

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2029 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.63. Attorney general; enforcement authority

No provision of this chapter, or of Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any ruling of the administrator, shall be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the administrator, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of this act, seek necessary remedial action by any person who violates any of the provisions of this act, or seek civil and criminal penalties against any person who violates any of the provisions of this act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.64. Prohibited acts; penalties

(a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(1) Fails to notify the Office of Emergency Services in violation of Section 8670.25.

(2) Continues operations for which contingency plans are required without a contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(3) Except as provided in Section 8670.27, knowingly fails to follow the material provisions of the applicable contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

Historic

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.65. Violat

Except as otherwise provided in this chapter, or permit, rule, regulation, or order, a person who is convicted of a violation of this act, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historic

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.66. Intent

(a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(1) Fails to notify the Office of Emergency Services in violation of Section 8670.25.

(2) Continues operations for which contingency plans are required without a contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(3) Except as provided in Section 8670.27, knowingly fails to follow the material provisions of the applicable contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

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Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.67. Intent

(a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(1) Fails to notify the Office of Emergency Services in violation of Section 8670.25.

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.65. Violations of chapter or regulations; penalties

Except as otherwise provided in Section 8670.64, any person who knowingly violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this act is, upon conviction, guilty of a misdemeanor, punishable by a fine of not more than fifty thousand dollars (\$50,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.66. Intentional or negligent acts; civil penalties

(a) Any person who intentionally or negligently does any of the following acts shall be subject to a civil penalty of not less than twenty-five thousand dollars (\$25,000) or more than five hundred thousand dollars (\$500,000) for each violation. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.67 for the same act or failure to act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.67. Intentional or negligent acts; administrative civil penalties

(a) Any person who intentionally or negligently does any of the following acts shall be subject to an administrative civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation as imposed by the administrator pursuant to Section 8670.68. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the applicable contingency plans or the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

Additions or changes indicated by underline; deletions by asterisks * * *

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required by Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for an administrative civil penalty as imposed by the administrator pursuant to Section 8670.68, not to exceed one hundred thousand dollars (\$100,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section or for a civil penalty imposed pursuant to Section 8670.66 for the same act or failure to act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.67.5. Discharge of oil; civil liability

(a) Any person who without regard to intent or negligence causes or permits oil to be discharged shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed ten dollars (\$10) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the discharge of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in the amount of thirty dollars (\$30) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(d) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.68. Complaint; service of complaint; hearings; appeal

(a) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the administrator a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the administrator. If no notice of defense is filed within 10 days after service of the complaint, the administrator shall issue an order setting liability in the amount proposed in the complaint unless the administrator and the party have entered into a settlement agreement, in which case the administrator shall issue an order setting liability in the amount specified in the settlement agreement. If the party has not filed a notice of defense or if the administrator and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts

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Historical and Statutory Notes

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Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

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Historical and Statutory Notes

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Historical and Statutory Notes

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to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of the orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with a court of appeal a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.68.5. Payment to prosecuting agency or office

Twenty-five percent of any penalty collected under this article shall be paid to the agency or office prosecuting the action.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.69. Private attorney general actions

Actions on behalf of the state or any other public entity to enforce Section 8670.61.5 through injunctive relief, declaratory relief, and all costs of the action, may be brought by any person in the public interest if both of the following occur:

(a) The action is commenced more than 60 days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator.

(b) No action has been commenced against the violation, or if commenced, is not being diligently prosecuted by the Attorney General, or any district attorney, city attorney or other prosecutor.

(c) This section applies to any actions brought with respect to any violations which have occurred, continue to occur or threaten to occur.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.69.4. Unauthorized activities; cease and desist orders

(a) When the administrator determines that any person has undertaken, or is threatening to undertake, any activity or procedure that (1) requires a permit, certificate, approval, or authorization

Additions or changes indicated by underline; deletions by ~~asterisks~~ * * *

under this chapter, without securing a permit, or (2) is inconsistent with any of the permits, certificates, rules, regulations, guidelines, or authorizations, previously issued or adopted by the administrator, or (3) threatens to cause or substantially increases the risk of unauthorized discharge of oil into the marine waters of the state, the administrator may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the administrator may be subject to such terms and conditions as the administrator may determine are necessary to ensure compliance with this division.

(c) Any cease and desist order issued by the administrator shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the administrator shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.69.6. Review of order

Within 30 days after service of a copy of a cease and desist order issued by the administrator under Section 8670.69.4, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of an order of the administrator in any judicial proceeding brought to enforce the order or for other civil remedies.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 10. ENVIRONMENTAL ENHANCEMENT FUND

Section

8670.70. Fund created; use of money in fund.

8670.71. Projects funded.

8670.72. Environmental Enhancement Committee.

Article 10 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.70. Fund created; use of money in fund

The Environmental Enhancement Fund is hereby created in the State Treasury. All penalties collected under Article 9 (commencing with Section 8670.57) shall be deposited into the Environmental Enhancement Fund, except as specified in Section 8670.64. The money in the fund shall only be used for environmental enhancement projects. The moneys shall not be used for the cleanup of an oil spill or the restoration required after an oil spill. The money is available for appropriation by the Legislature to the administrator for the purposes stated in this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.71. Projects

The administrator shall establish a committee to study the feasibility of establishing a fund for the cleanup of oil spills in the state's waters.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.72. Environmental Enhancement Fund

The Environmental Enhancement Fund shall be established following the receipt of the following monies:

(a) The administrator shall allocate the following monies to the fund:

(b) A public moneys account shall be established for the enhancement of the fund.

(c) The executive branch shall allocate the following monies to the fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

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§ 8670.71. Projects funded

The administrator shall fund only those projects approved by the Environmental Enhancement Committee. All projects funded under this article shall be within or immediately adjacent to marine waters.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.72. Environmental Enhancement Committee

The Environmental Enhancement Committee is hereby created. The committee shall consist of the following members:

(a) The administrator.

(b) A public member, to be appointed by the administrator, who shall be an officer or elected leader of a statewide nonprofit organization whose primary purpose is the protection and/or enhancement of natural resources.

(c) The executive officer of the State Coastal Conservancy, or his or her designee.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

CHAPTER 7.5. NATURAL DISASTER ASSISTANCE ACT

Derivation Table

Showing where the subject matter of sections added by Stats.1974, c. 290, p. 555, § 1 was covered by repealed sections:

New Sections	Repealed Sections
8680	54150 1
8680.2	54150 2
8680.4	54151 2
8682	54152 2
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8682.6	54153 2
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8685	54155 1
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	54162

1 Stats.1956, 1st Ex.Sess., c. 9, p. 294, § 1 version.

2 Stats.1959, c. 1511, p. 3800, § 2 version.

3 Stats.1969, c. 52, p. 167, § 8 version.

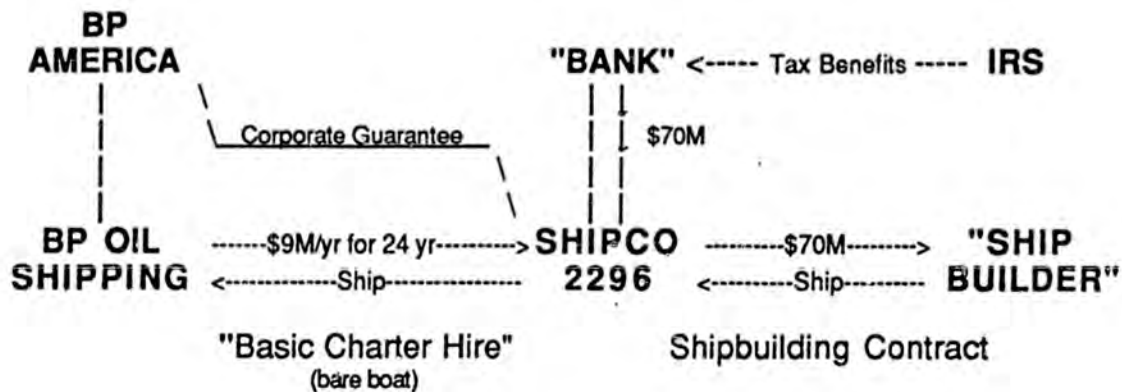
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

Section

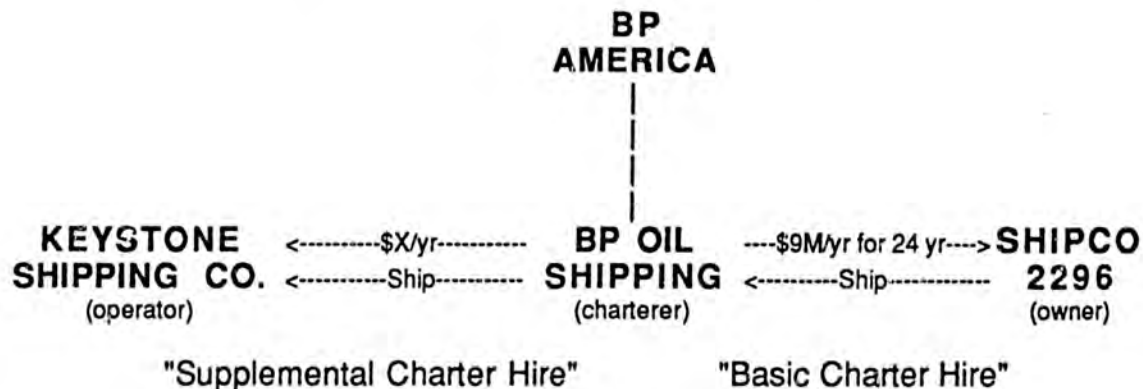
8680.25. Disaster assistance associated with October 17, 1989, earthquake; private nonprofit organizations eligible; duration of chapter.

Additions or changes indicated by underline; deletions by asterisks

FINANCING ARRANGEMENT FOR THE "KEYSTONE CANYON"



OPERATING ARRANGEMENT FOR THE "KEYSTONE CANYON"



VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulk tank Corp.	Intercontinental Bulk tank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp.	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

1 any action brought by the state, a county, city, or district.

2 (h) Except as provided in Section 1431.2 of the Civil
3 Code, liability under this section shall be joint and
4 several. However, this section does not bar a cause of
5 action that a responsible party has or would have, by
6 reason of subrogation or otherwise, against any person.

7 (i) This section does not apply to claims for damages
8 for personal injury or wrongful death, and does not limit
9 the right of any person to bring an action for personal
10 injury or wrongful death under any provision or principle
11 of law.

12 (j) Any payments made by a responsible party to
13 cover liabilities arising from a discharge of oil, whether
14 under this division or any other provision of federal, state,
15 or local law, shall not be charged against any royalties,
16 rents, or net profits owed to the United States, the state,
17 or any other public entity.

18 (k) Any action which a private or public individual or
19 entity may have against a responsible party under this
20 section may be brought directly by the individual or
21 entity or by the state on behalf of the individual or entity.
22 However, the state shall not pursue any action on behalf
23 of a private individual or entity which requests the state
24 not to pursue that action.

25 (l) For the purposes of this section, "vessels" means
26 vessels as defined in Section 21 of the Harbors and
27 Navigation Code.

28 8670.56.6. (a) (1) Except as provided in subdivisions

29 (b) and (d), and subject to subdivision (c), no person,
30 including, but not limited to, an oil spill cooperative, its
31 agents, subcontractors, or employees, shall be liable
32 under this chapter or the laws of the state to any person
33 for costs, damages, or other claims or expenses as a result
34 of actions taken or omitted in good faith in the course of
35 rendering care, assistance, or advice in accordance with
36 the National Contingency Plan, the state oil spill
37 contingency plan, or at the direction of the administrator,
38 onsite coordinator, or the Coast Guard in response to a
39 spill or threatened spill of oil.

40 (2) The qualified immunity under this section shall

1 not apply to any oil spill response action which is
2 inconsistent with the directions of the Coast Guard, the
3 director, or, in the absence of overriding directions of the
4 Coast Guard or the director, is inconsistent with
5 applicable contingency plans implemented under this
6 division.

7 (3) Nothing in this section shall, in any manner or
8 respect, affect or impair any cause of action against or any
9 liability of any person or persons responsible for the spill,
10 for the discharged oil, or for the tanker, barge, terminal,
11 pipeline, or facility from which the oil was discharged.
12 The responsible person or persons shall remain liable for
13 any and all damages arising from the discharge, including
14 damages arising from improperly carried out response
15 efforts, as otherwise provided by law.

16 ~~(4) The qualified immunity under this section shall~~
17 ~~only apply to response activity during the first 60 days~~
18 ~~after the spill for persons whose primary purpose is the~~
19 ~~business of responding to oil spills and who are regularly~~
20 ~~engaged in the business of responding to oil spills. No~~
21 ~~immunity shall attach to response activity after~~
22 ~~expiration of the first 60 days for the parties described~~
23 ~~herein.~~

24 ~~(5) The qualified immunity under this section shall~~
25 ~~attach, without the limitation described in paragraph (4),~~
26 ~~to those responding parties that do not "regularly~~
27 ~~engage" in the oil spill response business and to persons~~
28 ~~and entities who are primarily dedicated to the~~
29 ~~preservation and rehabilitation of wildlife. There shall be~~
30 ~~no limitation on the duration of the immunity.~~

31 (b) Nothing in this section shall, in any manner or
32 respect, affect or impair any cause of action against or any
33 liability of any party or parties responsible for the spill, or
34 the responsible party's agents, employees, and
35 subcontractors, for the discharged oil, or for the tanker,
36 terminal, pipeline, or marine facility from which the oil
37 was discharged.

38 (c) The responsible party or parties shall:

39 (1) Notwithstanding subdivision (b) or (h) of Section
40 8670.56.5, or any other provision of law, be strictly and

1 jointly and severally liable for all damages arising
2 pursuant to subdivision (g) of Section 8670.56.5 from the
3 response efforts of its agents, employees, subcontractors,
4 or an oil spill cooperative of which it is a member or with
5 which it has a contract or other arrangement for cleanup
6 of its oil spills, unless it would have a defense to the
7 original spill.

8 (2) Remain strictly liable for any and all damages
9 arising from the response efforts of a person other than
10 a person specified in paragraph (1).

11 (d) Nothing in this section shall immunize a
12 cooperative or any other person from liability for acts of
13 gross negligence or willful misconduct in connection with
14 the cleanup of a spill.

15 (e) This section shall not apply to any action for
16 personal injury or wrongful death.

17 (f) As used in this section, a "cooperative" means an
18 organization of private persons which is established for
19 the primary purpose and activity of preventing or
20 rendering care, assistance, or advice in response to a spill
21 or threatened spills of oil.

22 (g) Except for the responsible party, membership in a
23 cooperative shall not, in and of itself, be grounds for
24 liability resulting from cleanup activities of the
25 cooperative.

26 (h) For purposes of this section, there shall be a
27 rebuttable presumption that an act or omission described
28 in subdivision (a) was taken in good faith.

29 (i) In any situation in which immunity is granted
30 pursuant to subdivision (a) and a responsible party is not
31 liable, is not liable for noneconomic damages caused by
32 another, or is partially or totally insolvent, the fund
33 provided for in Article 7 (commencing with Section
34 8670.46) shall, in accordance with its terms, reimburse
35 claims of any injured party for which a person who is
36 granted immunity pursuant to this section would
37 otherwise be liable.

38 (j) The immunity granted pursuant to subdivision (a)
39 shall apply to a cooperative only if that cooperative has
40 contracted with the administrator to respond to oil spills

1 in accordance with the state oil spill contingency plan
2 and this chapter. The administrator shall enter into
3 contract with any cooperative that is qualified and that
4 offers to contract, on mutually acceptable terms, in
5 accordance with the state oil spill contingency plan and
6 this chapter.

7 (j) (1) The immunity granted by this section shall
8 only apply to response efforts that are undertaken after
9 the administrator certifies that contracts with qualified
10 and responsible persons are in place to ensure an
11 adequate and expeditious response to any foreseeable oil
12 spill that may occur in marine waters for which the
13 responsible party (A) cannot be identified or (B) is
14 unable or unwilling to respond, contain, and cleanup the
15 oil spill in an adequate and timely manner. In negotiating
16 these contracts, the administrator shall, to the maximum
17 extent practicable, procure the services of persons who
18 are willing to respond to oil spills with no, or lesser,
19 immunity than that conferred by this section, but, in no
20 event, a greater immunity. The administrator shall make
21 the certification required by this subdivision on an annual
22 basis. Upon certification, the immunity conferred by this
23 section shall apply to all response efforts undertaken
24 during the calendar year to which the certification
25 applies. In the absence of the certification required by
26 this subdivision, the immunity conferred by this section
27 shall not attach to any response efforts undertaken by any
28 person in marine waters.

29 (2) In addition to the authority to negotiate contracts
30 described in (1) above, the administrator shall also be
31 authorized to negotiate and enter into indemnification
32 agreements with qualified and financially responsible
33 persons to respond to oil spills that may occur in marine
34 waters for which the responsible party (A) cannot be
35 identified or (B) is unable or unwilling to respond,
36 contain, and cleanup the oil spill in an adequate and
37 timely manner.

38 (3) The administrator may indemnify response
39 contractors for (A) all damages payable by means of
40 settlement or judgment that arise from response efforts

1 to which the immunity conferred by this section would
2 otherwise apply, and (B) reasonably related legal costs
3 and expenses incurred by the responder, provided that
4 indemnification shall only apply to response efforts
5 undertaken after the expiration of any immunity that
6 may exist as the result of the contract negotiations
7 authorized in this subdivision. In negotiating these
8 contracts, the administrator shall, to the maximum extent
9 practicable, procure the services of persons who are
10 willing to respond to oil spills with no, or as little, right to
11 indemnification as possible. All indemnification shall be
12 paid by the administrator from the Oil Spill Response
13 Trust Fund.

14 (k) (1) With regard to a person who is regularly
15 engaged in the business of responding to oil spills, the
16 immunity conferred by this section shall not apply to any
17 response efforts by that person that occur later than 60
18 days after the first day the person's response efforts
19 commence.

20 (2) Notwithstanding the limitation contained in
21 paragraph (1), the administrator may, upon making all
22 the following findings, extend the period of time, not to
23 exceed 30 days, during which the immunity conferred by
24 this section applies to response efforts:

25 (A) Due to inadequate or incomplete containment
26 and stabilization, there exists a substantial probability
27 that the size of the spill will significantly expand and (i)
28 threaten previously uncontaminated marine or land
29 resources, (ii) threaten already contaminated marine or
30 land resources with substantial additional contamination,
31 or (iii) otherwise endanger the public safety or welfare.

32 (B) The remaining work is of such a difficult or
33 perilous nature that extension of the immunity is clearly
34 in the public interest.

35 (C) No other qualified and financially responsible
36 contractor is prepared and willing to complete the
37 response effort in the absence of the immunity, or a lesser
38 immunity, as negotiated by contract.

39 (3) The administrator shall provide five days' notice of
40 his or her proposed decision to either extend, or not

1 extend, the immunity conferred by this section.
2 Interested parties shall be given an opportunity to
3 present oral and written evidence at an informal hearing.
4 In making his or her proposed decision, the administrator
5 shall specifically seek and consider the advice of the
6 relevant Coast Guard representative. The administrator's
7 decision to not extend the immunity shall be announced
8 at least 10 working days before the expiration of the
9 immunity to provide persons an opportunity to terminate
10 their response efforts as contemplated by paragraph (4).

11 (4) No person or their agents, subcontractors, or
12 employees shall incur any liability under this chapter or
13 any other provision of law solely as a result of that
14 person's decision to terminate their response efforts
15 because of the expiration of the immunity conferred by
16 this section. A person's decision to terminate response
17 efforts because of the expiration of the immunity
18 conferred by this section shall not in any manner impair,
19 curtail, limit, or otherwise affect the immunity conferred
20 on the person with regard to the person's response efforts
21 undertaken during the period of time the immunity
22 applied to such response efforts.

23 (5) The immunity granted under this section shall
24 attach, without the limitation contained in this
25 subdivision, to the response efforts of persons who are not
26 regularly engaged in the business of responding to oil
27 spills. Persons who are not regularly engaged in the
28 business of responding to oil spills includes, but is not
29 limited to, (A) persons who are primarily dedicated to
30 the preservation and rehabilitation of wildlife and (B)
31 persons who derive their livelihood primarily from
32 fishing.

33 (1) As used in this section, "response efforts" means
34 rendering care, assistance, or advice in accordance with
35 the National Contingency Plan, the state oil spill
36 contingency plan, or at the direction of the administrator,
37 onsite coordinator, or the Coast Guard in response to a
38 spill or threatened spill of oil.

FROM: MSRC-WASHINGTON, D.C. TO: 15074834979 FEB 12 1992 3:11 PM MSRC FAX

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date:

2/12/92

To:

GINNY FAYE

907-465-4979

Company / Organization:

URGENT _____

NORMAL _____

From:

JUDITH KEARSE

Office #:

202-408 5797

Remarks:

"AS STATED EARLIER,

MASSACHUSETTS LEGISLATION

ATTACHED."

Pages to follow

5

+ Cover

Please call (202) 408-5700 if there is a problem with the transmission

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-one

AN ACT PROVIDING FEDERAL RESPONDER LIABILITY FOR MARINE OIL RELEASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3 of chapter 21E of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 1, the word "section" and inserting in place thereof the word: chapter.

SECTION 2. Said section 3 of said chapter 21E, as so appearing, is hereby amended by inserting after the definition of "Imminent hazard" the following definition:-

"Offshore oil facility", any oil facility of any kind located in, on, or under any submerged land within the jurisdiction of the commonwealth including, without limitation, the territorial sea; provided, however, that it shall not include a vessel.

SECTION 3. Said section 3 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Oil" the following three definitions:-

"Oil facility", any structure, group of structures, equipment, or device, including a public vessel but not including any other type of vessel, that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This definition shall include, without limitation, any motor vehicle, rolling stock, or pipeline used for one or more of the purposes set forth in the preceding sentence.

"Oil Pollution Act", the Oil Pollution Act of 1990, P.L. 101-220.

"Onshore oil facility", any oil facility of any kind located in, on, or under any land within the jurisdiction of the commonwealth other than submerged land. This definition shall include, without limitation, motor vehicles and rolling stock.

SECTION 4. The definition of "Owner" or "Operator" in said section 3 of said chapter 21E, as so appearing, is hereby amended by striking out the first

"Operator", (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site, (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site, vessel, onshore oil facility, offshore oil facility, deepwater port, or pipeline, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment, except that, in the case of an onshore oil facility or offshore oil facility, this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owned an onshore oil facility or offshore oil facility and that, as the owner, transferred possession and right to operate the onshore oil facility or offshore oil facility to another person by lease, assignment, or permit, immediately prior to such abandonment, (4) in the case of an onshore oil facility, other than a pipeline, any person owning or operating the onshore oil facility, except that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or body, that owns an onshore oil facility and that, as the owner, transfers possession and right to operate the onshore oil facility to another person by lease, assignment, or permit, (5) in the case of an offshore oil facility, other than a pipeline or a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the lessee or permittee of the area in which the offshore oil facility is located or the holder of a right of use and encroachment granted under an applicable law of the commonwealth or the U.S. Outer Continental Shelf Lands Act, for the area in which the offshore oil facility is located if such holder is a different person from the lessee or permittee; provided, however, that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owns an offshore oil facility and that, as the owner, transfers possession and right to operate the offshore oil facility to another person by lease, assignment, or permit, (6) in the case of a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the licensee, and (7) in the case of a pipeline, any person owning or operating the pipeline.

SECTION 5. The definition of "Person" in said section 2 of said chapter 11B, as so appearing, is hereby amended by inserting after the word "authority", in line 20, the words:- any interstate body, foreign nation,.

SECTION 1A. Said section 2 of said chapter 11B, as so appearing, is hereby further amended by striking out the definition of "Priority disposal site" and inserting in place thereof the following definition:-

"Priority disposal site", a disposal site which constitutes a substantial hazard to public health, safety, welfare, or the environment, including but not limited to a disposal site which is located within five hundred feet of a building being used as a school and which causes an increased risk of exposure to children from contamination in air, soil or water.

SECTION 6. Said section 2 of said chapter 11B, as so appearing, is hereby further amended by inserting after the definition of "Priority disposal site" the following definition:-

"Public vessel", a vessel of any kind that is owned, or a bareboat that is chartered and operated, by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

SECTION 7. Section 3 of said chapter 11B, as so appearing, is hereby amended by inserting after the word "laws", in line 3, the words:- including the Oil Pollution Act.

SECTION 8. Section 4 of said chapter 11B, as so appearing, is hereby amended by adding the following paragraph:-

Any person, except a person who is liable pursuant to clause (1) of paragraph (a) of section five, who provides care, assistance or advice in response to a release or threat of release of oil into or on to the tidal waters of the United States including without limitation the territorial sea, or to any tidal shorelines adjoining any waters of the United States, or to the areas established by Presidential Proclamation numbered 5020 dated March tenth, nineteen hundred and eighty-three, including without limitation, the ocean waters of the areas referred to as "eastern special areas" in Article 3 (1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June first, nineteen hundred and ninety, and said care, assistance or advice is consistent with applicable state law, or the National Contingency Plan or as otherwise directed by the federal on-scene coordinator designated by the United States Environ-

mental Protection Agency or the United States Coast Guard to coordinate and direct Federal response for oil removal under Subpart B of the National Contingency Plan, or by the state official with responsibility for oil spill response shall not be liable, notwithstanding any other provision of law, including section five, for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance, or advice, except with respect to personal injury or wrongful death of if such person is grossly negligent or engages in willful misconduct. For the purposes of this paragraph, the term damages shall mean any damages, costs, expenses or economic loss of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil. As used in the preceding sentence, the term discharge shall mean any emission, other than natural seepage, intentional or unintentional, and including but not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil, oil refuse, oil mixed with wastes, other than dredge spoil, or petroleum, but not including hazardous substances which are specifically listed under 42 USC 9601 (14) (A) through (F) and which are subject to the provisions of that Act. Nothing in this section shall affect the liability of a person as determined in clause (1) of paragraph (a) of section five, for oil spill response under any other provision of the General Laws.

SECTION 9. Paragraph (a) of section 8 of said chapter 21B, as so appearing, is hereby amended by striking out, in line 24, the word "and",- and by inserting after the word "release", in line 25, the words:- , and (iv) to any person for any liability that another person is relieved of pursuant to the fourth paragraph of section four.

SECTION 10. Paragraph (b) of said section 8 of said chapter 21B, as so appearing, is hereby amended by striking out, in line 29, the word "and (iii)" and inserting in place thereof the words:- , (iii) and (iv).

House of Representatives, December 18, 1992.

Passed to be enacted.

Joan M. Theriault
Speaker.

In Senate, December 19, 1992.

Passed to be enacted.

William H. Bengtson, President.

30 December, 1991.

4:34 PM ^{Approved.}

W. Grant F. Welch

Governor.

ACT NO. 5765

BILL NO. 19-0181

NINETEENTH LEGISLATURE OF THE VIRGIN ISLANDS
OF THE UNITED STATES

Regular Session

1991

enact the Virgin Islands limitation on liability act
for persons responding to oil spills

---0---

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Title 12, Virgin Islands Code, is amended
by adding thereto a new Chapter to read as follows:

"Chapter 18. Limitation on liability of third
parties responding to and rendering
assistance in oil spills and petro-
leum discharge cleanup

Section 751. Short Title

This Act may be cited as the "Virgin Islands Act
Regarding Liability for Persons Responding to Oil Spills".

Section 752. Findings and Declarations

The Legislature of the Virgin Islands and
declares:

That on March 24, 1989, an ocean-going oil tanker
Exxon Valdez, struck a reef and spilled approximately
216,000 barrels of oil into Prince William Sound,
Alaska, thereby extensively fouling the shoreline of
Prince William Sound, and heralding the largest oil spill
cleanup activity in the history of the United States;

That the funds of paid and volunteer individuals and
community organizations immediately undertook to clean up
the oil fouled shoreline of Prince William Sound,
but that the Sound was adversely affected, and the Alaska
fishery industry and the related economy of the Sound was
damaged and may take years to recover;

-2-

That other oil spills of a lesser magnitude have occurred following the Exxon Valdez spill, all of which have to an extent adversely affected the shorelines or waterways of the United States and its Territories;

That in part as a response to the need to plan for and undertake a comprehensive response to catastrophic oil spills in United States waters, the Congress of the United States proposed, and the President signed into law on August 18, 1990, The Oil Pollution Act of 1990, (P.L. 101-380); a measure which on final passage garnered the unanimous votes of the House of Representatives (360-0) and the Senate (99-0);

That the Oil Pollution Act of 1990 consolidated, on the Federal level, the laws pertaining to oil spill liability, prevention, preparedness and cleanup and affects vessels, oilrigs, oil terminals and businesses which transport, handle or store crude oil and petroleum products;

That a principal feature of the Act is a Good Samaritan provision, or a limited responder immunity provision, which seeks to encourage persons, groups and organizations to respond to catastrophic oil spills in the cleanup effort by granting such persons limited immunity from liability for oil removal costs or damages arising from their response activities or missions;

That the immunity granted by the Act is limited in scope in that it does not absolve responders for their acts or omissions which result in personal injury or wrongful death, or is caused by gross negligence or willful misconduct;

That several states have adopted the federal responder limited immunity standard, including California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Mississippi, New Hampshire, North Carolina, Texas, Virginia and Washington. The legislation is also before several Governors and state legislatures for their consideration;

That the Virgin Islands of the United States is a jurisdiction in which a catastrophic oil spill, unless responded to immediately, may have a devastating effect on the environment, wildlife and the economy of the Territory. Further, that the Virgin Islands' geographic location in the Atlantic Ocean and Caribbean Sea makes it particularly vulnerable to oil spills from local as well as external sources;

-3-

That on March 6, 1991, the vessel, Vista Bella, sank in the Atlantic Ocean with its cargo of oil and petroleum products estimated at a half million gallons. That several days later, oil escaping from the vessel entered Virgin Islands territorial waters and fouled the coastlines of St. John, St. Thomas and St. Croix, as well as the coastlines of Vieques, Culebra, and southeast Puerto Rico, and the coastlines of other Caribbean island nations;

That the Government of the Virgin Islands, the United States Coast Guard and other volunteer and responder organizations undertook to and cleaned up the oil spill from the beaches and coastline of the Virgin Islands. That the responders participated in the clean up activities without consideration of their potential liability for clean up costs, or for damages to person or property;

That it is the sense of the Legislature that persons and responder organizations should be encouraged to assist in oil spill containment and cleanup activities in the Virgin Islands in the event of catastrophic oil spills which have the potential for adversely affecting the environment, ecology and economy of the Territory;

That in order to encourage further the beneficial activities of oil spill responder groups and organizations, it is hereby declared to be the public policy of the Government of the Virgin Islands, that a limitation on the potential liability of such responders should be imposed by the adoption of the federal oil spill responder immunity standard as set forth in The Oil Pollution Act of 1990, at section 4201(a).

Section 753. Definitions

For the purposes of this Act the term:

(1) "damages" means damages of any kind for which liability may exist under the laws of the Virgin Islands resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) "discharge" means, any emission (other than natural seepage), intentional or unintentional, and includes, but it is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "Federal On-Scene Coordinator" means the federal official predesignated by the U. S. Environmental Protection Agency or

-4-

the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

(4) "National Contingency Plan" means the National Contingency Plan prepared and published under section 311(d) of The Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as amended by The Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

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

(6) "person" means an individual, corporation, partnership, association, state, territory, municipality, commission or political subdivision of a state or any interstate body.

(7) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident;

(8) "responsible party" means a responsible party as defined under Section 1001 of The Oil Pollution Act of 1990, Pub. L. No. 101-380, Stat. 484 (100);

Section 754. Exemption from liability

(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator or by the Territorial official with responsibility for oil spill response.

(b) Subparagraph (a) does not apply:

(1) to a responsible party;

-5-

(2) with respect to personal injury or wrongful death; or

(3) If the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (a).

(d) Nothing in this Section affects the liability of a responsible party for oil spill response under federal or territorial law."

- Thus passed by the Legislature of the Virgin Islands on November 26, 1991.

Witness our Hands and the Seal of the Legislature of the Virgin Islands this 26th Day of November, A.D., 1991.



Virdin C. Brown
VIRDIN C. BROWN
President

Almando "Rocky" Liburd
ALMANDO "ROCKY" LIBURD
Legislative Secretary



The above bill is hereby approved.

Witness my hand and the Seal of the Government of the Virgin Islands of the United States at Charlotte Amalie, St. Thomas, this 9th day December, A.D., 1991.

Alexander A. Farrelly
Alexander A. Farrelly
Governor

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 2/12/92

To: GINNY FAYE c/o SENATOR SAM COTTEN
907-465-4979

Company / Organization: _____

URGENT _____ NORMAL _____

From: JUDITH KEARSE Office #: 202-408-5797

Remarks: "MASSACHUSETTS LEGISLATION
WILL FOLLOW LATER TODAY."

Pages to follow _____ + Cover

Please call (202) 408-5700 if there is a problem with the transmission

n U 5 H

MAINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 1-31-92

To: GENNY FAYE

(907) 463-5661

Company / Organization: _____

URGENT ☒ NORMAL _____

From: DAVID LAKIN Office #: 202-408-5705

Remarks: PLEASE DELIVER TO ~~SENATOR~~
~~SAM COTTEN'S~~ OFFICE.

Pages to follow 15 + Cover

Please call (202) 408-5700 if there is a problem with the transmission

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Thank you for the opportunity to be part of the process that will determine Alaska's law concerning a limited immunity for oil spill responders. I'd like to commend the Citizen's Oversight Council and the state for taking the initiative to thoroughly study such a complex matter.

The written specific comments that have been provided separately are linked to the material available to us: The Summary of Research Projects. While several of the summaries conclusions that MSRC does not agree with, two of the summaries are of principal concern because we feel they may be indicative of a general condition, and that is that the full effect of OPA-90's many inter-linked provisions may not be clearly stated in the Research Summaries. This is important because we believe that the question of a limited responder immunity for Alaska should be addressed in a framework of full understanding of OPA-90.

The two research projects I will comment on are: (1) Response Action Contractor Provisions in the Oil Pollution Act of 1990 and (2) other state's response action contractor provisions. The first summary is incomplete in that there is no mention of an ably critical element: the assumption of any responder liability (given that certain conditions are met) by the responsible party. The second summary is also incomplete as it lists eight states that have enacted such a statute. The fact is 19 coastal states have enacted

legislation as protective as OPA-90 over the last 18 months. The majority of the six remaining jurisdictions have old "Good Samaritan" legislation that is not in conformance with OPA-90. Furthermore, three national state legislative associations (NCSL, CSG and ALEC) support the federal standard. The point here is that MSRC believes those facts are a powerful testimony of the soundness of OPA-90's provisions as public policy -- yet the full story of how other coastal legislatures have acted is not fully exposed in the research report.

Several statements/conclusions reached in the Research Report Summaries are inaccurate principally because they do not fully recognize the new responsibilities and relationships established for removal (§4201) and planning (§4202) of OPA-90. Understood in context of all of the provisions of OPA-90, it is clear that the purpose of the immunity is to promote the public welfare by insuring that responders -- no matter who they are or how they are paid, etc.-- will not be inhibited from acting boldly and decisively when confronted with the emergency conditions and potential liability surrounding marine oil spills. I say respectfully, that these provisions do not unreasonably protect responders from negligence. Rather as a matter of sound public policy, OPA-90 distributes risk between responders and the spiller, making the spiller assume liability for good faith errors made by a responder so long as the responder's acts are consistent with the National Contingency Plan, or the acts are at the direction of the federal (or in the case of state law, the Alaska) on-scene coordinator and the acts do not rise to the level of gross negligence or willful misconduct. There is no responder immunity provided in cases of personal injury or wrongful death.

We believe that these provisions go to the heart of the matter of responder performance. They insure that responders act with due care because they are not protected if their acts rise

to gross negligence or willful misconduct. Additional protection is provided to insure that responders will not negligently perform, since only acts consistent with the National Contingency Plan or directed by government officials receive immunity. Since the responsible party is liable for any removal costs and damages that another person is relieved of; and since the provisions of OPA-90 raise limits of liability and make available a \$1 billion per incident trust fund as a source of monies for injured parties; there is now a strong incentive for spillers to act immediately with a bold response and not attempt to deflect liability to those whose purpose is to remove oil from Alaskan waters.

In the specific comments provided you will see that we feel that other research projects do not fully explain the important new relationships and responsibilities established in other sections of OPA-90. In the time I have left I would like to mention just two of these because they demonstrate the importance of considering all aspects of OPA-90 before making your recommendations on Alaskan law.

Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages a bolder response rather than a potential delay, while lawyers of responders attempt to determine who may be liable for a spill. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is a part of the plan approval process, while state and federal

coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to \$25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent. P3

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A \$1 billion per incident trust fund has been established when a spiller's liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure

that what is submitted can be executed.

MSRC believes the Citizen's Oversight Council needs to fully consider the federal liability regime that exists three miles off its coast today as it makes recommendations that might adopt differing standards. MSRC further believes that Alaska should enact the same limited responder immunity provision as OP/ -90. We look forward to receiving your final full report and to seeing many of you at the legislative hearings in Juneau on February 11 and 12.

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Research Project: Response Action Contractor Activity in Alaska

Pg. 2 Statement: "The report concludes that the independent operators are the class of responders most suitable for liability limits."

Rebuttal: It is not clear why independent operators are "most suitable"? For that purpose, OPA-90 does not differentiate between responders -- all responders are covered.

Pg. 2 Statement: "The report asks whether it is appropriate for a response organization created by those with a duty to respond, (i.e., oil terminal and tanker owners) to be afforded that same degree of immunity."

Rebuttal: We believe that different degrees of immunity for different categories of responders would be counter productive. Such action misses the fundamental reason for providing the limited immunity for responders: To promote the most bold and aggressive response for the protection of the environment. OPA-90 requires that a responsible party cite private spill response resources in their contingency plans to respond to a worst case discharge in adverse weather conditions. Industry and other business interests have responded by upgrading existing spill response organizations. All responders (co-ops, for-profit and not-for profit contractors, fisherman, volunteers) work for the spiller during a spill. One type of responder should not be afforded certain privileges that others are denied. The spiller is still responsible for all removal costs and damages regardless of the actions of a fisherman, their own response organization, etc. unless of course the conditions for immunity are not present.

Pg. 2 Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages bolder response rather than a potential delay while lawyers of responders attempt to determine who may be liable for a spill and the risks to be assessed by responders under the current conditions and for every action

during a response and cleanup. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is part of the approval process, state and federal coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to \$25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Research Project: Risk of litigation and liability exposure for response action contractors:

Pg. 2 Statement: "Research indicated that there were no cases in the U.S. where response action contractors were sued or held liable for damages from an oil spill by virtue of their response activities."

Rebuttal: While true, the statement refers to pre-Valdez conditions. Valdez created an entirely new arena for litigation due to the adoption of OPA-90. Liability on removal costs and damages now associated with a spill the size of the Valdez can be in the billions of dollars. It should be noted that the Report Summary stated that the Alaska Department of Environmental Conservation was aware that responders are concerned about this potential liability. New categories of damages are created; i.e., natural resource damage, loss of subsistence use of natural resources, real or personal property damage, net loss of tax and other revenues, loss of profits or earning capability and costs of additional public services provided during or after removal actions. It is the chilling affect of potential liability of this magnitude that responders seek protection from.

Research Project: Contractual relationships among response action contractors, contingency plan holders, and the state:

Pg. 3 Statement: "The result is that private parties may be unable to recover damages for harms caused by response action contractors if there is no other financially solvent responsible party."

Rebuttal: This statement is not factually correct. Private and public parties are fully protected because there is always a source of funds! If a response action contractor responds to a spill or threat of a spill, all damages and removal costs

associated with that spill are the responsibility of the spiller under OPA-90. A responsible party also is liable for any removal costs and damages that another person (a responder) is relieved of. Responders are fully liable in cases of personal injury or wrongful death. To insure a source of funds, the spiller must provide the U.S. Coast Guard with a Certificate of Financial Responsibility before transporting petroleum/petroleum products in U.S. waters and in the case of a spill where the responsible party cannot be determined or his liability ceiling is reached, the U.S. Coast Guard has a \$1 billion per incident fund available from a tax on the transporters oil that pays removal costs and damages associated with the spill. There is universal agreement that OPA-90 reasonably protects injured parties by insuring the availability of funds first from the responsible party, then from the Oil Spill Liability Trust Fund.

Pg. 3 Statement: "Response action contractors and contingency plan holders also allocate liability for damages between each other through private contractual relationships."

Rebuttal: The research project well documents the complexity of these relationships. It is a lawyer's playground and because it is difficult for responders to understand the risks associated with sole and joint actions, and disagreements can only be resolved by litigation responders will not act with the boldness and decisiveness needed to quickly and effectively remove the oil out of the marine environment. On the other hand OPA-90's provisions encourage response by having all acts for which a responder is liable transferred back to the responsible party. This provides a twofold benefit: (1) There is no incentive for a responsible party to attempt to lay liability on responders because such liability will be assumed by him and (2) responders freed from the chilling affect of a simple negligence standard, can act boldly to promote the most effective response.

Pg. 3 Statement: "This means that the state has no way to force a response action contractor to comply with its contractual obligations. The report concludes that the state should take some action to ensure state control over response action contractors to avoid the risk that the response action contractor designated in a contingency plan could fail to perform."

Rebuttal: The state (and the federal government) have a variety of controls over response action contractors. OPA-90 requires that a response action contractor "... act in accordance with the National Contingency Plan or at the direction of the Federal On-Scene Coordinator ..." to be immune from removal costs or damages associated with rendering care, assistance or advice, etc. This is a strong incentive for responders to act with due care. The state is a party to drafting the requirements for response plans in the Local Area Planning Process and thus a party to the process of defining the response capabilities responsible parties must cite in response plans. OPA-90 requires

the Coast Guard to conduct periodic inspections of response equipment. OPA-90 requires proof of responder capability by holding unannounced drills. Also see penalty provisions previously mentioned for failure of a responsible party to comply with a removal order.

Pg. 3 Statement: "The report also concludes that because the legal standard for negligence includes full consideration of the emergency atmosphere in which response action contractors operate, response action contractors are protected from the consequences of crisis decision making and do not face an undue burden by being held to a standard of reasonable care under the circumstances."

Rebuttal: This issue of an emergency atmosphere will be determined as a matter of fact in court. Responders explicitly fear this potential litigation in that it provides an opportunity for the spiller to attempt to shift liability to the responder. This fear would have a chilling affect on response. The risks associated with good faith errors of the responder should fall on the spiller and not the responder reacting in an emergency situation. OPA-90 shifts the risk (for simple negligent acts) to the spiller, where it belongs.

Pg. 4 Statement: "On the other hand, the only way to ensure that injured parties will be compensated is to require that response action contractors exercise due care or face liability."

Rebuttal: The statement is factually incorrect. A punitive atmosphere for those responding under un-controlled circumstances; i.e., rain, wind, uncertain information defeats the purpose of initiating and sustaining a bold response. OPA-90 makes the responsible party liable for all removal costs and damages unless the responder acts with gross negligence, willful misconduct or in cases of personal injury or wrongful death. Moreover, only "approved" performance; i.e., within the National Contingency Plan or Federal On-Scene Coordinator/state officials receive immunity. If a responder acts outside these parameters then he is liable for damages. A state provision using fear of liability for responders will be directly counter to the main purpose of the federal standard. It will provide an opportunity for the responsible party to shift liability to responders. Moreover, OPA-90 provides the means to insure that injured parties will be promptly compensated. In a worst case scenario where the spiller is not identified, or the responsible party reaches his liability limit the Oil Spill Liability Trust Fund will pay removal costs and damages up to \$1 billion per incident.

Research Project: The relationship between a response action contractor and a contingency plan holder under the Oil Pollution Act of 1990:

Pg. 7 Statement: "The federal government will require a contingency plan holder to demonstrate that it has a contract with a response action contractor, but it is as yet unclear

what the precise requirements will be."

Rebuttal: This is correct, but the new OPA-90 planning standard for response plans is a very high one (See Section 4202 National Response System). Response plans must demonstrate, in detail, how a vessel owner/operator using private resources alone, would cleanup a worst case discharge (loss of all cargo) in adverse weather conditions to the maximum extent practicable. Initial indications are that federal rules will require a substantial response capability to meet Congressional intent.

Pg. 7 Statement: "Currently, the Oil Pollution Act does not grant the federal government any direct authority over response action contractor activities; the government's only leverage is to give directives to the contingency plan holder who, in turn, presumably would direct the response action contractor to implement the federal order."

Rebuttal: This is factually incorrect and misleading. The Coast Guard approves (with state input into the process) response plans that are consistent with the National Contingency Plan and Area Contingency Plans for all vessels/facilities and those response plans describe the actions to be followed for a worst case spill. The capabilities of responders must be consistent with the response plan and the area plan. OPA-90 requires the U.S. Coast Guard to conduct unannounced drills, and an inventory inspection of response assets (OPA-90 §4202) as part of the means to insure that the performance of responders will be as stated in response plans. In addition, if a response is not taking place to the satisfaction of the U.S. Coast Guard, the federal government can take over full control at any time.

Pg. 8 Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A \$1 billion per incident Oil Spill Liability Trust Fund has been established for occasions when a spillers liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure that what is submitted can be executed.

Research Project: Insurance coverage availability:

Pg. 8 Statement: "Costs are based upon the following factors: (1) revenues and/or payroll size; (2) historical loss experience; (3) contractual indemnities and their value; (4) statutory immunities; and (5) the general state of the insurance market."

Rebuttal: Item (2) will reflect all pre-Valdez experience. OPA-90 substantially increased liability limits and importantly, the categories of items for which damages can be paid. This item represents a new and very large potential exposure for responders. Therefore, insurance costs considering this formula are likely to be understated.

Research Project: Response action contractor provision in the Oil Pollution Act of 1990:

Pg. 9 Statement: "The conference committee explained that it wanted to avoid possible deterrence of prompt spill response because of liability fears."

Rebuttal: A major purpose of the liability standard of OPA-90 is to provide the fastest and most complete cleanup of the environment. One way it accomplishes this is by returning liability where it belongs . . . to the spiller. Moreover, there was considerable debate and further discussion on the issue inside the executive branch. For the provision to remain in the bill and for the bill to be unanimously passed by both houses of Congress, it had to receive the concurrence of the U.S. Coast Guard, Environmental Protection Agency, Department of Justice and Office of Management and Budget.



John D. Costello
President

July 26, 1991

Mr. John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811-1800

Dear Commissioner Sandor:

Thank you for your letter of July 2, 1991. As you know and reference in your correspondence, I wrote to your predecessor in March of 1990 requesting a meeting with appropriate state officials to discuss what role, if any, our organization might have in Alaska. We welcome the opportunity to begin this direct dialog and I have asked our Vice President for Readiness and External Affairs, Mr. G. Stephen Duca, to make the necessary arrangements.

Your letter indicated that the impediment for MSRC establishing a presence in Alaska was the nature of the state's responder liability statutes. This is really only one of our concerns. Several events have occurred in the intervening time since our letter to you that directly bear on answering the question of what role is an appropriate one for MSRC in Alaska. Since our last correspondence we have been incorporated as MSRC with a charter and by-laws that specifies our response and cleanup activities. It states in part, that we are to establish programs to render a best effort response to contain and cleanup catastrophic oil spills in coastal zone or tidal waters of the U. S., in particular open sea spills estimated to be in excess of 25,000 barrels and protected water spills estimated to be in excess of 40,000 barrels. We are specifically precluded from responding to spills of less than 1200 barrels unless certain conditions are met. This limitation was inserted into our by-laws for several reasons, one of which was to insure that we do not compete with the existing oil spill response and cleanup infrastructure. The existing infrastructure is generally recognized as having the capability to respond to the vast majority of the nations spills; i.e., small spills under 1200 barrels. In addition, you may recall that PIRO (now MSRC) was created to specifically fill a national response/cleanup capability void at the high end of the spill spectrum; i.e., the catastrophic spill.

In the aftermath of the Valdez spill and due in large part to the leadership of the Legislature and other state officials, Alyeska spill response capabilities have significantly increased in size and scope. My understanding is that current Alyeska capability is probably

Mr. John A. Sandor
July 26, 1991
Page Two

equal or greater to the size of a planned MSRC regional response center. A similar response and cleanup improvement process is underway in Cook Inlet and, presumably, will result in a capability there to meet the requirements of OPA-90; i.e., the capability to respond to a "worst case discharge". It is our understanding that between the resources of Prince William Sound and Cook Inlet well over 95% of the persistent oil transported in Alaska's marine environment will be covered. In the light of this considerable capability the question must be asked "Is there really any role or indeed need for MSRC in Alaska?"

As a responder, we have carefully followed the development of Alaska's comprehensive oil spill legislation. We fully support state legislation that enhances oil spill response and clean up capability, however you should know that here are certain portions of your existing statutes that we feel could be improved. For example, requiring a capability to remove 300,000 barrels of oil in 72 hours is an unrealistic planning standard given today's technology and the average weather conditions responders must face in your state. Although the statute attempts to provide for technical relief from this standard, we believe that a very false expectation of capability has been created. Moreover, such a standard invites litigation -- a chief element in discouraging prompt responder action.

We are of course, vitally concerned with state responder immunity legislation. We were happy to see that HB 196 recognized this as a critical element in promoting an effective oil spill response system. We note however, that it falls significantly short of the national standard of immunity provided for responders in OPA-90. Some of the major concerns we have with this law include:

- o **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place. Moreover, there is less likelihood for prompt responder action in cases where there is only the threat of a spill.

- o **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

- o **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a bind if conflicting orders are received from the state and federal governments.

- o **Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans.** Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are

Mr. John A. Sandor
July 26, 1991
Page Three

sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

o **Damages to Property not Caused by Oil.** Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling affect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

These are some of the issues we feel need improvement in the current statute. We believe, and parenthetically so do the legislatures of 17 other states that have enacted the federal standard over the past 18 months, that the provisions of Section 4202 of OPA-90 are sound public policy. It balances the issues of how to provide incentives for bold and decisive action with assuring that appropriate damages are allocated to the appropriate parties. The gross negligence willful misconduct standard of responder conduct is appropriate for emergency operations. Responder actions that cause personal injury and wrong death are not specially protected. Only acts that are consistent with the NCP or the directions of appropriate federal and state officials are protected. Enacting a statute that provides an immunity at least as protective as the federal standard would eliminate a major disincentive for responders in Alaska. Since the responder immunity law is subject to review including a report to the Legislature, MSRC would welcome the opportunity to work closely with you. Our role in Alaska notwithstanding, we want to ensure that your responder immunity legislation provides reasonable protection for responders. By doing so it will simultaneously facilitate a swift and effective response to help mitigate harm to your environment.

The foregoing provides you the major issues we see in Alaska in advance of our meeting so that you can have some insight into our perspective. We look forward to working up an agenda and meeting with you in the very near future,

Sincerely,



John D. Costello
President

December 31, 1991

Coastal States with Federal Responder Immunity Standard

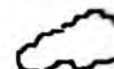
Alabama	Hawaii	North Carolina
California *	Louisiana	Oregon
Connecticut	Maine	Texas
Delaware	Massachusetts	Virginia
Florida	Mississippi	Virgin Islands
Georgia	New Hampshire	Washington
	New Jersey	

National Legislative Organizations Supporting the Federal Responder Immunity Standard

- National Conference of State Legislatures
- Council of State Governments
- American Legislative Exchange Council

■ Indicates states which have passed responder immunity legislation.

* Federal standard was adopted but only for a maximum of 90 days



MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 2/12/92

To: GINNY FAYE
407-465-4979

Company / Organization: _____

URGENT _____ NORMAL _____

From: JUDITH KEARSE Office #: 202-408-5797

Remarks: "AS STATED EARLIER,
MASSACHUSETTS LEGISLATION
ATTACHED."

Pages to follow 5 + Cover

Please call (202) 408-5700 if there is a problem with the transmission

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Chapter 476

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-one

AN ACT PROVIDING FEDERAL RESPONDER IMMUNITY FOR MARINE OIL RELEASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of chapter 21E of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 1, the word "section" and inserting in place thereof the word: chapter.

SECTION 2. Said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the definition of "Imminent hazard" the following definition:-

"Offshore oil facility", any oil facility of any kind located in, on, or under any submerged land within the jurisdiction of the commonwealth including, without limitation, the territorial sea; provided, however, that it shall not include a vessel.

SECTION 3. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Oil" the following three definitions:-

"Oil facility", any structure, group of structures, equipment, or device, including a public vessel but not including any other type of vessel, that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This definition shall include, without limitation, any motor vehicle, rolling stock, or pipeline used for one or more of the purposes set forth in the preceding sentence.

"Oil Pollution Act", the Oil Pollution Act of 1990, P.L. 101-380.

"Onshore oil facility", any oil facility of any kind located in, on, or under any land within the jurisdiction of the commonwealth other than submerged land. This definition shall include, without limitation, motor vehicles and rolling stock.

SECTION 4. The definition of "Owner" or "Operator" in said section 2 of said chapter 21E, as so appearing, is hereby amended by striking out the first

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SCNAIX POST OFFICE-

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sentence and inserting in place thereof the following sentence: "Owner" or "Operator", (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site, (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site, vessel, onshore oil facility, offshore oil facility, deepwater port, or pipeline, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment, except that, in the case of an onshore oil facility or offshore oil facility, this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owned an onshore oil facility or offshore oil facility and that, as the owner, transferred possession and right to operate the onshore oil facility or offshore oil facility to another person by lease, assignment, or permit, immediately prior to such abandonment, (4) in the case of an onshore oil facility, other than a pipeline, any person owning or operating the onshore oil facility, except that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or body, that owns an onshore oil facility and that, as the owner, transfers possession and right to operate the onshore oil facility to another person by lease, assignment, or permit, (5) in the case of an offshore oil facility, other than a pipeline or a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the lessee or permittee of the area in which the offshore oil facility is located or the holder of a right of use and assessment granted under an applicable law of the commonwealth or the U.S. Outer Continental Shelf Lands Act, for the area in which the offshore oil facility is located if such holder is a different person from the lessee or permittee; provided, however, that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owns an offshore oil facility and that, as the owner, transfers possession and right to operate the offshore oil facility to another person by lease, assignment, or permit, (6) in the case of a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the licensee, and (7) in the case of a pipeline, any person owning or operating the pipeline.

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SECTION 1. The definition of "Person" in said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "authority", in line 88, the words:- any interstate body, foreign nation,.

SECTION 2A. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by striking out the definition of "Priority disposal site" and inserting in place thereof the following definition:-

"Priority disposal site", a disposal site which constitutes a substantial hazard to public health, safety, welfare, or the environment, including but not limited to a disposal site which is located within five hundred feet of a building being used as a school and which causes an increased risk of exposure to children from contamination in air, soil or water.

SECTION 3. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Priority disposal site" the following definition:-

"Public vessel", a vessel of any kind that is owned, or a bareboat that is chartered and operated, by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

SECTION 4. Section 3 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "laws", in line 3, the words:- including the Oil Pollution Act.

SECTION 5. Section 4 of said chapter 21E, as so appearing, is hereby amended by adding the following paragraph:-

Any person, except a person who is liable pursuant to clause (1) of paragraph (a) of section five, who provides care, assistance or advice in response to a release or threat of release of oil into or on to the tidal waters of the United States including without limitation the territorial sea, or to any tidal shorelines adjoining any waters of the United States, or to the zone established by Presidential Proclamation numbered 8020 dated March tenth, nineteen hundred and eighty-three, including without limitation, the ocean waters of the areas referred to as "eastern special areas" in Article 3 (1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June first, nineteen hundred and ninety, and said care, assistance or advice is consistent with applicable state law, or the National Contingency Plan or as otherwise directed by the federal on-scene coordinator predesignated by the United States Environ-

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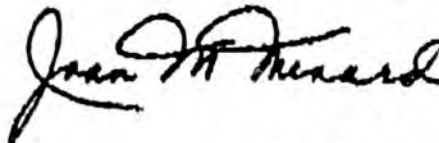
mental Protection Agency or the United States Coast Guard to coordinate and direct a federal response for oil removal under subpart B of the National Contingency Plan, or by the state official with responsibility for oil spill response shall not be liable, notwithstanding any other provision of law, including section five, for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance, or advice, except with respect to personal injury or wrongful death, or if such person is grossly negligent or engages in willful misconduct. For the purposes of this paragraph, the term damages shall mean any damages, costs, expenses or economic loss of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil. As used in the preceding sentence, the term discharge shall mean any emission, other than natural seepage, intentional or unintentional, and including but not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil, oil refuse, oil mixed with wastes, other than dredge spoil, or petroleum, but not including hazardous substances which are specifically listed under 42 USC 8601 (14) (A) through (F) and which are subject to the provisions of that Act. Nothing in this section shall affect the liability of a person as described in clause (1) of paragraph (a) of section five, for oil spill response under any other provision of the General Laws.

SECTION 9. Paragraph (a) of section 8 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 24, the word "and", and by inserting after the word "release", in line 26, the words: , and (iv) to any person for any liability that another person is relieved of pursuant to the fourth paragraph of section four.

SECTION 10. Paragraph (b) of said section 8 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 29, the words "and (iii)" and inserting in place thereof the words: , (iii) and (iv).

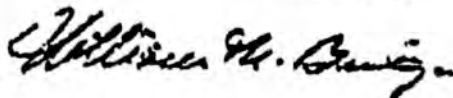
House of Representatives, Dated: 18, 1992.

Passed to be enacted.


 ALICE
Speaker

In Senate, December 19, 1992.

Passed to be enacted.


 President.

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30 December, 1991.

Approved.
4:34 PM

W. Krant. Welch

Governor.

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Paul Richards

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**SURVEY OF STATE LAWS
ON
GOOD SAMARITAN
OR
RESPONDER IMMUNITY PROVISIONS
FOR OIL SPILLS**

Prepared by

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**SURVEY OF STATE LAWS ON
GOOD SAMARITAN OR RESPONDER IMMUNITY PROVISIONS
FOR OIL SPILLS**

The following is a survey of state statutes, for states with navigable waterways, of good samaritan or responder immunity provisions dealing with oil spill prevention and response. Only statutory law has been surveyed and not case law or common law. The survey also includes references to 1992 pending legislation when such legislation either amends or adds to specific responder immunity provisions in current state law.

This survey is intended to be a reference guide only and is not to be construed as legal advice in any manner. The survey is subject to revision and changes as new laws are enacted. For a determination of specific liabilities and obligations of particular persons, vessels or facilities under the various state laws, the reader should consult the pertinent statutes or seek the appropriate advice of counsel. Any questions regarding this survey should be directed to Laurie A. Frost of the Maritime Department of LeBoeuf, Lamb, Leiby & MacRae.

January 1992

ALABAMA

Citation: Ala. Code § 22-22-1 et seq. (19891 Ala. Laws Ch. 470).

Good Samaritan Law: The statute provides that a person is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator or by any state official with responsibility for oil spill response. The immunity does not apply to (i) a responsible party; (ii) with respect to personal injury or wrongful death; or (iii) acts of gross negligence or willful misconduct.

ALASKA

Citation: Alaska Stat. § 09.65.091; § 46.03.825; § 46.04.080; § 46.08.110; § 46.08.160 (1987, Supp. 1990 & 1991 AK Laws Ch. 92).

Good Samaritan Law: There are three provisions which limit the liability of persons responding to an actual or threatened release of oil:

(1) A person providing equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other state governmental agency during a state of emergency declared by an authorized representative of the state or local government is not liable for the death of or injury to any person or damage to any property caused by that person's actions, unless the person acted intentionally, recklessly, or with gross negligence. § 09.65.091. In addition, the actual or imminent occurrence of a catastrophic oil spill which is a discharge in excess of 100,000 barrels or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state, constitutes a disaster emergency. § 46.04.080(a).

(2) Volunteers who register with the division of emergency services in the Department of Military and Veterans' Affairs and agree to be trained by the division in techniques for containment and cleanup, and to be available on short notice to assist the division in containment and cleanup, are not liable for costs and damages as a result of actions taken in response to a release or threatened release, unless the actions taken constitute gross negligence or intentional misconduct. § 46.08.110 and § 46.08.160. Volunteers are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions. *Id.*, § 46.08.110(c).

(3) A person who is a response action contractor with respect to the release or threatened release of oil whose act or omission is not contrary to an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing the claim proves by a preponderance of the evidence that (a) the response action contractor would have been liable for the initial release or threatened release; (b) the response action contractor acted with gross negligence or intentional misconduct; or (c) the response action contractor, without approval of the federal or state on-scene coordinator, substantially deviated from an oil spill contingency plan, and the plan was either prepared by that contractor for a responsible party or that contractor previously agreed to comply with the terms of that plan under a contract with parties responsible for the release. § 46.03.825(a).

The limitation on liability does not apply to an action for personal injury or death; to an action for personal property damage not caused by oil; or to an act or omission that occurs more than 15 days after the release. § 46.03.825(b).

If the limitation above does not apply, then the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission is negligent, grossly negligent, or constitutes intentional misconduct. § 46.03.825(c).

ARKANSAS

Citation: Ark. Code Ann. § 8-7-101 (1991).

Good Samaritan Law: No individual partnership, corporation, association, or other entity is liable for civil damages as a result of acts taken, voluntarily and without compensation, in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of actual or threatened discharge of hazardous materials, or in preventing, cleaning up, disposing of, or attempting to prevent, cleanup, or dispose of any such discharge. The limitation of liability does not apply to acts of gross negligence, defined as reckless, willful, or wanton misconduct. "Hazardous materials" means all materials and substances which are designated or defined as hazardous by law or regulation of the state or the federal government.

CALIFORNIA

Citation: Cal. Harb. & Nav. Code § 151, §§ 293-294 ; Cal. Gov't Code §§ 8574.1 - 8574.23, § 8670.1 et seq. (1978, Supp. 1991 & 1991 CA. Laws Ch. 300).

Good Samaritan Law: There are two provisions which limit the liability of persons responding to an oil spill:

(1) Under the Harbor Code: Any person including an individual, firm, corporation, association or partnership, who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident or other casualty without objection by any person assisted shall not be held liable for any civil damages sought as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person has acted as an ordinary, reasonably prudent man would have acted under the same or similar circumstances. §§ 293 - 294.

(2) Under the Government Code: No person, including but not limited to, an oil spill cooperative, its agent, subcontractors, or employees, is liable under the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, on-site coordinator, or the Coast Guard in response to a spill or threatened spill of oil. § 8670.56.6(a)(1). The

qualified immunity does not apply to any oil spill response action which is inconsistent with the directions of the Coast Guard or is inconsistent with applicable contingency plans. § 8670.56.6(a)(2). Responsible persons remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts. § 8670.56.6(a)(3).

The limited liability does not extend to a responsible party's agents, employees, and subcontractors remain liable for the discharged oil, unless these entities are immunized as provided by law. The limited liability also does not apply to a cooperative or other person for acts of gross negligence or willful misconduct in connection with the cleanup of a spill. § 8670.56.6(b); § 8670.56.6(d). "Cooperative" means an organization of private persons established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or after the administrator certifies that response contracts with qualified and responsible persons are in place to respond to an oil spill. § 8670.56.6(j). Only response efforts to which the certification applies obtain the qualified immunity of this section. Immunity for a person who is regularly engaged in the business of responding to oil spills is only effective for a period of 60 days after commencement of response efforts, but may be extended for a period of 30 days. § 8670.56.6(k).

CONNECTICUT

Citation:

Conn. Gen. Stat. § 22a-452 (1990); 1991 Conn. Laws Act 289.

Good Samaritan Law:

Connecticut has two provisions which limit the liability of persons responding to oil spills: One applies to oil as defined under the federal Oil Pollution Act of 1990; the other applies to oil mixed with hazardous substances and covered under the Comprehensive Environmental Response, Compensation and Liability Act, or to oil spilled into groundwater of the state.

(1) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice to prevent, minimize or mitigate a discharge of oil to the surface waters of the state, provided the care, assistance or advice is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator, or to the extent that the federal coordinator has not given direction, the commissioner of environmental protection. The immunity does not apply to (1) a responsible party; (2) with respect to personal injury or wrongful death; (3) if the person is grossly negligent or engages in willful misconduct; or (4) negligence in the operation of a motor vehicle. 1991 Conn. Laws Act 289.

(2) No person, firm or corporation which renders assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil or petroleum or assists in the prevention, cleanup or disposal of any such discharge shall be held liable for civil damages as a result of any act or omission in rendering such assistance or advice, except acts or omissions amounting to negligence, recklessness, intentional wrongdoing, breach of contract or willful or wanton misconduct, unless compensated by an entity other than the Department of Environmental Protection for such assistance or advice for more than actual expenses. "Hazardous materials" means any material or substance designated as such by any state or federal law or regulation. The oil covered by this provision is oil mixed with hazardous substances

and regulated under CERCLA, or oil discharged into the groundwater or onto the lands of the state. § 22a-452(b), as amended by 1991 Conn. Laws Act 289. Immunity does not apply to responsible persons, or to persons under a duty to mitigate effects of such discharge or spill. § 22a-452(c).

Persons rendering assistance or advice are entitled to reimbursement for the reasonable costs expended for containment, removal or mitigation, if discharge or spill resulted from negligence of responsible party. § 22a-452(a).

DELAWARE

Citation: 10 Del. Code Ann. § 8135 (1991 Del. Laws Ch. 5).

Good Samaritan Law: The liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate an oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice is limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, willful, wanton and/or intentional acts of misconduct. Limitation of liability does not apply to the actions of any person responsible for the initial discharge, or to any person for personal injuries or wrongful death as a result of the acts or omissions of such person.

FLORIDA

Citation: Fla. Stat. Ann. § 376.09 (1988 & Supp. 1991).

Good Samaritan Law: Persons who voluntarily or at the request of the state agency responsible for cleanups render assistance in containing or removing pollutants are not liable for any civil damages to third parties resulting from such assistance, except for acts or omissions resulting from gross negligence or willful misconduct. § 376.09(4).

A person authorized by the state or federal government to render assistance in containing or removing pollutants is not liable for costs, expenses and damages except for those proximately caused by gross negligence or willful misconduct. § 376.09(5).

Persons who render assistance may be eligible for reimbursement of the cost of containment or removal, provided prior approval for the reimbursement is granted by the Department of Natural Resources. § 376.09(6).

GEORGIA

Citation: Ga. Code Ann. § 12-5-500 et seq. (1991 Ga. Laws Act 534).

Good Samaritan Law: A person is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene

coordinator or by any state official with responsibility for oil spill response. § 12-5-501(a). Limitation of liability does not apply to a responsible party; with respect to personal injury or wrongful death; if the person is grossly negligent or engages in willful misconduct; or to a response under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. § 12-5-501(b).

HAWAII

Citation:

Haw. Rev. Stat. § 267-8(b); § 128D-1 et seq. (Supp. 1990).

Good Samaritan Law:

Not specifically related to oil spill response and cleanup. However, any person who in good faith without remuneration or expectation of remuneration renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or other assistance, except for damages as may result from the person's gross negligence or wanton acts or omissions.

No person shall be liable under Chap. 128D for costs, damages or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with Chap. 128D or at the direction of the on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance. This protection does not apply to liability for damages as the result of gross negligence or intentional misconduct. § 128D-6(e).

Pending Legislation:

S. 2256: This legislation would provide immunity from liability for oil spill responders as long as the response is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or appropriate state officials. The immunity does not extend to any actions of gross negligence or willful misconduct or with respect to personal injury or wrongful death.

IDAHO

Citation:

Idaho Gen. Laws § 49-2210; § 39-7101 et seq. (1988, Supp. 1990 & 1991 Idaho Laws Ch. 242).

Good Samaritan Law:

Idaho has two provisions which limit the liability of persons responding to oil spills:

(1) No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous material, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, is subject to civil liabilities or penalties of any type. The immunities shall not apply to any person:

1. Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and would otherwise be liable therefor; or

2. Who received compensation, or is an employee of a person who receives compensation for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

3. Whose gross negligence or reckless, wanton or intentional misconduct caused damages.

(2) "Hazardous Substance Emergency Response Act." Any state emergency response team, local emergency response team, or other person who responds to a hazardous substance incident at the request of an incident commander shall not be subject to civil liability for assistance or advice. § 39-7113(2). The exemption from liability does not apply to (a) an act or omission that caused in whole or in part such hazardous substance incident or a person who may otherwise be liable therefor; or (b) any person who has acted in a grossly negligent, reckless, or intentional manner. A "hazardous substance" includes petroleum. § 39-7103(4)(b). The "incident commander" is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous materials emergency response plan. § 39-7103(5).

ILLINOIS

Citation:

61 Ill. Ann. Stat. § 700-11.1 (Supp. 1990).

Good Samaritan Law:

No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, cleanup or dispose of any such discharge, shall be subject to civil liability or civil penalties of any type growing out of such assistance or advice. The immunities do not apply to any person:

1. Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and would otherwise be liable therefor; or

2. Who received compensation, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

3. Whose gross negligence or reckless, wanton or intentional misconduct caused damages.

INDIANA

Citation: Ind. Stat. Ann. § 34-4-12.2-2 (1986 & 1990 Supp.).

Good Samaritan Law: A person is not liable for any loss that results from an action taken or lack of an action by that person (i) during an emergency; and (ii) with intent to prevent or minimize harm from the emergency. The limitation of liability does not apply to a person (i) whose act or omission caused in whole or in part the emergency and who would otherwise be liable therefor; (ii) whose act or omission constituted gross negligence or willful or wanton misconduct; or (iii) who receives payment, or is an employee of a person who receives payment, for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency. Payment does not include reimbursement for expenses.

"Emergency" means an occurrence that involves a hazardous substance or compressed gas and that creates the possibility of harm to any person to property, or to the environment. "Hazardous substance" means a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies or commission; or any substance that may be potentially hazardous to any person to property or to the environment. "Loss" means injury to or death of a human being, or damage to property or to the environment. "Person" means an individual, a corporation, a partnership or unincorporated association, or a governmental entity that has qualifications or experience in (a) storing, transporting, or handling a hazardous substance or compressed gas; (b) fighting fires; (c) emergency rescue; or (d) first aid care; or is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

IOWA

Citation: Iowa Code Ann. § 455B.393 (1990).

Good Samaritan Law: A person who provides assistance at the request of the department or by previous agreement with the department is not liable for damages as a result of that person's acts or omissions in rendering the assistance except, for acts or omissions which result from intentional wrongdoing or gross negligence, or if the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment. Limitation of liability also does not apply if the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition. "Hazardous Condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance (defined to include oil and petroleum products) onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, whether the

person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

KANSAS

Citation: Kan. State. Ann. § 65.3472 (1985 & 1990 Supp.).

Good Samaritan Law: Any person who renders assistance or advice concerning an emergency or accident involving threatened discharge of hazardous materials (defined to include oil and petroleum products) or the cleanup thereof is not liable for any civil damages for acts or omissions in mitigating or attempting to mitigate the actual or threatened discharge of hazardous materials.

The immunity provided does not apply to any person responsible for the discharge and who would otherwise be liable therefor or who receives compensation other than reimbursement for out-of-pocket expenses for its services in rendering such assistance or advice. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from gross negligence or intentional misconduct.

KENTUCKY

Citation: Ken. Rev. Stat. Ann. §§ 411.460, 411.470 (1988 & Supp. 1990).

Good Samaritan Law: No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge or disposal of hazardous materials (defined to include oil and petroleum products), or in cleaning up such discharge or disposal, is subject to any civil or criminal liabilities or penalties. This immunity does not apply to any person whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable for the discharge. Also, this immunity does not apply to any person who provides assistance or advice for remuneration or with the expectation of remuneration, except that actual expenses directly incurred due to giving the assistance or advice may be recovered without losing the immunity. The limitation of liability does not extend to any person for damages resulting from such gross negligence, or reckless, wanton, or intentional misconduct.

LOUISIANA

Citation: La. Rev. Stat. Ann. § 30:2000 et. seq. (1989 & Supp. 1991; 1991 La. Laws Ch. 7).

Good Samaritan Law: There are two provisions which limit the liability of persons responding to an unauthorized discharge of oil:

(1) A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice. La. Rev. Stat. Ann. § 455B.399(1) (1988). Limitation of liability does not apply to a person who (i) receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice; or, (ii) for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct. § 455B.399.

(2) No action or omission taken by any person, including any discharge cleanup organization, to abate, contain, remove, cleanup, or otherwise respond to pollution from a threatened or actual unauthorized discharge of oil or to otherwise render care, assistance, or advice, whether such action or omission is taken voluntarily, or consistent with the National Contingency Plan or state oil spill contingency plan, or consistent with a response plan required under this Chapter, or consistent with the request of an authorized federal or state official, or consistent with the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge. Except for the responsible person, no person, including any discharge cleanup organization, that voluntarily renders care, assistance, or advice in an oil discharge cleanup operation is liable for removal costs, damages, or civil penalties, resulting from acts or omissions committed in rendering such care, assistance, or advice. Limitation of liability does not apply to actions for personal injury or wrongful death or for acts or omissions of gross negligence or willful misconduct. § 30.2466 (1991 La. Laws Ch. 7).

MAINE

Citation:

Me. Rev. Stat. Ann. tit. 38, § 552 Sub. 4 (1991 Me. Laws Ch. 380).

Good Samaritan Law:

A responder to an oil discharge is not subject to any civil liabilities or penalties for actions taken or omitted during the course of rendering care, assistance or advice consistent with the National Contingency Plan, a federal contingency plan, the State contingency plan or at the direction of the federal on-scene coordinator or the Commissioner of Environmental Protection unless: (i) the responder is found guilty of gross negligence or willful misconduct, except that any responder guilty of gross negligence or willful misconduct is liable only to the extent that the actions taken or omitted by the responder increase the costs or damages resulting from the spill; or (ii) the claim is for bodily injury to or death of a person. "Responder" means any person who provides assistance or advice in mitigating the effects of a threatened or actual discharge of oil or in the cleanup and removal of any discharge of oil, except for the person responsible for the discharge in the first instance.

The responder immunity does not affect the liability of any other person liable for the damages arising from the discharge or from improperly executed response efforts. Id.

MARYLAND

Citation:

Md. Env't Code Ann. § 4-419 (1987 & Supp. 1990).

Good Samaritan Law:

Except for willful or intentional acts or omissions, a person is not liable for removal costs or damages as a result of acts or omissions taken in the course of rendering care, assistance, or advice in accordance with the statute, unless (1) the person is a person responsible for the discharge, or (2) it is shown by clear and convincing evidence that the damage to persons, property or the environment is significantly increased by the negligent acts or omissions of the person removing, mitigating, controlling, or rectifying an oil discharge. § 4-419(a). A person who gratuitously responds to a Department request for assistance in cleaning up an oil discharge, and who renders care, assistance or advice in accordance with the statutes, is only liable for damages caused by willful or intentional acts or omissions, or gross negligence. § 4-419(b). These provisions do not apply to any cause of action for personal injury or death resulting from an act or omission of a person responding to a discharge. § 4-419(c).

Pending Legislation:

S. 199: This bill would limit the liability of persons responding to oil spills as long as the response is consistent with applicable Maryland law, the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or appropriate state officials. The person responding would not be liable for costs of containment, cleanup and removal of the discharge. The immunity does not extend to any actions of gross negligence or willful misconduct or with respect to personal injury or wrongful death. The immunity also does not extend to persons defined in § 4-401(G) as being responsible for the discharge, or to responsible parties under the Oil Pollution Act of 1990.

MASSACHUSETTS

Citation:

Mass. Ann. Laws Ch. 21E § 4, § 16 (1988, Supp. 1990 & 1991 Mass. Laws Ch. 476).

Good Samaritan Law:

The federal responder immunity standard was added to Chapter 21E § 4 to limit the liability of any person, except the responsible party as defined under the federal Oil Pollution Act of 1990, for removal costs or damages which result from action taken or omitted in the course of rendering care, assistance or advice consistent with applicable state law, the National Contingency Plan or as directed by the federal on-scene coordinator. Limitation of liability does not extend to acts of gross negligence or willful misconduct; to personal injury or wrongful death. Any liability for removal costs and damages would be borne by the responsible party.

In addition, any person who provides care, assistance or advice in response to a release or threat of release of oil into or onto the tidal waters of the United States shall not be liable for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance or advice, as long as such care, assistance or advice is consistent with the National Contingency Plan, applicable state law, or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response. 1991 Mass. Laws Ch. 476.

The statute also provides that response action contractors are not strictly liable to any person for injuries, costs, damages, expenses or other liability, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to real or personal property, or economic loss which results from a discharge, unless the response action contractor is otherwise a liable party. Ch. 21E, § 16.

MICHIGAN

Citation:

Mich. Compiled Laws Ann. § 29.7 (1981 & Supp. 1990).

Good Samaritan Law:

There are two provisions which limit the liability of oil spill responders:

(1) Any person including an individual, partnership, corporation or voluntary association, who provides assistance upon request of the state fire marshal following an accident or during an emergency which involves the handling, transportation, or storage of a hazardous material is not liable for damages as a result of an act or omission by the person arising out of and in the course of the person's good faith rendering of that assistance unless the person's act or omission was the result of gross negligence or wilful misconduct. Limitation of liability does not apply to a person rendering assistance for remuneration beyond reimbursement for out of pocket expenses in connection with the assistance.

(2) Any response activity contractor that renders assistance to a release is not liable for injuries, costs, damage or other liability, including, claims by third parties for death, personal injuries, illness, loss or damage to property or economic loss that result from the release. Qualified immunity does not extend to action by the response activity contractor that is negligent, grossly negligent, or constitutes intentional misconduct.

Pending Legislation:

H. 4806: This bill would extend immunity to oil spill responders for response activity costs or damages incurred in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator. Qualified immunity does not apply to (i) the responsible party; (ii) an action with respect to personal injury or wrongful death; (iii) to acts of gross negligence or willful misconduct.

MINNESOTA

Citation:

Minn. Stat. Ann. § 115E.06 (1991 Minn. Laws Ch. 305).

Good Samaritan Law:

Any of the following persons rendering assistance in response to a discharge of a hazardous substance or oil is not liable for response costs that result from actions taken or omitted in the course of such assistance unless the person is grossly negligent or engages in willful misconduct:

(1) a member of a cooperative or community awareness and emergency response group in compliance with standards in rules adopted by the state pollution control agency;

- (2) an employee or official of the political subdivision where the response takes place, or a political subdivision that has a mutual aid agreement with that subdivision;
- (3) a member or political subdivision sponsor of a hazardous materials incident response team or special chemical assessment team designated by the commissioner of the department of public safety;
- (4) a person carrying out the directions of the commissioner of the pollution control agency, the department of agriculture, the department of natural resources, or the department of public safety; or the United States Coast Guard or the federal on-scene coordinator consistent with the National Contingency Plan under the Oil Pollution Act of 1990; and
- (5) a for-hire response contractor.

MISSISSIPPI

Citation: Miss. Code Ann. (1991 Miss. Laws Ch. 582).

Good Samaritan Law: A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response. Limitation of liability does not apply to a responsible party; to personal injury or wrongful death; or, if the person is grossly negligent or engages in willful misconduct. "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

MISSOURI

Citation: Missouri Ann. Stat. § 260.545 (1990 & Supp. 1991).

Good Samaritan Law: Any person who provides assistance, including equipment or materials, at the request of the department of natural resources or a political subdivision or volunteer fire protection district or by previous agreement with the department or political subdivision or volunteer fire protection district in the event of a release of a hazardous substance shall not be held liable in any civil action for damages as a result of that person's acts or omissions in rendering such assistance. "Hazardous substance emergency" includes any release of petroleum including crude oil or any fraction thereof. Nothing in this section shall relieve any person from civil damages in the following circumstances:

- (1) Where the release referred to is the result of the person's having control of a spilled hazardous substance;
- (2) Where the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment; or

- (3) For acts or omissions which result from intentional wrongdoing or gross negligence.

NEBRASKA

Citation: Neb. Rev. Stat. § 81-1568 (1987 & Supp. 1990).

Good Samaritan Law: Any volunteer or any person who provides assistance or advice in attempting to mitigate or in mitigating the effects of an actual or threatened discharge of hazardous materials or who attempts to prevent, dispose of or clean up any such discharge is not subject to any civil liability or penalty, except that the person whose act or omission, in whole or in part, caused such actual or threatened discharge is liable for any negligence of such volunteer or other person. "Hazardous materials" means all materials and substances which are defined as hazardous by Nebraska or federal law or by the regulations of any Nebraska or federal government agency.

NEW HAMPSHIRE

Citation: N.H. Rev. Stat. Ann. § 146-A:7 (1991 N.H. Laws Ch. 92).

Good Samaritan Law: No oil spill cleanup organization or other person acting to contain, remove, clean up, restore or take other remedial or corrective action or measures with regard to the spillage or discharge of oil, or threatened spillage or discharge of oil, is liable for removal costs, penalties, fines or damages of any kind, including but not limited to, natural resources damages or civil damages to government or private parties, unless it is determined that their acts or omissions amounted to gross negligence or willful misconduct, provided that:

(a) The oil spill cleanup organization or other person was rendering care, assistance or advice, consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator; or

(b) The oil spill cleanup organization or other person was acting upon the request of the division of water supply and pollution control, or its designee, and pursuant to the division's response procedures. § 146-A:7.

NEW JERSEY

Citation: N.J. Stat. Ann. § 2A:62A-7; N.J. Stat. Ann. § 58.10-23.11(f); § 58.10-23.11g(1) (Supp. 1990) and 1991 N.J. Laws Ch. 260.

Good Samaritan Law: New Jersey now has four good samaritan laws:

(1) "No individual, partnership, corporation, association, or other entity shall be liable for civil damages as a result of acts taken or omitted in anticipation or in preparation for, or in the course of rendering care, assistance or advice with respect to an incident creating a danger to person, property, or the environment as a result of

[a]... hazardous discharge." This limit on liability does not apply to the action of the person responsible for the discharge. It is applicable only to third parties rendering assistance. This does not preclude liability for civil damages as the result of gross negligence or intentional misconduct. § 2A:62A-7.

(2) No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. § 58.10-23.11(f).

(3) The liability of any person performing hazardous discharge mitigation or cleanup services in accordance with procedures established by state or federal law for any injury to a person or property caused by or related to these services is limited to acts or omissions of the person shown to have been negligent. 58.10-23.11g1. Acts or omissions of a person performing cleanup services in accordance with generally accepted practice and state-of-the-art scientific knowledge, and utilizing the best technology available to the person at the time of services, creates a rebuttable presumption that the acts or omissions were not negligent. *Id.*

(4) A person is not liable for any cleanup and removal costs or damages of any kind that result from actions taken or not taken in the course of rendering care, assistance or advice with respect to the discharge or threatened discharge of petroleum into waters where the care, assistance or advice is consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or appropriate State officials. Limitation of liability does not extend to personal injury or wrongful death; to acts of gross negligence or willful misconduct; or to persons otherwise liable for cleanup and removal costs of the initial discharge. A person liable for the initial discharge is liable for any cleanup and removal costs that another person is relieved of under this section. 1991 N.J. Laws Ch. 260.

NEW YORK

Citation: N.Y. Nav. Law, § 176.7(b) (McKinney 1989 & Supp. 1990).

Good Samaritan Law: Any person who gratuitously renders assistance in containing or removing a discharge is not liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering assistance, except for acts or omissions of gross negligence or willful misconduct. § 176.7(b).

Pending Legislation: A. 5327/S. 3429: These bills provide that a person is not liable for clean up and removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the commissioner or his designee. However, limitation of liability does not apply (i) to a responsible party, (ii) with respect to personal injury or wrongful death, or (iii) if the person is grossly negligent or engaged in willful misconduct. A responsible party shall be liable for any cleanup and removal costs and damages that another person is relieved of under paragraph (a) of this subdivision. This bill would amend § 176. This bill was left pending in Committee when the legislature adjourned and may be reconsidered in the 1992 session.

A. 6133: This bill provides that no person who gratuitously or as a result of proximity to the discharge and the immediacy of the situation renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. This bill would amend § 176. This bill was left pending in Committee when the legislature adjourned and may be reconsidered in the 1992 session.

NORTH CAROLINA

Citation: N.C. Gen. Stat. § 143-215.93A. (1991 N.C. Laws Ch. 432).

Good Samaritan Law: A person is not liable under state or common law for removal costs or damages which result from, arising out of, or are related to the discharge or threatened discharge of oil, when such removal costs or damages result from acts or omissions in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President of the United States, the federal on-scene coordinator, the Governor, the Secretary, or any person designated to direct oil discharge removal activities. Limitation of liability does not apply to a responsible party, as defined under section 1001 of the Oil Pollution Act of 1990; with respect to personal injury or wrongful death; to a response under CERCLA/SARA; or when the person is grossly negligent or engages in willful misconduct. § 143-215.93A.

OHIO

Citation: Ohio Rev. Code § 2305.232 (Supp. 1990).

Good Samaritan Law: No person who gives aid or advice in an emergency situation relating to the release of hazardous material or to the cleanup of hazardous material that has been released, nor the employer of such a person, is liable in civil damages as a result of the aid or advice if (i) the aid or advice was given at the request of state officials or the owner or manufacturer of hazardous materials, or a hazardous material mutual aid group; (ii) the person acted without anticipating remuneration for himself or his employer; (iii) the person was specially qualified by training or experience to give aid or advice; (iv) neither the person or employer giving the aid or advice was responsible for the release; (v) the person giving the aid or advice did not engage in willful, wanton, or reckless misconduct or grossly negligent conduct in giving the aid or advice; (vi) the person giving the aid or advice notified the emergency response section of the environmental protection agency prior to giving the aid or advice. "Hazardous material" means any material designated as such under the "Hazardous Materials Transportation Act." "Mutual aid group" means any group formed at the federal, state, regional, or local level whose members agree to respond to incidents involving hazardous material whether or not they shipped, transported, manufactured, or were at all connected with the hazardous material involved in a particular incident.

OREGON

- Citation: Or. Rev. Stat. § 468.780 (1991 Or. Laws Ch. 606).
- Good Samaritan Law: A person is not liable for removal costs or damages that result from action taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by a state official responsible for oil spill response. Limitation of liability does not apply to a responsible party; with respect to personal injury or wrongful death; or if the person is grossly negligent or engages in willful misconduct. A responsible party would be liable for any removal costs or damages for which a person is relieved of under this section. Nothing in this section would affect the liability of a responsible party for oil spill response under ORS 468.780 to 468.833.

PENNSYLVANIA

- Citation: General water pollution law. Pa. Stat. Ann. tit. 35 § 691.1 et seq. (Purdon 1977 & Supp. 1990).
- Good Samaritan Law: No statutory provisions relating to "Good Samaritans."
- Pending Legislation: H. 1667/S. 1064: This legislation would provide limited liability for oil spill responders for removal costs and damages which result from actions taken or omitted in rendering assistance that is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or by the State official with responsibility for oil spill response. The limitation of liability does not extend to the responsible party or to acts of gross negligence or willful misconduct; or to personal injury or wrongful death.

RHODE ISLAND

- Citation: R.I. Gen. Laws § 46-12.3-3; § 46-12.6-1; § 46-12.3-8 (Supp. 1990).
- Good Samaritan Law: Rhode Island has three Good Samaritan provisions:
- (1) Any nonprofit entity incorporated as such, which is authorized by the department or the federal government or by the person responsible for a discharge to render assistance in containing or removing petroleum or petroleum products from waters of the state is not liable for costs, expenses and/or damages, unless such costs, expenses and/or damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of the nonprofit entity. If the nonprofit entity is authorized to render assistance by the person responsible for the discharge, the person responsible is liable for the costs, expenses or damages resulting from the nonprofit entity's acts or omissions. § 46-12.3-3.
 - (2) Any nonprofit entity qualifying for tax exemptions from the IRS which is authorized by the department or the federal government or by the person responsible for a discharge to render assistance in containing or removing petroleum or petroleum

products from waters of the state is not liable for costs, expenses and/or damages, unless such costs, expenses and/or damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of the nonprofit entity. If the nonprofit entity is authorized to render assistance by the person responsible for the discharge, the person responsible is liable for the costs, expenses or damages resulting from the nonprofit entity's acts or omissions. § 46-12.6-1.

(3) Persons, other than those responsible for a discharge, who render care, assistance or advice with respect to the discharge of a pollutant into the waters of the state regarding the amelioration of environmental damage caused by the discharge, are not strictly liable for their acts or omissions. § 46-12.3-8.

Pending Legislation:

S. 987: This bill provides that any person who renders care, assistance or advice in cleaning up, containing, removing or otherwise responding to a discharge or threat of discharge of petroleum from the waters of the state, consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the director of the department of the environment, shall not be liable for any costs (including removal costs), expenses and/or damages of any kind (including natural resource damages); provided, however, that this limitation shall not apply to such costs, expenses and/or damages that are a proximate result of that person's gross negligence or willful misconduct. Provided, also, that a person responsible for the initial discharge shall be liable for any costs, expenses and/or damages for which a responder is relieved of liability under this section. This bill would amend § 46-12.3-8. This bill was left pending in Committee at the end of the legislative session and may be reconsidered in the 1992 session.

SOUTH CAROLINA

Citation:

S.C. Code Ann. § 48-43-560 (Law. Co-op. 1987 & Supp. 1989).

Good Samaritan Law:

Any person who, voluntarily or at the request of the Department of Health and Environmental Control, renders assistance in containing or removing pollutants shall not be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct. § 48-43-560(4). This section does not affect the right of any person who renders assistance to reimbursement for the costs of the containment or removal. § 48-43-560(5).

Pending Legislation:

Legislation is expected to be introduced to adopt the federal responder immunity standard in South Carolina.

SOUTH DAKOTA

Citation:

S.D. Codified Laws Ann. § 33-15-18.1. (1986 & Supp. 1990).

Good Samaritan Laws:

A person who provides assistance at the request of any emergency and disaster service agency in the event of an accident or other emergency situation involving the use, handling, transportation, transmission or storage of hazardous material is not liable in

any civil action for damages as a result of his acts of commission or omission in rendering assistance. Nothing in this section grants immunity to a person causing damages as a result of his business activities or by his willful or wanton act of commission or omission in rendering assistance or which takes place without the request of an emergency and disaster service agency. "Hazardous material," means any material, including but not limited to, explosives, flammable liquids, flammable compressed gas, flammable solids, oxidizing materials, poisons, corrosive materials and radiological materials, the loss of control or mishandling of which could cause person injury or death to humans or damage to property or the environment.

TENNESSEE

Citation: Tenn. Code Ann. § 68-27-202 (1987).

Good Samaritan Law: Any person, defined as any individual, partnership, corporation, association, or other entity, who in good faith and without compensation renders emergency care, assistance or advice, upon the request of any police or fire department, rescue or emergency squad, or any governmental agency at the scene of an accident or disaster involving the use, handling, transportation, transmission or storage of hazardous materials is not liable for damages as a result of conduct in rendering such care, assistance or advice unless the damage was caused by gross negligence. Gross negligence shall also include rendering care, assistance or advice with respect to matters in which the person does not possess the technical knowledge or skills concerning such matters. "Compensation" shall not be construed to include the reimbursement of the actual expenses exclusive of salaries of any person rendering such emergency care, assistance or advice; "hazardous materials" includes: a) materials designated as hazardous by any governmental agency; or b) materials where the fire or explosion of or spillage, or other discharge or release creates a hazard to person, property or the environment.

This section does not confer any immunity from liability to any person for actions taken prior to or after the rendering of care, assistance or advice, and shall not affect any potential liability that any person may have arising from the manufacture, generation, transportation, storage or handling of any hazardous material. Any person who is in the business, for a compensation of rendering care, assistance or advice in accidents or existing or impending disasters involving hazardous materials shall not be included under the immunity provisions. § 68-27-203.

TEXAS

Citation: Texas Code Ann. §§ 79.001 - 79.002 (1987 & Supp. 1991); § 40.104 (1991 Tex. Laws Page 3).

Good Samaritan Law: Texas has two Good Samaritan provisions:

(1) Except in the case of reckless conduct or intentional, wilful, or wanton misconduct, a person is immune from civil liability for an act or omission that occurs in giving assistance or advice with respect to an incident that has already occurred, is related to the storage or transportation of hazardous materials, and endangers

individuals, property, or the environment as the result of spillage or other release. § 79.002 (1987). "Hazardous material" is defined to include petroleum products. § 79.001 (1987). This section does not apply to any person giving advice or assistance for or in expectation of compensation from or on behalf of the recipient of assistance in excess of reimbursement for expenses incurred. § 79.002 (1987).

(2) No person or discharge cleanup organization that voluntarily, or pursuant to the National Contingency Plan or the state coastal discharge contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct. § 40.104 (1991 Tex. Laws Page 3).

VERMONT

Citation: Ver. Stat. Ann. § 1251 et. seq. (1984 & Supp. 1990).

Good Samaritan Law: There are no provisions currently exempting from liability "good samaritans" who assist in cleanups.

VIRGINIA

Citation: Va. Code Ann. § 62.1-44.34:18 (Supp. 1991).

Good Samaritan Law: A person who renders assistance in containment and cleanup of an oil discharge or a threat of discharge is only liable for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages that are caused by the acts or omissions of that person in rendering such assistance. § 62.1-44.34:18.D. This qualified immunity does not extend to persons discharging or causing or permitting a discharge or threat of discharge into state waters. Id.

WASHINGTON

Citation: Wash. Rev. Code § 90.48.383 (1991 Supp.); § 90.48.325 (1991 Wa. Laws Ch. 200).

Good Samaritan Law: Washington has two good samaritan provisions:

(1) A person is not liable for removal costs or damages that result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or by the Department official with responsibility for oil spill response. § 304, added by 1991 Wash. Laws Ch. 200. The immunity does not apply to a

responsible party, with respect to personal injury or wrongful death, or if the person is grossly negligent or engages in willful misconduct. Id.

(2) A person who volunteers to assist in the cleanup of spilled oil, or a person who meets the standards established by the Department for contractors providing cleanup and containment services under approved contingency plans, or the state or any unit of local government are not liable for necessary expenses or property damage caused by an act or omission of that person during the oil spill cleanup unless the act or omission was performed in bad faith or with gross negligence. § 90.48.383(1).

WEST VIRGINIA

Citation: W. Va. Code § 15-5-11 (1991).

Good Samaritan Law: The State, any political subdivision, any agency of the State or political subdivision or, except in cases of willful misconduct, any duly qualified emergency service worker complying with or reasonably attempting to comply with this article or any order, rule, regulation or ordinance promulgated pursuant to this article, is not liable for the death of or injury to any person or for damage to any property as a result of such activity. This section shall not affect the right of any person to receive benefits or compensation to which he would otherwise be entitled under West Virginia law, any act of Congress or any other law.

As used in this section, "duly qualified emergency service worker" means any duly qualified full or part-time paid, volunteer or auxiliary employee of this State, or any other state, territory, possession or the District of Columbia, of the federal government, of any neighboring country or political subdivision thereof or of any agency or organization performing emergency services in this State subject to the order or control of or pursuant to the request of the State or any political subdivision thereof. A duly qualified emergency service worker performing his duty in this State pursuant to any lawful agreement, compact or arrangement for mutual aid and assistance to which the State or a political subdivision is a party shall possess the same powers, duties, immunities and privileges he would possess if performing the same duties in his own state, province or political subdivision thereof.

WISCONSIN

Citation: Wisconsin Stat. Ann. § 895.48 (1989 & Supp. 1990).

Good Samaritan Law: Any person is immune from civil liability for his or her good faith acts or omissions related to assistance or advice which the person provides relating to an emergency or a potential emergency regarding either i) mitigating or attempting to mitigate the effects of an actual or threatened discharge of a hazardous substance; ii) preventing or cleaning up or attempting to prevent or cleanup an actual or threatened discharge of a hazardous substance.

The immunity does not extend to any person:

- 1) whose act or omission causes in whole or in part the discharge and who would otherwise be liable for the act or omission;
- 2) whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct; or
- 3) who receives or expects to receive compensation, other than reimbursement for out-of-pocket expenses, for rendering the advice and assistance.

Any hazardous substance predictor or any person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for his or her good faith acts or omissions in making that prediction or providing that technology.

"Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department of natural resources. § 144.01 (4m).

[FIRST REPRINT]
ASSEMBLY, No. 4752

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STATE OF NEW JERSEY

INTRODUCED APRIL 22, 1991

By Assemblymen DEVERIN, COLLINS and Villapiano

APPROVED BY
GOVERNOR
FLORIO ON
AUGUST 13, 1991

AN ACT concerning the liability of certain persons for discharges of petroleum into the waters and supplementing P.L.1976, c.141 (C.58:23.11 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Notwithstanding the provisions of P.L.1976, c.141 (C.58:10-23.11g) or any other law, including common law, to the contrary, a person is not liable for any cleanup and removal costs or damages of any kind, direct or indirect no matter by whom sustained, which result from actions taken or not taken in the course of rendering care, assistance, or advice with respect to the discharge or threatened discharge of petroleum into '[surface or ground] the State's surface' waters where the care, assistance, or advice is consistent with the federal National Contingency Plan prepared pursuant to 33 U.S.C. {1321, or is otherwise directed by the federal on-scene coordinator or by the appropriate State official. The defense from liability granted pursuant to this section shall not apply (1) to a person otherwise liable for cleanup and removal costs of the initial discharge pursuant to subsection c. of section 8 of P.L. 1976, c.141 (C.58:10-23.11g), (2) with respect to personal injury or wrongful death, or (3) if the person is grossly negligent or engages in willful misconduct. A person liable for the initial discharge or threat of discharge pursuant to subsection c. of section 8 of P.L. 1976, c.141 (C.58:10-23.11g) is liable for any 'cleanup and' removal costs and damages that another person is relieved of under this section. Nothing in this section shall limit other defenses or immunities to liability that may exist in P.L. 1976, c.141.

'For the purposes of this section "petroleum" does not include dredged spoil.'

2. This act shall take effect immediately.

ENVIRONMENT

Provides limited immunity, from liability for cleanup and removal costs, to certain responders to petroleum discharges to water.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

* Assembly AEE committee amendments adopted April 29, 1991.

This document has been electronically recreated. Line numbers have been omitted in transmission. Although the text of each page is identical to that printed by the Legislature, the last line of text may not reach the right margin.

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ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4752

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 29, 1991

The Assembly Energy and Environment Committee favorably reports Assembly Bill No. 4752 with committee amendments.

As amended, Assembly Bill No. 4752 provides limited immunity for oil spill responders. This immunity provision is similar to the one contained in the federal "Oil Pollution Act of 1990."

This bill provides immunity from any cleanup and removal costs, as well as from any other damages, for any person rendering care, assistance, or advice with respect to the discharge of petroleum into the State's surface waters. Immunity is only available where the actions taken were consistent with the federal Water Pollution Control Act's National Contingency Plan or are otherwise directed by a federal or State on-scene coordinator.

No immunity is provided if the person is otherwise liable for the discharge under the State's "Spill Compensation and Control Act," for personal injury or wrongful death damages, or where the discharge was the result of gross negligence or willful misconduct. The bill further provides that the initial discharger is liable for any of the damages for which the responder is relieved of under this bill.

The committee amended the bill to limit the immunity provisions to discharges to surface waters and would exempt dredged spoils from the definition of petroleum for the purposes of the immunity provision in the bill. These changes make the immunity provisions more closely related to the federal act.

SCOMM

78:16

Alaska State Legislature



Sen. Curt Menard, *Chair*
Sen. Lloyd Jones, *Vice-Chair*
Sen. Bettye Fahrenkamp, *Member*
Sen. Drue Pearce, *Member*
Sen. Dick Shultz, *Member*

P.O. Box V
Juneau, AK 99811
907 465-4921

Senate Transportation Committee

March 23, 1992

Scott Sterling, President
Regional Citizens' Advisory Council
Jensen, Harris & Roth
1029 West Third Avenue
Suite 600
Anchorage, AK 99501-1917

Dear Scott:

Congratulations on your election as President of the Regional Citizens' Advisory Council. If your past performance as Chairman of the TOEM Committee is any example, I am confident that you will provide the Council with the diligent and credible leadership necessary to effectively carry out the mission of this citizens' organization.

I also would like to invite you and Greg Winter from the TOEM Committee to participate in a joint Senate Oil & Gas and Transportation Committee hearing to be held in Juneau on Tuesday, March 31, from 1:30 - 3:30 p.m. in the Beltz Room of the Capitol.

The Committees would like to follow-up on the ballast water issues evaluated at length during the 1991 legislative session and review the status of your development of an environmental monitoring and testing program for the Ballast Water Treatment Facility at Alyeska.

Secondly, the Committees would like for you to discuss the status of your review of air quality issues related to the Alyeska Marine Terminal and the results and conclusions of any specific projects undertaken regarding airborne hydrocarbons, including the report recently completed by Dr. Yoram Cohen and released by the RCAC last week.

Page 2
Scott Sterling

I look forward to your presentation to the Committees. Please let me know if you have any questions or are unable to attend.

Warm regards,

A handwritten signature in black ink, appearing to be "Curt Menard", written over the closing "Warm regards,".

Senator Curt Menard, Chairman
Senate Transportation Committee

cc: Sheila Gotterher
Greg Winter

Terminal Operations and Environmental Monitoring Committee (TOEM)

Quarterly Report to the RCAC, March 1992

Completed Projects

- Signed contract between RCAC and Alaska Department of Environmental Conservation to conduct review of testing and analysis used on effluent from the Ballast Water Treatment Plant at the Alyeska Marine Terminal, with a contingency for actual field sampling and testing if necessary.
- Compiled and submitted comments to government agencies and Alyeska Pipeline Service Co. regarding proposed revisions to the Best Management Practices Plan for Alyeska's ballast water treatment plant.
- Attended the Conference on Marine Vessel Emissions in Chantilly, VA, sponsored by the American Petroleum Institute.
- Met with EPA air pollution officials at EPA Pollutant Assessment Branch in Durham, NC, in order to enhance cooperation between RCAC and EPA on air pollution issues and become as current as possible on Clean Air Act Amendments rule making regarding vapor control requirements.
- Sponsored a fire protection workshop in Valdez with participants from RCAC, Alyeska, U.S. Coast Guard, City of Valdez, Prince William Sound Conservation Alliance, the Mayor's Ad Hoc Committee, etc.
- A Request for Qualifications seeking experts in the field of petroleum facility fire protection with the qualifications to conduct a review of fire protection and response at the Alyeska Marine Terminal in Valdez will be advertised and circulated in the near future.
- Completed the RCAC TOEM Committee's 1992 budget for total projected expenditures of \$825,000. Of this, \$525,000 is slated for direct program expense (the Committee's pollution-fighting projects) and \$300,000 is slated for operational expenses and overhead.
- Completed an upgrade of office space and equipment at the RCAC location in the Royal Center in Valdez. RCAC now occupies four offices and has the use of top of the line photocopying, fax, telephone and other equipment.

In Progress

- The TOEM Committee's review of sampling and test methods at the Ballast Water Treatment Plant continues, with funding assistance from DEC. The first phase of the TOEM Committee program, an examination of toxicity testing at the facility, is completed, and two other projects are underway:
 - a review by Beak Consultants of testing and analysis procedures used on BWTP influent;
 - a review by Investigative Science Inc. of methods used to sample and test effluent discharged from the plant.
- The TOEM Committee continues to track a number of ballast water issues with input from DEC, the Technical Advisory Group, and Alyeska, including:
 - Alyeska's request for a relaxation of state water quality standards or a redefinition of test methods;

- The company's bid to have EPA and DEC drop the requirement for a field verification study from its NPDES permit;
 - The likelihood that the state will exclude Port Valdez from its 1992 list of Impaired Waterbodies;
 - The TAG's call for a materials balance study at the BWT Plant.
- A report from TOEM consultant Dr. Richard Caldwell assessing toxicity testing of effluent from the ballast water treatment plant is near completion and is expected soon.
 - Valdez Air Study Review: the TOEM Committee continues to sponsor and fund this six-member peer review panel's examination of Alyeska's air studies and risk assessment in Valdez. The final step for the panel will be to review Alyeska's final report, expected in May.
 - Received draft report titled "Multimedia Fate and Effects of Airborne Petroleum Hydrocarbons in the Port Valdez Region" from TOEM consultant Dr. Yoram Cohen; the report will be reviewed, comments will be forwarded to Dr. Cohen, and the final report is expected to be available for the annual meeting in March.
 - The Committee continues to advocate the installation of technology to control volatile organic air emissions at the Alyeska Marine Terminal and is tracking government and industry dialogue and decision-making on this very important issue.
 - In the realm of fire protection, the TOEM Committee continues to work with the RCAC POVTS Committee, the City of Valdez, the Valdez Ad Hoc Committee, and Alyeska officials to assess fire protection and response capabilities at the Alyeska Marine Terminal. This effort is expected to include the hiring of an expert in the field petroleum facility fire protection.

Future

The TOEM Committee has budgeted for a number of projects that it hopes to initiate in the near future, including:

- A review of the effect of volatile air pollutants on the health and safety of workers at the Alyeska Marine Terminal;
- An investigation of sludge generation and disposal at the terminal
- An assessment of existing engineering and processes at the Ballast Water Treatment Plant and consideration of possible alternatives and improvements.

A Progress Report
on the
Independent Testing and Monitoring Program
at the
Alyeska Marine Terminal Ballast Water Treatment Plant
September 16, 1991

by the
Terminal Operations & Environmental Monitoring Committee
of the Regional Citizens' Advisory Council for Prince William Sound

I. Introduction

In May 1991, the Alaska State Legislature appropriated \$175,000 from the Oil & Hazardous Substance Release Response Fund to the Department of Environmental Conservation to fund a contract with the Prince William Sound Regional Citizens' Advisory Council for the development of an independent testing and monitoring program for the ballast water treatment facility operated by Alyeska Pipeline Service Company (Alyeska) in Valdez, Alaska. Governor Walter Hickel did not veto that appropriation.

Responsibility for developing this program lies with RCAC's Terminal Operations and Environmental Monitoring (TOEM) Committee, which is headquartered in Valdez. The TOEM Committee had already begun to develop such a program when the legislation was passed, recognizing that it is vital to the citizens of Prince William Sound regardless of whether the contract is ever realized.

The Independent Testing and Monitoring Program includes two major phases:

- Phase I. Research and design of independent testing and monitoring plans, and reviews of existing testing procedures at the terminal.
- Phase II. Implementation of the actual sampling and testing program to yield data from which broader and more accurate conclusions can be drawn.

In the legislators' letter to Commissioner Sandor, dated May 21, 1991, they suggest that this funding would enable ADEC to contract with RCAC to develop a plan for testing and monitoring influent, effluent, and "the long term effects on the biological system of Prince William Sound." The \$175,000 would probably cover little more than the first phase of the TOEM Committee's program. The committee will use the testing and monitoring plans designed under Phase I to initiate an independent testing and monitoring program or, if necessary, implement a plan to fill gaps in existing procedures.

influent and effluent, 2) critically review existing influent and effluent testing programs, 3) critically review existing toxicity testing programs, and 4) evaluate the combined results of the above studies.

This program complements and advances the recommendations of the Technical Advisory Group to ADEC on the BWTP (See IV.E. "Ballast Water Treatment Plant Concerns" in this report).

A. Influent and Effluent Reviews

For the reviews of influent and effluent testing, each consultant will design an ideal yet cost-effective sampling and analysis plan, using the highest scientific standards and best available technology. The consultants will then compare those plans with ADEC's influent sampling plan, or with the NPDES permit for the effluent analysis, and suggest improvements. The TOEM Committee will evaluate and, if appropriate, endorse those suggestions, and forward them to RCAC for approval. RCAC will then formally make recommendations to ADEC and Alyeska, and provide the information to the public.

Pursuant to the above reviews, the TOEM Committee is currently requesting proposals from qualified experts to design a random (unpredictable) sampling program for incoming tanker ballast water (influent). The final report is expected in January 1992. The committee is also drafting an RFP for design of a sampling plan for ballast water effluent. That report is expected to be completed in March 1992.

B. Toxicity Testing Review

Under the toxicity testing portion of the program, a qualified consultant will critically review the existing toxicity testing program at the terminal, including the NPDES permit requirements, make specific recommendations for expanding or improving those programs, and make recommendations for further studies. The TOEM Committee will evaluate and, if appropriate, endorse those suggestions, and forward them to RCAC for approval. RCAC will then formally make recommendations to ADEC and Alyeska, and provide the information to the public.

Pursuant to the above analysis, the TOEM Committee has selected experts to evaluate the toxicity tests and studies prepared by contractors for the Alyeska Pipeline Service Company. Their final report is expected in December 1991.

Phase II - Implementation

The result of Phase I of the Independent Sampling and Monitoring Program will be a body of reliable information about how to accurately assess the chemical composition of ballast water influent and effluent. The TOEM Committee will prepare a report based on those results and conclusions that:

adequately describe or characterize the wastes normally treated at the BWTP. ADEC began sampling and testing ballast water influent in April 1991.

Under the NPDES permit, ballast water effluent is monitored by a sampling and testing procedure scheduled in advance, which specifies substance to be tested, time, place, and testing method. Other waste streams are regulated or inventoried, but are not tested for water quality or monitored under the NPDES permit. Both EPA and ADEC agree that the presence or absence of hazardous or toxic substances in the influent can only be determined by a long-term testing and monitoring program.

There is still no "surprise" sampling program in effect at the BWTP which takes place without the prior knowledge of Alyeska officials. Alyeska controls the flow rate of the waste stream through the BWTP, has some control over tanker unloading, and arranges access and security escorts for ADEC and EPA officials there to take samples or inspect the facility. The TOEM Committee believes the Alyeska terminal should be subject to surprise sampling.

A. POSSIBLE DESIGN PROBLEMS WITH THE BWTP

As approved by Congress in 1977, the BWTP was designed to be built in phases corresponding to anticipated increased pipeline throughput. Alyeska promised, in the right of way lease covenants, to stay abreast of technological developments and to continually upgrade equipment. Since then, pipeline throughput has increased four-fold without the projected facility expansion.

The original plans called for an incinerator for disposing of oily sludge, real-time, continuous discharge monitoring instrumentation to control effluent quality, and two additional 430,000 barrel holding tanks. Presently, sludge is shipped out of state, continuous monitoring instruments are planned, but not yet in place, and additional holding tanks have not been built. It can be argued that Alyeska is currently operating with a BWTP that fails to carry out the original intent of Congress.

1. Flow Rate. Concerns have been expressed that the flow, or throughput rate (flow rate divided by volume) at the BWTP exceeds the rate for which the plant was originally designed, and that the facility is not operating effectively because of the alleged overload. Ballast water treatment effectiveness is determined by evaluating data regarding throughput rate, temperature, organism recycling, and nutrient sufficiency. Two important considerations when adjusting the throughput rate are 1) will the organisms suddenly wash out, or die off (called and "upset" by industry), and 2) is the degradation complete. Some say complete degradation requires a much slower throughput rate.

Another consideration which is not well understood is the mixing geometry. It is unclear how the system works: if biodegradation depends on recycling of organisms mixed upwards from the sediment and sludge on the bottom of the ponds, as driven by the aeration system. If that is the case, the throughput rate

B. UNIDENTIFIED TOXIC SUBSTANCES

Tank washings from dry dock cleaning of cargo areas, engine room diesel sludge, slops, and other toxic wastes have been known to be transferred to northbound TAPS trade tankers for discharge at BWTP in Valdez. This is not expressly forbidden by the NPDES permit, but neither is it authorized. EPA is currently investigating these practices, and until the investigation is closed, grants permission to unload ballast water in Valdez on a case-by-case basis. EPA has recently complained and proposed penalties against Alyeska, BP and Exxon for dumping unauthorized tank washings into the BWTP in Valdez.

Allegations have been made that this is a routine practice of TAPS tankers undertaken to avoid the substantial cost of discharging these loads at other west coast ports (up to \$200,000 per tankerload), and because the Valdez BWTP is the largest west coast facility. This practice undermines the original intention of having a "dedicated fleet" of tankers that haul only North Slope crude oil, thereby limiting the contents of ballast influent to the BWTP in Valdez.

There are two main problems 1) addition of foreign substances to the system, and 2) BWTP operations and effectiveness. If the plant operation is sound, foreign additions are not that serious; the wastes are going to remain somewhere.

C. QUESTIONS REGARDING OIL IN SEDIMENTS

Alyeska sediment studies required by the NPDES permit have recently shown increasing levels of aromatic hydrocarbons accumulating in the sediment of Port Valdez. These studies indicate the presence of sludge (i.e. toxic, carcinogenic, high molecular weight, polycyclic aromatic hydrocarbons) in the water column in increasing concentrations. Sediment concentrations are believed to be caused by the settling out of heavier chemical compounds from the water column (see TAG recommendations below). Therefore, in spite of the NPDES permit restrictions on effluent concentrations, ADEC's TAG group thought it reasonable to question whether, in fact, the BWTP is doing an adequate job of removing aromatic hydrocarbons from the effluent.

D. SELF-MONITORING

Harold Geren, Chief of Water Permits and Compliance Branch, EPA Region X, Seattle, in recent hearings before the Committee on Oil & Gas, stated that self-monitoring of discharges under wastewater discharge permits has been the foundation of the national compliance assurance program since the creation of the permit system under the federal Water Quality Act of 1972. In light of the Exxon Valdez spill and recent allegations regarding the BWTP, however, people want more than just assurances from the oil industry when it comes to pollution and environmental issues.

recommends that the first step in a mass balance study would be to look at the large amounts of data gathered by Woodward-Clyde, much of which was never reviewed or critiqued. He estimates 80% of the data needed already exists. Upon evaluation of the data, holes would be identified, and a plan established for filling in the missing information.

2) TAG recommends sampling, testing and analysis of the concentrations and concentration gradients of aromatic hydrocarbons in the Port Valdez water column (independent field verification). The 1985-86 Woodward Clyde study is admittedly flawed, yet modeling and extrapolation based on those results are the foundation of current estimates of water quality in Port Valdez, and the basis of the proposed removal of the port from the state's list of impaired waterbodies. To date there have been no field verification studies to show whether the BWT.V system currently in use by Alyeska results in compliance with state water quality standards outside the mixing zone.

Now that polycyclic aromatic hydrocarbons have been found in Port Valdez sediments by Alyeska's consultants, the TAG group feels it is critical that field testing and analysis be performed to verify the concentrations of oil in the water column. The most logical source of sediment concentrations of high molecular weight hydrocarbons is believed to be precipitation from the water column.

V. Background on the Regional Citizens' Advisory Council and Terminal Operations and Environmental Monitoring Committee

The Regional Citizens' Advisory Council (RCAC) of Prince William Sound (there is also an RCAC for Cook Inlet, the CIRCAC), is an independent, non-profit organization formed in the aftermath of the Exxon Valdez disaster to ensure the safe operation of the Trans-Alaska Pipeline Terminal and the crude oil tankers served by the terminal, so that the environmental impacts associated with the terminal and tanker fleet are minimized. The RCAC has 16 members who include representatives from municipalities, commercial fishing groups, Alaska Native interests, and environmental and business organizations.

RCAC is certified under the federal Oil Pollution Act of 1990 as the citizen advisory organization for Prince William Sound, and operates under a contract with Alyeska. The contract, which is in effect as long as oil flows through the pipeline, guarantees RCAC's independence, provides annual funding at \$2 million, and guarantees RCAC access to the terminal equal to that enjoyed by state and federal regulatory agencies.

The TOEM Committee is responsible for evaluating terminal operations in terms of their effect on the environment, identifying possible sources of chronic pollution, and making recommendations to RCAC in these areas. The TOEM Committee staff gathers information about the terminal through interaction with Alyeska, regulatory agencies, and the committee's consultants. Problems are usually approached by 1) identifying the relative seriousness and complexity of the situation, 2) determining how best to address the situation, 3) contracting

**Regional Citizens' Advisory Council
Terminal Operations and Environmental Monitoring Committee**

STATUS OF PROJECTS RELATED TO WATER QUALITY IN PORT VALDEZ

Mar. 31, 1992

TOEM remains focussed on ballast water treatment and monitoring practices at the Alyeska marine terminal. Past water quality violations and allegations of illegal ballast water transfers highlight the controversy surrounding this facility.

Port Valdez -- an impaired waterbody

- * Port Valdez appeared on Alaska's 1988 and 1990 lists of impaired waterbodies because aromatic hydrocarbons in the port were demonstrated to be in violation of state water quality standards.
- * More stringent effluent limits in the new permit should bring waters in Port Valdez back into compliance, however, a "mixing zone compliance study" has yet to be performed.
- * The Technical Advisory Group (TAG) and RCAC recommend such a study be conducted. RCAC feels strongly that Port Valdez should remain on the impaired waterbodies list until actual field verification verifies compliance with state water quality standards.

TOEM review of ballast water treatment testing and monitoring

Investigations launched last year and funded, by the \$175,000 appropriated by the legislature last year are starting to bear fruit in 1992. Based on the findings of three studies currently underway, TOEM will recommend changes or additions to the current ballast water treatment monitoring strategies.

Toxicity testing

- * Preliminary findings of the review of existing toxicity testing are generally positive. Our consultant reports that Alyeska is fulfilling, and in many ways exceeding, its NPDES requirements for toxicity studies at the present time.
- * Dr. Caldwell recommends that no significant reduction in required testing be allowed and suggests some refinements including a study of bottom fish to detect long term effects associated with hydrocarbons that have been detected in bottom sediment.
- * He also recommends that an effort be made to investigate the contribution of zinc to ballast water treatment plant effluent toxicity.

Influent testing

- * The TOEM Committee expects a draft review of Alyeska and ADEC ballast water treatment plant effluent in April, 1992.

Effluent testing

- * TOEM's contractor reviewing ballast water effluent testing is just getting started on this project, beginning with an Alyeska tour of the ballast water treatment facility and laboratory.

Revised "Best Management Practices Plan"

In February, TOEM submitted comments to the EPA on the proposed revised "Best Management Practices Plan" - a governing document in the operation of the ballast water treatment plant. We are waiting for EPA's response.

STATUS OF PROJECTS RELATED TO AIR POLLUTION IN PORT VALDEZ BASIN

Basic facts about air pollution in Valdez

- * Two categories of air pollutants are released from the Alyeska terminal. Levels of the so-called "criteria pollutants" are limited by federal and Alaska state regulations.
- * The other category is airborne hydrocarbons, also called VOCs (volatile organic compounds). The VOC group includes air toxics such as hexane, toluene, and benzene, a potent human carcinogen.
- * Alyeska's emissions comprise almost half of all VOCs emitted from marine loading operations nationwide. No existing regulations restrict the release of these gases from the terminal.

RCAC involvement -- Dr. Cohen's report

- * TOEM hired Dr. Yoram Cohen to identify specific air pollution issues the committee should address.
- * Dr. Cohen concludes that the expected lifetime cancer health risk due to benzene exposure is about 1 in 20,000. He also points out that the risk to terminal workers may be greater since their daily dose of benzene can be significantly higher than non-terminal workers.
- * Exposure to other chemicals of concern results in dose rates significantly below that which would cause health effects. However, it is pointed out that, like benzene, these other chemicals are found at much higher levels at and near the terminal.
- * Dr. Cohen found that the concentrations of some air toxics, including benzene, in Valdez air are typical of big cities like Los Angeles, Boston and Miami.
- * There is a need for a systematic program focused on ecological risks to the marine environment as a result of chronic exposure to low levels of hydrocarbons.
- * Convincing evidence needs to be presented to show whether or not the ballast water treatment plant is indeed biodegrading the chemicals of concern.

TOEM Committee's Valdez Air Studies Review Committee

In addition to commissioning Dr. Cohen's study, the TOEM Committee contracted with independent consultants to review the procedures being used by Alyeska's consultants in their health risk assessment study.

*Alyeska
Regulations
to respond*

- * Independent review will help insure that regulators and the public receive accurate and objective information from the Alyeska study.
- * Alyeska's study is comprehensive and utilizes state-of-the-art knowledge and current expertise.
- * The review committee, through RCAC, submitted recommendations for Alyeska's consideration in drafting the final report.
- * TOEM's consultants will review Alyeska's final report when it is issued this spring.

Vapor control at the Valdez marine terminal

- * TOEM continues to advocate installation of vapor control technology at the terminal, as well as, air quality regulations to require it.
- * Alyeska's ambitious efforts in the design of such technology have lead to the feasibility of a safe and effective hard piping system at the terminal.

Air pollution regulations

- * Federal rules are expected to require marine loading terminals to install hard pipe vapor control systems.
- * If Alyeska can demonstrate to the federal government that the Valdez terminal's VOC emissions do not pose a significant health or environmental problem, controls may not be required.
- * Alyeska is currently conducting a risk assessment study in Valdez to determine whether a health risk exists due to VOC emissions from the terminal. Alyeska expects to release its draft report this spring.
- * In the meantime, Alyeska has proceeded with preliminary engineering work for a vapor control system at the terminal; and has said, they may act to reduce or control these emissions even if the health studies are completely reassuring.



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

May 21, 1991

John Sandor, Commissioner
Dept. of Environmental Conservation
P.O. Box O
Juneau, AK 99811

Dear Commissioner:

Today, the House and Senate passed HB 75, the FY 92 operating budget. HB 75 appropriates \$175,000 from the Oil and Hazardous Substance Release Response Fund to the Department of Environmental Conservation to fund a contract with the Prince William Sound Regional Citizens Advisory Council (RCAC) to develop an independent testing and monitoring program for the ballast water treatment facility in Valdez.

This appropriation language is a result of extensive hearings in both the Senate and House on the ballast water treatment plant at the Valdez Marine Terminal. Those hearings documented substantial concerns regarding the adequacy of the monitoring at the plant by both the terminal operator and the agencies with regulatory responsibility.

It was our conclusion that state and federal agencies charged with oversight do not have sufficient information on the origins or composition of the ballast water being treated at the plant. Serious questions have been raised as to whether hazardous wastes, specifically tank washings, tank cleanings and diesel engine and other sludges, are being run through the system, whether the system is capable of treating these wastes and if the Port Valdez is in fact an "impaired waterway".

The funding provided for by section 20(e) of the operating budget will enable DEC to contract with RCAC to develop, in consultation with the Citizens' Oversight Council, a plan for testing and monitoring the ballast off-loaded to the ballast water facility, the effluent discharged into the Port Valdez and the long term effects on the biological system in Prince William Sound.