA.

¹⁸ Conference Report, House Report No. 101-652 (8-1-90), at 144-146.

¹⁹ § 4201((a)(2), OPA.

²⁰ Conference Report, *supra*, at 144-146.

approval of a c-plan remains in the government's discretion. Likewise the government's continued oversight of the Holder-RAC relationship after initial c-plan approval is not specified by statute. Since the private party contingency planning requirement has been divided into at least three efforts, shared between two agencies, it is possible that the requirements for vessels and facilities may differ.

The Coast Guard has recently filed an Advance Notice of Proposed Rulemaking for vessel response plans, in which it asked for public comment on various issues before proceeding with developing a proposed regulation.²¹ I have suggested to the Oil Spill Prevention/Response Committee of RCAC that they identify these Holder-RAC Relationship issues in their response to the Advance Notice, and believe that has been accomplished.²² RCAC and other interested Alaska parties should continue to track this rulemaking to ensure that the concerns about RAC accountability for oil spills from tanker vessels are adequately addressed.

EPA is working on regulations for fixed facility c-plans, which should be proposed as a part of revised regulations implementing the Spill Prevention and Pollution Control provisions of the Clean Water Act.²³ These proposed regulations have finished the work group process, and should go to "red border review"²⁴ soon; it is impossible to predict a date by which they will be proposed. Although a current draft of the regulations could not be obtained, I have been told that they will address the circumstances under which a c-plan will have to be updated (e.g., change in amounts of material stored, change in type of product),

²¹ 56 Fed. Register 43535 (8-30-91); Coast Guard contact, Lieutenant Commander Glenn Wiltshire, 202-267-6740.

²² In particular, I suggested the proposed vessel response plan regulations should address:

- frequency of EPA/Coast Guard periodic review of c-plan, including Holder-RAC contractual arrangements
- requirement that Holder notify EPA/Coast Guard whenever there is a change in RAC or contract with the RAC, to obtain approval of the changed condition
- consider adopting Mike Frank's suggestion that the federal government require RACs to agree to respond at the OSC's request.

²³ EPA contact, Bobbie Lively-Diebold, 703-356-8774.

²⁴ Red border review involves circulation among all EPA offices for sign-off. The next stages include EPA Administrator review and sign-off, Office of Management and Budget review and sign-off, revisions after OMB review if necessary and repeat of the whole cycle, proposal in the Federal Register.

and that they will require annual review and updating of c-plans. It was my impression that the regulations will not focus extensively on the Holder-RAC contract, because EPA will rely on Holder liability to provide the needed incentive for prompt oil spill response.

Another office in EPA is allegedly preparing regulations for pipeline c-plans.²⁵ Despite multiple attempts, I have been unable to speak with them.

(2) Federal Enforcement of the Holder-RAC Relationship

A perfect c-plan and a model Holder-RAC contract do not guarantee a smooth oil spill response. There are multiple conditions under which the RAC may refuse to perform its responsibilities under the approved c-plan, or the Holder may refuse to pay for or direct the RAC to conduct the required activities. If the oil spill in question poses a "substantial threat" to public health and welfare, the President must "direct" the response activities.

If it is a spill of lesser consequence, the President has the authority to "direct" the response activities.

What does the statutory term "direct" mean? The legislative history repeatedly refers to "federalizing" a spill, which means having the federal government use its contractors and Fund money to provide oil spill response. By contrast, the term "direct" appears to provide the On-Scene Coordinator with authority to require other parties (including responsible parties) to conduct response activities at their expense.²⁶

Clarification of the term "direct" should be included in the revisions to the NCP, which are being jointly drafted by EPA and the Coast Guard. The Coast Guard appears to have responsibility for this particular issue, however.²⁷ Work group discussions have discussed the definition of the term "direct", and the current thinking is to provide a range of alternatives for the OSC. These would range from simply monitoring the private parties' response actions, to directing them to get another contractor or more equipment, to taking over the entire cleanup.

²⁵ EPA contact, Caesar DeLeon, 202-366-1640.

²⁶ House Report 101-402, Part 2: Committee on Merchant Marine and Fisheries (9-18-89) at 38 describes a 3-tiered removal authority -- federalize, direct and oversee.

²⁷ Coast Guard contact, Lieutenant Commander Harry Schultz, 202-267-2616.

The current approach is to provide the OSC with maximum flexibility in the revised NCP regulations,²⁸ while imposing more specific requirements in policy documents.

My discussion with the Coast Guard reflected a strong disinclination to enforce the Holder-RAC contract, or to force the RAC to respond if the Holder (responsible party) did not concur.²⁹ The Coast Guard apparently intends to direct its enforcement efforts (and all orders to act) against the responsible party only, since it does not have clear legal authority to impose liability on the RAC. The Coast Guard representative did opine, however, that if a RAC certification program were adopted, this might provide authority to order RAC action directly.

In addition, the Coast Guard representative did not feel that the concerns I expressed about the Holder-RAC relationship were significant, and opined that most responsible parties will and do respond. He cited to all the statutory provisions we are familiar with -- strict liability, treble damages, contingency planning, periodic drills -- to support his contention that it is in the responsible party's best interest to respond without objection. He did confirm that in a worst case scenario, the OSC could direct the RAC to implement the approved contingency plan and reimburse the RAC's costs from the Fund.

Finally, it is worth noting that the Holder-RAC relationship is not discussed in the OPA 90 legislative history, except with respect to the RAC exemption from liability.

²⁸ The reason for this is that the regulatory process is cumbersome and time-consuming. Detailed requirements in the NCP will likely take years to change, whereas policy is iterative. Note that policy is also not subject to the Administrative Procedure Act, therefore not open for public comment and review, nor judicially reviewable.

²⁹ In my judgment, this position is directly contrary to the RAC exemption from liability, which is intended to encourage prompt and aggressive response action. House Report 101-402, Part 2, *supra*, at 84.