

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2061 SCOMM 78. SENATE SPEC. COMM. ON OIL & GAS, 1991-1992



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

17th January 1991

Mr Larry Katkin,
Alaska Department of Environmental Conservation,
Northern Region Office,
1001 Noble Street , Suite 350,
Fairbanks, Alaska 99701

Endicott and Prudhoe Bay Oil Discharge Prevention and
Contingency Plan

Dear Mr. Katkin,

This letter is to confirm the agreement reached at our meeting yesterday regarding an Oil Discharge Prevention and Contingency Plan for our Prudhoe Bay and Endicott operations.

As agreed, I herewith enclose 2 copies of the Pollution Prevention and Control Plan, originally submitted to ADEC in December 1988, which you will review and consider for interim approval under HB 567.

In the meantime, in the absence of Regulations pertaining to HB 567 and the understanding that these Regulations when issued will have major implications for C-Plan format and content, we undertake to revise the cover, title page, contact list and initial actions section. These sections will be forwarded to you within the week.

You know of the major improvements which have been made to our North Slope spill response capabilities over the last two years which I believe reflect our commitment to operating in the spirit of HB 567. I trust that this and the agreement reached yesterday will resolve the concerns expressed in your letter to Mr. Taylor of 8th January 1991.

I look forward to your comments on the enclosed plan and to working closely with you on this subject.

Sincerely,



John P. Hartley.



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

Certified Mail

February 5, 1990

Alaska Department of Environmental Conservation
Attn: Mr. William D. McGee, Supervisor
Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

Renewal of BPX Pollution Prevention and Control Plan

Dear Mr. McGee:

As previously noted in earlier correspondence (see December 13, 1989, June 27, 1989) BP Exploration has not yet received review comments or approval for the revised BPX Pollution Prevention and Control Plan for the Prudhoe Bay Western Operating Area and the Endicott Development submitted to ADEC in December of 1988. Acknowledgement from ADEC of BPX's intent to operate under the revised plan until final review of the plan by ADEC is complete would be helpful to BPX.

BPX will be happy to discuss any element of the revised plan with ADEC as required. If I can provide any additional information or answer any questions please call me at 564-4037.

Sincerely,

Steven D. Taylor, Manager
Environmental and Regulatory Affairs, Alaska

Acknowledgement:

William D. McGee



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

June 27, 1989

Mr. Pete McGee
Alaska Department of Environmental Conservation
Northern Regional Office
1001 Noble Street, Suite 350
Fairbanks, AK 99701

Renewal of Pollution Prevention and Control Plan

Dear Mr. McGee:

BPX (Alaska) Inc. submitted our updated oil discharge contingency plan for Alaska operations entitled Pollution Prevention and Control Plan, in December, 1988 for renewal in accordance with the ADEC regulations, 18 AAC 75. The contingency plan revisions provided updates to the existing, ADEC approved plan. BPX (Alaska) did not receive any agency comments within the 65 days, therefore, we have distributed the plan, and are currently operating in accordance with the updated plan.

If you have any questions, please call me 564-4037.

Sincerely,


Steven D. Taylor, Manager
Environmental & Regulatory Affairs

SDT/SCH

File GC/NU/PPCP

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

452-1714

February 21, 1986

Northern Regional Office
Pouch 1601
Fairbanks, Alaska 99707

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Ms. Sharon Hillman
Senior Environmental Scientist
Sohio Alaska Petroleum Company
P.O. Box 6612
Anchorage, Alaska 99502-0612

Dear Ms. Hillman:

RE: Sohio's Oil Spill Contingency Plan for Alaska Operations

The Alaska Department of Environmental Conservation has completed its review of the subject core document from the standpoint of "terminal facilities", which is the only actual regulatory handle we currently have on this plan in terms of the oil pollution regulations. In this regard, we have found that the plan meets the requirements of the regulations (18 AAC 75.305, et. seq.), and is, therefore, approved as submitted and amended. This approval will be in effect for three years from date of issue. The plan is concurrently found to be consistent with the Alaska Coastal Management Program.

We recognize that this formal approval encompasses a relatively small portion of the plan. We do appreciate the value of this document as a core document for contingency planning and pollution prevention in all aspects of Sohio's operations, including a chapter currently under separate review which will be the oil spill contingency plan for the Endicott project. We appreciate your continuing quality of effort.

Sincerely,

Richard Cormack
Richard Cormack
Environmental Field Officer

RC:tss

cc: P. O'Brien, ADEC/Juneau
P. Cyr, ADEC/Anchorage
D. Warren, ADEC/Fairbanks
G. Zimmerman, ADNRR/Fairbanks
A. Ott, ADFG/Fairbanks
W. Matumeak, NSB/Barrow
P. Wightman, OMB/Fairbanks

300.02a.064
C-plan # 8536-ED016

*Nice
Approval
letter
Thanks
to all!
SR*

Exploration Planning
Environment/Lands
OHIO ANCHORAGE

FEB 24 '86

<i>RE</i>	Herrera	Wagner	
	Togade	Cassetti	
	Henley	Hanson	
	Alrymple	Dippe	
	Tush	Shingleton	
<i>XC</i>	Oppe	Hillman	<i>XC</i>
	Parsons	Platt	<i>XC</i>
	Lombard	Hirsh	
	Sorah	Doglen	
	Brown	Wright	<i>-XC</i>
	Fraker	FILE	

*file
origina
Legal
Record*

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

TO: Lynn Tomich Kent
Chief, SPPM Section
Div. Env. Quality

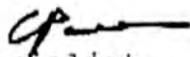
DATE: April 16, 1991

FILE NO.:

THRU:

TELEPHONE NO.: 465-2630

SUBJECT: H.B. 567:
June 1
Implementation

FROM: Christopher Pace 
Environmental Specialist
EQ/SPPM Juneau

I was asked to provide a list of those oil spill contingency plans that will be amended and submitted to the department by June 1, 1991, to satisfy the response planning standards described in Alaska Statute AS 46.04.030(k) and to implement H.B. 567. I was also asked for a list of those facilities/vessels that would be affected by June 1 plan amendments. I enlisted the help of Oil Pollution Control staff at the three region offices to contact plan holders in conducting this survey. This survey primarily reflects the efforts of ten staff in the region offices working to contact 174 plan holders.

EXPLORATION/PRODUCTION FACILITIES:

Owner/Operator	Facility Name	Plan Amendments?
Amoco Production Co.	Amoco Galahad	Yes
ARCO	Beluga River	No
ARCO	Bufflehead	Yes
ARCO	Sunfish/Northland	No
ARCO	Galena	No
ARCO	Swanson	No
ARCO	King Salmon #2	No
CIRI Production	West Fork 1-21	No
CONOCO	Astosch #1	No
Marathon Oil Co.	Cook Inlet Platforms	Yes
Shell Western E & P Inc.	Platforms A & C	No
Stewart Petroleum Co.	West McArthur River #1	No
UNOCAL	Cook Inlet Production	Yes
ARCO	Fireweed Prospect	Yes
ARCO	Stinson	No
BP Exploration	Kuparuk Uplands	Yes
BP Exploration	Sag Delta #12	Yes
BP Exploration	Pt. McIntyre #5	Yes
Chevron USA	Maktar Prospect	Yes
Chevron USA	Canvasback Prospect	Yes
Shell Western E & P Inc.	Shell Western Chukchi Sea	Yes
Texaco	Texaco Chukchi Sea	Maybe

April 16, 1991

OIL TERMINAL FACILITIES:

Owner/Operator	Facility Name	Plan Amendments?
ARCO	ARCO Eastern Operations	Yes
ARCO	Kuparuk Terminal	Yes
U.S. Air Force	Radar Stations	Yes
U.S. Air Force	Shemya AFB	No
Anchorage Light & Power	Station #2	Yes
Anchorage Fuel & Ser Co.	Anchorage Terminal Anchorage Airport	No
Bethel Fuel Sales Inc.	Bethel Terminal	Yes
Chevron USA	Anchorage Terminal	Yes
Chevron USA	Kenai Refinery	No
Crowley Maritime Corp.	Captain's Bay Terminal	Yes
Deep Sea Fisheries	Akutan Terminal	No
U.S. Dept of Defense	Anchorage Terminal	Yes
U.S. Dept of Defense	Whittier Terminal	Yes
Delta Western	Nikiski Terminal	Yes
Delta Western	Wood River Terminal	Yes
Delta Western	Dillingham Terminal	Yes
Delta Western	Dutch Harbor Terminal	Yes
Delta Western	Naknek Terminal	Yes
Mapco Alaska Petroleum	Anchorage Terminal	No
Naknek Electric Inc.	Naknek Power Plant	Yes
U.S. Navy	Amchitka NAS	Yes
North Pacific Fuels	Kodiak Terminal	Yes
Nushagak Electric Inc.	Dillingham Power Plant	Maybe
Orca Oil Co. Inc.	Cordova Terminal	Yes
Peter Pan Seafood	King Cove Terminal	Yes

C-Plan Ammendments

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April 16, 1991

Harbor Enterprises Inc.	Ballyhoo Terminal	No
Harbor Enterprises Inc.	Resoff Terminal	No
Harbor Enterprises Inc.	Kenai Terminal	No
Harbor Enterprises Inc.	Kodiak Terminal	No
Harbor Enterprises Inc.	Seward Terminal	No
Harbor Enterprises Inc.	Unalaska Terminal	Yes
Phillips Petroleum Co.	Nikiski LNG Terminal	No Contact
Reeve Aleutian Airways	Cold Bay Airport	Yes
City of St. Paul Island	St. Paul Terminal	Maybe
Terminal Oil Sales	Homer Terminal	Yes
Tesoro Alaska Petroleum	Anchorage Terminal	Yes
Tesoro Alaska Petroleum	Kenai Refinery	Yes
Texaco Market & Refining	Anchorage Terminal	No Contact
Trident Seafoods Corp.	Akutan Terminal	No
Trident Seafoods Corp.	Sand Point Terminal	No
U.S. Army	Fort Greely	Yes
U.S. Army	Fort Wainwright	Maybe
BP Exploration	BPX Endicott/Lisburne	Yes
Chevron USA	St. Michael	Yes
Suape Chevron	Fairbanks Terminal	No
Conoco	Milne Point	Yes
Mapco Petroleum	Fairbanks Airport	Yes
Eskimos Inc.	Barrow Terminal	Maybe
City of Galena	Galena Power Plant	No
Golden Valley Electric	North Pole Power Plant	Yes
Kotzebue Electric	Kotzebue Power Plant	Maybe
Mapco Petroleum	North Pole Refinery	Yes
Nenana Fuel	Galena Terminal	Maybe

Nome Joint Utility	Nome Power Plant	Yes
North Slope Borough	Barrow Terminal	Maybe
North Slope Borough	Wainwright Terminal	Maybe
North Slope Borough	Point Hope Terminal	No
Pacific Alaska Fuel	Kotzebue Terminal	Yes
Pacific Alaska Fuel	Nome Terminal	Yes
Petro Star	North Pole Refinery	Yes
Cominco	Red Dog Mine	Maybe
Tesoro Alaska Petroleum	Fairbanks Terminal	Yes
U.S. Air Force	Eielson AFB	Maybe
U.S. Air Force	Tin City AFB	No
U.S. Air Force	Barter Island AFB	No
U.S. Air Force	Fort Yukon AFB	No
U.S. Air Force	Indian Mountain AFB	No
U.S. Air Force	Cape Lisburne AFB	No
U.S. Air Force	Galena AFB	No
Yutana Barge Lines	Fort Yukon Terminal	Yes
Alaska Pulp Co.	Sitka Pulp Mill	Yes
Ketchikan Pulp Co.	Ward Cove Pulp Mill	Yes
UNOCAL	Ketchikan Terminal	Maybe
UNOCAL	Sitka Terminal	Yes
UNOCAL	Juneau Terminal	Yes
Delta Western	Juneau Terminal	Yes
Delta Western	Yakutat Terminal	Yes
White Pass Alaska	Skagway Terminal	Yes
White Pass Alaska	Haines Terminal	Yes
White Pass Alaska	Sitka Terminal	Yes

White Pass Alaska	Petersburg Terminal	Yes
White Pass Alaska	Ketchikan Terminal	Yes
Totem Oil	Haines Terminal	Maybe
Andres Oil	Ketchikan Terminal	Yes
Sitka Fuels	Sitka Terminal	Yes

PIPELINES:

Owner/Operator	Facility Name	Plan Amendments?
Alyeska Pipeline Co.	Trans Alaska Pipeline	Yes
Cook Inlet Pipeline Co.	Cook Inlet Pipeline	Yes
Tesoro Alaska Petroleum	Tesoro Pipeline	Yes

VESSELS:

Owner/Operator	Vessel Name	Plan Amendments?
White Pass Alaska	Frank H. Brown	Yes
A/S N.R. Bugge	Unknown	Yes
Amerada Hess Corp.	St. Lucia Mount Cabrite Seal Island	Yes
American Trading Co.	American Trader Baltimore Trader Chesapeake Trader	Yes
ARCO Marine Inc. (Prince William Sound)	ARCO Alaska ARCO Anchorage ARCO Juneau ARCO Prudhoe Bay ARCO California ARCO Fairbanks ARCO Independence ARCO Sag River ARCO Spirit ARCO Texas	Yes
ARCO Marine Inc. (Cook Inlet)	ARCO Alaska ARCO Anchorage ARCO Juneau ARCO Prudhoe Bay ARCO California ARCO Fairbanks ARCO Independence ARCO Sag River ARCO Spirit ARCO Texas	Yes
Astra Oil Co.	Unknown	Yes
BP America	British Resolution	Yes
Cambridge Tanker Corp.	Unknown	Yes
Chevron Marine Co. (Cook Inlet)	Unknown	Yes
Chevron Shipping Co. (Prince William Sound)	Chevron California Chevron Mississippi Chevron Oregon Chevron Washington Chevron Colorado Chevron Louisiana Chevron Arizona	Yes

Chinese Petroleum Co.	Unknown	No
Daitoh Trading Co. (Cook Inlet)	Unknown	Yes
Daitoh Trading Co. (Dutch Harbor)	Unknown	No
East Asiatic Co. Ltd.	Unknown	Yes
Exxon Shipping Co.	Exxon Benicia Exxon New Orleans Exxon North Slope Exxon Philadelphia Exxon Baton Rouge Exxon San Francisco Exxon Baytown Exxon Jamestown Exxon Long Beach Exxon Galveston	Yes
First Shipmor Associates	Unknown	Yes
First United Shipping	Unknown	Yes
Fourth Shipmor Associates	Unknown	Yes
Intercontinental Bulktank	Unknown	Yes
Interocean Management	Brooks Range Thompson Pass	Yes
Interocean Tanker Corp.	Unknown	Yes
Juneau Tanker Corp.	Unknown	Yes
Keystone Shipping Co.	Atigun Pass Kenai Keystone Canyon Tonsina Prince William Sound	Yes
Mapco Alaska Petroleum	Unknown	No
Marathon Oil Co.	Arctic Tokyo Polar Alaska	Yes
Marine Transport Lines	Unknown	Yes
Maritime Overseas Corp.	Eastern Lion Northern Lion Southern Lion Western Lion Overseas New York Overseas Washington	Yes

	Overseas Boston	
	Overseas Ohio	
	Overseas Juneau	
	Overseas Chicago	
	Overseas Alaska	
Mobil Oil Corp.	Mobil Arctic Mobil Meridian Syosset	No
Navix Lines	Yuyo Breeze	No Contact
U.S. Navy	MSC Vessels	Yes
Ocean Ships Inc.	Lawrence H. Gianella Samuel L. Cobb	Yes
Olsen Enterprises	Unknown	Yes
OMI Corp.	OMI Columbia	Yes
Pacific Fuel Trading Co.	Unknown	Yes
Petro-Diamond Inc. (Dutch Harbor)	Unknown	No
Petro-Diamond Inc. (Cook Inlet)	Unknown	No
Petro Marine Services	Unknown	No
Second Shipmor Associates	Unknown	Yes
Second United Shipping	Unknown	Yes
Stolt Hawk	Unknown	Yes
Tesoro Alaska Petroleum (Cook Inlet)	Unknown	Yes
Tesoro Alaska Petroleum (Prince William Sound)	Unknown	Yes
Texaco Marine Services	Star Connecticut Star Georgia Star Massachusetts Star Mississippi Star Montana Star Oregon Star Rhode Island Brooklyn	No
Third Shipmor Associates	Unknown	Yes
Third United Shipping	Unknown	Yes

April 16, 1991

Trinidad Corp.

Admiralty Bay
Aspen
Glacier Bay

Yes

West Coast Shipping Co.

Coast Range
Sansinena II
Sierra Madre

Yes

Wickland Oil Co.

Unknown

Yes

BARGES:

Owner/Operator	Barge Name	Plan Amendments?
Alaska Marine Charters	Investigator	Yes
Bering Sea Fisheries	King Salmon	Yes
Brix Maritime	Sitka Palmer	Yes
Boyer Towing	Callapooya Kootznahoo	No
Crowley Maritime Corp.	B&R 5 B&R 80-1 B&R 80-2 B&R 80-3 120-1 120-2 160-1 160-4 BC 151 BC 152 BC 154 210 211 212 213 218 251 255 312-3 Arctic PAC 570 Challenger Cordova Nikiski McKinley Ketchikan Palmer Kodiak Juneau 101 102 450-2 450-3 450-4 450-6 450-7 450-8 450-9 450-11 UT 10 250-10	Yes

Crowley (continued):	SATCO 10 SATCO 20 SATCO 21 Barge ST22 Barge ST23 Napamute Kodiak No.1 Eek Orca No.2 Oil No. 1 14 17 450-10 500-2 16 18 254 DB 300 Cinnabar	
Delta Western	DW 280 DW 282	Yes
Flyum's Barge Service	Unknown	No
Forty Niner Trans Co.	FNT-180 FNT-340	Yes
Foss Maritime Co.	Foss 256 Foss 255 Foss Tongass SEA 76 Foss Energizer Phoenix 120 Hanalei	Yes
Kipnuk Fuel Service	Chalin	Yes
Moody's Sea Lighterage	Sealite I ST 20	Maybe
Smith Lightering Co. Inc.	Skip I Ray'Sons	No
United Marine Inc.	UMTB 282 MLC 344 MLC 332 MLC 340-1 MLC 333	Maybe
Northland Services Inc.	ZPC 401 Kvichak Trader	Yes
Yutana Barge Lines	Riverways 7 Riverways 8	Yes

April 16, 1991

Riverways 9
Riverways 10
Riverways 11
Riverways 12
OB-2
OB-3
OB-4
OB-5
OB-6
Frank Turner #1
Polaris #6
Stewart

Samson Tug & Barge	Annahootz	Yes
White Pass Alaska	Alaskan Spirit	Yes
West Coast Shipping Co.	Coast Range Sierra Madre	Yes

SUMMARY:

TOTAL NUMBER OF PLANS:	177
TOTAL NUMBER OF FACILITIES/VESSELS:	308
NUMBER OF PLAN AMENDMENTS:	118
NUMBER OF PLANS MAY BE AMENDED OR UNSURE:	14
NUMBER OF PLANS THAT WILL NOT BE AMENDED:	42
NUMBER OF PLAN HOLDERS NOT CONTACTED:	3

cc: Larry Dietrick
Roy Warren
Joe Suatner
Larry Katkin

MEMORANDUM

State of Alaska

TO: Mike Mansker
Program Manager, Financial Responsibility
and Oil Spill Prevention
Department of Environmental Conservation

DATE: February 1, 1991

FILE NO.:

THRU: Glenn Adams
Project Assistant, Financial Responsibility
DEC

TELEPHONE NO.: (907) 465-2560

SUBJECT: Summary Memo
Problem Issues

FROM: Ted Lehrbach *HL*
Insurance Market Analyst
Division of Insurance
Department of Commerce and
Economic Development

Per your request here is a two issue summary of AS 46.04.040 and the applicable regulations, 18 AAC 20., dealing with financial responsibility (FR) requirements. the following is my insight into what appears to be developing into several complicated and acute problems.

1. **The Unlimited Liability Problem:** During my limited "on loan" time with you, Glenn Adams has informed me about an increasing problem. Apparently, some non-crude tankers and barges are having great difficulty either getting or renewing insurance coverage thru the London market to meet FR requirements. Simply put, the insurance market available to the smaller carriers may be drying up. The result could be that some operators of fuel barges or fuel tankers carrying non crude will be forced into non-compliance with the FR requirements effectively putting them out of business. This, obviously, could result in the disruption of fuel deliveries to small remote villages, communities and fishing fleets.

Last year, as an observer, I attended a meeting between DEC, Dept. of Law and industry representatives Mike Padden an Anchorage Broker and John Gimlet from Lloyds of London. The purpose was to discuss this and other issues. It is my impression that a clear understanding of the "unlimited liability" problem really was not grasped by those in attendance. This problem never went away. It now needs immediate attention.

It seems The London Underwriters and P&I Clubs may not wish to provide the cover fearing they may be held to "unlimited liability" due to the way the DEC FR laws are written. For Example, 46.04.040 (e) contains the following language; *An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility.* The insurers probably feel that this language might be interpreted to mean that they stand in the shoes of the polluter.

Consider the following scenario. Coverage is provided to an insured subject to the language above, a loss occurs with resulting damages above the policy liability limits. The insured declares bankruptcy or insolvency and thus becomes incapable of providing funds for the excess amount of the loss. Since the polluter is held to be responsible on a strict liability basis for all (100%) damages listed in the above statutes, then the insurers could be subject to unlimited liability under a strict

MEMORANDUM

Ted Lehrbach
DEC comments

reading of this language and a successful "deep pocket theory" legal argument. This argument might run like this, since the intent of the law is to protect the public and third parties from the damages listed in 758,759,760,822,& 030, and, since the insured is not able to respond to the damages above the policy limits, then, for the greater good (ie;the protection of the public interest) section 040 (e) is interpreted to defeat the policy limits in the name of protecting the public interest. Therefore, the insurer as a cautious thinker must consider this worst case scenario.

There is a lot of evidence to show that these insurers are very paranoid of our legal system which they view as simply a tool used by some to finance social engineering. Whether this is valid or not is a subject for other discussions, but it is a perception among many in the insurance industry and it must be recognized and addressed if the two parties are to come to some type of working arrangement.

On the human side of this problem the broader question of "Why is the coverage doing up?" needs to be asked.

Simple Answer: The Insurer's and P&I clubs (who are reinsuring the London underwriters providing the coverage) are concerned about the ambiguities contained in our DEC FR laws, as well as federal and other state laws. In other words, the language of the law is not clear to them. They object to what they feel is imprecise language.

The Dept. of Law has tried to reassure the industry's concerns, saying basically, "Trust us, we know what it means. It may be ambiguous but we know that the state intended to protect your policy limits. The law imputes unlimited liability only upon the polluter. Because we say so, this should be enough to allay your fears." The underwriters are thinking "Sorry, we have reason not to trust you. Ambiguity in the law has caused us harm many times before. We do not trust your court system to give us a fair hearing. Until the language specifically states that the integrity of our policy limits will be protected, we will be faced with confusion and uncertainty in your courts and therefore we choose not to be subject to their decisions."

Result: The underwriters have been trying to protect themselves by inserting an ambiguous clause into their policies in order to try to guard against "unlimited liability". The Dept. of Law responded by saying "you shouldn't have ambiguity in your policy language. Is this a plot to try to deny coverage at a later date?" Thus nothing has been accomplished because the two sides do not trust each other, each attempting to use ambiguity in their language to protect their interests against perceived threats.

Possible Solutions?: First, you need someone to put both sides of the argument into perspective and bring the two parties together, and act as an umpire guiding each thru the raised objections and mis-perceptions. Second, an agreement containing precise language must be created. Each must agree on the intent and content of the language. Precise language is the only way to bring two mistrusting parties together in agreement. Without it, uncertainty and confusion rules.

How?

MEMORANDUM

Ted Lehrbach
DEC comments

(A) Add language to the proposed regulations stating clearly that 46.04.040(e) is not intended to defeat an insurance policy limit or surety bond cap. You then ask the Department of Law to provide a clear decision on the issue that would hold up in our courts. This may work to deflate the industry's fears.

(B) If a statute fix is required, I would recommend adding language similar to the following to 46.04.040 (e) *"An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility, subject to the limits of liability set forth in such insurance policy or evidence of financial responsibility."*

2. **The P&I Club Issue:** Did the legislature intend to allow the use of P&I Clubs for FR purposes on non-crude tankers and barges? According to current opinion from the Dept. of Law, P&I Clubs, who do not wish to be subject to direct state action (as has been the traditional form) may not be used for FR under the current wording of AS 46.040(l). This conclusion is found in the footnote on the last page of Doug Mertz's January 24, 1991 opinion memo.

The remaining portion of the memo speaks to the use of P&I clubs for FR coverage on crude tankers, stating that P&I Clubs may only be used for amounts of required FR in excess of \$50 million. The opinion is silent on whether the legislature intended to allow P&I clubs to be used for non-crude carriers, which would benefit more from this exemption than would the larger crude oil tankers which do not seem to have problems meeting FR requirements due to their affiliations to large oil companies. Non-crude carriers are often independents. If they are forced out of the market, competition decreases and the consumer is harmed.

An idea to allow non-crude carriers to provide at least 50% of FR requirements thru P&I coverage was suggested in the DEC opinion request of Nov. 27, 1990. Unfortunately the idea was not discussed at any length in the reply opinion from Dept. of Law.

If non-crude carriers were allowed to use P&I clubs who do not wish to be subject to direct state action for their maximum limit of required FR, \$35 million (below the \$50 million threshold), then they would not have to seek additional coverage at additional cost. These carriers must have P&I coverage anyway since they are marine vessels. Non-crude presents less of an environmental risk than does crude. If their pollution FR requirements can be met with their P&I club, it would eliminate the burden of obtaining additional coverage, providing they can find it. P&I coverage traditionally covers pollution clean up costs and the like. However, It does not cover all of the damages listed in 04.040(e).

If the legislature did intend, as some were led to believe, that non-crude carriers could benefit, at least partially, by using P&I clubs for FR purposes, the statute, as written, does not allow it for the following reasons:

A. Non-crude carriers are subject to a maximum FR limit of \$35 million. see AS 46.04.040(c)(2).

MEMORANDUM

Ted Lehrbach
DEC comments

B. The "P&I" partial exemption, 040(l)(2), has a floor of \$50 million for use of P&I clubs, well above the \$35 million maximum required for non-crude tankers. Thus, in the practical world, the exemption is useful only for crude carriers.

C. P&I coverage can of course be used for non-crude carriers providing they submit to direct action in state court and respond to all of the damages outlined in 040(e). They are reluctant to do this because of the "unlimited liability" issue explained earlier. Thus we are caught in a "Catch 22" situation.

CONCLUSION:

You have two serious problems. Connected together they primarily affect the small independent non-crude carrier. It does not exist to any great extent to the large bulk crude carriers. The large oil companies have the capital to either self insure or provide guarantee letters to their leased vessels. The lack of availability and affordability of insurance coverage adversely affects the smaller non-crude carrier. If steps are not taken to work out a solution with the underwriters in the insurance industry soon, the problem will only get increasingly worse.

JIM BERRY & ASSOCIATES

4540 Timberlux Circle
Anchorage, Alaska 99516
(907) 345-5426

March 27, 1991

APR 1991
RECEIVED

Brad Reeve
General Manager
Kotzebue Electric Association, Inc.
P.O. Box 44
Kotzebue, Alaska 99752

Dear Mr. Reeve:

RE: Oil Spill Contingency Plan Regulations

This letter responds to your request for comments regarding ADEC's preliminary draft regulations pertaining to oil discharge prevention and contingency plans (C-plan). The attachment identifies specific sections of the proposed regulations which I think may present concern to rural Alaska operators. My comments are based on experience gained in preparing spill response and prevention plans for approximately 75 fuel terminals and 25 vessels which operate in Alaska.

The C-plan draft regulations were prepared by ADEC to implement 1990 SLA Ch. 191 (HB 567). They were distributed as a proposed draft on March 4 to all C-plan holders. By July 1, and after incorporating public comment, the draft regulations are to be finalized for public review. New regulations are to become effective December 1, and by February 1, 1992 operators are to submit new contingency plans. In the meantime, operators must update their current plans by June 1 to meet the statutory requirements which the proposed regulations are attempting to interpret.

Regardless of the outcome of the regulatory review process, the new statutory requirements will result in considerable expense and will significantly impact all regulated facilities and operators. Compliance with the proposed regulations will be particularly difficult and expensive for rural Alaska facilities and operators.

In my opinion, the proposed regulations were written primarily to regulate the Alyeska Terminal and its tanker trade, and the Cook Inlet operators. Many of the requirements are not practical or achievable for rural facilities.

For example:

- All facilities must maintain in their "area of operation" containment boom, response equipment and temporary storage capacity adequate to recover and store, at minimum, the volume of the largest tank.
- Response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10-foot waves.
- Operators must maintain, separate from facility response equipment, the necessary personnel and equipment to prevent spilled fuel from reaching all sensitive areas and areas of public concern.
- Marine operators must maintain in each "area of operation" the resources adequate to lighten the entire vessel cargo capacity within 48 hours.
- All facility operators must be trained to OSHA/ADOL hazardous waste standards. Currently, this requires certified training of 40 hours for operators and 64 hours for supervisors, and annual refresher courses.
- All plans must be reviewed and updated at least every six months.

If adopted as drafted, the new regulations will require every operator to rewrite its contingency plan to satisfy new format and content requirements. To obtain plan approval, operators will be required to purchase extensive amounts of new equipment, present voluminous environmental and equipment data/boilerplate, train operators to hazardous waste standards, and make commitments which are unobtainable.

The cost per facility to write new C-plans will likely exceed \$50,000. New equipment requirements could easily exceed \$100,000 depending on proximity to sensitive areas and areas of public concern. Initial training costs may vary from \$600-800 per person. Further, it is estimated that rural fuel costs will increase 30 cents per gallon to allow transporters and distributors to meet new expenses and liabilities.

I question whether the proposed regulations and associated costs are the best investment for spill prevention and response for rural operators. It appears the State is uncertain as well. As part of 1990 SLA Ch. 191 the legislature required ADEC to study:

"(1) appropriate locations for regional response [equipment] depots, based on an assessment of

historical evidence of where non-crude discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

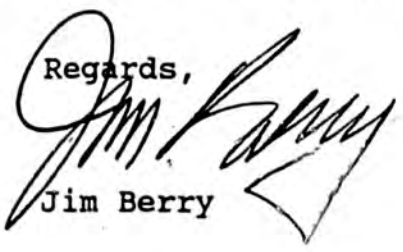
(3) requirements for personnel and equipment that should be based on [vessel] contingency plan holders; and

(4) appropriate roles for industry and state and local government in the purchase, ownership, and positioning of discharge response efforts."

The mandated report is due July 1, 1991. Its affect on the proposed C-plan regulations is unknown. I project that if the proposed regulations are adopted there will be little uniformity in ADEC's interpretation, application and enforcement of the statutes. Operators who attempt to comply will bear the time and expense of being party to an inter-agency educational process. Further, due to confusion regarding implementation and content of the regulations, it is likely there will be numerous changes to the program, as well as possible statutory revisions.

I encourage you to discuss the matter with other rural operators and become involved in the review process. Hopefully, the regulations can be amended or modified in a timely manner. If not, a temporary exemption for rural operators may be appropriate. Effective February 1, 1992, operators who are not in compliance will be subject to a \$5,000 per day fine.

Regards,


Jim Berry

enclosure

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

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May 6, 1991

Representative Cliff Davidson
P.O. Box V
Juneau, Alaska 99811

Re: HB312
Our File No.: 401.590.1

Dear Representative Davidson:

We represent Northern Transportation Company, Ltd. Northern Transportation is an affiliate of Inuvialuit Regional Corporation, a Canadian Native corporation. Northern Transportation intends to ship relatively small quantities of refined products to various North Slope communities this summer. The product will be transported by barge; and, as a result, Northern Transportation must obtain ADEC approval of both an oil spill contingency plan and proof of financial responsibility.

Northern Transportation supports the goals behind HB312. The bill would face up to the hard reality that Alaska's refined petroleum trade may be unable to meet the new demands of HB567, which would otherwise take effect in June. With respect to the state's financial responsibility laws, however, Northern Transportation urges that the scope of the legislation be expanded. Without additional statutory or regulatory relief, international commerce in refined products would remain in peril.

On the other hand, deferring the effective date of last year's changes to AS 46.04.040 (financial responsibility) would deprive industry of one beneficial aspect of that legislation.

¹The communities to be served include Barrow, Wainwright, Point Lay, Point Hope and Barter Island--in addition to a single delivery to Prudhoe Bay.

May 6, 1991
Representative Cliff Davidson

Page 2

Let me explain:

A. Financial Responsibility. Under existing law (that is, pre-HB567), Northern Transportation would be required to post approximately \$172,000 of financial responsibility.² Under HB567, the amount would be increased nearly tenfold--to approximately \$1.54 million.³ In-and-of-itself, this substantial increase in required financial responsibility will pose a substantial hardship on small operators.

More fundamentally, the options for providing financial responsibility are decreasing, rather than increasing. Under current law, Northern Transportation has four alternate means of meeting the state's financial responsibility requirements--self insurance, guarantee, surety or insurance. However, ADEC's regulations allow a party to self insure only if it has sufficient United States assets. And, the same requirement applies to any guarantor that the company might seek to employ. See 18 AAC 20.055 and 18 AAC 20.085. Being a foreign company, Northern Transportation is thus limited to two options--insurance or a surety bond.

However, current law (as well as HB567) requires that any insurer or surety must agree to submit to "direct action" in Alaska state courts. "Direct action" means that the injured party may sue the insurance company (or surety) directly, rather than through the insured (as is customarily the case). There has never been very much direct action insurance available, principally because most Protection and Indemnity (P&I) Clubs have declined to provide it. It is for this reason that HB567 allowed non-direct action insurance to be used for any financial responsibility in excess of \$50 million.

Unfortunately, the direct action insurance market now appears to have dried up completely. For example, until recently small amounts of direct action insurance were available through the Portland broker of Gene Sause and Company. However, as the enclosed correspondence indicates, that broker is now no longer able to place any direct action insurance; and, it is our understanding (based on conversations with ADEC) that other potential providers have left the market as well.

²Under existing law, oil barges are required to post an amount equal to the amount required under the federal Clean Water Act, which was \$150/gross ton.

³This amount is calculated on the basis of the carrying capacity of the company's largest barge operating in Alaska, multiplied by \$100/barrel.

May 6, 1991

Representative Cliff Davidson

Page 3

Thus, both current law and HB567 leave Northern Transportation (and, in fact, any international carrier) in an impossible position. They cannot self insure because of ADEC's requirement that the self insured's assets be located in the United States. Conversely, they cannot obtain direct action insurance, because none is available. And, because this problem arises under either current law or HB567, HB312, in its current form, would do nothing to alleviate this barrier to international trade.

We would therefore suggest one of two options:

1. The immediately-effective repeal of the direct action requirement under both current law and HB567. We understand the reasons for the direct action requirement. However, the need for direct action insurance has lessened as the result of other, newly-enacted financial guarantees--including the \$1 billion/incident oil spill fund established under the 1990 federal Oil Pollution Act.

More importantly, "direct action" insurance is no longer possible; or

2. Repeal the requirement, in ADEC's regulations, that a self insurer's assets be domestically located. ADEC could implement this cure itself, since the "domestic asset" requirement does not appear in statute. And, we believe that the change may be necessary for both constitutional and practical reasons. States may not unreasonably discriminate against foreign or interstate commerce. And yet the recent evaporation of any "direct action" insurance means that the agency is doing just that. It is preventing a foreign corporation from self insuring, yet at the same time conditioning the most commercially realistic alternative on an impossible standard.

We hope, through the deliberations on HB312, to convince ADEC that recent events warrant the repeal, and even the emergency repeal, of the "domestic asset" rule. Foreign corporations would still be required to submit to the jurisdiction of Alaska courts, and appoint an agent for service of process in Alaska.

Finally, while HB312 fails to address the recent loss of the "direct action" option, it also overlooks at least one favorable provision of HB567 whose effective date ought not to be postponed. Specifically, HB567 expands the list of available methods for financial responsibility to include letters of credit. While a foreign corporation dealing with foreign banks may still find the letter of credit option difficult, allowing a letter of credit option does provide some flexibility in attempting to meet the requirements of even current law.

2. Oil Spill Contingency Plans. We support a one year extension of the effective date for HB567's new oil spill contingency plan

May 6, 1991

Representative Cliff Davidson

Page 4

requirements. Oil barge operations like Northern Transportation's often navigate in more remote parts of the state, where cleanup capability is very limited. The debate over HB567 focused on Prince William Sound, where the nature of the trade better allows for rapid, large scale increases in cleanup capability. Outside of Prince William Sound, and perhaps Cook Inlet, oil spill cleanup resources, and the ability to expand those resources, are far more limited.

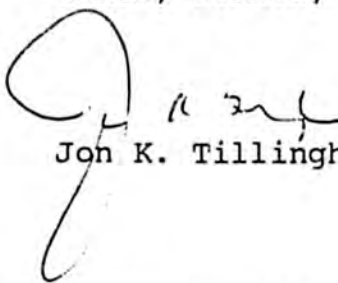
In summary, Northern Transportation supports HB312, with the following amendments:

1. A repeal of the "direct action" insurance requirement--unless ADEC is willing to change its "domestic asset" rule; and
2. The immediate implementation of the letter of credit option for providing financial responsibility.

Thank you for your consideration of our concerns, and we look forward to working with the committee on this legislation.

Sincerely,

BIRCH, HORTON, BITTNER & CHEROT



Jon K. Tillinghast

JKT/kpb

cc: Senator Al Adams
Members of the House Resources Committee
Janice Adair, ADEC

APR-22-91 MON 11:11

GENE SAUSE & CO.

FAX NO. 5032848037

F.C.I

*Hein-Adon
789-567?***GENE SAUSE & COMPANY**ALASKA HILL BUILDING, SUITE 200 • 1800 NORTHWEST FRONT AVENUE • PORTLAND, OREGON 97209
TELEPHONE (503) 811-4101MARINE INSURANCE
GENERAL INSURANCE

DATE: April 22, 1991

TO: Mr. Ed Bain
COMPANY: E.R. Bain Consultants Limited
FAX NO.: (416) 874-0078FROM: Ms. Ginny Wade
COMPANY: Gene Sause & Company
FAX NO.: (503) 894-9037

NO. OF PAGES (including this cover): 1

FOR TRANSMISSION PROBLEMS, PLEASE CALL (503) 223-5893.

SUBJECT: Northern Transportation Company, Limited

Dear Mr. Bain:

Thank you for your April 16, fax regarding your clients movement of Oil Barges into the territorial waters of Alaska.

I am afraid that the Alaska Division of Insurance is slightly confused on what we provided to them as evidence of insurance for our various clients. While it is true that our clients are placed with a Ship Owners Mutual Insurance Club, the insurance that was evidenced to the State of Alaska was a separate Pollution Liability Insurance Policy that we obtain from the Lloyd's Marketplace. In order to meet the State's requirements, it was necessary for us to, in essence, purchase double insurance on the Oil Barges moving in the State of Alaska's waters. This was, of course, a financial burden on our clients, but was the only way to be in compliance with their state laws.

Unfortunately, since the passage of the Federal Oil Pollution Act and the pending June 1, implementation of the State of Alaska's new regulations, the London Marketplace has now firmly stated that they will no longer provide any form of insurance that will be direct action as is required by the State of Alaska. When the current policies we have in place expire, we will be in the same situation as you find yourself.

We are working with the State of Alaska in trying to convince them that their requirements are not commercially available. We are also having meetings later this week with one of the mutual Protection and Indemnity Clubs in order to elicit their assistance in defeating the State of Alaska's proposed statutes. If you would like to check back with me in a week or so, I would certainly be glad to update you on any progress we make toward resolution of the State of Alaska problems.

Best regards,

Ginny Wade

Ginny Wade

GW:wk

INTERNATIONAL GROUP OF P & I CLUBS

78 FENCHURCH STREET, LONDON EC3M 4BT

Telephone: 071 451 2071

Telex: 330000 INTCL

Fax: 071 451 2527

Secretary and Treasurer: D.J.L.

D.J.L. WATKINS

BY FAX

5th April 1991

H.E. Mesirov, Esq,
Robins, Kaplan, Miller & Ciresi
1220 19th St. N.W. Suite 700
Washington D.C. 20036
U.S.A.

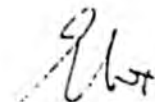
Dear Hal,

Certification: Alaska

Thank you for your letter of 1st April enclosing copy of Foss' letter of 28th March.

Perhaps the simplest answer is to underline that the Clubs in the Group are not prepared to issue certificates of financial responsibility in any of the States. This seems to have been accepted now in Alaska where in practice charterers provide the security required under State law. I regret that there is no flexibility on this issue and hope that Foss will be able to reach a satisfactory conclusion with the State authorities.

Yours sincerely,



p1? D.J.L. Watkins



Alaska State Legislature

*Senate Special Committee on
Oil & Gas*

Please enter into the record my testimony to the

committee name

committee on

SB 263

, dated

4-26-91

bill/subject

This a letter in support of SB 263.

Kodiak Oil Sales Inc. is a fuel distributor serving the Kodiak Area. We are a family owned business and have operated as a family business since 1950.

I would like to encourage the passage of SB 263.

The proposed regulations that came out of HB 567 have created many problems for fuel distributors like us.

There are so many unknown factors and unanswered questions. Trying to comply with regulations that don't actually exist is very confusing for both the State DEC and Industry.

Applying the same standards to Alyeska, Exxon USA and Kodiak Oil Sales Inc. (or electric utilities in Western Alaska) doesn't make sense to me. What does make sense is separating the issues of Crude and Noncrude, then designing regulations that fit the very different industries involved and the very different risks to the environment.

The passage of SB 263 will allow for a more orderly process, one that makes sense both to government and industry. A more orderly process makes for better Laws and better Regulations, regulations that are much better for both government and industry.

Jim Ramaglia
Vice Pres
Kodiak Oil Sales Inc
486-3245

Signed: *Jim Ramaglia*

Testifier

Kodiak Oil Sales Inc.

Representing (Optional)

Box 1487 Kodiak

Address

486-3245 486 3205 (Fax)

Phone No.



P.O. BOX 1487
KODIAK, ALASKA 99615

Attn: Bob Herron

Senator Lyman Hoffman

Fax 465-4523

April 25, 1991

Dear Senator Hoffman:

This is a letter in support of SB 263.

I'm a fuel distributor in Kodiak, and own a NON CRUDE oil terminal. I believe my views are shared by most other "fuel distributors" and "electric utilities" in the State.

House Bill 567 and the regulations that resulted from them have caused companies like mine a lot of heartburn. HB 567 and the regulations that have resulted were written with "tunnel vision" looking primarily to regulate the Alyeska Terminal and its tanker traffic. Many of the requirements are not practical or achievable for rural Alaska.

Using the same set of rules for both Crude and Noncrude operations, is like trying to put a square peg into a round hole. Refined fuel distributors and the barges that service them are much different than Alyeska and the Exxon Valdez.

I have felt throughout the process that a solution would be to separate the issue of crude oil and non crude oil, for both terminals and vessel traffic. Then formulate the laws and regulations around the potential risks that each present. For example a few thousand gallons of diesel fuel or gasoline is a much different threat to the environment than a similar amount of crude oil.

Senate Bill 263 appears to do separate the issues, but I would like to suggest one change.

Section 1. (b) remove the wording " with storage capacity of less than 10,000 barrels"

Many non crude terminals in the State are greater than 10,000 barrels. The costs that larger facilities are having to undertake should also be considered when looking at the impact of regulations.

Yours truly,

Jim Ranaglia
Vice pres

186-3245 Phone
186-3205 Fax

1991-03-18 17:48 Lowndes Lambert Eastcheap

071 283 1970 P.02

**Lowndes Lambert Marine Limited**

Lowndes Lambert House 53 Eastcheap London EC3P 3HL
 Telephone 071-283 2000
 Facsimile 071-283 1970 and 071-220 7548
 Telex 8814631 Cable Eltelge London EC3

Our Ref: GRLKR/EP/H

18th March, 1991

Gene Sause & Company,
 Albers Mill Building,
 Suite 620,
 1200 Northwest Front Avenue,
 Portland,
 Oregon,
 U.S.A.

For the attention of Ginny Wade

Dear Ginny,

POLLUTION**State of Alaska Financial Responsibility**

Following our recent correspondence and telephone conversations regarding the current position of our London Underwriters in respect of proof of Financial Responsibility, I am writing to advise as follows:-

We have available to us several markets for the insurance of Pollution here in London. There are specific Lloyd's and/or Institute of London Underwriters members plus various agencies here in London who write for and on behalf of the aforementioned. We do also place a Pollution cover specifically for your office. Following the introduction of the United States Oil Pollution Act 1990, these Underwriters reviewed the basis on which they were prepared to offer coverage in respect of this exposure. The outcome of this review was to withdraw all previous forms of cover and offer in its place the "limited" London form. This form does not cover any additional coverage in respect of specific State Regulations. Additionally, they no longer offer nor provide any proof of Financial Responsibility under either the Act or any State Regulation.

I do appreciate this is not what you wanted to hear but must advise that London Underwriters are adamant in their stand in this respect.

Yours sincerely,
 LOWNDES LAMBERT MARINE LIMITED

Gerald Becker



A subsidiary of and agent for Lowndes Lambert Group Limited
 Registered office 53 Eastcheap London EC3P 3HL
 Registered number 136551 England

TOTAL P.02

A APR 1 1991
NUSHAGAK ELECTRIC CO-OPERATIVE, INC.P.O. BOX 350
DILLINGHAM, ALASKA 99576TELEPHONE (907) 842-5251
* * TELECOPIER (907) 842-2799 * *

ALASKA

Telecopy Transmittal Sheet
(Transmitting from Canon FAX-610)

TO: REP GEORGE VAIKO

Attn: _____ FAX Number: 465 2997

No. Pages: 9 DATE: 4-1-91 TIME: _____
(incl. this page)

FROM: DAVE BOUKER

MESSAGE

RE: HB 567 PASSED IN 1990WE ARE BEGINNING TO FEEL NEGATIVE
IMPACT OF THIS LEGISLATION.I HAVE WRITTEN TO JOHN SANDOR, DEC
COMMISSIONER, ON MARCH 21, 1991 AND ON
APRIL 1, 1991 CONCERNING THIS MATTER.
COPIES OF LETTERS ENCLOSED.ENERGY COSTS HAVE ALREADY RISEN AS IS
EVIDENCED BY 24% INCREASE IN FINANCIAL
RESPONSIBILITY INSURANCE TO \$26000 PER YR.
ACCORDING TO LATEST FIGURES (ENCLOSED)
INCREMENTAL COSTS TO RURAL UTILITIES
AS RESULT OF NEW HB 567 REQUIREMENTS
MAY EXCEED \$100,000.WE NEED SOME RELIEF — CAN YOU HELP?

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE
CALL: (907) 842-5251 OR (907) 842-5295



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

March 21, 1991

John Sandor, Commissioner
Department of Environmental Conservation
PO Box 0
Juneau, AK 995811

Dear Commissioner:

Last year the Legislature passed House Bill 567 which addresses financial responsibility for oil terminal operators, as provided in A.S. 46.04.040. Presently, this piece of legislation was introduced as a response to the Exxon Valdez spill.

As so often is the case, hasty legislation makes for bad law, and I believe that such a condition exists here. Unfortunately, this piece of legislation failed to address existing shortcomings in the financial responsibility statute and appears to merely perpetuate a weakness that really isn't in anyone's best interests.

At hearings during consideration of HB-567, I did have the opportunity to comment on this issue. However, I do not believe that I did a very good job on the matter because problems still exist in the statute.

In the meantime, I have prepared a paper on financial responsibility of oil terminal operators which is relevant to these comments. Please note the attached.

If you should be so inclined, I would be happy to discuss this matter further.

Please advise.

Sincerely,

David F. Bouker
General Manager

lwb
Enc.

FINANCIAL RESPONSIBILITY

AS 46.04.040 (a) requires proof of financial responsibility for a non crude oil terminal in the amount of \$25 per incident for each barrel of capacity at the terminal or \$1,000,000 whichever is greater...

AS 46.04.040 (e) states that financial responsibility may be demonstrated by one of the following:

1. Self Insurance
2. Insurance
3. Surety
4. Guarantee
5. Letter of Credit approved by the dept.
6. Other proof of financial responsibility approved by the dept.

Nushagak Electric Cooperative, Inc. has non crude capacity as follows:

Tank No. 1	520,000 gal.	12380 bbls.
Tank No. 2	520,000 gal.	12380 bbls.
Tank No. 3	24,000 gal.	571 bbls.
	<u>1,064,000 gal.</u>	<u>25333 bbls.</u>

NEC is financially unable to self insure and has purchased liability insurance to meet the financial responsibility requirements from foreign insurers. In 1989 the cost of insurance was \$.021 per gallon of capacity; in 1990, the cost increased to \$.026 per gallon of capacity. This represented a 23.8% increase or making a total annual cost of \$23 per consumer. There is nothing to indicate that increases in cost will not continue.

The following factors are appropriate to the discussion on the requirements of the existing statute:

1. It would seem that exposure to oil spills should be more properly based on thru-put rather than capacity. Two tank farms of identical capacity would have widely varying exposures depending on the amount of fuel pumped in and out. Therefore it would seem reasonable as well as sensible to base the financial responsibility requirements on thru-put and not capacity.
2. Oil Spill Pollution Liability Insurance is not available from domestic insurers; it is available from Lloyds of London only.
3. There is probably great diversity on how terminal operators provide financial responsibility with large operators being generally self insured and smaller operators (those least able to pay) purchasing insurance or letters of credit.

Letters of credit while costing substantially less than insurance provide a false sense of security to the operator and to the state. If a spill does occur, the state immediately forecloses on the letter of credit and the small rural terminal operator may find himself suddenly increasing his debt load by \$1,000,000 or more.

The impact of such a situation may well be to bankrupt the operator which is frequently a municipality or a small non profit rural electric cooperative and thus placing themselves in a financially precarious position. Very likely it will be the state legislature that has to bail the terminal operator out thus ultimately paying for the damage claim that the state initiated.

4. Purchasing liability insurance including pollution liability insurance never provides coverage for damages incurred on the insured's premises. Generally, terminal spills originate on the insured's premises and depending on magnitude, may spread to others' premises. At that point, the pollution liability insurance would begin to apply.

This condition could have the undesired impact of the terminal operator having insufficient resources to clean up a spill occurring on his own premises but being able to produce legally acceptable financial responsibility.

5. As of this writing, it would appear that there is little incentive for an oil terminal operator to improve his facility. There seems to be little enforcement of standards of construction applicable to tank farms and related diking facilities. There is no state or federal inspection program in use that can offer even a modicum of oversight or standardization in the operation and development of tank farms.
6. The financial responsibility based on capacity rather than thru-put serves as a deterrent to installing additional capacity. Diesel fuel is the single largest component of the cost of electricity in the rural areas. All too frequently, the rural area is served by a single supplier thus creating a monopolistic position (and attendant high prices). In the Dillingham area the installation of additional capacity resulted in a fuel cost to NEC approximating 50% of that of the single source supplier. This resulted in savings of approximately \$48,000 per month of which \$16,000 resulted in direct savings to the state in reduced need for PCE. The rural community is held hostage to the single source supplier and existing regulations exacerbate this situation.

INSURANCE POOLING

The concept of insurance pooling may meet a substantial need for financial responsibility for all terminal operators in the state. This concept would provide for the establishment of an insurance pool presumably operated as a subsidiary of the Division of Insurance whereby all terminal operators would be obligated to provide support by premiums based on thru-put in their facilities.

Advantages of such a system would include:

1. Each operator would have the same liability or cost based on his own activity.
2. Since it is anticipated that there would be 100% participation, the unit cost of premiums would be much lower than are presently paid to Lloyds.
3. This program would be self supporting; administration costs would be paid from premiums. Additionally, it is believed such a program could also support an inspection program which would in turn help to minimize exposures.
4. The accumulation of revenues from the pooling could, at some future date, be sufficient to fund future potential liabilities. This could result in premium moratoriums.
5. Funds paid in the pool would remain in the state rather than fueling our balance of payments deficit.
6. The state would be assured that the goal of environmental protection for all pollution liability exposures was adequately covered thus meeting the purpose and expectations of financial responsibility.
7. Insurance pooling would promote competitive pricing, help to lower fuel costs and establish less reliance on PCE by providing incentives to build adequate capacity; present plan penalizes any additional capacity.

(ljc:reports/finres)



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

April 1, 1991

John A. Sandor, Commissioner
Department of Environmental Conservation
PO Box 0
Juneau, Alaska 99811-1800

Dear Commissioner:

On March 21, 1991 I wrote to you concerning the shortcoming of the financial responsibility requirements of HB 567 which was passed in the last session of the legislature.

Subsequent to that date our consultant prepared an analysis of the Oil Spill Contingency Plan Regulations outlined in your letter of March 4, 1991 which were also affected by HB 567.

Total impact of this legislation is yet to be felt but we do not necessarily believe it to be all in the public interest and request your review of it. If, in fact, "the proposed regulations were written primarily to regulate the Alyeska terminal and its tanker trade and the Cook Inlet operators," they have no reason to be applied to small rural Alaskan communities where energy costs are already at astronomical levels that are, in fact, supported by the state subsidized PCE program.

Again referring to my original letter of March 21 and its enclosures on financial responsibility, I believe that mandatory insurance pooling might solve DEC's concerns and the financial viability of the small rural operator.

In the meantime I am also enclosing an excerpt from our consultant, Jim Berry and Associates, on this matter for your review.

Sincerely,

David F. Bouker
General Manager

ljc

RE: Oil Spill Contingency Plan Regulations

This letter responds to your request for comments regarding ADEC's preliminary draft regulations pertaining to oil discharge prevention and contingency plans (C-plan). The attachment identifies specific sections of the proposed regulations which I think may present concern to rural Alaska operators. My comments are based on experience gained in preparing spill response and prevention plans for approximately 75 fuel terminals and 25 vessels which operate in Alaska.

The C-plan draft regulations were prepared by ADEC to implement 1990 SLA Ch. 191 (HB 567). They were distributed as a proposed draft on March 4 to all C-plan holders. By July 1, and after incorporating public comment, the draft regulations are to be finalized for public review. New regulations are to become effective December 1, and by February 1, 1992 operators are to submit new contingency plans. In the meantime, operators must update their current plans by June 1 to meet the statutory requirements which the proposed regulations are attempting to interpret.

Regardless of the outcome of the regulatory review process, the new statutory requirements will result in considerable expense and will significantly impact all regulated facilities and operators. Compliance with the proposed regulations will be particularly difficult and expensive for rural Alaska facilities and operators.

In my opinion, the proposed regulations were written primarily to regulate the Alyeska Terminal and its tanker trade, and the Cook Inlet operators. Many of the requirements are not practical or achievable for rural facilities.

For example:

- All facilities must maintain in their "area of operation" containment boom, response equipment and temporary storage capacity adequate to recover and store, at minimum, the volume of the largest tank.
- Response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10-foot waves.
- Operators must maintain, separate from facility response equipment, the necessary personnel and equipment to prevent spilled fuel from reaching all sensitive areas and areas of public concern.
- Marine operators must maintain in each "area of operation" the resources adequate to lighten the entire vessel cargo capacity within 48 hours.
- All facility operators must be trained to OSHA/ADOL hazardous waste standards. Currently, this requires certified training of 40 hours for operators and 64 hours for supervisors, and annual refresher courses.
- All plans must be reviewed and updated at least every six months.

If adopted as drafted, the new regulations will require every operator to rewrite its contingency plan to satisfy new format and content requirements. To obtain plan approval, operators will be required to purchase extensive amounts of new equipment, present voluminous environmental and equipment data/boilerplate, train operators to hazardous waste standards, and make commitments which are unobtainable.

The cost per facility to write new C-plans will likely exceed \$50,000. New equipment requirements could easily exceed \$100,000 depending on proximity to sensitive areas and areas of public concern. Initial training costs may vary from \$600-800 per person. Further, it is estimated that rural fuel costs will increase 30 cents per gallon to allow transporters and distributors to meet new expenses and liabilities.

I question whether the proposed regulations and associated costs are the best investment for spill prevention and response for rural operators. It appears the State is uncertain as well. As part of 1990 SLA Ch. 191 the legislature required ADEC to study:

"(1) appropriate locations for regional response [equipment] depots, based on an assessment of

historical evidence of where non-crude discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

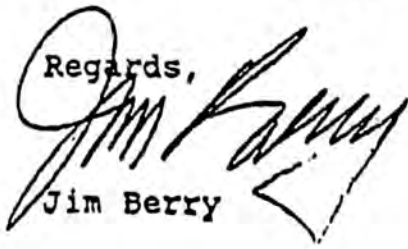
(3) requirements for personnel and equipment that should be imposed on [vessel] contingency plan holders; and

(4) appropriate roles for industry and state and local governments in the purchase, ownership, and positioning of discharge response efforts."

The mandated report is due July 1, 1991. Its affect on the proposed C-plan regulations is unknown. I project that if the proposed regulations are adopted there will be little uniformity in ADEC's interpretation, application and enforcement of the statutes. Operators who attempt to comply will bear the time and expense of being party to an inter-agency educational process. Further, due to confusion regarding implementation and content of the regulations, it is likely there will be numerous changes to the program, as well as possible statutory revisions.

I encourage you to discuss the matter with other rural operators and become involved in the review process. Hopefully, the regulations can be amended or modified in a timely manner. If not, a temporary exemption for rural operators may be appropriate. Effective February 1, 1992, operators who are not in compliance will be subject to a \$5,000 per day fine.

Regards,


Jim Berry

enclosure

Ribelin Lowell & Company
INSURANCE BROKERS INC.3111 C STREET, SUITE 300
ANCHORAGE, ALASKA 99503-1111
Phone: (907) 561-1250 Fax: (907) 561-4315

DESTINATION CITY AND COUNTRY: SITKA

FAX NO.: () 747-5065

DATE: 4-19-91

PAGES: ...
(INCLUDE THIS PAGE)

COMPANY: VENNEBERG INSURANCE, INC. ATTN: JAN WILBUR

MESSAGE

SUBJECT: SITKA FUELS, INC- 6-4-91 EXPIRATION
JAN-

GLORIA MCWHIRTER SHOULD HAVE MENTIONED IN HER... 4-9...
LETTER TO ED THAT WE'RE HAVING TO RE-MARKET THIS
PROGRAM W/ A NEW LEAD UNDERWRITER, WHICH MEANS WE
NEED MORE LEAD TIME. SECONDLY, PREMIUMS ARE UP SUB-
STANTIALLY. MY GUEST IS SITKA FUEL COULD BE LOOKING
AT A \$40-\$50,000. COST. TO MY KNOWLEDGE, LONDON IS THE
ONLY SOURCE FOR MARINE FUEL TERMINALS.

PLEASE ADVISE IF YOU WANT ME TO PURSUE THIS. GLORIA
SENT A ONE Pg QUESTIONNAIRE W/HER LETTER

TTTUNKS



SENDER:

Ribelin Lowell & Company
Insurance Brokers Inc.

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Senator Dick Eliason
Alaska State Legislature
P.O. Box V
State Capitol Building
Juneau, AK. 99811

May 2, 1991

Dear Senator Eliason:

A marine industry organization from Anchorage advised us on Friday May 26, 1991, of Senate Bill 263, which had been introduced, was in committee, and that testimony was being received on that afternoon. This bill would amend a portion of HB 567 of 1990. It would offer some relief from the regulations that go into effect on 1 June 1991; extending portions of the regs until 1992. We have submitted written comment on this bill to the Oil and Gas Committee. We invite you to review the bill and encourage its passage.

Senate Bill 263 would allow time to study and analyze non-crude operations, including facility operations, transportation of and the economic effects. The operational and engineering standards, established by the state in HB 567, we consider to be unworkable and as a result petroleum transportation operations by our company will be discontinued on June 1, 1991. Operating under the interim approved contingency plan we now have, plus amendments that must be made, we feel cannot be done legally. The opposite of course being illegal, which subjects Samson Tug and Barge to civil penalties, lawsuits, and possible criminal action. We have been advised that other transportation companies are considering this same avenue.

As our State Senator, we would request that you keep us up to date on the outcome of this bill and future bills concerning the transportation of petroleum products.

Sincerely,

Albert M. Snelling
ALBERT M. SNELLING

Albert M. Snelling
ALBERT M. SNELLING
Safety Director

Copy: Congressman Grussendorf
Senator Cotten
Senator Hoffman

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Jerome Brown
Sitka Fuels, Inc.
Box 1947
Sitka, AK. 99835

May 1, 1991

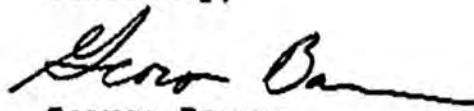
Dear Mr. Brown:

This letter is to inform you that effective 1 June 1991, we will be unable to deliver any petroleum products to your facility. Due to Alaska statutes (HB567) that will become effective June 1, 1991, Samson Tug and Barge will be unable to comply with the law, which we consider unworkable. Further operations under our Contingency Plan would constitute an illegal action on our part. Liability spill insurance coverage for the T/B Annahootz is minimal in comparison to the possible liabilities that could be incurred for a spill incident. Therefore because of regulatory action and increasing cost we are forced to discontinue our fuel delivery service.

Presently, there is legislative action to amend HB 567 and extend previous requirements until January 1992. In the event this bill, SB 263, passes, we will continue our fuel operation and will be able to provide you continued service.

We regret this action to a long and valued customer, however we must protect our company and its employees. Thank you for your patronage and your understanding.

Sincerely,



George Baggen



Alaska State Legislature

SENATE SPECIAL COMMITTEE
OIL & GAS

Please enter into the record my testimony to the _____
committee name

committee on SB 263, dated 29 April 1991
bill/subject

We are in favor of SB 263. There must be an understanding of the difference between persistent petroleum products (crude and heavy oils that are going to hang around awhile) and non-persistent petroleum products (gasoline, diesel, and aviation fuels that are going to dissipate thru various avenues in short time) by the regulators, to make HB 567 workable. The industry that transports and stores non-persistent petroleum products are forced to comply with regulations that are aimed at the persistent oil transporters. There is a difference in the two. Something must be done to amend the regulations.

The economic ramifications of HB 567 as it stands is going to be far reaching. Continuing along the trackline now set, the number of transporters in business is going to decline very rapidly. Who is willing to mortgage the company to pay the insurance premium so they can transport gas and oil in Alaska? But worse of all, the consumer in the bush and the small coastal communities and the State of Alaska are going to pay the cost.

To make this bill work, when passed, the legislature and the Department of Environmental Conservation (DEC) must be willing to listen and learn from the industry (the non-persistent gas and oil transporters and facility operators) on who, what, where, when and how the industry functions. To date in dealing with DEC and in reviewing "preliminary draft 1/28/91 - oil discharge and contingency plans", it is easily noticeable, the inexperience of personnel involved in the regulatory process.

Put common sense and communication to work in solving this problem, pass SB 263 and let us study the problem together.

Signed: _____

Testifier

SAMSON TUG & BARGE CO.

Representing (Optional)

P.O. BOX 559, SITKA, AK. 99835

Address

(907) 747-8559

Phone No.

TESTIMONY OF SEAPRO MANAGER CONCERNING SB 283

04/30/91

SEAPRO is a cooperative organization made up of companies who transport, store, and use bulk quantities of oil in Southeast Alaska. With the exception of the Unocal terminal in Ketchikan, none of the companies who make up our membership can be considered "big oil". We are predominantly small businesses, the majority of whom are locally owned. Our members include tug and barge companies, medium and small fuel terminals, mining companies, pulp mills, and others. Our members are located in Juneau, Ketchikan, Sitka, Petersburg, Wrangell, and Thorne Bay. Some of our members have operations which service virtually all the smaller communities and habitations in the region, while others simply consume oil in sufficient quantity to fall within the jurisdiction of the new state law.

We are a relatively new entity, having officially started activities last December after several months of planning and organizational work. One of the main purposes of our organization is to provide a mechanism for making better use of the pollution response assets which already exist within our member companies, and to seek improvements in the overall pollution prevention and response system within our region.

SEAPRO has been working with co-op members, ADEC, the Coast Guard, other state and federal resource agencies, local emergency planning committees, and response organizations outside the region to identify region specific needs, conditions, and concerns which directly relate to the pollution prevention and response infrastructure of the region.

Naturally, the requirements of state law and regulation are a portion of the equation which will drive the final design of our region's system, so SEAPRO has been careful to pay close attention to developments in those areas, but especially to the non-crude oil regulations promulgated under HB 567.

Last Thursday and Friday, I participated in a two day meeting in Anchorage of a working group dealing with ADEC's draft financial responsibility and contingency plan regulations for non-crude oil vessels and facilities. I participated in this working group with the express purpose of trying to contribute the views of our region's companies who are very confused as to how they can comply with several specific provisions, and what impacts these regulations will have on their ability to continue in business. Additionally, as a professional in the pollution prevention and response fields, I had hoped to suggest specific technological language and methodologies which could improve the workability of the proposed rules.

While I am not all that knowledgeable about insurance matters, it appeared that some progress was made toward resolving several of the insurance industry's objections to the draft financial responsibility rules during the first day of these meetings. Unfortunately, less progress was made in addressing technical details of the planning regulations.

It is my opinion that there are serious technical flaws with the draft planning regulations. Additionally, so far as I can determine, there are still no prevention regulations available for us to work with. It is imperative that these regulations, together with the financial responsibility regulations, be considered as a comprehensive package, especially as they relate to the interdependent system of distribution, storage, and use of distilled or refined products which exists in our region of the state. Failure to adopt these regulations as a system will limit their effectiveness and make compliance that much more difficult to achieve.

During these meetings, it was obvious to me that there is a great gap between what the DEC thinks they are saying to industry with these regulations, and what industry in our region believes is being said. This is not simply a matter of semantics. It is also a matter of our assumption of how these regulations will be applied by the state, and interpreted by the courts. These assumptions, even if incorrect, are exacerbated by an atmosphere of confusion caused by the law having an effective date which precedes the state's ability to complete a normal regulatory process.

Many of our businesses are firmly convinced that they cannot comply with certain provisions of the regulations because the technology to meet the required standards does not exist. There is also the problem of acquiring and putting into place capital assets which may meet some of the requirements, in time to comply with the law. Following this logic then, it should be obvious that these businesses believe they are faced with a quandary. Do they continue in business knowing they cannot comply with technical provisions of the regulations and hope that the government will correct the situation eventually, or should they strictly comply with current law and unadopted regulation and cease doing business?

I believe that progress has been and will continue to be made in constructing practical regulations which can satisfy the intent of the legislature. However, the current situation of HB 567 becoming effective in advance of implementing regulations creates an artificial barrier to progress and an atmosphere of uncertainty for our member businesses.

The work to craft functional regulations implementing HB 567 has at least begun, but there is a long way to go. The DEC, our businesses, and the communities of our region need time to do this work. I believe that SB 263 will give us an opportunity to do this work. More importantly, it will also give our member companies some assurance that while the regulations are being crafted, they can continue in business without the fear that they may be unintentionally breaking the law. I urge the legislature to adopt SB 263.

R. M. Mullen

Manager

Southeast Alaska Petroleum Resource Organization



P.O. Box 1947
 Sitka, Alaska 99835
 Phone (907) 747-8460

Post-It® brand fax transmittal memo 7871		# of pages > 4
To: <i>Dick Eliason</i>	From: <i>Don Brown</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>465-4928</i>	Fax # <i>747 5382</i>	

May 2, 1991

Senator Dick Eliason
 President of the Senate
 Juneau, Ak.

Dear Senator Eliason:

Thank you for your prompt response to my phone call this morning. I am enclosing copies of the three letters I discussed with you. The problem is the outfall of HB 567, passed last session. The regulations being developed by the DEC are not in place and without a program you cannot tell the players. This is generating much concern among players and spectators alike.

At the DEC public hearing in Sitka yesterday evening a large portion of the public expressed a degree of delight that transporters and oilers were getting what they deserved. I did not favor these people with my Economics 101 theme, the consumer pays for all direct and indirect cost in the purchase price. I have been exposed to projected consumer cost per gallon, of the current DEC regulations, of a low of 30¢ per gallon to a high of 57¢ per gallon. Sitka Fuels is going to comply with whatever washes out of this deal and the end user will address all costs except the anxiety factor, and my blood pressure is the same as twenty years ago.

I strongly support the position of SB 263 by Senators Hoffman and Adams, requesting a delay in implementing the effects of HB 567 and bringing some realism to this "Land of Oz".

Thank you for volunteering your staff to distribute to other addressees. I will FAX direct to the Lt. Governors office. All the real halibut fishermen have left town.

Senator Al Adams
 Senator Sam Cotton
 Senator Rick Halford
 Senator Lloyd Jones
 Speaker Ben Grussendorf
 Representative Cheri Davis
 Representative Jerry Mackie
 Representative Robin Taylor
 Lt Governor Jack Coghill

Sincerely,

Don Brown
 Don Brown

Enclosures: Samson 5-1-91
 Venneberg 5-1-91
 Ribelin Towell and Co. 4-19-91

VENNEBERG INSURANCE, INC.

May 1, 1991

225 Harbor Drive
P.O. Box 199
Sitka, Alaska 99835
(907) 747-8625
FAX (907) 747-5065

Jerome Brown
Sitka Fuels, Inc.
P.O. Box 1947
Sitka, AK 99835

Re: Pollution Liability
#L5552/90

Dear Jerome:

The above pollution liability policy for Sitka Fuels, Inc. is due to expire on 6/4/91.

We have been notified by Ribelin Lowell & Co. that the current lead underwriters in London for this program are pulling out. They are in the process of remarketing to new underwriters and believe that they will be able to place the coverage but at a substantially higher premium. Last years cost of \$27,000 is likely to increase to something like \$40,000 - \$50,000.

As you are aware, the problem with marketing this coverage is the requirements that DEC has in the "Alaska Endorsement". We are in the process of getting quotes from two other markets which are able to provide this coverage but without the current wording of the "Alaska Endorsement".

One of these markets, AIG, is a very large writer of environmental impairment liability. They have looked over the current DEC required wording for Alaska and believe that two problems exist. One is that the wording requires the insurer to pay first dollar expense (No Deductible). The other problem exists in changing the coverage from a claims made to an occurrence basis.

The current financial responsibility laws are limiting competition for this coverage to only one source. It is possible for DEC to change the wording requirements and not reduce the coverage that is carried by Sitka Fuels.

If you have any questions on this or need any additional information please let me know.

Sincerely,



Mike Venneberg

SB 263 - APR. 30

Tanks - 5 - 10,000 - 40 50 tanks.
Over 10,000 - 180

Please provide chart showing distribution
of sizes of tanks

SERC (?)

Sen. Pappal

Conf. w/ 72 hr planning staff for June 1
for cruise -
Post - 72 hr.

H. B. 196 - House Finance 5/1/91

DEC - Adair -
Love it, except:

1. Sunset
2. subsec. (d) - Jim. resp.

News -

Forward Ellis amendment out, incl. in title.
Adopted w/out objection.

~~TH~~

Statute 46.04.030 (e) - "terms + conditions"

18 AAC 75.365

If C-Plans not approved
or conditionally approved, applicant
must apply for variance

Law - variance can be used for
procedural or only substantive
time frames, etc.

Law set only subot.

Larry doesn't feel we need any
authority for interim app'l -
can always issue app'l for
time frame

Q

Sta ROW lease say must have C-plan
Similar permit under lease for
production.

(B)

SB 263 - 4/31

BP - Problems -

1. Legal -

2. No C-Plan

John ^{Holley} - C-Plan Status - PB + Endicott
Lippert - Lumsden
been reviewing '85 plan, which was
modified in '88
2 plans - Paper work in this
week.

Surprise was LZM review; length
of time to complete
Only in last 3 weeks been advised
LZM review required.

Was confusion as to whether had an
existing, approved plan.

Last agreed not submit plans on May 10.
DEC said hurry up, won't be time for LZM
before June 1

Who does LZM? We deal w/

Processing operations previously regulated.
567 brought in everything. Could be
argued their existing plan covers all

(3)

Both: AG currently reviewing whether LCM review req'd.

Larry Mathis: Will BP docs pass 567?

BP plan has expired. They sent doc's to renew DEC had nobody in office.

Written doc. not in compliance; believe they have equip. etc; but not correct documentation.

Believe they will not be in compliance for a period of 3-4 weeks.

Dave: If plan expired in 8 - did you ask them to submit whole new plan.

1. Existing plan revised + updated under old law -

2. Need new revisions to 567

BP "going extra mile" - getting together a good doc.

Coraco's C-plan also is expired; also prob. DEC's fault.

DP Palmeries? - Chuck

Currently approved C-Plan?

What is issue ~~is~~ before ALG?

Next What are legal concerns as of June 1?

1. 2 neighboring facilities have different response, both approved.
2. Uncertainty w/ CZM approved
3. Is a law with teeth; DEC can shut down;
 - DEC may do that
 - Somebody else may say DEC is doing

Murtz - Can't prevent tirial suits - One operator can sue another, really rack things up, but not be back with litigation

Co-current group - maybe get standing

(7)

Cherxon - Ray Phummer -

Support 263 in present form; strongly
urges amend for ~~the~~ crude.

Finding financial resp. requirements
repelling;

Also finds C-plan req. confusing.

Miki - closing - marginal cost asser.
w/ 567 - no longer economic.

§ weren't formerly req'd to have
C-plan, then are "newly
regulated" - and are not out
of compliance.

But BP say used to at least have
C-plan

BP- Legal

§ LZM is not there,
prob. have approved plan
by June 1

§ is, then probably not have
approval by June 1, we'd be
concerned

3d pt suit asking court to shut
down BP

Statute permitting interim approval by DCL
would alleviate.

Pres. Commission - req. everybody to file by
June 1, but defer until June 1 next year
power to shut down.

Dave - Take of RMOD from table

Muel - \$60, DV fiscal

Molly - take studies out of this bill.

Dave - Please provide list of out of compliance holders.

DV: any pending suits? No.

SENATE SPECIAL COMMITTEE ON OIL AND GAS

April 30, 1991

11:12 a.m.

MEMBERS PRESENT

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Lyman Hoffman
Senator Dick Shultz

MEMBERS ABSENT

Senator Bettye Fahrenkamp

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 28

Relating to oil and gas exploration in Alaska and the Presidential Task Force on the Trans Alaska Pipeline System.

SENATE BILL NO. 263

"An Act relating to oil discharge prevention and contingency plans and financial responsibility requirements for noncrude oil operations; and providing for an effective date."

PREVIOUS SENATE COMMITTEE ACTION

SJR 28 - No previous action to record.

SB 263 - See Senate Special Committee on Oil & Gas Committee minutes dated 4/26/91.

WITNESS REGISTER

Kathy Hathway, Staff to Senator Jay Kerttula
P.O. Box V
Juneau, AK 99811

POSITION STATEMENT: Testified on behalf of sponsor of
SJR 28

Riki Ott
Oil Reform Alliance
Box 1430
Cordova, AK

POSITION STATEMENT: Supports SJR 28

Mead Treadwell, Deputy Commissioner
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811

POSITION STATEMENT: Offered information on SJR 28 and
SB 263

Mike Mansker
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811

POSITION STATEMENT: Testified on SB 263

John Ringstad
British Petroleum Exploration
P.O. Box 196612
Anchorage, AK 99519

POSITION STATEMENT: Suggested amending SB 263

ACTION NARRATIVE

Tape 1, side 1

Number 001

#SJR28

The meeting of the Senate Special Committee on Oil and Gas was called to order by CHAIRMAN COTTEN at 11:12 a.m. He introduced SJR 28 (TAPS PRESIDENTIAL TASK FORCE) as the first order of business.

Number 005

KATHY HATHAWAY, staff to Senator Jay Kerttula who is prime sponsor of SJR 28, explained the resolution encourages both the Governor and President Bush to expeditiously appoint members to the Presidential Task Force that has resulted from the Oil Pollution Act of 1990 and which is going to be conducting a two-year audit of TAPS. Senator Kerttula feels that the results of the audit would be useful in encouraging further oil development on the North Slope.

Number 020

RIKI OTT, representing the Oil Reform Alliance, said the need for a Trans Alaska Pipeline presidential audit was evident after the oil spill when other problems with the system surfaced, specifically corrosion in the pipeline.

Ms. Ott noted that the Oil Pollution Act of 1990 wasn't authorized until August of 1990, and by that time, it was too late to get any money appropriated to the task force. The resolution requests that Congress provide full and immediate funding for the task force. The Alliance supports the Citizens Oversight Council on Oil and Other Hazardous Substances to have input into the Governor's appointments to the task force.

Number 058

MEAD TREADWELL, Deputy Commissioner, Department of Environmental Conservation, spoke to some of the other measures that are being taken to accomplish what the audit was set out to do in federal law. He said they do support creating the audit, but they are not sure it is going to happen.

The State Pipeline Coordinator's Office has come together and consists of the Department of Fish and Game, Department of Natural Resources, Department of Environmental Conservation and on the federal side consists the Bureau of Land Management, U.S. Department of Transportation, the Corps of Engineers and the Fish and Wildlife Service. They have brought together the combined federal/state oversight of the pipeline in doing what the audit has set out to do.

A corrosion team has been put together with representatives from the federal and state agencies, and they will be examining all components of the system over the next 20 months.

The General Accounting Office is the process of completing an audit on the pipeline now. Also, the Pipeline Safety Office has just completed a thorough review of Alyeska's oil spill contingency plan.

Deputy Commissioner Treadwell said a lot of the concerns that Congress may have had when they passed the authorization for the task force have already been addressed by the agencies. However, the Governor has requested advice already from the DEC and DNR commissioners' appointments from their departments, and he has names ready for the President whenever the President requests them.

Deputy Commissioner Treadwell said that if the committee wanted to make any modification to the resolution, he would suggest looking at other parts of the Oil Pollution Act of 1990, and asking for funding of certain programs addressing research that were promised under the Act.

Number 115

SENATOR COTTEN requested that Mr. Treadwell get together with committee staff to draft some possible amendments to the resolution. He stated SJR 28 would be back before the committee at a later date.

#

Number 125

#SP263

SENATOR COTTEN introduced SB 263 (OIL SPILL REQUIREMENTS;

NONCRUDE OPERATION) as the next order of business, stating the committee would discuss proposed amendments to the bill.

Number 145

MEAD TREADWELL, Deputy Commissioner, Department of Environmental Conservation, spoke to two potential amendments that were discussed at a previous hearing and are supported by the department.

The first amendment to page 1 removes the 10,000 barrel cap on the study of oil terminal facilities, and, basically, asks DEC to study noncrude facilities of 5,000 barrels or greater. Deputy Commissioner Treadwell estimated that the upper limit cost of the additional study would be \$300,000. He added that the department is in the process of preparing a formal fiscal note.

The second amendment would not only look at the costs of implementing the law on the vessels, barge owners and the operators and the persons they serve, but also would look at the benefits of this law through avoiding cleanup costs through implementation. He said while they understand that this will raise the cost of fuel at various points throughout Alaska and they are sympathetic with that, they also know that at any time a village or community could be asking them for emergency response funds to cover a facility that right now doesn't have sufficient prevention and response capability. He said he felt it was important to take a look at the risks of not having this law in effect for noncrude carriers, as well as the effect that the law will have on the price of fuel.

Number 180

SENATOR HOFFMAN commented that there are a lot of problems with the small refineries that need the studies, but if it is the committee's desire to have this addressed, he would suggest that both of the studies be taken out and put into a separate piece of legislation. He said his primary concern is the effective date.

Number 195

SENATOR COTTEN referred to the first amendment and asked if it was changing the perimeters of the report that they are supposed to submit next year. DEPUTY COMMISSIONER TREADWELL responded that under the law passed last year, the department has two studies that are in the process of being completed. One is due the first of July and the other is due late next year. One is basically an inventory of tank facilities between 5,000 and 10,000 barrels, and the other is a

transportation study. The amendment would take off the upper limit of 10,000 barrels and do a noncrude storage inventory for the entire state. SENATOR HOFFMAN added that the 10,000 limit was put on primarily because it is the average number of crude facilities in rural areas of the state and he wanted to look at the some of the economic factors that this legislation would have on those small users. SENATOR PEARCE added that last year DEC brought the committee a list of storage facilities in the state and a small number of facilities had a storage capacity of more than 10,000 barrels. Ten thousand seemed a likely cutoff point where they needed to survey to see what was out there below 10,000 barrels.

Number 275

SENATOR PEARCE asked how many facilities they think there are that are between 5,000 and 10,000 barrels. DEPUTY COMMISSIONER TREADWELL said he thought that right now that inventory was looking at 40 or 41 tanks.

Number 283

SENATOR HOFFMAN asked what the department's position would be if an upper limit of 150,000 barrels was put on the study. DEPUTY COMMISSIONER TREADWELL responded that he had no idea right now of what it would change as far as the numbers, but he had no problem with 150,000 barrels and didn't know where the best place would be to draw the line.

Number 385

SENATOR PEARCE said she is comfortable with putting into effect on June 1 the 72 hours planning standard for having equipment on site to handle the containment and cleanup of a spill. However, where she has question and where there may be difficulty for anybody trying to write their plan by June 1, is what happens after the 72 hours and with coming up with a definition of what a realistic maximum oil discharge is.

Number 475

MIKE MANSKER, Department of Environmental Conservation, said he chairs the HB 567 Technical Implementation Work Group and they have been struggling with the question of defining a realistic maximum oil discharge and how they are going to implement contingency planning based on the definition of it.

SENATOR COTTEN noted that it appears that by regulation that a realistic maximum oil discharge is already described. SENATOR PEARCE said it does not meet what the legislative intent was last year, nor does it contain what they were told by the department that they were going to do. MIKE MANSKER

agreed with her, saying that the draft response regulations were promulgated without benefit of having drafted the prevention regulations. The problem that the department is having in implementing the bill right now is that realistic maximum oil discharge is seemingly used in conflicting ways in the bill. He said he would be happy to meet with Senator Pearce and brief her on what's been going on with the working group and to discuss potential amendment language.

Tape 1, side 2

Number 001

JOHN RINGSTAD, representing British Petroleum Exploration, stated their interest in trying to expand the bill to include crude oil. There are a couple of areas of concern in the implementation of this, but it is not their intention to slow the bill down.

Number 015

SENATOR COTTEN said he would meet with Mr. Ringstad and other members of British Petroleum in the next couple of days to have a work session to listen to what their interests are.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.

#

TELECONFERENCE SITES AND THOSE TESTIFYING:

BETHEL: Bethel Fuel Sales, Ollie Olsen ✓

KOTZEBUE: Brad Reeve, Kotzebue Electric ✓

DILLINGHAM: Dave Bowker, mgr. of Nushagak Electric ✓

ANCHORAGE: Meera Kohler, mgr. of Naknek Electric

~~Steve Peterson~~
Bill Schoephoester, Petro Marine

Steve Peterson, Crowley

NOME:

Joe Murphy, Nome Joint Utilities
Don Stoltz, Arctic Lighterage ✓

SEATTLE:

Randy Collar, Delta-Western

^{Mahon}
Jerry McMahon, region vp Pacific ^{Region}
American Waterways Operators ~~Coast~~

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TELECONFERENCE SITES AND THOSE TESTIFYING:

BETHEL: Bethel Fuel Sales, Ollie Olsen

KOTZEBUE: Brad Reeve, Kotzebue Electric

DILLINGHAM: Dave Bowker, mgr. of Nushagak Electric

ANCHORAGE: Meera Kohler, mgr. of Naknek Electric

Bill Schoephoester, Petro Marine

Steve Peterson, Crowley

NOME:

Berke Wilson

~~Joe~~ Murphy, Nome Joint Utilities

Don Stoltz, Arctic Lighterage

SEATTLE: Randy Collar, Delta-Western

^{Mahon}
Jerry Mc~~Mahan~~, region vp Pacific ^{Region}
~~Coast~~
American Waterways Operators

Karen Wood -
ACE -

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* DELIVER TO: LIOCACE *
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* ORIGINAL *
* SENT: 04/26/91 TIME: 14:12 *
* FROM: LIOCMIL *
* SUBJECT: TESTIFIER *
* PRINT DATE: 04/26/91 TIME: 14:12 *
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ADAM

KAREN WOOD OF AK CENTER FOR THE ENVIRONMENT WOULD LIKE TO TESTIFY IF POSSIBLE.

JUDY

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* DELIVER TO: LIOCACE *
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SUBJECT LINE TO READ: TC NO., PL/FS, SHORT SUBJECT, DATE

T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: SENATE SPECIAL COMMITTEE ON OIL & GAS
SUBJECT: SB 263; OIL SPILL REQUIREMENTS; NONCRUDE OPERATION
MODERATOR: THERESA/KATHY
SITE: SITKA

PARTICIPANT LIST

TO TESTIFY

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. ALBERT SNELLING,	SAMSON TUG & BARGE		SB 263
2.			

T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: SENATE SPL CMTE ON OIL & GAS
SUBJECT: SB 263
MODERATOR: CHARLENE
SITE: HOMER

PARTICIPANT LIST

TO TESTIFY

~~TESTIFYING~~

NAME/REPRESENTING ADDRESS PHONE BILL NO.
1. LARRY SMITH, KACHEMAK RESEARCH INSTITUTE SB263
2.
3.

OBSERVING)

NAME/REPRESENTING ADDRESS PHONE BILL NO.
1.
2.
3.

T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: (S) SPECIAL COMMITTEE ON OIL & GAS
SUBJECT: SB263: OIL SPILL REQUIREMENTS/NONCRUDE OPERATION
MODERATOR: RAE RHODES
SITE: KETCHIKAN

PARTICIPANT LIST

TO TESTIFY



NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. RICHARD MULLEN, SEAPRO			SB 263
2.			
3.			
4.			
5.			

OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
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SCOMM

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Response Action Contractor Liability Limitation Sponsor Substitute for SB 270 Sectional Analysis

Section One. Findings. Twenty-five percent of the country's crude oil supply is transported through Alaska state waters and approximately 650 million barrels of crude oil move through Prince William Sound annually. Oil discharged into the environment causes considerable damage to fish, wildlife, and other natural resources of the state and impacts the commercial and subsistence livelihoods of state residents. Because of this potential damage, it is imperative that oil spills be responded to as quickly, aggressively, and competently as possible. In addition, under the provisions of the state Trans-Alaska Pipeline System Right-of-Way Agreement, the lessees, the holders, and their common operating agent are required to contain and clean up crude oil spills in Prince William Sound.

Section Two. Actionable Claims Against the State. Limits the liability of the state of Alaska for the registration of response action contractors (RACs) under AS 46.03.815 and approval of an oil spill contingency plan under 46.04.030. An action may not be brought against the state under AS 09.05.250 for claims arising from either of these approval processes. A suit cannot be filed for an act or omission of the state, or an employee or contractor of the state in responding to or directing a response action to a release or threatened release of oil unless the act or omission resulted from gross negligence or intentional misconduct.

Section Three. Registration of Oil Spill Response Action Contractors. This section establishes a voluntary RAC registration and approval process and directs the Alaska Department of Environmental Conservation to adopt regulations. Regulation must include:

- 1) minimum training standards for personnel,
- 2) verification requirements for personnel, equipment, services, and an adequate deployment plan; and
- 3) minimum professional response action standards and practices.

The state registration and approval program may be substituted by a U.S. Coast Guard approval when a federal program is developed and implemented.

The department shall establish fee applicable for the registration program as necessary to cover the costs of the program.

The department shall provide a list of registered and approved RAC to be made available to interested parties. In addition, registered RACs shall annually provide to DEC a list of contingency plans on which they have agreed to be listed.

Defines response action contractor as those who enter into a contract to respond to a release or threatened release of oil, as well as volunteers.

Section Four. This section amends AS 46.03.822, relating to financial responsibility for oil spill damages and clean-up costs, to include a response action contractor who agrees to be listed in a contingency plan approved under AS 46.04.030 but fails to respond to a release or threatened release of oil. The paragraph does not apply if the RAC is engaged in a concurrent response under another approved contingency plan in which the RAC is the primary responder.

Section Five. Amendment required to cross-reference AS 46.03.822 (b), that relieves financial liability for responsible parties for oil spill damages and clean-up costs; a responsible parties liability is not reduced as a result of an act or omission of a RAC.

Section Six. Amends AS 46.03.822(k), the definition of "damages" to cross reference AS 46.03.824.

Section Seven. Establishes that a RAC who responds to a release or threatened release of oil is not civilly liable for damages or clean-up costs if the RAC's act or omission was consistent with an approved vessel or facility contingency plan or a prepared state or national contingency plan, or if the act or omission was otherwise directed by the state or federal on-scene coordinator.

Section Eight. Establishes the limitations on liability contained above as follows (situations in which a RAC would not automatically have limited liability):

- 1) an action for personal injury or death;
- 2) an action for damages to tangible property not caused by oil;
- 3) an act or omission that occurs more than 60 days after the oil spill occurs, this can be extended for an additional 60 days with the approval of the state on-scene coordinator;

- 4) a RAC would otherwise be liable for the release or threatened release under AS 46.03.822, eg., the RAC was the responsible party that cause the spill; the RAC acts with gross negligence or intentional misconduct; or a RAC who is the primary responder listed and agreed to be listed on an approved vessel or facility contingency plan is not registered with DEC as required.

Section Nine. Establishes that the limitation of liability for RACs is not extended to RACS who do not respond or who caused the release or threaten release of oil.

Section Ten. Defines "registered" as defined under AS 46.03.815 established in this bill.

Section Eleven. This section clarifies that the liability of a potentially responsible party for oil spill damages and clean-up costs is not reduced as a result of acts or omissions of a RAC conducting a response action. In addition, limiting RAC liability does not affect the liability under AS 46.03 or under any other state law of a person other than a response action contractor.

Section Twelve. Reordering of AS 46.04.020 (a) (1) - (2) to (h) (1) -(2) in section thirteen.

Section Thirteen. Amends AS 46.04.020 to clarify that the common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system (TAPS) shall immediately contain and clean up a discharge of crude oil transported by or due to the operation of the pipeline system or due to related activities, including operation of a tank vessel berthed or travelling in state waters to or from a marine terminal.

This section also establishes that a proof of financial responsibility requirement for vessels engaged in intrastate voyages for crude oil from TAPS is subject to the review of the Alaska Public Utilities Commission (APUC).

Section Fourteen. Amends AS 46.04.030(e) to establish that DEC may not approve a vessel or facility contingency plan that relies on a RAC to be a primary responder if the RAC is not registered by DEC or the U.S. Coast Guard. This section is not effective until July 1, 1993.

Section Fifteen. Allows DEC until January 1, 1993 to develop RAC registration regulations.

Section Sixteen. Requires DEC to report to the legislature by March 31, 1993, on progress of the department in the development of the state to respond to oil spill of unknown origin and enhance regional response and coastline protection.

Section Seventeen. Repeals the section of HB 196 enacted in 1991 that are to sunset June 30, 1992.

Section Eighteen. If this act takes effect after June 30, 1992, section 17 is retroactive to June 30, 1992.

Section Nineteen. Establishes that the applicability of sections 4 - 11 apply only to causes of action accruing on or after the effective dates of sections 4 - 11.

Section Twenty. Delays the effective date of AS 46.03.825(b)(4)(C), added by section 8, and section 14 until July 1, 1993.

Section Twenty-one. Except for the delayed effective dates of sections 8 and 14, the act becomes effective immediately.

Recurring Issues Regarding Response Action Contractor Liability

If a response action contractor (RAC) is indemnified (released of liability) by the financially responsible party (usually the contingency plan holder), is it sound public policy to also limit RAC liability in statute?

Theoretically, RAC indemnification by the contingency plan (c-plan) holder/responsible party should be sufficient to limit the liability of RACs. However, given the potentially high costs responsible parties may face as a result of an oil spill and our litigious society, many RACs fear lawsuits from responsible parties for any "errors" occurring in emergency situations.

Probably of even greater concern, is RAC fear of third-party lawsuits if the responsible party is financially insolvent. In addition, limiting liability reduces the disincentives for vessels of opportunity and volunteers to respond to releases or threatened releases of oil. In summary, limiting liability should encourage prompt, aggressive, and sustained response to oil spills, thereby reducing the potential damages and costs of spills.

If liability is limited can the public be assured that a response action contractor will respond?

Limiting response action contractor (RAC) liability does not in and of itself ensure response. However, limiting liability does create a climate that encourages response. For example, despite reduced liability, Crowley Maritime testified at a Citizens' Oversight Council's (COC) public hearing that they probably would not respond to an oil spill if they thought the C-plan holder was not financially solvent. With or without immunity, there is currently no legal obligation on a response action contractor to respond. Just as RACs require assurance that they will not face liability exposure, the public needs assurance that a RAC will perform in a bold, aggressive manner if their liability is limited.

Does the Alaska Department of Environmental Conservation (DEC) presently have the authority and the ability to review response action contractor response capability?

DEC may have the ability under current statutes to assure performance by key response action contractors, but it currently has no actual or proposed regulatory

program to do so. If DEC has authority under present law and regulations, it is not using it. Currently, DEC only has authority over RACs through individual vessel and terminal contingency plans. To help ensure response, it is important for DEC to assert direct authority over RACs. Only with direct authority can DEC assess whether RACs are being appropriately listed on contingency plans submitted to DEC for approval.

More importantly, DEC does not currently inspect professional independent contractors (VRCA, Martech, Chempro) relied upon in contingency plans. DEC does not drill those independent contractors or verify their equipment either. Although it can be argued that DEC has the authority to drill or inspect a RAC's equipment and response capability when they drill a contingency plan holder, it is rarely if ever done.

For cooperatives, DEC has participated in drills that use the cooperative's equipment. For example, in Cook Inlet CISPRI has initiated drills, including equipment deployment drills, and invited DEC to participate.

In Prince William Sound, industry-initiated drills have also been conducted. However, only Alyeska's equipment has been drilled. After the first 72 hours of Alyeska's response, a management transition occurs. The secondary responder's capability to get equipment to Prince William Sound to replace Alyeska's equipment has not been tested. The drills to date have only drilled personnel management transitions and not equipment transitions. It should also be noted that Alaska is the only state in which industry oil spill response drills are conducted because of their high cost. Given declining oil production, drills may not indefinitely be an economically practicable way to ensure equipment and training capabilities.

Is state certification necessary if the Coast Guard is also considering certification?

Although the negotiated rulemaking committee for vessel response plan regulations is considering certification, the final decision will not be made by the Coast Guard until the proposed rule undergoes a 45-day public review and comment period, and reviews by the federal Office of Management and Budget and the Council on competitiveness. Even if certification is adopted, it will take a minimum of one to two years before a program implemented. In addition, only RACs that provide spill response for vessels are being considered certification under the Coast Guard negotiated rulemaking. The Coast Guard is not currently developing a program for facilities.

In addition, RAC certification must be designed to integrate with the contingency plan program for which RACs are used. The federal government will have its

own contingency plan program, and any federal RAC certification will be constructed to reflect that program. A contingency plan program is already in place in Alaska. The RAC certification program adopted for Alaska must be crafted to meet the needs of Alaska's oil program. The state has its own needs under the state's stronger oil spill statutes. Since it is very likely that the Coast Guard will adopt weaker standards for response requirements than Alaska's, it is important that any certification program accommodates our stronger statutes.

Washington, Texas, New Jersey and California all require RAC certification or pre-approval.

Is a requirement that a response action contractor comply with the the State Contingency Plan (under 46.04.200-210) adequate to assure responsiveness by the response action contractor?

In Alaska, our oil spill program is based on individual industry contingency plans approved by DEC under 46.04.030. These plans describe what actions industry will take in the event of a spill. Contingency plans address issues such as equipment, personnel and resources, expected response times, and critical habitat areas to be protected. These individual vessel contingency plans reflect the response planning standards required in HB 567.

The State Master Oil and Hazardous Substance Discharge Prevention and Contingency Plan developed under 46.04.200 describes state agency response, including 1) state notification procedures, 2) the state Incident Command System, 3) roles of each state agency, and 4) interaction with local and federal government. The state contingency plan does not describe specific requirements for industry response to oil spills. These requirement are only described in the state approved industry contingency plans under 46.04.030. Therefore, it is more important to assure that the RAC act in accordance with the state approved industry contingency plan under 46.04.030 than the State Master Contingency Plan under 46.04.200.

Is there a likelihood of a spill occurring from a vessel with no assets other than the vessel itself?

This has happened and could occur again, particularly where contingency plans are held by single vessel owners. It is argued that the worst case scenario of a vessel owner becoming insolvent and failing to respond or pay damages will never happen. It is further asserted that federal and state funds are available to pay costs attributable to oil spills. The first use of the government funding is to pay for the spill response and clean-up costs.

Using the federal and state funds as a safety net in a small number of spills is probably inevitable, but it should not be relied on as justification for reducing requirements for a high level of protection and assuredness for vessels and facilities that are operating in Alaska. In addition, Alaska and the national system of spill response is industry based; it is not intended to be a government response process.

The second use of the federal fund is to pay third-party damages. Historically, that fund has not compensated injured parties fairly or quickly. Indeed, that fund recently refused to honor lost subsistence claims from the *Exxon Valdez* oil spill. Moreover, the fund does not provide any assurance that the equipment necessary to be on scene immediately to respond to a spill will, in fact, be available.

The ownership structure of vessels in Prince William Sound which allows companies such as First, Second and Third Shipmor to be created to carry a major oil company's oil should be considered when making the assumption that the federal financial responsibility requirements will prevent a worst case scenario from taking place.

In addition, the federal financial responsibility rules have not yet been set by the Coast Guard. Will the vessel or facility be able to use P&I clubs? Will they be able to self insure? What kind of insurance will they be required to obtain? These questions are still unanswered.

In Prince William Sound, with whom does Alyeska sign response action contracts?

An Alyeska spokesperson has stated that Alyeska signs contracts with the contingency plan holder. However, this is not true in all cases, specifically regarding British Petroleum (BP) and Amerada Hess. British Petroleum, Amerada Hess and Tesoro all sign private contracts, as the vessel charterer, with the vessel owner or operator. The vessel charterers, in turn, sign a response action contract with Alyeska for initial response services. The contingency plan holder is the owner or operator of the vessel in the cases described above. The state has no direct authority over anyone except the contingency plan holder which is often the least well capitalized of these parties.

What is the contractual relationship between the major oil companies that are chartering vessels and the contingency plan holder? Is this information located in the contingency plans that DEC approves?

The only place that the relationship between BP, Amerada Hess, Arco, Exxon, Chevron, and Tesoro and Alyeska is discussed is in the contracts that are

submitted as part of the contingency plan. DEC has no authority over the contracts and is not a party to them. In the case of Keystone Shipping or First Shipmor company, the only place that BP states their intent to respond is also through the contract. BP's intention is not stated anywhere as a legal obligation to the state.

Although these contracts may be binding among these private parties, because these relationships are not required by law or regulation, there is no assurance that the contract terms will continue. The parties can restructure their contracts at any time. In addition, the complicated network of relationships between shippers, charterers, vessel owners and contingency plans holders is extremely difficult for DEC to oversee. This is especially true since DEC has only one technical reviewer actually conducting the reviews on the contingency plans in Prince William Sound.

What is the process for submitting the vessel contingency plans in Prince William Sound?

Without doing a detailed analysis of an individual plan, such as First Shipmor's plan or others like it, this is the process that has been explained by DEC staff: First Shipmor submits a plan to DEC which includes a signed contract with BP to respond to oil spills. BP signs a contract with Alyeska for Alyeska to respond for the first 72 hours. Both contracts are included in the submission of the contingency plan.

But there is no obligation or legal assurance that either BP or Alyeska will respond, although there may be strong incentives because of BP's potential legal responsibility for damages (strict liability) and public perception issue. However, there is nothing stopping the arrangements from changing because they are not presently required by law.

Does DEC approve the 72-hour management transition in Prince William Sound?

The 72-hour management transition is, at best, a difficult thing for DEC to oversee. Although Alyeska states that the state has to approve the transition, it is not written in any plan and is not in the regulations. Industry adamantly opposed a formal approval requirement when it was requested by DEC. The transition approval process has been practiced in drills. However, where the responder is required to bring in additional equipment, the drills do not actually test the secondary responder's equipment. They test only Alyeska's equipment.

Will Alyeska respond to a TAPS trade tanker oil spills?

When asked this question, Alyeska has responded that DEC would not have approved vessel contingency plans if there was concern regarding Alyeska's performance. However, Alyeska's contract language with a number of c-plan holders excuses Alyeska from performance in a number of circumstances. In recent years, Alyeska also identifies itself as a "volunteer" RAC. This results in uncertainty as to whether Alyeska will respond in all situations. Alyeska's unwillingness to commit to responding to all TAPS related spills in Prince William Sound is of great concern to many of the residents and fishermen in the area.

How does DEC presently review the response action contracts submitted as part of contingency plans?

With the exception of Prince William Sound, in most cases the contracts between RACs and c-plan holders primarily provide an equipment and a price list. In general, these contracts provide no guarantee that the RAC will respond or if it is capable of responding to the type of spill (nearshore or offshore, facility or vessel) or the substance spilled (persistent or non-persistent oil). *Under current law there is no requirement nor any incentive for RACs to be conversant with the contingency plan on which they are listed.*

DEC currently reviews response action contracts by reviewing the equipment list and making a determination as to whether the equipment is adequate to respond to an oil spill of the c-plan holder. DEC does not examine contractual terms and obligations between contingency plan holders and RACs. DEC does not review whether there are contractual provisions that relieve the RAC from performance. In addition, while DEC may have the authority to inspect the equipment of independent professional response action contractors, this is not done as part of the c-plan approval process.

In addition, there is no requirement that the contingency plan holder periodically review the RAC's capability or even determine if it is still in business. DEC has testified that it discovered in reviewing contingency plans that some RACs listed on the plans were no longer in business. Although DEC's work plan allows for one inspection per facility or vessel a year, the inspectors rarely if ever inspect the equipment that will be brought in by an independent professional RAC in the event of an actual spill. They solely inspect the equipment on the vessel or at the facility that rely upon the independent professional RACs.* This is not the case with regard to regional cooperatives and Alyeska's SERVS.