

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2062 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

88

Is there any limit to the number of contingency plans a RAC can be listed on?

Several RACs are listed on contingency plans statewide and there is no limit to the number of contingency plans that can list a particular contractor.

*Independent professional response Action Contractors are those like VRCA, VECO, Martech, VRCA, Chempro. They are usually an independent third party and provide response in many different areas of the state. They are different from regional spill cooperatives like Seapro, CISPRI, and Alaska Clean Seas and SERVS.

PROPOSED AMENDMENT #1 TO SSSB 270

Delete Sections 3 and 8 of the legislation.

Add another exclusion to limited liability by inserting the following additional subparagraph to Sec. 7, page 6, between lines 10 and 11:

(D) has agreed in writing to be listed and who is listed in a contingency plan approved under AS 46.04.030 who fails to respond to a release or threatened release of oil that the response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a response action contractor if the failure to respond to a release or threatened release of oil results from a concurrent response under another contingency plan approved under AS 46.04.030 in which the response action contractor has the primary duty to respond.

1
2 EXPLANATION OF PROPOSED AMENDMENT

3 NO. 1 TO SSSB 270
4

5 Contingency plan holders, such as tanker owners, must
6 contract with response action contractors ("RACs") in order
7 to obtain cleanup services necessary to meet ADEC
8 requirements. RACs will agree to provide cleanup services
9 only under contractual terms that they believe are
sufficient to protect their interests. Like any private
business, these contracts are essential to the RACs,
because they define the limits of the obligations that the
RAC is willing to take on.

10 As presently written, however, SSSB 270 would make
11 these RAC contracts meaningless. The bill provides, in
12 Sections 3 and 8, that if a RAC contracts to be part of a
13 tanker's contingency plan, the RAC is then unconditionally
14 obligated to respond to an actual spill, whether or not the
15 RAC's contract requires a response. The RAC will not be
entitled to rely on the contract provisions that it
carefully negotiated. The result of this will be that RACs
will simply refuse to be part of any contingency plans--a
result contrary to the purpose of the legislation, which is
to encourage RACs to more freely participate in spill
cleanup.

16 Moreover, under Sections 3 and 8, if the RAC violates
17 this involuntary unconditional obligation to respond, it is
18 subject to an extremely harsh penalty. Not only will it
19 lose its limited liability, but it will be subject to
strict liability for its "failure" to respond, even though
the "failure" wasn't a "failure" at all, but was actually
anticipated and allowed in the RAC's contract.

20 Certainly, if a RAC breaches a cleanup contract on
21 which the state has relied in approving a contingency plan,
22 the RAC should not have limited liability for that wrongful
23 failure to respond. The proposed amendment, by adding an
24 additional exclusion to limited liability for this
situation, adequately protects the public against breaches
of a RAC contract.

25 However, a RAC should never be subject to strict
26 liability--unless, of course, the RAC is also the one who
spilled the oil. And, attempting to coerce RACs into
ignoring their own contracts with threats of strict
liability will do little to encourage RACs to aggressively
participate in Alaska oil spill cleanup.

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2 PROPOSED AMENDMENT NO. 2 TO SSSB 270
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4 Add an additional new subsection under Section 10 of the
5 bill (at p. 7, between lines 1 and 2) to read:

6 (g) No response action contractor shall be liable for
7 any removal costs or damages solely as a result of that
8 contractor's decision to terminate its response efforts
9 because of the expiration of the limited liability provided
10 by this section. A response action contractor's decision
11 to terminate response efforts because of the expiration of
12 the limited liability conferred by this section shall not
13 in any manner impair, curtail, limit, or otherwise affect
14 the limited liability conferred on the contractor with
15 regard to the contractor's response efforts undertaken
16 during the period of time the limited liability applied to
17 those response efforts.
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2 EXPLANATION OF PROPOSED AMENDMENT

3 NO. 2 TO SSSB 270
4

5 SSSB 270 would limit the legislation's limited
6 liability for response action contractors (RACs) to 60 days
7 following the spill, with the opportunity for an additional
8 60 day extension. See Sec. 7, p. 5, ls. 29-31.

9 This time limit is patterned after California's law,
10 which is the only other state to put a time limit on RAC
11 limited liability. SSSB 270, however, lacks an important
12 component of California's approach. The California
13 legislature understood that the time limit for limited
14 liability might cause RACs to refuse to participate in
15 spill cleanup even during the initial 60 day period. This
16 is because some RACs may choose to leave the scene after
17 the immunity period expires, and might be sued for making
18 that choice. To prevent themselves from being "squeezed"
19 on day 61 (that is, being forced to choose between
20 unlimited liability for continuing with cleanup, on the one
21 hand, and liability for ceasing cleanup on the other), the
22 RAC would simply choose to not become involved.

23 California avoided this problem by promising RACs that
24 they would not incur liability for abandoning cleanup on
25 day 61. That promise was part-and-parcel of California's
26 "limited time" approach, and it needs to be inserted in
27 SSSB 270. Otherwise, the 60-day limitation will present
28 the same deterrent to any cleanup that the California
29 legislature found unacceptable.

30 Proposed amendment no. 2 is virtually identical to
31 California Government Code §8670.56.6(k)(4).
32

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

AMENDMENTS/QUESTIONS

SSSB 270

Section 3, Subparagraph (6).

This would make response action contractors strictly liable for "failing to respond" to a release or threatened release if the RAC was listed in the contingency plan. The Department has a few concerns with this. 1) "Failing to respond" is not defined, and while the sponsor has explained this means not showing up, it can also be interpreted to mean "failing to respond" as directed by the contingency plan. 2) The law provides a strict liability standard in very specific instances, and we are concerned that the specter of strict liability will simply lead to RACs not willing to be listed in a contingency plan. With the other provisions of this legislation, the effects of RACs not willing to be listed will be profound.

Section 6, amend to read:

(a) The following persons are not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice that is consistent with an approved contingency plan or as otherwise directed by the federal or state on-scene coordinator

- 1) A response action contractor;
- 2) A person hired or retained and under control of a response action contractor; and
- 3) A person who acts as a volunteer and is engaged in the response action.

This, coupled with our recommended changes to Section 14 make it clear that the Department is not being directed to register every business or individual associated with the cleanup of a release; i.e. the garbage company, the transportation providers, etc.

Section 7.

Delete (b)(3). Direction is provided by the on-scene coordinator for spill response. The time limit creates the possibility of conflict between the on-scene coordinator's direction and the response action contractor's desire to shield itself from liability after the time limit expires. So long as

the response action contractor is following the direction of the on-scene coordinator, the limitation should apply.

Section 7 (b)(4)(c): clarification needed

The intent of this section is that all 5 conditions be met before the limitation would not apply. The 5 conditions are

- 1) not registered with Department
- 2) agrees in writing to be listed
- 3) is in fact listed
- 4) the contingency plan the response action contractor is listed in is the contingency plan implemented, and
- 5) there is a written agreement between the response action contractor and the contingency plan holder.

This conflicts with Section 13 wherein DEC may not approve a contingency plan unless the response action contractor listed is registered. Thus, the holder of a contingency plan that meets all five of the conditions set out above would not have an approved contingency plan.

This section, (b)(4)(c), should be deleted.

Section 14.

(a)(4), line 29 change "performance" to "planning"

(g)(3) amend to read: "Response Action Contractor" means a person who enters into a contract to provide direct containment, control and clean-up services with respect to a release or threatened release of oil.

(g) delete (3)(B) and (C).

Section 15. Change January 1, 1993 to December 31, 1993.

JA/das (04/13/92)

DIVISION OF SPILL PREVENTION AND RESPONSE

RESPONSE ACTION CONTRACTORS

LIST # 1

Alaska Clean Seas
12350 Industry Way, #200
Anchorage, AK 99519-6010

4/7/92 4pm
FAX: 345-2435

Alaska Clean Seas
Pouch 34022
Prudhoe Bay, AK 99734

sent to
Anch

Alyeska Pipeline Service Co.
Alyeska Terminal
Valdez, AK 99686

- Juneau Rep

Chempro Environmental Services
P.O. Box 230147
Anchorage, AK 99523

4:26pm

FAX: 5221963

Cook Inlet Spill Prevention
& Response, Inc.
130 N. Willow Street, #1
Kenai, AK 99611

Lisa Parker
Fax: 283-6102
4/7/92 3:55pm

Harding-Lawson & Asso.
601 E. 56th Place
Anchorage, AK 99518

4:35pm

563-8102

FAX: 561-4574

Hartec Management Consultants
8220 Briarwood Street
Anchorage, AK 99518

4/7/92 4:06pm
522-3031 phone
FAX: 522-3494

Martech U.S.A., Inc.
300 E. 54th Avenue
Anchorage, AK 99518

4:28pm

45
561-1970

FAX: 563-0830

Northwest EnviroService, Inc.
1813 1st East Ave.
Anchorage, AK 99501

4/7/92
4:15pm
FAX: 272-6805

Shannon & Wilson, Inc.
5621 Arctic Blvd.
Anchorage, AK 99518

4:50
4:07pm

561-2120

FAX: 561-4483

Unitech of Alaska, Inc.
7348 Abbott Loop Road
Anchorage, AK 99507

4:20pm
349-5142
FAX: 349-2733

VECO, Inc.
813 W. Northern Lights Blvd
Anchorage, AK 99503-2495

5:00pm

FAX: 264-8181

VRCA Environmental Services
1315 Queen's Way
Fairbanks, AK 99706

sent to
Anch

VRCA Environmental Services
6700 Arctic Spur Road
Anchorage, AK 99518

5:05pm

548-3100
349-4827

FAX: 267-3190

VRCA Environmental Services
Pouch 34
Prudhoe Bay, AK 99734

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Post-It™ brand fax transmittal memo 7671		# of pages ▶ 10
To	ALASKA Clean Seas	
Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
Fax #	343-2435	
Fax #	465-4979	

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Fax #	465-3711	

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To	Lisa Parker
Co.	Sen. Cotten
Dept.	Phone # 465-3711
Fax #	283-6102
Fax #	465-4979

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Dept.	Phone # 465-3711	
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Fax #	465-4979	

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Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
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Fax #	465-4979	

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Fax #	465-4979	

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Co.	Sen. Sam Cotten	
Dept.	Phone # 465-3711	
Fax #	272-6805	
Fax #	465-4979	

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Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
Fax #	561-4483	
Fax #	465-4979	

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Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
Fax #	349-2733	
Fax #	465-4979	

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Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
Fax #	264-8181	
Fax #	465-4979	

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To	VRC A	
Co.	Sen. Cotten	
Dept.	Phone # 465-3711	
Fax #	267-3190	
Fax #	465-4979	

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 270
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of the state for certain registration, planning, and
2 response activities related to oil spills; relating to the liability of an oil spill response
3 action contractor, to registration of response action contractors, and to oil discharge and
4 contingency plans; relating to liability for release of a hazardous substance; relating to the
5 duty of, and charges or financial responsibility requirements related to that duty imposed
6 by, the common operating agent for the holders and lessees of the right-of-way agreement
7 for the trans-Alaska pipeline system to control and contain oil discharges; and providing
8 for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) 25 percent of the country's crude oil supply moves through Alaska state waters; in
12 particular, 650,000,000 barrels of crude oil move through Prince William Sound each year;

1 (2) crude oil, once discharged into the environment, is highly damaging to the
2 environment, to the resources of the state, to wildlife, and to the commercial and subsistence livelihoods
3 of state residents; crude oil is also persistent in the environment and becomes increasingly difficult to
4 remove the longer it remains in the environment;

5 (3) experience from oil spill response in the state and throughout the world has
6 demonstrated that response activities must occur as aggressively as possible in the first few days
7 following a spill in order to be effective; experience has also shown that the critical initial response has
8 the best chance of success when it is conducted by trained personnel using a previously prepared, well-
9 practiced, and site-specific contingency plan;

10 (4) following the oil spill from the tanker vessel Exxon Valdez, there was a confusing
11 and time consuming transfer of spill response management from the oil spill contingency plan holder
12 and one of the parties responsible for the oil spill; this transfer of management delayed efficient and
13 effective response efforts in the critical period of initial response;

14 (5) under the provisions of the state Trans-Alaska Pipeline System Right-of-Way
15 Agreement, the lessees, the holders, and their common operating agent are required to contain and clean
16 up crude oil spills within state waters, in particular, in Prince William Sound;

17 (6) it is very important that initial oil spill response efforts be immediate, well-trained,
18 well-drilled, and certain; the response should not be subject to successive management transfers or to
19 the risk of interruption due to disagreements or disputes among contingency plan holders, parties
20 responsible for oil spills, and private responders relied upon for oil spill response.

21 * Sec. 2. AS 09.50.250 is amended to read:

22 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
23 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
24 against the state in the superior court. A person who may present the claim under AS 44.77 may
25 not bring an action under this section except as set out in AS 44.77.040(c). A person who may
26 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except
27 as set out in AS 36.30.685. However, an action may not be brought under this section if the
28 claim

29 (1) is an action for tort, and is based upon an act or omission of an employee of
30 the state, exercising due care, in the execution of a statute or regulation, whether or not the
31 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance

1 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
2 or an employee of the state, whether or not the discretion involved is abused;

3 (2) is for damages caused by the imposition or establishment of a quarantine by
4 the state;

5 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
6 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
7 contract rights; [OR]

8 (4) arises out of the use of an ignition interlock device certified under
9 AS 33.05.020(c); or

10 (5) arises out of

11 (A) registration and approval of an oil spill response action contractor
12 under AS 46.04.035;

13 (B) approval of an oil spill contingency plan under AS 46.04.030; or

14 (C) an act or omission of the state, an employee of the state, or a
15 person who contracts with the state in responding to or directing a response to a
16 release or threatened release of oil, unless the act or omission resulted from gross
17 negligence or intentional misconduct; in this subparagraph, "oil" has the meaning
18 given in AS 46.03.826.

19 * Sec. 3. AS 46.03.822(a) is amended to read:

20 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
21 set out in (b) of this section and the exception set out in (i) of this section, the following persons
22 are strictly liable, jointly and severally, for damages, for the costs of response, containment,
23 removal, or remedial action incurred by the state, a municipality, or a village, and for the
24 additional costs of a function or service, including administrative expenses for the incremental
25 costs of providing the function or service, that are incurred by the state, a municipality, or a
26 village, and the costs of projects or activities that are delayed or lost because of the efforts of the
27 state, the municipality, or the village, resulting from an unpermitted release of a hazardous
28 substance or, with respect to response costs, the substantial threat of an unpermitted release of
29 a hazardous substance:

30 (1) the owner of, and the person having control over, the hazardous substance at
31 the time of the release or threatened release; this paragraph does not apply to a consumer product

1 in consumer use;

2 (2) the owner and the operator of a vessel or facility, from which there is a
3 release, or a threatened release that causes the incurrence of response costs, of a hazardous
4 substance;

5 (3) any person who at the time of disposal of any hazardous substance owned or
6 operated any facility or vessel at which the hazardous substances were disposed of, from which
7 there is a release, or a threatened release that causes the incurrence of response costs, of a
8 hazardous substance;

9 (4) any person who by contract, agreement, or otherwise arranged for disposal or
10 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
11 substances owned or possessed by the person, other than domestic sewage, or by any other party
12 or entity, at any facility or vessel owned or operated by another party or entity and containing
13 hazardous substances, from which there is a release, or a threatened release that causes the
14 incurrence of response costs, of a hazardous substance;

15 (5) any person who accepts or accepted any hazardous substances, other than
16 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
17 from which there is a release, or a threatened release that causes the incurrence of response costs,
18 of a hazardous substance;

19 (6) a response action contractor who has agreed in writing to be listed and
20 who is listed in a contingency plan approved under AS 46.04.030 who fails to respond to a
21 release or threatened release of oil that the response action contractor was required to
22 respond to under the contingency plan; this paragraph does not apply to a response action
23 contractor if the failure to respond to a release or threatened release of oil results from a
24 concurrent response under another contingency plan approved under AS 46.04.030 in which
25 the response action contractor has the primary duty to respond.

26 * Sec. 4. AS 46.03.822(b) is amended to read:

27 (b) In an action to recover damages or costs, a person otherwise liable under this section
28 is relieved from liability under this section if the person proves

29 (1) that the release or threatened release of the hazardous substance to which the
30 damages relate occurred solely as a result of

31 (A) an act of war;

1 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an
2 intentional or negligent act or omission of a third party, other than a party or its agents
3 in privity of contract with, or employed by, the person, and that the person

4 (i) exercised due care with respect to the hazardous substance; and

5 (ii) took reasonable precautions against the act or omission of the
6 third party and against the consequences of the act or omission; or

7 (C) an act of God; and

8 (2) in relation to (1)(B) or (C) of this subsection, that the person, within a
9 reasonable period of time after the act occurred,

10 (A) discovered the release or threatened release of the hazardous
11 substance; and

12 (B) began operations to contain and clean up the hazardous substance.

13 * Sec. 5. AS 46.03.822(k) is amended to read:

14 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes

15 [INCLUDE] damage to persons or to public or private property, damage to the natural resources
16 of the state or a municipality, and damage caused by acts or omissions of a response action
17 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

18 * Sec. 6. AS 46.03.825(a) is repealed and reenacted to read:

19 (a) A response action contractor who responds to a release or threatened release of oil
20 is not civilly liable for removal costs or damages that result from an act or omission in the course
21 of providing care, assistance, or advice

22 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
23 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d); or

24 (2) as otherwise directed by the federal or state on-scene coordinator.

25 * Sec. 7. AS 46.03.825(b) is amended to read:

26 (b) The limitation on liability contained in (a) of this section does not apply to

27 (1) an action for personal injury or death;

28 (2) an action for damages to tangible personal property not caused by oil; or

29 (3) an act or omission that occurs more than 60 [15] days after the release;
30 provided, however, that the period of time described in this paragraph may be extended for
31 not more than 60 days by a written order of the state on-scene coordinator issued on or

1 before the 60th day after the release;

2 (4) a response action contractor who

3 (A) would otherwise have been liable for the release or threatened
4 release under AS 46.03.822;

5 (B) acts with gross negligence or intentional misconduct; or

6 (C) is not registered by the department, who agrees in writing to be
7 listed and who is listed as a response action contractor in a contingency plan
8 approved under AS 46.04.030, that is being implemented to respond to a release or
9 threatened release of oil, and who has executed a written agreement with the
10 contingency plan holder.

11 * Sec. 8. AS 46.03.825(c) is amended to read:

12 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
13 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
14 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the response action contractor's act or omission with respect to
16 a release or threatened release of oil unless the act or omission of the oil spill response action
17 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
18 does not apply to an oil spill response action contractor who is liable under AS 46.03.822(a)(6)
19 or who would have been liable for the initial release or threatened release of oil under
20 AS 46.03.822 even if that contractor had not carried out a response action.

21 * Sec. 9. AS 46.03.825(d) is amended to read:

22 (d) In this section,

23 (1) "registered" means registered under AS 46.04.035;

24 (2) "response action" means an action taken to respond to a release or threatened
25 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release
26 or threatened release of oil.

27 * Sec. 10. AS 46.03.825 is amended by adding new subsections to read:

28 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable
29 person with respect to costs or damages caused by an act or omission of a response action
30 contractor.

31 (f) Except as provided in (e) of this section, this section does not affect the liability under

1 this chapter or under any other state law of a person other than a response action contractor.

2 * Sec. 11. AS 46.04.020(a) is amended to read:

3 (a) A person causing or permitting the discharge of oil shall immediately contain and
4 clean up the discharge. [THE DEPARTMENT MAY WAIVE THIS REQUIREMENT

5 (1) IF IT DETERMINES, IN CONSULTATION WITH THE UNITED STATES
6 COAST GUARD OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
7 AS APPROPRIATE, THAT CONTAINMENT OR CLEANUP IS TECHNICALLY NOT
8 FEASIBLE; OR

9 (2) IF THE CLEANUP OR CONTAINMENT ACTIVITIES WOULD RESULT
10 IN GREATER ENVIRONMENTAL DAMAGE THAN THE DISCHARGE ITSELF.]

11 * Sec. 12. AS 46.04.020 is amended by adding new subsections to read:

12 (g) The common operating agent for the holders and lessees of the right-of-way
13 agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of
14 crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to
15 related activities, including operation of a tank vessel while berthed at a marine terminal or while
16 traveling within state waters to or from a marine terminal. A charge or financial responsibility
17 requirement imposed by the common operating agent for holders and lessees of the right-of-way
18 agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage
19 from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil
20 is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441.
21 Review of a charge or financial responsibility requirement allowed under this subsection may
22 occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska
23 Public Utilities Commission.

24 (h) The department may waive an oil discharge containment and cleanup requirement
25 imposed under (a) or (g) of this section if

26 (1) the department determines, in consultation with the United States Coast Guard
27 or the United States Environmental Protection Agency, as appropriate, that containment or
28 cleanup is technically not feasible; or

29 (2) the cleanup or containment activities would result in greater environmental
30 damage than the discharge itself.

31 * Sec. 13. AS 46.04.030(e) is amended to read:

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill response action contractor, the department may not approve the contingency plan unless the response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified

as available in the approved contingency plan.

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

Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person may apply to the department for registration as an oil spill response action contractor. The department shall adopt regulations governing the registration and approval of oil spill response action contractors. Regulations adopted by the department under this section must include

- (1) minimum training standards for personnel;
- (2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;
- (3) minimum professional response action standards and practices; and
- (4) minimum performance standards for oil spill response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(b) Notwithstanding (a) of this section, the department may substitute a response action

1 contractor approval program, and a subsequent process to approve response action contractors
2 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
3 required under (a)(1) - (3) of this section if the approval program and subsequent process are
4 developed by the United States Coast Guard.

5 (c) The department shall establish fees applicable to registration under this section in an
6 amount necessary to cover the costs of the registration program. The fees shall be collected by
7 the department.

8 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations
9 under this section.

10 (e) The department shall develop and maintain a list of oil spill response action
11 contractors registered under this section. The department shall provide the list on request to
12 interested persons.

13 (f) A response action contractor registered under this section shall annually provide to
14 the department a list of all contingency plans approved under AS 46.04.030 in which the response
15 action contractor has agreed in writing to be listed as a responder.

16 (g) In this section,

17 (1) "oil" has the meaning given in AS 46.03.826;

18 (2) "response action" has the meaning given in AS 46.03.825;

19 (3) "response action contractor" means

20 (A) a person who enters into a response action contract with respect to a
21 release or threatened release of oil and who is carrying out the contract, including a
22 cooperative organization formed to maintain and supply response equipment and materials
23 that enters into a response action contract relating to a release or threatened release of oil;

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

27 (C) a person who acts as a volunteer and is engaged in a response action.

28 * Sec. 15. TRANSITION. The Department of Environmental Conservation shall adopt regulations
29 to implement AS 46.04.035(a), enacted in sec. 14 of this Act, on or before January 1, 1993.

30 * Sec. 16. REPORT. The Department of Environmental Conservation shall report to the legislature
31 by March 31, 1993, on the progress of the department in developing the ability of the state to respond

1 to oil spills of an unknown origin and enhance regional response and coastline protection.

2 * Sec. 17. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

3 * Sec. 18. If this Act takes effect after June 30, 1992, sec. 17 of this Act is retroactive to June 30,
4 1992.

5 * Sec. 19. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments
6 AS 46.03.822 and 46.03.825, made by secs. 3 - 10 of this Act, apply only to causes of action accruing
7 on or after the effective date of secs. 3 - 10 of this Act.

8 (b) The provisions of AS 46.03.825(b)(4)(C) apply only to causes of action accruing on or after
9 the effective date of that paragraph under sec. 20 of this Act.

10 * Sec. 20. AS 46.03.825(b)(4)(C), added by sec. 7 of this Act, and sec. 13 of this Act take effect
1 July 1, 1993.

12 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c).



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

April 2, 1992

State of Alaska
House of Representatives
Juneau, Alaska 99801

MEMORANDUM

TO: Cliff Davidson, Chair
House Resources Committee

FROM: Bill Hudson *Bill*

SUBJECT: Backup materials relating work group meeting on HB 540

I have compiled materials relating to certification, the subject of the HB 540 working group meeting this evening at 7:00 p.m.

The contents include:

CSSSHB 540(O&G)

Excerpts from the Citizens Oversight Council Report
pages 30 and 31, "C. Response Action Contractor
Certification"

Negotiated Regulation (REG NEG) work group (March 13, 1992)
Contractor Certification Program

Alaska Department of Environmental Conservation letter
relating to certification

Alyeska Pipeline Service Company letter to Representative
Hudson relating to 72 hour spill management in Prince
William Sound

Alyeska Pipeline Service Company letter to Rear Admiral
Ciancaglini relating to spill management in Prince
William Sound

Prince William Sound Regional Citizens Oversight Council
letter relating to certification





Citizens' Oversight Council
on Oil and Other Hazardous Substances

3111 C Street, Suite 150 • Anchorage, Alaska 99503
(907)561-2101 • 561-7538 (FAX)

**OIL SPILL RESPONSE ACTION
CONTRACTORS**

A REPORT
To The
ALASKA STATE LEGISLATURE
SEVENTEENTH LEGISLATURE - SECOND SESSION
1992

Prepared By

The Citizens' Oversight Council
On Oil and Other Hazardous Substances
Pursuant to Section 11 of HB 196 (Ch. 92 SLA 1991)

Council Members

Harry R. Bader, Fairbanks • Leo J. Hannan, Anchorage • Kathryn L. Kinnear, Kodiak
Gary P. Kompkoff, Tatitlek • John H. Lucking, Jr., Unalaska

pay off liability claims than expend the costs for cleanup. Since the contingency plan holder is responsible for directing the services of the independent operators, the state lacks effective authority to direct a cleanup in a timely fashion. Even for those contingency plans where the initial response is conducted by a cooperative responder, the contingency plan holder is a member of that cooperative's decisionmaking and could at any time call off the response effort. That result is clearly not in the state's interest.

C. RESPONSE ACTION CONTRACTOR CERTIFICATION

Consequently, the Citizens' Oversight Council believes that the current laws authorizing contingency plan holders to contract with response action contractors to carry out contingency plans are not adequate to protect the public when a spill occurs because the response action contractors who, in many cases, are indispensable for the complete implementation of a contingency plan have not been made a full participant in response preparedness requirements. Limiting the liability of a response action contractor, therefore, without fixing this other system weakness, renders the entire contingency plan a mere formality rather than a "living" document.

The Council still believes that public policy is best served by limiting the liability of response action contractors, but simultaneously the system needs to be improved to ensure the performance of both contingency plan holders and the response action contractors these holders rely upon. The Council recommends that this be done through a response action contractor certification program to be developed and implemented by the Department of Environmental Conservation. The certification program will accomplish the same purpose as the "substantial deviation" provision did in the current version of HB 196.

It is worth noting that the federal government and some coastal states are simultaneously grappling with the issue of response action contractor accountability. In those forums, the liability limitation laws passed, but now regulations are being promulgated in order to ensure that those limitations do provide assurance of a bold response. For instance, the Coast Guard has announced that it will require certification of response action contractors. California requires that the state's spill prevention and response administrator must certify that there is maximum coastal protection through pooled response efforts before response action contractors may enjoy the benefits of limited liability. Alaska's proposed oil spill prevention and planning regulations were promulgated before final responder immunity legislation was addressed. Now, it is advisable for the legislature to establish the basic standard for response action contractor accountability in law to enable DEC to promulgate the best program to achieve that standard.

The Council believes that a certification program for professional response action contractors should include the following elements:

1. No contingency plan holder may rely on a contingency plan submitted for approval upon a response action contractor unless that response action contractor is certified;

2. DEC will certify response action contractors for minimum standards of personnel training and to verify the equipment and services the response action contractor offers and to ensure that response action contractors employ generally accepted professional standards and practices;

3. Once a certified response action contractor is listed, with its consent, upon a contingency plan approved by DEC, that response action contractor subjects itself to the orders of the state on-scene coordinator for performance under that particular contingency plan, regardless of the terms of the private contract between the response action contractor and the contingency plan holder that might provide otherwise. Only response efforts meeting this duty will obtain the limited liability benefits;

4. A certified response action contractor must respond, at state direction, to a spill of unknown origin or for which there is no responsible party (with state guarantee of reimbursement to the response action contractor), except that a regional cooperative will not be required to respond outside their region of operation;

5. Unpaid volunteer responders will not be subject to the certification process;

6. DEC will develop the certification program to maximize coastal protection and to enhance regional response capabilities.

NOTE: Bold type identifies unresolved issues; highlighted text is new language; and strike out indicates language to be removed.

[Preamble Language]

Contractor Certification Program

a. and Scope

This ion establishes a response contractor certification gram. It has two major purposes.

First, any spill responders are expected to be named in multiple vessel and facility response plans, and the preparers of those plans need a common basis by which the responders will be measured and credited. Spill contractors' response services must be matched to the plan holder's requirements. Certification allows plan preparers to know in advance the value the plan reviewer will give for a particular contractor's capabilities. Plan preparers must assemble a sufficient number and mix of contracted resources contractors to satisfy their response planning responsibilities. The response plan must also meet the contractual requirements of 4202(a)(5) and identify certified contractor resources or demonstrate that non-certified or un-certified resources (private personnel and equipment) have equivalent capability for response/removal operations.

In addition, Certification will allow contractors to know what credit they their capabilities will be given for their resources, so they can better present or market their services. Contractor certification also will allow the contractor's capabilities to be evaluated and credited on a fair, consistent and efficient basis.

A second major purpose of certification is to verify that response resources do in fact exist and are available from that contractor. /The plan holder has a responsibility to verify a contractor's capability and claims. ~~because the plan holder is responsible for performance under the response plan.~~ The public purpose of certification is to better assure that the increased response capability required by OPA to help protect the environment from the threat of oil spills does, in fact, come about.

Contractor certification does not in any way relieve the plan holder of the plan holder's responsibility to carefully evaluate and select competent contractors. Certification is not a generalized "seal of approval" or a guarantee of performance. Contractor certification is not intended to establish professional standards or provide a judgment of the many important but unquantifiable factors that would be necessary to establish an overall evaluation of a contractor's competence and skill.

Although a contractor's capabilities may be related to a certain size spill, the assignment of individual Response Values is necessarily artificial and somewhat arbitrary. The term "Response Value" is used in this proposed rule to reflect this reality.

Although a contractor may wish to suggest a "Response Value" for each of a contractor's designated response services, the federal government retains the ultimate responsibility for the assignment of that factor.

b. Application for Certification

To obtain certification, a response contractor must first submit a certification application. The application must identify basic information about the contractor, as well as specific details regarding the contractor's available equipment and personnel, ~~management structure and support~~. The type of information required, and the detail of that information, depends on the level and type of service that the contractor intends to offer. The application is intended to provide sufficient and specific factual information to permit the application reviewer to assign one or more "Response Values" to each of the contractor's response services.

Included as required information in the application is the contractor's experience related to oil spills and drills. Experience is an important quality which is difficult to objectively measure. The purpose of this application requirement is to gather concise information about a contractor's oil spill response or drill experience. Rather than solicit general information which encourages lengthy resumes and "boilerplate," it is intended that the information be provided in a manner which is easily read and understood.

Finally, the application requests specific information about booming, on-water recovery, shoreline remediation, and transfer/storage services. To enable the Coast Guard to better evaluate shoreline remediation services, the Commandant will request that OSHA clarify its Hazardous Waste Operations and Emergency Response requirements to consider the emergency nature of oil spill removal operations, the lower health and safety risk associated with recovery of weathered oil and identify only those necessary training requirements which are appropriate to the risk.

~~In addition to this quantifiable factual information, the response contractor also must provide descriptive information on certain important factors that bear on whether the contractor should be allowed to be cited in a spill response plan. {For example, the application must list all notices of violation issued by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and the Coast Guard~~

The process described above is expected to result in an "interim status letter." The "Response Value" in the interim status letter may be used by plan preparers until final review and certification is complete. It is expected, given the workload of contractor and plan reviewers, that the Response Values contained in interim status letters likely will be the basis for the initial submission of response plans that are required by February of 1993. If the Response Value established by certification varies from the value used in the interim status letter, plan holders relying on that interim status will be allowed a reasonable time to supplement their resources. This may be accomplished through upgrade of the contractor's capabilities or by supplementing or replacing that contractor's resources with other certified contractors.

d. Certification Criteria

The reviewer must certify any contractor who submits a true and complete application demonstrating response resources that satisfy the approval criteria. Certification may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services. An important part of contractor certification is the assignment of a Response Value or Values to the contractor's response resources for purposes of preparation of vessel or facility response plans. The reviewer will assign Response Values based on a best judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values. A contractor whose resources capability does not match these presumptive norms may submit information demonstrating the equivalency of its own resources. Planning assumptions used to arrive at the Response Value may also be adjusted based upon a demonstration that other planning assumptions are more accurate for the contractor's specific equipment or personnel.

[The certification of a contractor also includes the concept of the credit due a contractor given the contractor's combination of mobilization time and location. Contractors, for a given response service for a given Port Area, would be assigned a classification. Class I for a given service for a given contractor requires a mobilization time of [2] hours or less and location of the resources associated with the service within the COTP Port Area. A Class II contractor service would be located within the Port Area, and mobilization within [12] hours, or a contractor with any combination of mobilization time and location that would allow the resource to be moving within the Port Area within the [12-hour] period. Similarly, Class III would be within [24] hours, Class IV within [48] hours, and Class V within [72] hours.]

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

NOTE: Bold type identifies unresolved issues; highlighted text is new language; and strike out indicates language to be removed.

[Preamble Language]

Contractor Certification Program

a. Purpose and Scope

This regulation establishes a response contractor certification program. It has two major purposes.

First, many spill responders are expected to be named in multiple vessel and facility response plans, and the preparers of those plans need a common basis by which the responders will be measured and credited. Spill contractors' response services must be matched to the plan holder's requirements. Certification allows plan preparers to know in advance the value the plan reviewer will give for a particular contractor's ~~capabilities~~. Plan preparers must assemble a sufficient number and mix of contracted resources ~~contractors~~ to satisfy their response planning responsibilities. The response plan must also meet the contractual requirements of 4202(a)(5) and identify certified contractor resources or demonstrate that non-certified or un-certified resources (private personnel and equipment) have equivalent capability for response/removal operations.

~~In addition,~~ Certification will allow contractors to know what credit they ~~their capabilities~~ will be given for their resources, so they can better present or market their services. Contractor certification also will allow the contractor's ~~capabilities~~ to be evaluated and credited on a fair, consistent and efficient basis.

A second major purpose of certification is to verify that response resources do in fact exist and are available from that contractor. /The plan holder has a responsibility to verify a contractor's ~~capability~~ and claims. ~~because the plan holder is responsible for performance under the response plan.~~ The public purpose of certification is to better assure that the increased response capability required by OPA to help protect the environment from the threat of oil spills does, in fact, come about.

Contractor certification does not in any way relieve the plan holder of the plan holder's responsibility to carefully evaluate and select competent contractors. Certification is not a generalized "seal of approval" or a guarantee of performance. Contractor certification is not intended to establish professional standards or provide a judgment of the many important but unquantifiable factors that would be necessary to establish an overall evaluation of a contractor's competence and skill.

Certification is simply a process by which the President's designee (e.g., the Coast Guard) will verify the existence of certain "facts," (i.e., ~~management structure, the inventory of personnel and response equipment~~) and where possible, assign a particular "quantitative value" to that inventory for purposes of relating specific contractor's response services to a plan holder's particular spill size. Certification must be based whenever possible on objective and quantifiable measures. However, certain important subjective factors must be identified by the contractor in the contractor's application to provide a clearer understanding of a contractor's ~~capabilities~~.

The proposed regulation reflects this intent in the definition of the term "certification." One key element of that definition is that certification is a process. Response contractors, to be cited in vessel response plans, must first file an application with the Coast Guard, identifying the service being offered, the type, quantity and location of equipment, number, training and qualifications of personnel, including corporate and individual spill response experience, ~~management structure~~ and certain other information about associated support. This information is factual in nature, and therefore subject to straightforward verification.

The certification definition also recognizes that certification is fundamentally the responsibility of the President under OPA-90. The President has delegated this responsibility to the Coast Guard. The Coast Guard may use other organizations to assist it in the certification process. However, the responsibility for certification remains a governmental one, because certification derives from the President's responsibility to review and approve vessel and facility response plans.

The definition of "certification" refers to the assignment of one or more "Response Values," where possible, for each of the contractor's designated response services. The translation of the type, location and quantity of equipment and personnel into a quantified capability for response is inherently a matter of judgment, particularly given the recognized limitations in spill response technology and variability in the types and conditions of any particular spill.

Each oil spill, particularly any large spill, is unique. The capability needed in a particular response will vary, involving dozens of factors, some of which cannot be accurately measured or predicted. For evaluation and quantification purposes, assumptions must be made regarding these factors. Many of these assumptions may not prove accurate or valid in any particular spill response. Many assumptions also are beyond the control of a particular responder, just as in the analogous case of response to a fire. Accordingly, this proposed regulation carefully avoids any intimation that various planning assumptions are or ever should be viewed as performance standards.

Although a contractor's capabilities may be related to a certain size spill, the assignment of individual Response Values is necessarily artificial and somewhat arbitrary. The term "Response Value" is used in this proposed rule to reflect this reality.

Although a contractor may wish to suggest a "Response Value" for each of a contractor's designated response services, the federal government retains the ultimate responsibility for the assignment of that factor.

b. Application for Certification

To obtain certification, a response contractor must first submit a certification application. The application must identify basic information about the contractor, as well as specific details regarding the contractor's available equipment and personnel, ~~management structure and support~~. The type of information required, and the detail of that information, depends on the level and type of service that the contractor intends to offer. The application is intended to provide sufficient and specific factual information to permit the application reviewer to assign one or more "Response Values" to each of the contractor's response services.

Included as required information in the application is the contractor's experience related to oil spills and drills. Experience is an important quality which is difficult to objectively measure. The purpose of this application requirement is to gather concise information about a contractor's oil spill response or drill experience. Rather than solicit general information which encourages lengthy resumes and "boilerplate," it is intended that the information be provided in a manner which is easily read and understood.

Finally, the application requests specific information about booming, on-water recovery, shoreline remediation, and transfer/storage services. To enable the Coast Guard to better evaluate shoreline remediation services, the Commandant will request that OSHA clarify its Hazardous Waste Operations and Emergency Response requirements to consider the emergency nature of oil spill removal operations, the lower health and safety risk associated with recovery of weathered oil and identify only those necessary training requirements which are appropriate to the risk.

~~In addition to this quantifiable factual information, the response contractor also must provide descriptive information on certain important factors that bear on whether the contractor should be allowed to be cited in a spill response plan. {For example, the application must list all notices of violation issued by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and the Coast Guard~~

~~related to oil spill response operations for the last five years, and a description of the disposition of those notices. In addition, the contractor may, as supplemental information, submit information that describes the contractor's experience.]~~

The contractor must attest that the required factual information is true and correct to the best of the contractor's information and belief as of the date of attestation. Because the application is made to a federal agency for purposes of obtaining governmental approval, knowing false statements would be subject to enforcement action under federal law and revocation of the certification. The contractor also is obligated to notify the COTP of significant changes in response capability (see below).

As a supplement to these factual matters, the response contractor may apply for and propose one or more "Response Values" to be assigned to the contractor's capabilities, by designated geographic area for each specific type of response service. (see below). The response contractor can supply supporting analysis or argument to support its proposal. ~~{The contractor may also submit supplemental information describing the contractor's experience, regulatory awareness or other factors which the contractor believes may be relevant to an understanding of the contractor's response capabilities.}~~

The contractor may submit the application to the reviewer any time after the rule goes into effect. [Note: the Coast Guard will need to define who will act as reviewer of contractor applications. If the Coast Guard does not want to centralize all review of contractors, then it is recommended that a tiered approach such as follows be used: The reviewer, in the case of a contractor who requests certification only in a single Captain of the Port (COTP) zone, will be the COTP. If the contractor requests certification in more than one COTP zone, but not more than one Coast Guard District, then the reviewer will be the District Commander. In the case of a contractor seeking certification in more than one District, the review shall be the Chief, Office of Marine Safety, Security and Environmental Protection.]

c. Certification Process

Once a certification application is received, the reviewer must make an initial review of the application to determine if it is complete. If not, the application should be immediately returned to the applicant with an explanation of the additional information needed to process the application. Once a complete application is filed, the reviewer has 45 days to assign an initial "Response Value" to the contractor, based on the representations in the application. This determination is only interim, because it is subject to subsequent verification of the factual information in the application, as well as a more refined evaluation once the agency has the opportunity for in-depth review.

The process described above is expected to result in an "interim status letter." The "Response Value" in the interim status letter may be used by plan preparers until final review and certification is complete. It is expected, given the workload of contractor and plan reviewers, that the Response Values contained in interim status letters likely will be the basis for the initial submission of response plans that are required by February of 1993. If the Response Value established by certification varies from the value used in the interim status letter, plan holders relying on that interim status will be allowed a reasonable time to supplement their resources. This may be accomplished through upgrade of the contractor's resources capabilities or by supplementing or replacing that contractor's resources with other certified contractors.

d. Certification Criteria

The reviewer must certify any contractor who submits a true and complete application demonstrating response resources that satisfy the approval criteria. Certification may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services. An important part of contractor certification is the assignment of a Response Value or Values to the contractor's response resources for purposes of preparation of vessel or facility response plans. The reviewer will assign Response Values based on a best judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values. A contractor whose resources capability does not match these presumptive norms may submit information demonstrating the equivalency of its own resources. Planning assumptions used to arrive at the Response Value may also be adjusted based upon a demonstration that other planning assumptions are more accurate for the contractor's specific equipment or personnel.

[The certification of a contractor also includes the concept of the credit due a contractor given the contractor's combination of mobilization time and location. Contractors, for a given response service for a given Port Area, would be assigned a classification. Class I for a given service for a given contractor requires a mobilization time of [2] hours or less and location of the resources associated with the service within the COTP Port Area. A Class II contractor service would be located within the Port Area, and mobilization within [12] hours, or a contractor with any combination of mobilization time and location that would allow the resource to be moving within the Port Area within the [12-hour] period. Similarly, Class III would be within [24] hours, Class IV within [48] hours, and Class V within [72] hours.]

[The Response Value would therefore be specific to a certain geographic area for a specific class of service. For example, XYZ Response Contractor could be certified for Class II on-water oil removal services for the offshore environment in a specified COTP port area in an amount of 10,000 barrels per hour. The same contractor also may be certified for Class II on-water removal service for the nearshore harbor environment of 15,000 barrels per hour.]

Part of the certification process requires that contractors define their mobilization time. The primary goal is that equipment and/or personnel will be available and ready to deploy, upon notice, with prompt dispatch. The intent of this requirement is to ensure that first crews are dispatched and someone is working to fill any special requirements.

e. Denial of Approval and Appeals

If the reviewer finds that the contractor does not qualify, the contractor can be denied approval. The letter of denial must state why approval was denied, and explain any deficiencies, and explain the process for appeals and resubmittal. The reviewer also may approve a different Response Value for some or all of the contractor's designated services.

If the reviewer denies certification, or selects a "Response Value" less than what the contractor applied for, the contractor may appeal the decision to ... [note: appeal process to be specified by the USCG, but with the recommendation of at least one level of internal appeal, and with at least one appeal to Washington before going to the courts].

f. Notification of Significant Changes in Contracted Resources ~~Response Capability~~

Once a contractor has been certified, certification is valid for a period of [5] years. However, contractors are required to notify the COTP of a significant reduction in contracted resources ~~of capability~~, as specifically identified in the certification. The proposed regulation requires this notification to be in advance, if the significant reduction is planned, or no later than 24 hours after the contractor becomes aware of the significant change, if unplanned. The COTP can then determine whether to require plan holders to secure additional resources ~~capability~~, or make other practicable arrangements to compensate for the reduction in resources ~~capability~~.

g. Effect on State Certification

The contractor certification established in this rule is designed to implement the requirements of OPA. Some states may have similar contractor certification requirements under individual state laws. Nothing in this rule is intended to preclude reliance on these certification rules or the federal certification process by states where it is appropriate to do so. In fact, States are encouraged to rely on the federal certification process, to the maximum extent practicable, taking into account any differences in the purposes and value of the federal certification process and the specific requirements of state law. States are not prevented from requiring response resources in addition to the response resources required by the federal program (e.g., by assigning different response values for purposes of state contingency plans), or taking other actions not in conflict with federal law. (see House Conf. Rep. No. 101-653, p. 799; and section 311(0)(2) of the Federal Water Pollution Control Act, as amended by section 4202(c) of OPA 90).

[REGULATORY LANGUAGE]

[NOTE: The regulations describing the contents of vessel and facility response plans will establish the types of services for which the response plan holder must rely on certified response contractors]

Sec. XXX.00 Contractor Approval

(a) This section defines the process for certification of response contractor services to be cited in individual response plans.

(b) Contractor certification does not in any way relieve the plan holder of the plan holder's responsibility to carefully evaluate and select competent contractors. Certification is not a generalized "seal of approval" or a guarantee of performance. Contractor certification is not intended to establish professional standards or provide a judgment of the many important but unquantifiable factors that would be necessary to establish an overall evaluation of a contractor's competence and skill.

(c) The capability needed in a particular response will vary, involving dozens of factors, some of which cannot be accurately measured or predicted. For evaluation and quantification purposes, assumptions must be made regarding these factors. Many of these assumptions may not prove accurate or valid in any particular spill response. Many assumptions also are beyond the control of a particular responder. The various planning assumptions are not and should not be viewed as performance standards.

(d) Definitions. For purposes of sections XXX.01-.05, the terms below shall have the following meanings:

(i) "Certification" is the process by which the President's designee will verify a primary oil spill response contractor's inventory of available spill response equipment and personnel, ~~management structure and support~~, and assign a Response Value for those resources within a standardized classification of designated response services, for a specific geographic area, for purposes of preparation of spill response plans.

(ii) "Certificate" is the final document issued following verification, inspection and final review by the reviewer.

(iii) "Interim status letter" means the letter sent by the reviewer to the contractor describing the initial Response Value assigned to the contractor

pending verification of the factual information contained in the application and an in-depth review of the contractor's application for purposes of certification.

(iv) "President's designee" means the federal official delegated responsibility by the President under OPA-90 for approval of response plans. Pursuant to Executive Order 12777 the President has delegated responsibility for approval of vessel response plans and transportation-related onshore facilities to the Commandant of the Coast Guard. The Commandant has delegated responsibility for certification of response contractors to various "reviewers" under this rule.

(v) "Response contractor" is any for-profit or not-for-profit corporation ~~person who~~ that provides designated response equipment ~~or~~ ~~and~~ services under contract or other means approved by the President directly to an owner or operator of a tank vessel or facility required to have a response plan under 33 U.S.C. 1321(j)(5), which designated equipment or services are required to be available and identified in such plan. Response contractors must have the ability to mobilize and deploy their identified resources. Individuals or organizations warehousing or storing equipment are not response contractors.

(vi) "Reviewer" means: (1) in the case of a response contractor seeking certification in a single COTP zone, the COTP; (2) in the case of a response contractor seeking certification in more than one COTP zone, but only one Coast Guard District, the District Commander; and (3) in the case of a response contractor seeking certification in more than one Coast Guard District, the Chief of the Office of Marine Safety, Security and Environmental Protection.

(vii) "Response Value" means the value for a particular defined service in a defined geographic area, that is assigned to a response contractor for purposes of being identified as response capability in a vessel or facility response plan.

(viii) "Mobilization time" means the time in which initial personnel are able to begin movement of response resources to the spill scene.

Sec. XXX.01 Contractor Certification Application Content

(a) **Required Information.** A person desiring to be a response contractor must file an application that contains at least the following information:

(i) Contractor's name, mailing address and phone number;

(ii) The specific response services being offered for certification;

(iii) The specific location of all spill response resources, and the areas in which spill response services using each resource is being offered;

(iv) List the oil spill removal equipment and trained personnel, including subcontracted resources for whom you had contractual responsibility, during the most recent 10 oil spills.

(v) List the oil spill removal equipment and trained personnel, including subcontracted resources for whom you had contractual responsibility, during the most recent 10 oil spill drills.

~~A description of the training and experience of the contractor (both corporate and individual) relative to oil spills and a description of any oil spill drills in which the contractor has participated.~~

~~{(v) A list of all Occupation Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) notices of violation related to oil spill response operations and disposition of those notices for the last five years. Any applicant with less than five years under their current business name or organization shall provide the same information for any oil spill activities or businesses participated in by the principals in the new company within the last five years;}~~

(vi) An organizational diagram depicting the chain of command;

(vii) A call-out list for the contractor's resources, and a description of the call-out procedure;

(viii) For each type of service, the types of oil to which the contractor is willing and able to respond;

(ix) For each type of service, the planned mobilization time for that resource.

(b) **Equipment.** For each type of service, the specific significant equipment available to be applied to that service, including:

(i) Type, quantity, age, and location;

- (ii) Whether the equipment is owned or under contract;
- (iii) If the equipment is contracted from another party, the application must identify:
 - (A) the name, address and telephone number of the owner of the equipment;
 - (B) the equipment's storage location and area of operation; and
 - (C) the contractual terms regarding availability of the equipment to the contractor.
- (iv) A statement of the maintenance program for such equipment, together with a description of records of such maintenance;
- (v) Identification of the number of operators necessary to operate the equipment over a sustained response (i.e., 30 days);
- (vi) For each piece of equipment, a description of: the make, model, type, and applicable design limits (e.g., suitability for different types of oils and operating environments, as related to adverse weather);
- (vii) A description of contractor's communications equipment, including the amount and frequencies, and identification of certified operators;
- (viii) For any equipment not located in the COTP zone for which certification is sought, a description of the transportation capabilities available for use in a response;
- (ix) A description of the readiness for mobilization of response resources and the means of mobilization.

Equipment shall be listed only if it is in a fully operable condition. Future equipment, ordered but not yet delivered and fully operable, may be listed, but it must be listed separately and so identified.

(c) **Personnel.** For each category of personnel identified as a spill response resource, the application shall, for each location:

- (1) list by job category;
- (2) match to the equipment list and scope of service, including the plan for how the equipment and people necessary to provide the service will be brought to bear in an incident from what source; and

(3) list training and qualifications, including OSHA Hazardous Operations training, and how additional personnel are planned to be trained within what timeframe if they will be required to meet the service listed.

The application shall also list the total personnel available.

~~(d) Management Structure. The application shall identify the management structure associated with the service(s) offered. [This capability should include a discussion of spill response training and experience, regulatory awareness and compliance, and supervision.]~~

(d) Service-specific information. In addition to the general information described above, the applicant must submit the following service-specific information, as applicable to the service offered:

(i) Boom control/containment/protective booming services

- (A) Describe the platforms for deployment (number/type); and,
- (B) Type, amount and condition (e.g., 2000' of offshore boom/vessel).

(ii) On-water recovery services

- (A) recovery platform (for owned vessel and vessel of opportunity recovery systems):
 - (1) name of vessel;
 - (2) size/class;
 - (3) location; and,
 - (4) contract terms of availability.
- (B) skimming system:
 - (1) make;
 - (2) model;
 - (3) manufacturer's nameplate capacity; and
 - (4) applicable design limits (e.g., suitability for different types of oil and different operating environments, as related to adverse weather).
- (C) personnel trained to operate the equipment:
 - ~~(1) name;~~
 - (1) position description; and
 - (2) training or experience.

(iii) Shoreline remediation services

- (A) number of persons available for beach cleanup (training to be addressed)

- (B) description of supplies/support for beach cleanup
- (C) *description of supplies/support for facility cleanup*
- (iv) **Transfer/storage services**
 - (A) type and capacity of storage/transfer facilities

[Services considered for certification but not included at this time are source control, non-mechanical removal, wildlife treatment, lightering, salvage, fire fighting, logistic support, disposal, analysis and testing, spill response management]

(e) **Attestation.** A responsible corporate official of the contractor shall sign the application, affirming that the factual information contained in the application regarding the capabilities described in paragraphs (a)-(e) is, to the best of his knowledge and belief, true and accurate as of the time of signing.

(g) **Agreement for Inspection and Participation in Drills.** The contractor shall state that the contractor agrees to submit to inspection and verification of the designated capability cited in the application. The contractor also agrees to make itself available to participate in drills as reasonably necessary to verify the contractor's application.

(h) **Self assessment.** A response contractor may submit with the contractor's application a suggested Response Value for each of the contractor's response services for each geographic area to be served. The applicant should provide an explanation and analysis to support the suggested Response Value, based on standardized planning factors identified by the reviewer, or such other planning factors as the contractor shall demonstrate more accurately reflects the contractor's response capabilities. [The applicant may also include other information that may bear on an applicant's capabilities, including a description of the applicant's experience and regulatory awareness and compliance.]

(i) **Mobilization.** The contractor shall state the time for initial mobilization of its resources. Equipment readiness shall include being available and able to be promptly dispatched to a spill site, not counting normal maintenance and repairs.

Section XXX.02 Contractor Certification Application Procedure.

(a) **Filing address.** Applications must be filed with the appropriate reviewer. The addresses are as follows:

[provide filing addresses]

(b) **Time for Filing.** Applications may be submitted at any time after adoption of this paragraph.

Section XXX.03 Contractor Application Review

(a) **Review for completeness.** Upon receipt of a response contractor certification application, the reviewer shall promptly evaluate the application for completeness. If the application is not complete, the reviewer shall return the application promptly, identifying the deficiencies in the application.

(b) **Review for interim status.** An application shall be reviewed within 45 days of receipt of a complete application. The reviewer shall send an interim status letter within 5 days of completion of a review. If, at a later time, the reviewing agency determines that the terms of the interim status letter should be limited, it shall so notify the contractor, who shall be given a reasonable time to provide acceptable numbers or types of response resources.

(c) **Review for certification.** Following inspection and review of any drills or exercises, or information from other sources as necessary to verify the application and complete a detailed review of the application, the reviewer shall either issue or deny a certificate, in accordance with the standards in paragraph (d). A certificate may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services.

(d) **Standards for review.** Certificates shall be issued to response contractors subject to the following conditions:

(1) Equipment, equipment maintenance, and equipment and personnel deployment readiness must be verifiable by inspection by the office. Any resources not on site at the time of an inspection must be accounted for by company records;

(2) Response personnel must comply with all appropriate safety and training requirements of OSHA Hazardous Operations. Training records may be audited for verification;

(3) Determination of an acceptable safety history by review of pertinent records on a case-by-case, best-professional-judgment basis. Lack of a safety history will not be grounds for denying approval;

(4) For each COTP zone, the reviewer will assign a Response Value for each Response Service for each response area (e.g., offshore, nearshore, inland) on a best engineering judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values.

(e) **Inspections of Certified Equipment.** To ensure that certification standards are maintained, the Coast Guard or its designee shall verify, by site inspection, that equipment and personnel resources are available, operable and maintained. Such inspections may be random but must occur at least once every three years.

[Note: a policy issue is whether the presumptive planning criteria are described in the rule, incorporated by reference in the rule, or left to guidance. We also need to decide what the criteria is and how it would be applied.]

Section XXX.04 Appeals and Notices

(a) **Appeals.** If the reviewer denies certification, or assigns a Response Value less than the amount requested in the application, the applicant may appeal the decision:

[some appeal to centralized authority recommended].

[Note: some favor a review in Headquarters of all appeals]

(b) **Notice of Significant Reduction in Contracted Resources Capability.** The reviewer shall identify specific reductions in equipment or personnel, ~~or management structure~~ that require notification to the COTP where the equipment or personnel are located. A certified response contractor must provide notice to the COTP of such reductions in advance, if planned, or within 24 hours of becoming aware of such change, if unplanned. This notice may be oral, followed by writing within a reasonable time, or in writing, by facsimile or letter. The reviewer will maintain and make available to the contractors and plan holders detailed guidance on the types of changes that require notification.

Section XXX.05 Renewal and Revocation

(a) **Renewal.**

(1) Certification shall be for a period of [5] years. A contractor must file an application for renewal prior to the expiration of the certificate. The contractor shall remain certified until the reviewer acts on the application.

(2) Certification may be renewed at the request of the contractor in the event of sustained and significant increase or decrease in response resources.

(b) **Revocation.** Failure to comply with the requirements of certification may result in revocation or suspension of the Certificate. Examples of such failure may be fraudulent self-attestation or other failure to comply with the conditions of certification as identified in Sections XXX.00 through XXX.05. (Exact procedure to be added).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Telephone: 465-5050
FAX: 465-5070

February 25, 1992

Representative Bill Hudson
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Hudson:

Thank you for the copy of the Citizen's Oversight Council's report on Oil Spill Response Liability. We have reviewed the issues raised in your February 18, 1992 letter concerning response action contractor certification and liability limitation in Alaska. We have also completed a preliminary review of HB 540.

I preface my comments at this point by saying that we are currently reviewing the Council's Report and developing our position on this subject and the associated legislation that is being developed. We are very interested in the input that will undoubtedly be provided during future committee hearings. The information and testimony given will assist in the development of our position. With that in mind I would like to offer our preliminary views on the issues you have raised.

The Department supports legislation limiting liability for response action contractors that is carefully crafted. We believe that it is in the state's best interest to ensure there will be a quick and ready response in the event of another catastrophic spill, as well as for those releases that are significantly smaller but just as important to contain and cleanup in the shortest possible time.

Beyond the contractual arrangement, there are no other legal assurances that response action contractors who have a pre-existing agreement with a contingency plan holder will respond and perform when a spill occurs. The Department does not legally review or pass judgement on the validity of these contracts and is not a party to them. However, the Department is developing emergency response contracts to provide the capability for responding to orphan spills (i.e., no responsible party) and spills where it may be necessary to take over or augment cleanup. Additional assurances are appropriate to increase the certainty of response by contractors who have contracted to provide a response with a contingency plan holder. In that regard we would support inclusion of language in Section 1 of HB 540 which would require response action contractors who have previously agreed to comply with the terms of a facility or vessel contingency plan to also comply and act pursuant with the terms of those plans unless otherwise directed by the SOSC or FOSC. This would provide an additional incentive for assuring response.

Representative Bill Hudson

February 25, 1992

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Certification of response action contractors is, in our view, a separate issue. Certification is currently being debated at the federal level. Some of the elements being considered include verification of equipment and personnel, validation of resources through inspections, certification of response capability, notification of down status and validity of response contracts, among others. The Department performs many of these functions already in the industry contingency plan review process. We participate in numerous spill drills, which are an excellent means for demonstrating response readiness and authenticating the capability of contingency plan holders.

Notwithstanding what might be done at the federal level, the elements of a certification program could be accomplished under existing authority by including appropriate parameters in the Department's oil and hazardous substances (commonly referred to as HB 567) regulations. A certification program in this case would only apply to response action contractors who have a contract with a contingency plan holder and the certification would occur in conjunction with the existing contingency plan review process. A separate certification review process would not be necessary. The program being contemplated at the federal level would likely require a separate review and approval process.

Regarding Recommendation #7 of the Council's report, we defer to the recent opinion from the Department of Law and we offer no further comments at this time.

I believe the "task force" referenced in your letter is the "Negotiated Rulemaking Committee" (REGNEG) that was formed by the Coast Guard to assist in drafting tank vessel regulations to implement the mandate of the Oil Pollution Act of 1990 (OPA 90). The State of Alaska was not selected to formally participate on this advisory committee (see enclosed letter from Admiral Henn). The State of California was selected as a member of the REGNEG Committee and has agreed to informally represent Alaska's and Washington's views as per our agreement under the States/British Columbia Oil Spill Task Force. However, Alaska is not bound in any way to a consensus that may be reached by the REGNEG Committee.

Other states selected for membership on the REGNEG Committee include Louisiana, Maryland and Wisconsin. Both of Alaska's Regional Citizen's Advisory Councils are on the committee. The majority of the committee membership is comprised of oil and shipping industry representatives. There is only one member from the environmental interest groups. The REGNEG Committee has been set up by the Coast Guard under the authority of the "Negotiated Rulemaking Act of 1990".

Since January, staff from this Department have attended two of the last three meetings in an observer status. The committee has been attempting to reach consensus on the issues of "adverse weather", "maximum extent practicable", "on board carriage of equipment", "plan contents", "vessel applicability", and "contractor certification". The most difficult issues seem to be defining response standards for "adverse weather" and "maximum extent practicable". These definitions have the potential to become substantially different than the counterpart provisions found in Alaska's laws, specifically the response planning standards given in AS. 46.04.030(k)(3-4).

Representative Bill Hudson

February 25, 1992

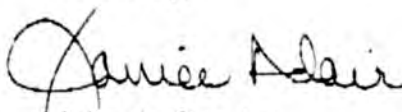
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Discussions at the REGNEG Committee on the subject of "contractor certification" have touched on the issues of type of services, capacity/quantity of service, location, self-assessment, and Coast Guard inspection/certification. Issues still under discussion include exactly how verification is to be achieved, frequency of verification/certification, the possibility of funding verifications, spill drills from the federal Oil Spill Liability Trust Fund, and contract validity. Enclosed is a copy of the Working Group Issue paper concerning this matter.

We have a DEC staff member at REGNEG meetings this week. The next committee meeting is scheduled for the week of March 9 through 13 in Washington D.C. The Coast Guard plans to publish the "Notice of Proposed Rulemaking" in the Federal Register on or about May 1. The goal is to have an adopted rule in place, which may include RAC certification, by August, 1992 and in effect by February, 1993.

I hope these comments are responsive to your request and we look forward to working with you in the development of appropriate legislation.

Sincerely,


for John A. Sandor
Commissioner

CJP/MAC/JA/tls

Enclosure: January 7, 1992 letter from A. E. Henn

cc: Janice Adair, Special Assistant, Commissioner's Office
Mike Conway, Director, Division Spill Prevention and Response
Lynn Tomich Kent, Section Chief, SPPM

bcc: Chris Pace
Tracy Sherrer

Alyeska pipeline

SERVICE COMPANY

415 SOUTH BRADAW STREET ANCHORAGE ALASKA 99501 TELEPHONE 837-1715 FAX TELEPHONE 837-1715

March 2, 1992

Letter No. 92-9411-G

David E. Ciancaglini
Rear Admiral
U.S. Coast Guard
P.O. Box 25517
Juneau, Alaska 99802

Re: Coast Guard Directed Oil Spill Responses
in Prince William Sound

Dear Admiral Ciancaglini:

Alyeska Pipeline Service Company ("Alyeska") is an oil spill response action contractor for spills from TAPS trade tankers in Prince William Sound. To provide this service, Alyeska has entered into Oil Spill Response Services Agreements with five companies that either own, charter or operate tank vessels that call at Valdez. Those companies, which we refer to as Contracting Vessels, are ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Chevron U.S.A., Inc., Exxon Shipping Company, and Tesoro Alaska Petroleum Company. Exhibit A of each Agreement lists the tank vessels covered by the Agreement.

In the Agreements, Alyeska promises to manage the initial response to an oil spill for as long as 72 hours following a spill, in accordance with the Prince William Sound Tanker Spill Prevention and Response Plan. The Contracting Vessels agree to assume management of the spill response within 72 hours after notification by Alyeska. Under this arrangement, Alyeska will continue to assist the Contracting Vessel's on water response until the Alyeska resources are not needed or can be replaced. For small spills, under 1,000 barrels, Alyeska may elect to complete the entire response on behalf of the contracting vessel.

We believe that each of these companies is prepared to respond to a spill from the vessels it utilizes in Prince William Sound. The Alaska Department of Environmental Conservation has arrived at the same conclusion and has approved the contingency plans for the tank vessels covered by these Agreements. Alyeska has held major response drills with ARCO, BP, Exxon Shipping and Chevron and plan a similar exercise with Tesoro. Moreover, the Agreements and the PWS Plan anticipate that if the Contracting Vessel or other acceptable representative of the responsible party does not assume management of the spill

Name
March 2, 1992
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response as required, Alyeska will ask the Coast Guard to federalize the response and assist in whatever way is appropriate, at the direction of the Federal On Scene Coordinator.

Based on discussions with Commander Ed Thompson, Captain of the Port in Valdez, there is an understanding between Alyeska and the Coast Guard that Alyeska will assist the Coast Guard if a spill response is federalized. We believe that it would be useful to have a formal procedure in place to guide transition from Alyeska management of spill response to federal control in the event such transition becomes necessary. Preparation for this contingency might be enhanced if there is a contract or Memorandum of Understanding between Alyeska and the Coast Guard describing the Coast Guard's expectations of Alyeska and establishing a management and reimbursement procedure.

It is our understanding that the Oil Pollution Act of 1990 and the National Contingency Plan (NCP) provide the Coast Guard with the authority and mission to direct a spill response when the responsible party does not take proper removal action or is unknown and the spill poses a substantial threat to the public health or welfare. 33 U.S.C. 1321(c) and National Contingency Plan 300.300. Section 300 of the NCP and Subpart H also describe how the Coast Guard can use private resources to fulfill this responsibility.

I would like to meet with you to discuss these issues and if you agree, begin the process of developing a procedure and an agreement tailored to meet the unique circumstances found in Prince William Sound.

There are two other issues we should address. Alyeska will respond to a discovery of crude oil on the waters of Prince William Sound even if the origin is not known. Under those circumstances, if the spiller is not quickly identified, we believe the response should be federalized.

Concerned citizens have asked about Alyeska's role in responding to phantom spills of refined petroleum products in Prince William Sound. In the past, Alyeska has responded voluntarily to such spills at the request of the Coast Guard, without seeking compensation. We will continue to be available to voluntarily assist the Coast Guard under these circumstances, with no actual duty to respond. These limitations are necessary because our resources cannot be dedicated to any effort other than our primary responsibilities to the TAPS trade vessels. We would be willing to discuss Alyeska's role in assisting the Coast

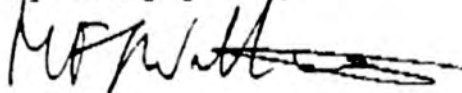
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Letter No. 92-9411-G

Guard's response to phantom spills. In the case of potential spills from cruise ships, fishing support vessels or fuel barges, Alyeska should only have a voluntary support role to assist the primary plan of the spiller. The responsible parties and the Coast Guard should enter into binding contracts with other Response Action Contractors to provide response capability for these types of spills.

I will contact you soon to discuss these issues.

Very truly yours,



M.F.G Williams
Vice-President
Environment & Contingencies

cc: Representative Bill Hudson
Senator Sam Cotten

March 6, 1992

The Honorable Bill Hudson
Chairman, House Special Committee on Oil and Gas
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

RE: Prince William Sound Oil Spill Response Services

Dear Chairman Hudson:

Alyeska Pipeline Service Company ("Alyeska") is an oil spill response action contractor for spills in Prince William Sound on behalf of companies that own, operate or charter tank vessels in the TAPS trade. We refer to those companies as "Contracting Vessels." The scope of services to be provided by Alyeska to those companies is described in Oil Spill Response Services Agreements between Alyeska and the Contracting Vessels. The Agreements incorporate the Prince William Sound Tanker Spill Prevention and Response Plan to describe Alyeska's response plans. Exhibit A of each Agreement lists the vessels covered by that Agreement.

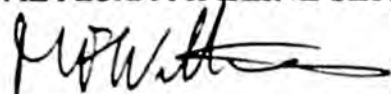
Under these arrangements, for large spills, Alyeska is obligated to respond for up to 72 hours to spills in Prince William Sound, while the Contracting Vessel is mobilizing its resources to take over management of the spill response. The Plan and the Agreements describe how the management transition from Alyeska to the appropriate Contracting Vessel should occur. After the transition, Alyeska's resources, including the on-water-response equipment, will be available for use by the Contracting Vessel for as long as needed and until they can be replaced by other equipment. The Contracting Vessel is contractually obligated to replace Alyeska's core equipment as rapidly as possible so that normal terminal operations may resume as soon as the Coast Guard allows it.

If the Contracting Vessel fails to assume management of the spill response in the 72 hour period, Alyeska anticipates that the Coast Guard will federalize the response, directing and paying for the effort. Alyeska has recently reiterated its verbal understanding with the Valdez Captain of the Port that Alyeska will make its resources available to the Coast Guard under a federalized response. We have written to Admiral Ciancaglini asking for an opportunity to describe this arrangement in writing.

Please contact me if you would like any other information on these matters.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY



M. F. G. Williams
Vice President-Environment & Contingencies

MFGW/RIS/md



Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 / FAX (907) 277-4523

March 6, 1992

Representative Kay Brown
P.O. Box V
Juneau, AK 99811

Dear Representative Brown;

While Mr. Hudson is correct that the United States Coast Guard is developing a certification system for response resources, it is my opinion that the State of Alaska would be wise to pursue a parallel course by making response action contractor certification a condition to the relief of liability immunity. If an industry is to be given an immunity to promote an increased response capability then that industry should be required to demonstrate that response capability does exist, is available, and is reasonably capable of mounting a credible performance in any future oil spills.

The following are answers to your questions.

1. What is the status of the federal RAC certification program?

Response action contractor certification is an issue being considered by the negotiated rulemaking committee for vessel response plan regulations. This is a supplement to the normal rulemaking process. While the Reg Neg committee may issue a recommendation for response action contractor certification, the final decision will not be made by the United States Coast Guard until the proposed rule undergoes a 45-day public review and a review by the Office of Management and Budget and the President's Council on Competitiveness. There are those that do not want response action contractor certification and they will have opportunity to be heard before the rule is published.

Has a decision definitely been made to proceed with a federal certification? No.

2. To what kind of RACs would a federal certification program apply? The envisioned program would apply to RACs desiring to be listed as a primary response resource in a vessel response plan.

Would the federal certification process being discussed fully address the concerns about competency and preparedness of RACs responding to oil and hazardous substance spills other than those by vessels? The proposed program would not apply to hazardous substance spills. The EPA has been charged with writing regulations for facility response plans, and MMS is charged with writing response plan regulations for offshore platforms. I understand both agencies are watching the USCG process closely, but they have not yet developed regulations.

3. Has the regulatory negotiating committee examined the possibility of complementary state and federal certification programs? Yes, it is part of the concept. The Reg Neg working group recognized the fact that states may want to have RAC certification programs for any number of reasons. There was participation from the states of Washington and California, which both have forms of RAC certification. We should strive for a program which is compatible with the proposed federal program.

4. In your view is the federal certification process that is under consideration by the committee fully responsive to Alaska's needs or do you feel that the state should develop a complementary certification program of its own? The federal program is designed to meet the needs of OPA 90. As you know the state has its own needs under the stronger statutes our legislature has passed. My personal advice is that you should require those RACs listed as responders in a state contingency plan to attest to the resources they offer, allow inspection of those resources, participate in drills necessary to assess the capability of the contractor, and submit that they are willing to work for the state under the same terms and conditions for which they are willing to offer themselves to contingency plan holders. I believe that it is time for the state to assure its citizens that the resources listed in contingency plans are actually available and can be employed rapidly by a trained crew. I think the state on-scene coordinator needs access to those resources when he or she finds themselves incident commander at a spill. I think the state deserves verification of the response capability they are trying to achieve by giving liability immunity.

Thank you for considering my views on this matter. If I can answer any question please call me at 277-7222.

Sincerely,

Tim Robertson by jwf

Tim Robertson, Member USCG Negotiated Rulemaking Committee
Representing the Regional Citizens' Advisory Council

cc: Scott Sterling/PWS RCAC
Michele Brown/Citizens' Oversight Council
Representative Bill Hudson

**UNITED STATES COAST GUARD
OIL SPILL RESPONSE PLAN NEGOTIATED RULEMAKING COMMITTEE**

AGREEMENT

The Oil Spill Response Plan Negotiated Rulemaking Committee considered the technical and policy issues involved in tank vessel response plans to implement that portion of Section 4202 of the Oil Pollution Act of 1990 that amends the Federal Water Pollution Control Act by requiring Tank Vessel Response Plans.

The parties whose signatures appear on this document, agree that:

1. The individual signing this agreement is authorized to commit the party to its terms.
2. The party concurs in the attached written statement, dated 27 March 1992, and attached hereto as exhibit (1), (the "Statement"), when considered as a whole.
3. The Coast Guard agrees to draft preambles and proposed rules consistent with the attached statement and will publish them as a Notice of Proposed Rulemaking.
4. The Coast Guard will send the members of the Committee the proposed rule for their review and comment prior to the signature of the Commandant on the Notice of Proposed Rulemaking.
5. Each party agrees not to file negative comments on the proposed rule or the preamble concerning tank vessel response plans to the extent the proposed rule and its preamble have the same substance and effect as the Committee Statement. However, signature by an organization which is a member of the Negotiated Rulemaking Committee does not preclude its constituent members from filing negative comments on the proposed rule or the preamble concerning tank vessel response plans regardless of whether the proposed rule or the preamble have the same substance and effect as the Committee Statement.
6. Each party may comment on those portions of the proposed rule and its preamble that explain the Coast Guard's position on issues that were not the subject of negotiations. In addition, each party may comment on the portions of the proposed rule where two options are presented, expressing their preference for whichever option, and on any specific aspects of the proposed rule, such as numerical values, that were not subject to the consensus.

7. The Coast Guard will consider all relevant comments submitted concerning the Notice of Proposed Rulemaking and in response to such comments will make such modifications in the proposed rule and the preamble as are necessary when issuing a final rule. After the close of the comment period, the Committee will reconvene as it deems necessary to consider those comments in reaching a recommended final rule.
8. The Coast Guard will provide copies of the final rule and its preamble to members of the Committee prior to their signature by the Commandant.
9. Each party agrees not to take any action to inhibit the adoption of the final rule to the extent the final rule and its preamble have the same substance and effect as the Committee Statement.
10. Each party agrees not to challenge the rule in court to the extent that the final rule and its preamble have the same substance and effect as the Committee Statement.
11. No party is bound under Articles 9 and 10 with respect to matters not agreed to by the committee.
12. Each party agrees to submit a memorandum to the relevant docket that it participated in the negotiations and that it concurred in the Committee Statement when considered as a whole if --
 - (a) adverse comments are filed with the agency or the rule is challenged in court, and
 - (b) the preamble and rule have the same substance and effect as the recommended preamble and proposed rule concurred in by the Committee.

NAME:

ORGANIZATION:

SIGNATURE:

Mr. Erik Stromberg

American Association of Port
Authorities

Mr. Joseph J. Cox

American Institute of
Merchant Shipping

Mr. V. K. Leonard

American Petroleum Institute

Mr. Howard B. Hile

American Waterways Operators

Capt. Oliver F. Williams ARCO Marine Inc.

Erik Stromberg
Joseph J. Cox
V. K. Leonard
Howard B. Hile
Oliver F. Williams

NAME:ORGANIZATION:SIGNATURE:

Mr. John Prokop

Independent Liquid Terminals
Association

Mr. Joe A. Nichols

International Tanker Owners
Pollution Federation Limited

Mr. William Gray

INTERTANKO

Mr. William Jennings

Louisiana Offshore Oil Port

Vice Admiral John
Costello, USCG Ret.

Marine Spill Response Corp.

Mr. Rick Morrill

District One
Pacific Coast District, MEBA

Mr. Mark Miller

National Response Corp.

Ms. Nina Sankovitch

Natural Resources Defense
Council, Inc.

Mr. T. S. Wyman

Oil Companies International
Marine Forum

Mr. Tim Robertson

Regional Citizens Advisory
Council Prince William Sound
Oil Spill Prevention/Response
Committee

Ms. Lisa Parker

Regional Citizens Advisory
Council Cook Inlet
Oil Spill Prevention/Response
Committee

Mr. Joseph Smith

Remedial Contractors Inst.

Mr. Dave Usher

Spill Control Association of
America

Mr. Pete Bontadelli

State of California
Office of Oil Spill Prevention
and Response

Mr. Roland Guidry

State of Louisiana
Louisiana Oil Spill
Commission
Office of the Governor

Mr. John K. Chlada

State of Maryland
Department of the Environment

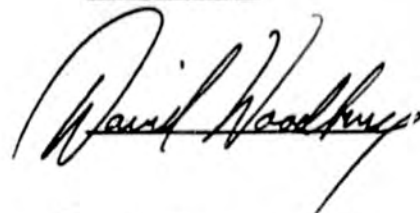
NAME:

ORGANIZATION:

SIGNATURE

Mr. David Woodbury

State of Wisconsin
Wisconsin Department of
Natural Resources



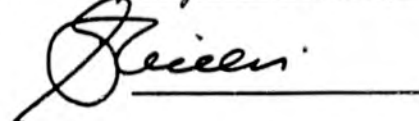
Ms. Liz Sigel Bouchard

Transportation Institute



Capt. Gerald Willis

U.S. Coast Guard



Dated 27 March 1992

[COMMITTEE PRINT]

MARCH 31, 1992

102D CONGRESS
2D SESSION**H. R.** __________
IN THE HOUSE OF REPRESENTATIVESMr. _____ introduced the following bill; which was referred to the
Committee on _____
_____**A BILL**

To establish a national program and policy for the production
of energy and the protection and preservation of the
natural environment.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE VII—ALASKA RESOURCES**
2 **Subtitle A—Alaska Outer**
3 **Continental Shelf**

4 **SEC. 701. ALASKA LEASING AND DRILLING MORATORIA**
5 **AND CANCELLATION.**

6 The Outer Continental Shelf Lands Act (43 U.S.C.
7 1301 et seq.) is amended by adding at the end thereof
8 the following:

9 "SEC. 31. ALASKA LEASING AND DRILLING MORA-
10 TORIA AND LEASE CANCELLATION.—(a) The Secretary
11 shall not prepare for or conduct any preleasing or leasing
12 activity and shall not approve or permit any drilling or
13 other exploration activity under this Act on lands within
14 the North Aleutian Basin planning area in the Alaska re-
15 gion until after January 1, 2002.

16 "(b) Congress finds that the requirements pertaining
17 to cancellation of leases in section 5(a)(2) of this Act have
18 been met with regard to the North Aleutian Basin plan-
19 ning area in the Alaska region. The Secretary shall initiate
20 cancellation of such leases within 90 days after the date
21 of enactment of this section in accordance with this Act."

22 **SEC. 702. ALASKA OCS SUBSISTENCE REVIEW.**

23 The Outer Continental Shelf Lands Act (43 U.S.C.
24 1301 et seq.), as amended by section 701 of this Act, is

1 further amended by adding at the end thereof the fol-
2 lowing:

3 "SEC. 32. ALASKA OCS SUBSISTENCE REVIEW.—

4 Prior to issuing any five-year program under section 18
5 of this Act, conducting any lease sale, or approving any
6 plan or permit for exploration, development, or production
7 activities in the Alaska region authorized by this Act, the
8 Secretary shall comply with section 810 of the Alaska Na-
9 tional Interest Lands Conservation Act (16 U.S.C. 3120).
10 In addition to other requirements, at the lease sale stage
11 the Secretary shall fully consider the effects of exploration,
12 development, and production upon subsistence uses."

13 **Subtitle B—Trans-Alaska Pipeline**

14 **SEC. 711. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER.**

15 Title II of the Trans-Alaska Pipeline Authorization
16 Act (43 U.S.C. 1651 et seq.) is amended by adding at
17 the end thereof the following:

18 "RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

19 "SEC. 208. In addition to the existing duties to re-
20 spond to, contain, and clean up oil spills within the State
21 of Alaska, including Prince William Sound, under section
22 204(b) of this Act and other laws and requirements, the
23 holder of the right-of-way shall file an Oil Spill Contin-
24 gency Plan for Prince William Sound with the Secretary
25 of the Interior and other appropriate authorities."

1 SEC. 712. EXXON VALDEZ SETTLEMENT FUND LAND ACQUI-
2 SITION.

3 Title II of the Trans-Alaska Pipeline Authorization
4 Act (43 U.S.C. 1651 et seq.), as amended by section 711
5 of this Act, is amended by adding at the end thereof the
6 following:

7 "PUBLIC LAND ACQUISITION

8 "SEC. 209. Notwithstanding any other provision of
9 law, no less than 80 percent of any amounts received by
10 the United States pursuant to section 207 of Public Law
11 102-229 shall be utilized to acquire land and conservation
12 easements, including timber rights, within the Chugach
13 National Forest in the Prince William Sound region and
14 in other Gulf of Alaska areas, including Kenai Fjords Na-
15 tional Park, Afognak Island, and Kodiak National Wildlife
16 Refuge."

17 SEC. 713. SUBSISTENCE CLAIMS AGAINST TRANS-ALASKA
18 PIPELINE LIABILITY FUND.

19 Section 204(c)(13) of the Trans-Alaska Pipeline Au-
20 thorization Act (43 U.S.C. 1653(c)(13)) is amended—

21 (1) by striking out "and" at the end of sub-
22 paragraph (A);

23 (2) by striking out the period at the end of sub-
24 paragraph (B) and inserting in lieu thereof "; and";
25 and

1 (3) by adding after subparagraph (B) the fol-
 2 lowing:

3 "(C) all injuries suffered by individuals or enti-
 4 ties due to the impact of a discharge on people en-
 5 gaging in subsistence.

6 "In order to expedite compensation, the Fund shall certify
 7 a class action claim with respect to subparagraph (C).".

8 **TITLE VIII—COAL, OIL, AND GAS**

Subtitle A—Coal Development

- Sec. 801. Coal remining.
- Sec. 802. Metallurgical coal development.
- Sec. 803. Utilization of coal wastes.
- Sec. 804. Coalbed methane development.
- Sec. 805. Surface mining act implementation.

Subtitle B—Coal, Oil, and Gas Leasing

- Sec. 811. Federal coal leasing considerations.
- Sec. 812. Federal coal royalty study.
- Sec. 813. Acquired Federal land mineral receipts management.
- Sec. 814. Reserved oil and gas.
- Sec. 815. Outstanding oil and gas.
- Sec. 816. Oil and gas leasing on oil shale lands.
- Sec. 817. Federal onshore oil and gas leasing.
- Sec. 818. Oil placer claims.
- Sec. 819. Prohibition on lease issuance.
- Sec. 820. Advanced secondary and enhanced oil recovery.

SUBTITLE C—ABANDONED MINE RECLAMATION FUND

- Sec. 821. Amendments to Surface Mining Act.

SUBTITLE D—HEALTH, SAFETY, AND MINING TECHNOLOGY RESEARCH

- Sec. 831. Health, safety, and mining technology research program.

9 **Subtitle A—Coal Development**

10 **SEC. 801. COAL REMINING.**

11 (a) **MODIFICATION OF PROHIBITION.**—Section 510 of
 12 the Surface Mining Control and Reclamation Act of 1977

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Subtitle A—Coal Development

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- Sec. 803. Utilization of coal wastes.
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- Sec. 817. Federal onshore oil and gas leasing.
- Sec. 818. Oil placer claims.
- Sec. 819. Prohibition on lease issuance.
- Sec. 820. Advanced secondary and enhanced oil recovery.

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- Sec. 821. Amendments to Surface Mining Act.

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- Sec. 831. Health, safety, and mining technology research program.

9 Subtitle A—Coal Development

10 SEC. 801. COAL REMINING.

11 (a) MODIFICATION OF PROHIBITION.—Section 510 of
 12 the Surface Mining Control and Reclamation Act of 1977

Energy Development and Environmental Protection Act

Section-by-Section Summary

Title I—Nuclear Plant Licensing

Subtitle A—Hearing and One Step Licensing

Section 101 amends section 189a of the Atomic Energy Act by adding a new paragraph (3) which clarifies that for licensing of power reactors, proceedings to grant, suspend, revoke, renew, or amend any license or construction permit must be "on the record" formal adjudicatory proceedings under the Administrative Procedure Act. This has been the traditional interpretation of the Atomic Energy Act, and rejects a recent NRC interpretation that informal hearings are adequate under section 189.

Section 102 governs a pre-operation hearing under a combined construction permit and operating license pursuant to NRC's new one-step licensing rule, 10 CFR Part 52. It adds a new section 189c to the Atomic Energy Act. Paragraph (1) provides for Federal Register notice of the expected date of fuel loading and criticality of a power reactor under a previously issued combined license. Paragraph (2) provides a 60-day period for any member of the public to request an "on-the-record" hearing on operation of the plant under the combined license. Paragraph (3) limits the scope of any pre-operation hearing to consideration of: (A) whether the facility will operate in conformity with the Atomic Energy Act and the rules and regulations of the Commission; and (B) whether the facility has been constructed and will operate in conformity with the terms of its combined license. Paragraph (4) places a further limitation on consideration of issues under subparagraph (3)(A). It provides that litigation of issues not encompassed by the terms of the license—i.e., issues of compliance with the Atomic Energy Act or the Commission's regulations—is permitted at the pre-operation hearing only if the person requesting such hearing presents *significant, new* information that was not considered by the Commission in any earlier proceeding. The intent of this section is to codify the result of a 1990 three-judge panel decision of the U.S. Court of Appeals for the D.C. Circuit invalidating the severe restrictions on pre-operation hearings in the NRC rule.

Section 103 adds a new section 185b to the Atomic Energy Act to provide explicit statutory authority for the Commission to issue combined construction permits and operating licenses (one-step licenses), provided that prior to operation, the Commission finds that the facility has been constructed and will operate in conformity with the Atomic Energy Act, the Commission's regulations, and the terms of the combined license.

Subtitle B—License Renewal

Section 111 amends section 103c of the Atomic Energy Act by adding two new paragraphs. New paragraph (2) would provide that licenses for power reactors may be renewed for a period not to exceed 20 years. New paragraph (3) provides that both the adequacy of and compliance with the terms of a power reactor license (the plant's "current licensing basis") are within the scope of any license renewal proceeding. This provision responds to a 1991 NRC rule on license renewal, 10 CFR Part 54, which declares the adequacy of and compliance with the current licensing basis for a plant to be outside the scope of a renewal proceeding.

Section 112 further amends section 103c of the Atomic Energy Act by adding a new paragraph (4). This paragraph provides that in any license renewal proceeding for a power reactor, the state in which the plant is located has the automatic right to participate as a full party. If the state takes the position that the license should not be renewed, NRC may not renew the license. If the state takes the position that the renewal should be for only a specified period, NRC may not renew the license for longer than that period.

Subtitle C—Judicial Review of Enforcement Petitions

Section 121 further amends section 189 of the Atomic Energy Act by adding a new subsection d, pertaining to citizen enforcement petitions and judicial review. New paragraph (d)(1) provides that any person may petition the Commission to institute a proceeding to modify, suspend, or revoke a license, or for other appropriate action. This provision simply codifies NRC's existing regulations governing citizen enforcement petitions at 10 CFR §§ 2.202 and 2.206.

Paragraph (2) provides that NRC shall grant such petition if there is material evidence to suggest that the licensee is in significant noncompliance with the terms of its license, Commission regulations, or the Atomic Energy Act, or that conditions at the facility may present undue risk to public health and safety or common defense and security. This provision provides the standard for the Commission to use in granting or denying enforcement petitions, and provides law for a court to apply in the context of judicial review of NRC disposition of such petitions.

Paragraph (3) provides that Commission orders denying enforcement petitions are subject to judicial review. This section simply restores the status quo prior to 1989, when denials of 2.206 petitions were always considered judicially reviewable. In 1989, U.S. Courts of Appeals first held that 2.206 petition denials were presumptively unreviewable under the 1985 Supreme Court case, *Heckler v. Chaney*, because there is "no law for a court to apply" in judging them. This

section corrects that deficiency by providing law for a court to apply.

Subtitle D—Licensing Fees

Section 131(a) adds a new paragraph (4) to section 6101(c) of the Omnibus Budget Reconciliation Act of 1990 to exempt certain federally owned research and educational licenses of the Nuclear Regulatory Commission from annual licensing fees. Specifically, fees are waived for federally owned research reactors used primarily for educational training and academic research purposes. "Research reactor" is defined as one licensed by the Nuclear Regulatory Commission under section 104a of the Atomic Energy Act to operate at a thermal power level of 10 megawatts or less, and if the power level is greater than 1 megawatt, certain other limitations must be met. According to NRC, this provision would waive fees for four reactors nationwide.

Section 131(b) specifies that this section shall apply to annual fees assessed for fiscal year 1992 or any succeeding fiscal year.

Title II—Radiation Protection

Subtitle A—Below Regulatory Concern

Section 201(a) adds a new section 276 to the Atomic Energy Act of 1954. New subsection 276(a) would give states authority to regulate, on the basis of radiological hazard, the management or disposal of low-level radioactive waste, or other practices, materials, or emissions involving radioactivity, if the Nuclear Regulatory Commission, after January 1, 1990, either deregulates or relaxes regulation of such waste disposal or practices. Specifically, the state authority to regulate would be activated if NRC, after the specified date, either "(1) exempts such waste, practices or materials from regulation" or "(2) issues a regulation governing such waste, practices, materials, or emissions that reduces protection of the public health and safety (as determined by any State seeking to regulate under this subsection)." New subsection 276(b) of the Atomic Energy Act incorporates definitions of terms from section 2 of the Low Level Radioactive Waste Policy Act. Section 201(b) makes a conforming amendment to the Table of Contents of the Atomic Energy Act.

Section 202 revokes the NRC's 1986 and 1990 policy statements on "Below Regulatory Concern." Because this legislation does not repeal the statutory requirement (in the Low Level Radioactive Waste Policy Amendments Act of 1985) for the NRC to have a policy and procedures for considering BRC petitions, NRC will be required to promulgate a new policy statement.

Subtitle B—Standards for Cleanup of Contaminated Sites

Subsection 211(a) requires the Environmental Agency to conduct a review of available information on federally owned or licensed sites contaminated with radioactivity as a result of human activity, in consultation with the Department of Energy and the Nuclear Regulatory Commission, and to report to Congress within 9 months.

Subsection 211(b) requires EPA to issue regulations establishing generally applicable standards for decontamination of radiologically contaminated sites that are owned or operated by the federal government or licensed by the NRC or an agreement state under the Atomic Energy Act. Proposed standards must be issued within 9 months, and final standards within 18 months of enactment.

Subsection 211(c) requires the EPA Administrator to establish and chair an interagency committee to provide information and advice to the agency. Subsection 211(d) defines terms used in the section.

Title III—High-Level Radioactive Waste

Subtitle A—Standards for High-Level Radioactive Waste Disposal

Section 301 would amend section 121 of the Nuclear Waste Policy Act of 1982 by adding a new subsection (d). Paragraph (1) would reinstate the EPA's generally applicable environmental standards for the disposal of high-level radioactive waste, spent nuclear fuel, and transuranic waste, as in effect on July 1, 1987, except for two provisions in the standards which were found unlawful by the U.S. Court of Appeals for the First Circuit in 1987.

Paragraph (2) would require the EPA Administrator to propose revisions to the standards within 3 months of passage that would address the matters struck down by the court and any other revisions the Administrator deems appropriate. The Administrator would be required to issue final revisions to the standards within 9 months of the date of enactment. This provision is intended to break the inter-agency logjam which has for several years prevented reinstatement of the EPA standards.

Subtitle B—Federal Interim Storage

Section 311(a) resurrects the Federal Interim storage provisions in sections 135 and 136 of the Nuclear Waste Policy Act of 1982 by deleting the 1990 sunset provision in

that Act and specifying that DOE may not enter into interim storage contracts after a repository or monitored retrievable storage facility is available.

Subsection 311(b) amends section 135(e) of the NWA by providing that any spent nuclear fuel must be removed from an interim storage site within one year of the date of availability of a repository or monitored retrievable storage facility, instead of three years.

Subsection 311(c) strengthens the state and tribal participation provisions of the NWA with respect to federal interim storage. It removes the NWA's 300 metric ton floor on a host state's authority to disapprove federal interim storage at a facility within the state, and deletes the NWA provisions providing for Congressional override of a state's notice of disapproval. A potential host state has an absolute veto over any federal interim storage within its borders.

Title IV—Uranium Enrichment Corporation

Section 401 creates new chapters under the new Title II of the Atomic Energy Act and a Table of Contents for that Chapter, as follows:

Section 1201 defines terms used in this title.

Section 1202 lists key purposes of the Corporation including providing enrichment services in a business-like fashion, maximizing economic return to the Treasury, seeking to commercialize the AVLIS technology, and helping to maintain a reliable, domestic source of enriched uranium.

New Chapter 23 of the Atomic Energy Act, Establishment, Powers and Organization of Corporation, provides as follows:

Section 1301 establishes the Uranium Enrichment Corporation.

Section 1302 concerns corporate offices.

Section 1303 concerns authority and flexibility of the corporation.

Section 1304 empowers the Corporation to act in general as if it were a private corporation. Specifically, the Corporation is authorized to enrich uranium, acquire enriched uranium, or provide uranium to be enriched by others.

Section 1305 directs the President to appoint a Board of Directors that will select a Chairman. Under this section, the Board is responsible for management of the Corporation and must be free of conflicts of interest.

Section 1306 specifies that employees and officers of the Corporation shall not be officers or employees of the United States.

Section 1307 requires the Corporation to prepare professional financial statements with an audit by an independent CPA. In addition, the Corporation will be subject to reviews and audits by the Comptroller General.

Section 1308 provides for annual reports.

Section 1309 requires the Corporation to maintain its own revolving fund that would not require annual appropriations or be subject to Gramm-Rudman apportionments.

Section 1310 allows the Corporation to issue bonds for debt, subject to certain conditions, but may not issue bonds for the purpose of constructing a new enrichment plant.

Section 1311 exempts the Corporation from Federal, State and local taxes, but requires an annual payment in lieu of taxes to state and local tax jurisdictions that the Corporation judges to be fair and reasonable using specified criteria.

Section 1312 authorizes the Corporation to receive assistance from Federal agencies on a reimbursable basis.

Section 1313 requires that Corporation actions shall be consistent with antitrust laws, and makes the Corporation subject to OSHA to the same extent as a private corporation. Furthermore, the section requires the Corporation to be subject to and comply with environmental laws and requirements to same extent and manner as a private corporation.

Section 1314 authorizes the Corporation to provide security for its facilities in the same manner that the DOE could.

Section 1315 subjects the Corporation to the Freedom of Information Act. Corporation employees shall be obligated to protect proprietary information in the same manner as Federal employees.

Section 1316 authorizes DOE to detail, on a reimbursable basis, personnel to run the Corporation until the Corporation's Board of Directors can hire top officers.

Section 1401 makes the Corporation the exclusive marketing agent on behalf of the Federal government for uranium enrichment services. Current contracts and commitments of the DOE, except the TVA settlement agreement, shall be transferred to the Corporation under this section.

Section 1402 specifies that the Corporation shall charge prices that recover costs plus a reasonable profit for uranium enrichment services it provides to the DOE. Otherwise, the Corporation is freed from restrictions on prices it charges its

customers. Instead, it is the expectation of this legislation that the Corporation will operate according to the principle of profit maximization.

Section 1403 grants the Corporation an exclusive option to lease the gaseous diffusion plants of the DOE, subject to a leasing agreement to be negotiated. The section directs DOE to negotiate leasing terms that maximize payments to the Treasury consistent with the economic viability of the Corporation. The section also bars the Corporation from leasing DOE facilities for producing highly-enriched uranium.

Section 1404 provides that the Corporation shall have the exclusive rights to commercial AVLIS, subject to a royalty payment to be negotiated. In addition, the DOE shall transfer to the Corporation property related to enrichment of uranium through the AVLIS process. Such property may transfer only if it is directly related to and materially useful to the commercialization of AVLIS. The Corporation may not construct an AVLIS plant until it is fully privatized.

Section 1405 gives the Corporation \$364 million in the form of a loan for initial working capital, known as Initial Debt, from the Uranium Enrichment Special Fund. The Corporation may not receive any additional financial assistance from the Federal government except as provided in this legislation.

Revenue received by the Treasury from leasing of the DOE gaseous diffusion plants, AVLIS royalty payments, unused balances in the Uranium Enrichment Special Fund, repayment of Initial Debt, and accounts receivable would constitute the full extent of recovery under subsection 161(v) of past direct costs of production under DOE's uranium enrichment program.

This section grants the Corporation an exclusive option to lease the gaseous diffusion plants of the DOE.

Section 1406 authorizes the Corporation to apply to the DOE for patent licenses.

Section 1407 stipulates that liabilities arising from the operation of the uranium enrichment enterprise by DOE prior to enactment of this legislation shall be considered judgments against DOE.

Section 931 adds a new chapter to Title II of the Atomic Energy Act providing for privatization of the Uranium Enrichment Corporation. Chapter 25, Licensing and Regulation of Uranium Enrichment Facilities, provides as follows:

Section 1501 states that NRC, in consultation with DOE and EPA, shall issue safety regulations for the gaseous diffu-

sion plants in lieu of a license. The Corporation must maintain a certificate of compliance in order to lease the facilities.

Section 1502 states that facilities using technologies other than AVLIS would be licensed under the applicable provisions of current law.

Section 1503 provides that the Corporation shall be subject to the regulation of the DOE regarding use of or access to restricted data.

Chapter 26, Privatization of the Corporation, provides as follows:

Section 1601 directs the Corporation to prepare a strategic plan for privatization, including a market evaluation, an assessment of technology options, and a detailed approach for offering stock for sale to the private sector.

Section 1602 directs the Corporation to undertake certain post-demonstration activities necessary to prepare AVLIS for commercialization.

Section 1603 provides that the Corporation may sell stock to the private sector as an equity investment in the assets of the Corporation. Once the Corporation sells more than \$364 million worth of stock, it would be converted to a private corporation, provided that an agreement has been reached on leasing the GDPs and on royalty payments for AVLIS.

Section 1604 directs the Corporation, once privatized, to elect a new Board of Directors, select a new Chief Executive Officer, and propose changes to its corporate charter. This section also repeals powers under Chapter 23, but allows other rights and regulations to remain in effect.

Chapter 27, Deterioration and Decommissioning, provides as follows:

Section 1701 establishes a dedicated Fund for the decontamination and decommissioning of DOE's gaseous diffusion plants in the Treasury and makes it available to the DOE. Under this section, interest and other proceeds from the Fund shall be retained by the Fund.

Section 1702 states that the Fund shall consist of deposits of \$500 million a year, indexed to inflation. Under this section, contributions from the Government shall be made out of revenue that is being recovered by the Corporation from several sources: (1) payments under the leasing agreement for the DOE's gaseous diffusion plants; (2) transfer of unused balances from the Uranium Enrichment Special Fund; (3) royalties from AVLIS; (4) repayment of Initial Debt; and, (5) accounts receivable transferred from the DOE.

The President is authorized to negotiate contributions to the Fund from foreign customers or their governments.

If the sum of contributions to the Fund from Government sources, foreign customers, and interest on balances, is less than the annual deposit requirement, the section states that a special backup assessment on domestic nuclear utilities would make up the difference. Under this section, the amount of the difference that an individual utility would pay would be proportional to the amount of fuel that utility had purchased from the DOE in the past.

This section requires deposits to continue to be made into the Fund until balances in the Fund are adequate to complete decontamination and decommissioning.

Section 1703 directs the National Academy of Sciences to conduct a study to determine cleanup needs, identify alternative cleanup methods, estimate costs of cleanup, and provide recommendations for reducing costs of cleanup in the way that complies with all relevant environmental laws and requirements.

Section 1704 states that the Corporation shall be responsible separately for the decontamination and decommissioning at its own facilities and shall report annually to Congress.

Section 402 contains amendments to laws that are necessary for conformance to the new Title II that this legislation adds to the Atomic Energy Act.

In addition, this section amends section 161(v) of the Atomic Energy Act by removing restrictions on pricing policy in order to allow the Corporation the flexibility it needs to maximize profits. However, this section retains the cost recovery requirement for total costs contained in the current section 161(v).

Section 403 contains a standard severability clause.

Section 404 grants standing for citizens or an organization that represents them to bring actions in Federal court to enforce provisions of this title.

Title V—Whistleblower Protection

Section 501(a) amends the whistleblower protection provisions of section 210(a) of the Energy Reorganization Act of 1974 to explicitly provide whistleblower protection for employees: 1) notifying the employer of an alleged violation rather than a federal regulator; 2) opposing a practice that would be a violation of the Atomic Energy Act; or 3) testify-

ing before Congress or any Federal or State agency regarding an alleged violation of this Act or the Atomic Energy Act.

Subsection 501(a)(5) adds a new paragraph (2) to Energy Reorganization Act section 210(a) which defines the term "employer" to include a Commission licensee, an applicant for a Commission license, a contractor or subcontractor of a Commission licensee or of an applicant for a Commission license, the Department of Energy, a contractor or subcontractor at a Department of Energy Nuclear facility, or any other employer engaged in any activity under the Energy Reorganization Act or the Atomic Energy Act of 1954.

Section 501(b) amends section 210(b)(1) of the Energy Reorganization Act to extend the statute of limitations for the filing of written complaints with the Department of Labor from thirty days to one year.

Section 501(c) adds a new clause to section 210(b)(2)(A) of the Energy Reorganization Act which provides that in the event that the Secretary of Labor does not issue an order on a complaint within the 120 days prescribed, the complainant shall be entitled to *de novo* review of the complaint in any United States District Court.

Section 501(d) adds a new paragraph (3) to section 210(b) of the Energy Reorganization Act which provides that the Secretary of Labor may determine that a violation of the Act has occurred only if the reporting of the alleged violation was a contributing factor. Relief may not be ordered if the employer is able to demonstrate by clear and convincing evidence that the employer would have taken the same unfavorable personnel action against the employee in the absence of the "whistleblowing activity."

Section 501(e) adds a new subsection (b) to section 210 of the Energy Reorganization Act. It waives preemption by providing that complainants are not precluded from pursuing any other available right or remedy: 1) contemporaneously with pursuit of relief under this section; 2) subsequent to issuance of a final order by the Secretary of Labor; or 3) subsequent to judicial review.

Section 501(f) adds a new subsection (i) to section 210 of the Energy Reorganization Act which provides that the rights and requirements under this title must be prominently posted in the workplace.

Section 501(g) adds a new subsection (j) to section 210 of the Energy Reorganization Act which provides that the Secretary of Labor or, on appeal, the U.S. District Court have authority to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages. It allows

for additional monetary damages for serious and repeated intimidation and harassment of whistleblowers.

Section 501(h) adds a new subsection (k) to section 210 of the Energy Reorganization Act which provides that the Nuclear Regulatory Commission may not delay any investigation of an alleged violation on the basis of a whistleblower complaint being filed or an investigation by the Secretary being initiated. A determination that a violation has not occurred shall not be considered by the Commission in its determination of whether any violation of the Act or the Atomic Energy Act of 1954 has occurred.

Section 501(i) redefines "Secretary" and corrects a mistaken section designation in the Energy Reorganization Act.

Section 501(j) provides that the amendments enacted by this section will apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 on or after the date of enactment.

Title VI—Outer Continental Shelf

Subtitle A—Prohibition of Leasing and Preleasing Activity

Section 601 bars any preleasing after January 1, 2002 in the Onnia, North Atlantic, Mid-Atlantic Florida and North Aleutian Plan

It also establishes environmental planning areas with responsibility the oceanographic, ecological and socioeconomic information available, obtain additional information that might be necessary and subject it to peer review, and identify potential impacts of oil and gas activity in the region.

The secretary must certify adequacy of information before proceeding to lease in any area subject to a moratorium; in making leasing decisions in moratorium areas the Secretary must consider information developed and must give equal weight to the environment and oil and gas development.

Subtitle B—Buyback of Certain Leases

Section 602 amends section 5(2)(a) of OCSLA to require the Secretary to cancel leases upon a determination that it has resulted in or poses a serious threat of damage to wildlife, property, minerals, the national security or the environment. It also reduces from five years to one year the lease suspension period that must precede cancellation. Finally, section

602 authorizes the use of credits against future rents, royalties or bonuses as compensation to owners of canceled leases.

Title VII—Alaska

Subtitle A—Alaska Outer Continental Shelf

Section 701 provides that the Secretary of the Interior is prohibited from permitting any drilling or other exploration activity on existing leases and also prohibited from conducting additional lease sales in Bristol Bay Alaska [North Aleutian Basin Planning Area] until after January 1, 2002.

Alaska's Bristol Bay is one of the world richest fishing grounds and productive marine environments. Accordingly, the Secretary is directed to cancel the existing leases in Bristol Bay in conformance with the new criteria set forth in section 602 of this bill.

Section 702 provides that in conducting OCS leasing and related activities in Alaska, the Secretary is required to evaluate and minimize adverse impacts on subsistence pursuant to Section 810 of the Alaska National Interest Lands Conservation Act.

Subtitle B—Trans-Alaska Pipeline

Section 711 provides that Alyeska file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior. Under existing law, Alyeska Pipeline Service Company, as agent for the seven companies which were granted the right-of-way for the Trans-Alaska pipeline, has a duty to respond to oil spills in Prince William Sound.

Section 712 provides that funds received by the United States from settlement of claims related to the Exxon Valdez oil spill be deposited in a Natural Resource Damage Assessment and Restoration Fund in the Department of the Interior. The Federal Trustees for the oil spill restoration (Interior, Forest Service and NOAA) are also required by section 207 of the FY-92 dire emergency supplemental appropriations act (P.L. 102-229) to submit their proposed use of such funds in the President's budget for Congressional review.

The President's FY 93 Budget estimates that over \$400 million will eventually be received by the United States as its share of the Exxon Valdez civil settlement. In addition, \$50 million in criminal restitutionary payments have already been deposited in the Fund. Consistent with the Committee's Views and Estimates on the President's Budget, section 712 requires that no less than 80 percent of the money received from the Exxon Valdez settlement shall be used to acquire or otherwise protect key fish and wildlife habitat in Prince Wil-

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Ilam Sound and the Gulf of Alaska areas damaged by the Exxon Valdez oil spill. The intent is for the Federal Trusts to acquire, on a willing seller basis, Alaska Native corporation property, including timber rights, within the Chugach National Forest, Kenai Fjords National Park, Afognak Island, and Kodiak National Wildlife Refuge.

Section 713 fulfills the original intent of Congress that Alaska Natives be fully and fairly compensated for damages from a spill of TAPS oil by specifically authorizing subsistence claims to be brought against the Liability Fund. The section also directs the Fund to certify a class action in order to expedite compensation. The \$100 million Liability Fund established by the 1973 Trans-Alaska Pipeline Authorization Act was intended by Congress to provide quick compensation for Alaska Natives and other persons injured by spills of TAPS oil. Congress amended the TAPS Act in 1990 with the intent to facilitate full and fair compensation for spill victims. Yet three years after the Exxon Valdez spill, the administrators of the Liability Fund have failed to provide adequate compensation. In January 1992, the Liability Fund rejected several thousand Alaska Native subsistence claims.

Title VIII—Coal, Oil and Gas

Subtitle A—Coal Development

Section 801 in subsection (a) would amend the Surface Mining Control and Reclamation Act of 1977 to provide that the prohibition of section 510(c) of the Act would not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. The term 'violation' would have the same meaning as such term has under section 510(c).

Subsection (b) would amend the Surface Mining Control and Reclamation Act of 1977 to provide that on lands eligible for remining the period for assuming responsibility for successful revegetation would be two full years after the last year of augmented seeding, fertilizing, irrigation, or other required work; except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, the period would be five years.

Subsection (c) would amend the Surface Mining Control and Reclamation Act of 1977 to define the term 'unanticipated event or condition' as an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit, and the term 'lands eligible for remining' as those lands that would other-

wise be eligible for expenditures under the Abandoned Mine Reclamation Program.

Subsection (d) would amend the Surface Mining Control and Reclamation Act of 1977 to provide that surface coal mining operations on lands eligible for remining would not affect the eligibility of such lands for reclamation and restoration under the Abandoned Mine Reclamation Program.

Subsection (e) authorizes the Secretary of the Interior to undertake a rulemaking to establish environmental protection performance and reclamation standards, and a separate permit system, for operations for the on-site reprocessing of abandoned coal refuse piles, and operations for the removal of these piles on lands that would otherwise be eligible under the Abandoned Mine Reclamation Program.

Section 802 in subsection (a) would establish a metallurgical coal mining experimental program within the Bureau of Mines for the purpose of developing techniques that will lead to the greater and more efficient utilization of the Nation's metallurgical coal resources. Under the program techniques and demonstration projects would be undertaken to facilitate the use of metallurgical coal as a boiler fuel for the purpose of generating steam to produce electricity, including blending metallurgical coal with other coals in order to enhance its efficient application as a boiler fuel; as an ingredient in the manufacturing of steel; and as a source of pipeline quality coalbed methane.

Subsection (b) would establish a Metallurgical Coal Development Advisory Committee to advise the Interior Secretary on the metallurgical coal mining experimental program. The Committee would be composed of 3 members representing producers of metallurgical coal; 2 members representing transporters of coal, including representatives of rail and barge carriers; 2 members representing steel producers; 3 members representing the electric utility industry; 2 members representing boiler manufacturers; and 2 members representing natural gas distributors and carriers.

Section 803 would establish a coal waste utilization experimental program with the Bureau of Mines for the purpose of developing techniques that will lead to the greater and more efficient utilization of coal from mining and processing wastes. Under the program techniques and demonstration projects would be undertaken to facilitate the use of coal from mining and processing wastes as a boiler fuel for the purpose of generating steam to produce electricity.

Section 804 would amend section 32 of the Mineral Leasing Act by adding a new subsection (b). Subsection (b) would require that 180 days after this section is enacted, the Interior Secretary would publish in the Federal Register a list of states where the Secretary determines that disputes, uncertainty, or

litigation exist regarding the ownership of the methane; development of significant deposits of coalbed methane is being impeded by existing disputes, uncertainty, or litigation regarding ownership of methane; a statutory or regulatory procedure or existing case law is not in effect permitting and encouraging the development of coalbed methane; and no extensive development of methane is taking place. States that are listed would be considered "Affected States".

The Secretary would have the authority to revise the list by either adding or deleting states. Affected states would have the authority to petition the Secretary to be delisted once the state has either enacted coalbed methane development legislation or case law has been established in that state.

The states of West Virginia, Pennsylvania, Kentucky, Ohio, Tennessee, Indiana, and Illinois would be considered Affected States upon enactment of this section. These are states where the ownership question is impeding development of coalbed methane. The states of Colorado, Montana, New Mexico, Wyoming, Utah, Washington, Mississippi, Virginia and Alabama would not be included in this list. These states have either already passed legislation to address the ownership question or are not experiencing an ownership problem.

Once a state becomes an Affected State, it would have 360 days to establish a State Board to administer the provisions of this subsection in order to provide for the expeditious and economical development of coalbed methane. The State Board would have authority to promulgate regulations for coalbed methane development. A person concerned with preserving the integrity of workable seams who is knowledgeable in underground coal mining methods and a person knowledgeable in oil and gas development activities must be appointed to the State Board.

The Secretary would act in lieu of a State Board if a state does not meet the 360-day requirement. In implementing a coalbed methane program, the State Board or the Secretary must take into consideration existing and future coal mining plans, preserve the mineability of coal seams and provide for the prevention of waste and maximization of recovery of the methane in a manner which will protect the rights of all entities owning an interest in the methane when administering the coalbed methane development program.

The State Board would have the authority to establish spacing requirements for the minimum distance between coalbed methane wells, and the minimum distance of a coalbed methane well from a property line, if a state did not already have existing spacing requirements in place. Spacing requirements would be established within 90 days after the State Board is created.

An entity claiming a coalbed methane ownership interest and planning to drill and operate a coalbed methane well can

apply for a spacing unit from the State Board. Once the application is received and approved by the State Board, an order would be issued establishing the boundaries of the spacing unit. Spacing units must generally be uniform in size.

Once a spacing order has been issued, and once an application for pooling has been filed by an entity claiming a coalbed methane ownership interest and proposing to drill a coalbed methane well, the State Board would hold a hearing for purposes of reviewing the pooling application. If the State Board determines that all applicable criteria have been met, the State Board would issue a pooling order. A pooling order could not be issued until notice has been provided, or a reasonable and diligent effort to provide notice has been made, to each entity which may claim an interest in the coalbed methane gas, within the unit, and each entity has been offered an opportunity to appear at the hearing. Once a pooling order has been issued, each entity would be given an opportunity to either: sell or lease its coalbed methane ownership interest to the unit operator at a royalty rate determined by the State Board and set forth in the pooling order; become a participating working interest owner by bearing a share of the risks in the drilling operation; or, share in the operation of the well as a nonparticipating working interest owner by relinquishing its working interest to the participating working interest owner until the proceeds allocable to its share equal 300 percent of the share of such costs allocable to its interest. Thereafter, the nonparticipating working interest owner would become a participating working interest owner.

The pooling order would designate a unit operator to drill and operate in the unit. The order would provide that any entity claiming an interest in the coalbed methane within the unit which does not make an election under the pooling order would be deemed to have leased its coalbed methane interest to the unit operator under the same terms and conditions of the pooling order. If all entities claiming an ownership of the coalbed methane enter into a voluntary agreement for drilling and operating the methane gas well, a pooling order could not be issued.

Each pooling order would provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to the conflicting interests would be deposited and held for the interest of the claimants. Each participating working interest owner, except for the unit operator, would be required to deposit into the escrow account a proportionate share of the costs allocable to the ownership interest claimed by each participating working interest owner. The unit operator would be required to deposit into the escrow account all proceeds associated with the conflicting interests of lessees, plus all proceeds in excess of ongoing operational expenses related to the conflicting interests.

Once the State Board has been notified of a final legal determination on the methane ownership or, when and if, an agreement among all entities claiming an interest in the methane has been reached, the State Board would order the payment of principal and accrued interest from the escrow account to all entities legally entitled to the funds within 30 days of receipt of this notification or agreement. Each participating working interest owner would receive a proportionate share of the proceeds attributable to the conflicting interest. Each nonparticipating working interest owner would receive a proportionate share of the proceeds attributable to the conflicting interest, less the cost of being carried as a nonparticipating working interest owner. Each entity leasing, or deemed to have leased, its coalbed methane ownership interest would receive a share of the royalty proceeds, as set forth in the pooling order. The State Board would be required to issue rules and regulations in order to provide for the protection of funds deposited into the escrow account.

No methane well could be drilled unless the State Board has approved the drilling.

A unit operator would be prohibited from stimulating a coal seam or known coal bearing geologic strata without the written consent of each entity which is operating, or at the time of application for a spacing unit, has by virtue of ownership or a coal lease, the right to operate, a coal mine in a coal seam that is situated within a certain horizontal or vertical distance, as determined by the State Board, of the well. Any methane lease that would be in existence as of the effective date of this subsection would not be affected.

The State Board would not be able to approve the drilling of a methane well unless the unit operator has notified each entity which is operating, or has the right to operate, a coal mine within the horizontal and vertical distances determined by the State Board. Any entity that receives a notice would be able to object to the drilling within 30 days of receipt of the notice. The State Board would be able to refuse the drilling of a methane well based on any of the following: the proposed activity, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine, would adversely affect any operating, inactive or abandoned coal mine, including any coal mine already surveyed and planned but not yet in operation; the proposed activity would not conform with a coal operator's mine development plan for an existing or proposed activity; there would be an unreasonable interference from the proposed activity with present or future coal mining operations, including the ability to comply with other applicable laws and regulations; the presence of evidence indicating that the proposed drilling activities would be unsafe, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; the proposed activity would

unreasonably interfere with the safe recovery of coal, oil and gas.

If the State Board does not approve the drilling of a well, the State Board would be required to consider whether other options were available to promote the development of the methane. The State Board would be required to consider whether the unit operator could modify its proposed operation in order that the proposed activity could instead be reasonably done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration surface topography; the proposed activity could be moved to a mined-out area, below the coal outcrop or some other feasible area; the unit operator agrees to a drilling moratorium of not more than two years to permit completion of coal mining operations; or, the practicality of locating the proposed spacing unit or well on a uniform pattern with other spacing units or wells.

Wells that are drilled after enactment of this legislation which penetrate coal seams with remaining reserves would be required to provide for subsequent safe mining through the well in accordance with standards prescribed by the State Board for the State in which the well would be located, in consultation with any Federal and State agencies having authority over coal mine safety.

The State Board would not be able to approve the drilling of a coalbed methane well unless the well complied with the State Board's spacing and other requirements and the operator has notified, or made a reasonable and diligent effort to notify, all entities claiming ownership of the methane and they were provided an opportunity to object in accordance with requirements established by the State Board; a pooling order has been issued if an ownership conflict existed. These conditions would be in addition to the notification required for coal operators, or future coal operators, where the well would be drilled within a specific horizontal or vertical distance of the coal seam. The State Board would be required to establish conditions under which entities claiming ownership of coalbed methane may object to the drilling of a coalbed methane well.

The legislation would not prevent or inhibit the entity which has the right to develop and mine coal in any mine from venting coalbed methane gas to ensure safe mining operations.

Section 805 in subsection (a)(1) would amend section 717(b) of the Surface Mining Control and Reclamation Act of 1977 to clarify the terminology used under that subsection. Paragraph (2) would require the Interior Secretary to promulgate regulations requiring the repair, or compensation for, material damage resulting from subsidence caused to any structure or facility, and the replacement of adversely affected water supplies.

Subsection (b) would amend the Surface Mining Control and Reclamation Act of 1977 to define the term 'valid existing rights' as used under section 522(e) of the Act.

Subsection (c) would require the Interior Secretary to comply with the Settlement Agreement the Secretary entered into for the implementation of the Applicant-Violator System.

Subsection (d) would amend the Surface Mining Control and Reclamation Act of 1977 to clarify the Interior Department's research authorities under the Act.

Subsection (e) provides for cooperative agreements to be entered into between the Interior Secretary and states with approved abandoned mine reclamation programs for the purpose of undertaking activities under the coal outcrop fire program.

Subtitle B—Coal, Oil and Gas Leasing

Section 811 would amend the Mineral Leasing Act to require the Interior Secretary, prior to the issuance of any federal coal lease, to consider the effects which mining of the proposed lease might have on competition in the coal industry, and the market demand for coal from the proposed lease. This requirement would not apply to the issuance of a coal lease which would in the reasonably foreseeable future prevent the bypass of federal coal deposits, or which would provide for the expansion of existing mining operations.

Section 812 would require the Secretary of the Interior to conduct a study of current Federal coal royalty rates for surface mined and underground mined coal, and the valuation methodology of such coal, for the purposes of assessing whether the current Federal coal royalty system creates competitive inequities among the Federal coal producing regions and States, suppresses coal production in certain Federal coal producing regions and States, results in a loss of mineral receipts to the Federal Government and to State governments, or causes inefficiencies in Federal valuation, audit and collection activities.

Under the study, the Secretary would make findings on whether an alternative royalty system would mitigate any competitive inequities among the Federal coal producing regions and States, increase coal production in certain Federal coal producing regions and States, result in an increase in mineral receipts to the Federal government and to State governments or provide for a more efficient valuation, audit and collection program. The alternative coal royalty systems considered would be based on the value of coal measured in cents per million British thermal units, a flat cents-per-ton rate and any other methodology the Secretary deems appropriate for the purpose of the study. The Secretary would also examine the justification for establishing a separate royalty rate for

lignite coal and a separate valuation methodology for lignite coal.

Within 60 days after the date of enactment of this Act, the Secretary would publish in the Federal Register a notice detailing the scope and methodology proposed to be used in the study, and after opportunity for public comment, publish a final notice on the scope and methodology that will be used in the study. Within 2 years after the date of enactment of this Act, the Secretary would report the findings of the study, and recommendations on alternative Federal royalty systems, to the President and the Congress.

Section 813 in subsection (a) would amend section 6 of the Mineral Leasing Act for Acquired Lands to require that the disbursement of the state share of mineral receipts be made by the Secretary of the Interior on a monthly basis in the same manner as is the state-share of mineral receipts collected and disbursed from public domain lands.

Subsection (b) would amend the Mineral Leasing Act for Acquired Lands to clarify that the Secretary of the Interior has the authority to administer mineral leases located on acquired federal lands.

Subsection (c) provides for an explicit definition of the term "money" in section 7 of the Act of August 13, 1941, as including bonuses, royalties and rentals, as well as any late interest payments.

Section 814 in subsection (a) would amend section 17(b) of the Mineral Leasing Act to authorize the Secretary of the Interior to issue a non-competitive lease under subsection (c)(1) to the holder of a private lease for oil and gas to which the United States held a vested future interest if the lease was producing or was capable of producing oil or gas in paying quantities at an annual average production volume of 15 b/d of oil or condensate or less, or 60 mcf or less of gas at the time ownership to the oil and gas vests with the United States. The time frames for which an individual would be required to meet in order to elect to enter into a non-competitive lease are set forth. In addition, all terms and conditions of leases issued under section 17(c)(1) of the Mineral Leasing Act would apply to non-competitive leases issued pursuant to the amendments made by this Act.

Subsection (b) provides that the amendments made by subsection (a) apply to mineral estates which vested with the United States after January 1, 1990.

Section 815 in subsection (a) would amend section 17(g) of the Mineral Leasing Act to require that before any surface disturbing activities relating to oil and gas development take place on lands where the oil and gas rights are considered outstanding, the Secretary of Agriculture would be required to

issue reasonable regulations as may be necessary to protect the interests of the United States. These regulations would prevent or minimize damage to the environment and other resource values. Lands that would be affected by these requirements would be those lands under the administration of the Secretary of Agriculture where the United States has acquired an interest in the lands, but does not have an interest in oil and gas deposits that may be present under these lands. Lands where the United States has not, but will in the future, acquire the interest in the oil and gas that may be present under these lands are not affected.

Subsection (b) provides for the promulgation of regulations to implement the amendment made by subsection (a).

Section 816 in subsection (a) would amend Section 17 of the Mineral Leasing Act to authorize the Secretary of Interior to make available, subject to valid existing rights, lands within Naval Oil Shale Reserves 1 and 3 for oil and gas leasing.

Subsection (b) would authorize the Secretary of Interior, acting through the Bureau of Land Management, to manage the surface estate of the lands referred to in subsection (a) pursuant to the Federal Land Policy Management Act and other applicable laws.

Section 817 would amend Section 17(c)(1) of the Mineral Leasing Act to prohibit the Secretary of the Interior from issuing a noncompetitive lease if more than one qualified person applies for a noncompetitive lease under this paragraph for any unit on the first day after a competitive lease sale. The Secretary shall instead make such unit available for competitive leasing under subsection (b) at the next quarterly competitive oil and gas lease sale held by the Secretary.

Section 818 would cure a technical title problem relating to certain claims under the Act of February 11, 1897, commonly referred to as the Oil Placer Act.

Section 819 would amend the Mineral Leasing Act to prohibit the issuance of federal coal leases to any entity engaged in the production of coal in a foreign country if the coal is imported into the United States. This provision would not apply to the issuance of a coal lease which would in the reasonably foreseeable future prevent the bypass of federal coal deposits, or which would provide for the expansion of existing mining operations.

Section 820 would require the Department of Interior, acting through the Bureau of Land Management, to establish a cooperative government-private sector program to research, develop and demonstrate advanced secondary and enhanced oil recovery technologies in producing fields on public lands in order to extend the production life of a well, reduce the rate of well abandonments, and allow for the recovery of oil that is

left behind after conventional technologies have been utilized. Technologies to be included in the program would identify, select and classify reservoirs that have the highest potential for oil recovery and are on the verge of abandonment; improve reservoir characterization and management; improve waterflooding techniques to improve oil recovery; extend the economic life of the reservoir; improve analysis and field verification; demonstrate and field test advanced secondary and enhanced oil recovery processes determined by the Secretary to be high priority reservoirs; improve techniques for meeting environmental requirements, including temporary well-plugging techniques; and maximize the economically recoverable oil in a reservoir in order to prevent abandonment.

The Secretary of Interior, acting through the Bureau of Land Management, would have the authority to enter into cooperative government-private sector programs with any entity to carry out a project on non-public lands if that project was determined by the Secretary to have potential application on public lands.

The Secretary of Interior would be required to solicit proposals for the cooperative program within one year after enactment of this section.

Private sector entities would be required to cost-share all project costs on a 50/50 basis with the federal government. There would be authorized such sums as are necessary to carry out this section.

Subtitle C—Abandoned Mine Reclamation Fund

Section 821 would amend the Surface Mining Control and Reclamation Act of 1977 to extend the authority to collect reclamation fees to the year 2010 and authorize the deposit of a certain amount of reclamation fees into a Coal Industry Retiree Benefit Fund.

Subtitle D—Health, Safety and Mining Technology Research

Section 831 would direct the Bureau of Mines to develop a plan to identify the goals and objectives of the Health, Safety and Mining Technology program of the Bureau of Mines, and to guide research and technology development under the program, over each 5-year period. In preparing the plan, the Director of the Bureau of Mines shall prepare a list of all health, safety and mining technology proposals and submit them to a Health, Safety and Mining Technology Research Advisory Committee for review and recommendations. The Committee would be composed of a representative from the Mine Safety and Health Administration; a representative from the National Institute for Occupational Safety and Health; two representatives from the coal mining industry, one with exper-

disc is surface mining techniques and one with expertise in underground mining techniques; two representatives from the metal, non-metal mining industry, one with expertise in surface mining techniques and one with expertise in underground mining techniques; six representatives from unions representing miners, of which two shall have expertise in metal, non-metal mining; a representative from a school of mines with expertise in coal mining research located in the eastern portion of the United States; and a representative from a school of mines with expertise in metal, non-metal mining research located in the western portion of the United States.

Title IX—Federal Power Marketing Administrations

Section 901 amends Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275-76, P.L. 98-381) as follows:

Section 201 defines terms used in this title. "Integrated resource planning" means a comparison of all practicable energy efficiency and energy supply options to identify the least-cost option for providing electric service. "Least-cost option" means an option for providing electric service which will minimize life-cycle system costs, including environmental costs, of providing such service.

Section 202 requires promulgation of regulations to require integrated resource planning. Requires that WAPA amend, by regulation, its current energy conservation and renewable energy program to require purchasers of firm power under long-term contracts to implement integrated resource planning within three years of enactment. This section also requires that WAPA, within 12 months after enactment, prescribe a value, or a range of values, for the environmental costs of energy supply and energy efficiency resources to be used by WAPA firm power customers for the purposes of complying with this title.

Section 203 provides that WAPA shall provide technical assistance to utilities to conduct integrated resource planning and comply with the requirements of this title, including developing demand-side management pilot programs.

Section 204 mandates integrated resource plans. Subsection (a) provides that each purchaser shall submit an integrated resource plan to WAPA 12 months after regulations are issued. A revision of such plan shall be submitted every 3 years.

Subsection (b) provides that WAPA shall approve an integrated resource plan if it accurately compares life-cycle system costs and environmental costs for energy supply options; designates that the least-cost supply option is acquired;

and, to the maximum extent practicable, minimizes adverse environmental effects of energy supply acquisitions.

Subsection (c) provides that where a purchaser is implementing integrated resource planning under a program responding to Federal, State, or other initiatives, WAPA shall make due allowance for the incorporation of such elements within the least-cost plan required by this title.

Subsection (d) provides that each purchaser shall fully comply with its least-cost plan. WAPA shall review each purchaser's implementation of its least-cost plan at least once every 2 years to determine if the purchaser is in compliance with the plan. If WAPA finds the purchaser out-of-compliance, the Administrator shall impose either a surcharge on all power purchased from WAPA by the purchaser or a reduction in power allocation.

Subsection (e) specified enforcement provisions. Paragraph (1) provides that if an integrated resource plan for any purchaser is disapproved by the Administrator and a revised plan not resubmitted within 9 months the Administrator shall impose a surcharge of 20 percent of the purchase price on all power obtained by that purchaser. The surcharge shall remain in effect until the plan is approved. If the plan is not approved for more than one year, the surcharge shall increase to 30 percent for the second year, and to 40 percent thereafter until the plan is approved.

Paragraph (2) provides that identical surcharges shall be imposed whenever the Administrator determines that a purchaser's activities are not consistent with its integrated resource plan.

Paragraph (3) provides that in lieu of imposing a surcharge under paragraphs (1) or (2) the Administrator may reduce a utility's power allocation. If the reduction is for the first year of a violation, the reduction shall be 10 percent of the power allocation otherwise available, for the second year the reduction shall be 20 percent and for each year thereafter the reduction shall be 30 percent.

Paragraph (4) provides that any person who may be affected by the integrated resource plan of any utility may bring an action against the Administrator in federal District Court to require the Administrator to immediately approve or disapprove a plan; or impose a surcharge or power allocation whenever such surcharge is mandated in accordance with paragraphs (1), (2), and (3).

Paragraph (5) provides that any person subject to a surcharge or reduction in power allocation may appeal the imposition of such penalty within 30 days.

Subsection (f) provides that with the approval of WAPA, purchasers may form integrated resource planning cooperatives for the purposes of complying with this title.

Section 205 establishes the Central Valley Project Energy Efficiency Pilot Program. Subsection (a) provides that the Secretary of Energy, in cooperation with the Secretary of Interior, is directed to promulgate regulations whereby any entity with a long-term power service CVP contract may propose energy efficiency and conservation improvements in the CVP water delivery, power generation, transmission systems, and associated irrigation and water systems, provide all financing for such improvements, and receive 80 percent of the energy savings produced from such improvements.

Subsection (b) provides that WAPA shall receive 20 percent of any power saved from efficiency improvements.

Subsection (c) provides for energy efficiency savings. Subsection (d) specifies criteria for approval.

Subsection (e) provides that a 25-percent set-aside shall be made available to the Secretary of Interior to restore the fish and wildlife resources of the CVP.

Subsection (f) provides that the authority of this section shall expire 5 years after final regulations are issued. Contracts in place pursuant to this section shall continue in effect through the term of the contract.

Subsection (g) provides that GAO shall evaluate and audit this program not less than once every 2 years. One year prior to expiration of this authority GAO shall provide recommendations regarding whether the authority should be continued or modified in any way.

Section 206 contains miscellaneous provisions concerning environmental impact statements, regulations, annual reports, funding, and prohibition on bleeding of power prices. With respect to funding, the Administrator is required to adjust WAPA rates for the sale of electric energy to the extent necessary to cover all costs incurred under this title.

Title X—Federal Power Marketing Administration Transmission

Section 1001 contains definitions used in this title.

Section 1002 concerns application to Federal Power Marketing Administrations. Subsection (a) provides that the provisions of Federal law applicable to transmitting utilities under which such utilities may be required to provide transmission access shall be applicable to Federal power marketing

administrations in the same manner and to the same extent as such provisions are applicable to transmitting utilities except as provided in subsection (b).

Subsection (b) specifies laws applicable to the federal Columbia River Transmission System.

Section 1003 concerns state authorities.

Title XI—Energy Development on Indian Lands

Section 1101 names this title as the "Indian Energy Amendments of 1992".

Section 1102 defines the terms "Indian tribe", "Indian reservation", and "Secretary" for purposes of this title.

Section 1103(a) stipulates that while implementing the various provisions of this Act the Secretary of Energy must include Indian tribes to the maximum extent possible consistent with the Federal trust responsibilities to Indian tribes.

Subsection (b) provides that the Secretary of Energy may treat an Indian tribe the same as a state wherever appropriate under the provisions of this Act.

Section 1104(a) provides that the Secretary of Energy shall consult with the Secretary of the Interior to establish a demonstration grant program for tribes and Alaska Native Organizations. The grant program shall assist tribes and Alaska Native Organizations in becoming energy self-sufficient and in developing vertically integrated enterprises on reservations. Vertically integrated enterprises may include the exploration, extraction, preparation, and transportation of resources. Grants shall be used by tribes to develop managerial and technical expertise. Grants may be awarded to tribes or joint ventures where tribes control at least 51% of the joint venture.

Paragraph (2) of this subsection provides that the Secretary shall provide matching grants not to exceed 50% of the cost of a vertical integration project. Projects may include solar and wind energy, oil refineries, cogeneration, generation and transmission of electricity, and clean, innovative uses of coal.

Paragraph (3) of this subsection provides that the Secretary of Energy will make technical assistance available to tribes and Alaska Native Organizations.

Subsection (b) provides that the Secretary of Energy shall establish a low interest loan program for tribes and Alaska

Native Organizations to assist in energy resource exploitation, development, and vertical integration.

Subsection (c) authorizes that \$10 million be appropriated for each of the grant programs established in subsection (a)(1) and subsection (a)(2) of this section for fiscal years 1994, 1995, and 1996. It further authorizes such sums as may be necessary to carry out subsection (b).

Section 1105(a) authorizes the Secretary of Energy to make annual grants to tribes and Alaska Native Organizations to assist them in the development and implementation of tribal laws and regulations regarding the development of energy resources on reservations.

Subsection (b) provides that development grants may be used for training and education of employees, tribal resource inventories, and the monitoring and enforcement of laws and regulations.

Subsection (c) stipulates that the Secretary of Energy shall assist tribes and Alaska Native Organizations with energy development, administrative, and enforcement projects including training and technical assistance including the preparation and maintenance of a tribal energy resource inventory.

Subsection (d) authorizes \$10 million to be appropriated for the purposes of this section for fiscal years 1994, 1995, and 1996.

Section 1106 amends Section 710 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1300) to provide that the Secretary of Interior make grants available to the Navajo, Hopi, and Crow tribes in order to establish a tribal office of surface mining regulation. Each office shall develop regulations, assist the Office of Surface Mining Reclamation and Enforcement in its activities related to tribal lands, and provide employment training.

Section 1107(a) establishes the Indian Energy Taxation and Royalty Management Commission.

Subsection (b) stipulates the membership of the 15 member Commission.

Subsection (c) provides that members to the Commission shall be appointed within 60 days of enactment of this title.

Subsection (d) sets out the process for filling a vacancy on the Commission.

Subsection (e) provides that the members shall elect a Chairperson from the membership.

Subsection (f) provides that 7 members shall constitute a quorum.

Subsection (g) provides that the Commission shall hold an organizational hearing within 30 days after all the members have been appointed.

Subsection (h) sets out the compensation for members of the Commission.

Subsection (i) provides that Commission members shall be allowed travel expenses including per diem when in the performance of the duties of the Commission.

Subsection (j) provides that the Commission shall appoint an Executive Director, who may hire additional personnel within the approval of the Commission. In addition, the Chairperson of the Commission may hire experts and consultants on a temporary basis.

Subsection (k) specifies the duties of the Commission which are to develop proposals to address dual taxation issues, to recommend improvements to the management and administration of royalties, and to generate new proposals for the collection and distribution of royalties.

Subsection (l) sets out the powers of the Commission including its ability to take and receive testimony.

Subsection (m) provides that a report is to be submitted to the President, the House Committee on Interior and Insular Affairs, the Senate Select Committee on Indian Affairs and the Senate Committee on Energy and Natural Resources within 12 months.

Subsection (n) authorizes \$2 million be appropriated to fund the Commission and allows that these funds be available until expended regardless of fiscal year limitations.

Subsection (o) provides that the Commission shall terminate within 30 days after submitting the final report.

Title XII—Insular Areas Energy Security

Section 1201 would amend an authorization contained in a 1980 omnibus insular areas act to provide for appropriations of \$1,000,000 annually for grants to all insular area governments for projects that would reduce dependence on imported fuels. It would expand the current authorization (which relates to projects identified in a 1982 Energy Department report) to cover any projects deemed to be worthwhile by the Secretary of Energy. This provision is identical to a provision

passed by the House on October 27, 1990 and June 20, 1991 except that this authorization would be for \$1 million annually rather than \$300,000 a year.

Section 1202 would remove the insular areas associated with the United States from those "states" with which the Nuclear Waste Negotiator may negotiate when seeking a site to which nuclear wastes may be shipped.

Section 1203 would recognize the insular areas' special vulnerability to disruptions in the nation's oil supply, and addresses this by ensuring that:

(i) If an insular area's competitive bid for a supply of oil fails, that insular area would be able to obtain the required quantity of oil at the average price of the competitive bids that were successful;

(ii) When an insular chief executive certifies that there is a critical shortage of oil in the insular area, that area's vessel will, unless the Secretary of Energy disagrees, be loaded ahead of other vessels at the delivery line of the Strategic Petroleum Reserve.

(iii) Insular areas may decline to accept an offer from the Strategic Petroleum Reserve if the oil offered is less than half a tankerful because it would be too expensive to ship. Similarly, if the amount offered is more than half a tankerful, the insular area has the right to request a full tankerful since this would minimize the shipping cost; and

(iv) the Secretary has the right to limit the quantity of oil shipped to any insular area to 1/12 of the total oil imports (not including exports) of that insular area during the previous year.

Section 1204 would require a plan from the Secretary of the Interior, outlining how the electricity needs of Palau will be met, and how any debt for Palau's IPSECO power plant will be eliminated.

Title XIII—Federal and State Lands

Section 1301 is similar to a 1988 bill approved by the Interior Committee that died in the 100th Congress. It would amend FLPMA to clarify that BLM and the Forest Service are responsible for issuing and conditioning any necessary rights-of-way related to hydroelectric or other electric power projects involving public or National Forest lands, to make clear which agency is to have lead responsibility in cases involving lands managed by more than one agency, and to encourage coordination among agencies with regard to the timing of review of aspects of projects involving more than one agency.

Section 1302 would prohibit new dams in National Park System units or that would inundate lands in that System. This prohibition is similar to provisions passed by the House in 1987 on which the Senate did not complete action. It would prohibit any new dams that would be located on or that would flood any lands within the National Park System, except National Park Service projects necessary for park purposes. Subsection (c) would resolve a current dispute concerning possible relicensing of existing dams involving National Park System units by making it clear that any such relicensing could occur only with the concurrence of the Secretary of the Interior.

Section 1303 provides that Federal agencies are required to obtain permission from State and/or local government entities prior to authorizing the transfer out of State and/or local government ownership any property to be used for a new hydroelectric project without the approval of the state or local government involved.

Section 1304 provides that Federal agencies are prohibited from licensing new hydroelectric power projects on any river segment in a State which: 1) has enacted a statutory provision prohibiting the development of new hydroelectric projects on such river segment; and, 2) has described the protection of such river segment in the State Comprehensive Outdoor Recreation Plan.

TANK VESSEL CARRIED EQUIPMENT (WG#1)

PROPOSED TERMS OF REGULATIONS

Section XXX.00 CARRIAGE OF DISCHARGE REMOVAL EQUIPMENT AND OTHER
EMERGENCY CAPABILITIES

Section XXX.01 CONTAINMENT AND CLEANUP OF ON-DECK SPILLS

A. Tankers, [ocean-going and coastal tank barges] shall be fitted with a deck-edge coaming suitable and sufficient to contain small spills of cargo on deck. The height and location of the coaming and barrier shall be sufficient to contain a small spill (as identified in paragraphs B.1 & B.2 below) with the vessel on an even keel.

B. Tankers, ocean-going tank barges and coastal tank barges shall carry equipment and supplies for the containment and removal of on-deck oil cargo spills.

- 1) For vessels whose overall length is equal to or greater than 400 feet, such equipment and supplies shall be sufficient to contain and remove oil cargo spills of at least 12 barrels.
- 2) For vessels whose overall length is less than 400 feet, such equipment and supplies shall be sufficient to contain and remove oil cargo spills of at least 7 barrels.

- C. The equipment and supplies set forth in Section B above shall include, as a minimum, the following items:
- 1) Sorbents
 - 2) Non-sparking hand scoops, shovels, and buckets
 - 3) Containers suitable for holding recovered waste,
 - 4) Emulsifiers for deck cleaning and
 - 5) Appropriate protective clothing.
- D. Tankers, ocean-going tank barges, and coastal tank barges shall carry non-sparking portable pump(s) and hoses suitable for pumping spilled cargo from the deck of the vessel. The pump(s) shall be rigged before any cargo transfer operations begin and remain ready for immediate use during transfer operations.
- E. Inland river tank barges shall have resources in place before and during cargo transfer operations to control and remove on-deck oil cargo spills of at least one barrel. Such equipment and supplies need not be carried on the barge but must be immediately available during any cargo transfers.

Section XXX.02 INTERNAL CARGO TRANSFER CAPABILITY

- A. Tankers, ocean-going tank barges, and coastal tank barges shall carry suitable hoses and reducers for internal transfer of cargo to tanks or other spaces within the cargo block, unless the vessel's installed cargo piping system is sufficient for such purposes.
- B. Inland river tank barges are not required to carry such equipment.

Section XXX.OX EMERGENCY LIGHTERING PLAN (to be included in the VRP regulations as opposed to the tank vessel carried equipment regulations).

- A. Every tanker shall have a Lightering Plan. The format and content of the plan shall be consistent with the Ship to Ship Transfer Guide published jointly by the International Chamber of Shipping (ICS) and Oil Companies International Marine Forum (OCIMF). The plan shall also include the recommended operational check lists, and a station bill clearly identifying the responsibilities and duties of all involved personnel.
- B. The Lightering Plan shall identify the availability and location, and include the appropriate telephone or telefax contact numbers, of the following:
1. Suitable fendering equipment,
 2. Transfer hoses and connection equipment,
 3. Portable pumps and ancillary equipment,
 4. Lightering and Mooring Masters,
 5. Vessel and barge brokers.
- C. Planned equipment availability should not be confused with actual mobilization performance. Planning for mobilization of necessary lightering resources, however, should consider foreseeable constraints which might delay mobilization. Vessel owners must plan for on-scene arrival of lightering resources as identified in (B)(1) to (B)(3) within the following requirements:

Inland and nearshore waters	12 hours
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