

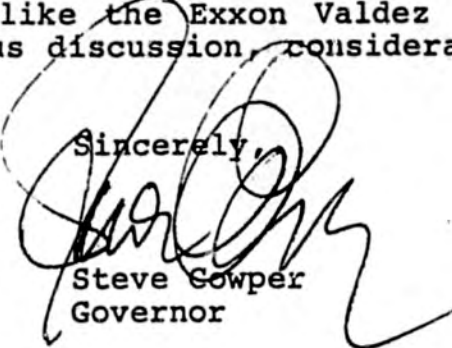
ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2080 SCOMM 78; SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

98

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,



Steve Cowper
Governor

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 565
HB 566
HB 567

February 21, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

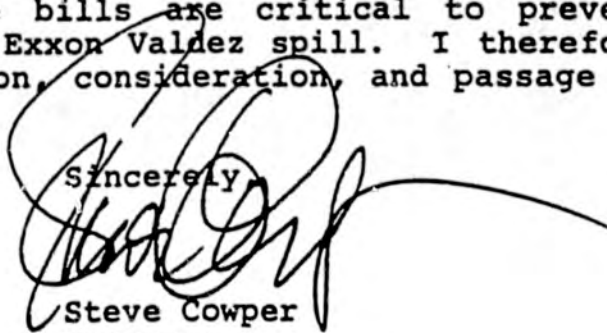
The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Steve Cowper, is written over the word "Sincerely," and extends to the right.

Steve Cowper
Governor

3

773-90-0053

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 567

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the strengthening of the state's
oil contingency plan requirements, financial respon-
sibility requirements, and inspection authority under
AS 46.04; and providing for an effective date."

9

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

11

* Section 1. AS 46.04.030 is amended to read:

12

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person

13

may not cause or permit the operation of an oil terminal facility in
the state unless an oil discharge contingency plan for the facility
has been approved by the department and has been properly implemented.

14

15

16

[THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO

17

APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS

18

SECTION.]

19

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit

20

the operation of an offshore exploration or production facility in the

21

state unless an oil discharge contingency plan for the facility has

22

been approved by the department and has been properly implemented.

23

(c) A person may not operate a tanker vessel or an oil barge

24

within the waters of the state, or cause or permit the transfer of oil

25

to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]

26

an oil barge, unless an oil discharge contingency plan for the tank

27

vessel or oil barge has been approved by the department and has been

28

properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),

29

IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
3 APPROVED BY THE DEPARTMENT.]

4 (d) The department is the only state agency that has the power
5 to approve, modify, or revoke an oil contingency plan for the purposes
6 of this section, and the department shall exercise its power in a
7 timely manner. Except for prosecutions under AS 46.03.790(b), it is
8 not a defense to an action brought for a violation of (a) - (c) of
9 this section that the person charged believed that a current oil
10 discharge contingency plan had been approved by the department.

11 (e) Before the department approves or modifies an oil discharge
12 contingency plan under this section, the department shall provide a
13 copy of the oil discharge contingency plan to the Department of Fish
14 and Game and to the Department of Natural Resources and shall provide
15 those departments a reasonable opportunity to review and comment on
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required
18 by this section shall maintain in its area of operation, singly or in
19 conjunction with other operators in its area of operation, sufficient
20 oil discharge containment, storage, transfer, and removal equipment,
21 manpower, and resources to rapidly contain a realistic maximum oil
22 discharge and to remove that discharge within the shortest possible
23 time.

24 (g) An oil discharge contingency plan must be renewed at least
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and
27 conditions to its approval or modification of an oil discharge
28 contingency plan which the department [IT] determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ensure that the applicant properly implements the
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 discharge contingency plan must provide for the use of the best
7 available technology by the applicant. The department may require an
8 applicant or holder of an approved contingency plan to take steps
9 necessary to demonstrate its ability to carry out the contingency
10 plan, including

11 (1) periodic training;
12 (2) response team exercises; and
13 (3) verifying access to inventories of available equipment,
14 supplies, and personnel.

15 (i) [(f)] The department, after notice and opportunity for
16 hearing, may modify its approval of an oil discharge contingency plan
17 if the department [IT] determines that a change has occurred in the
18 operation of a facility[, MARINA] or vessel necessitating an amended
19 or supplemented plan, or the operator's discharge experience
20 demonstrates a necessity for modification. The department, after
21 notice and opportunity for hearing, may revoke its approval of an oil
22 discharge contingency plan if the department [IT] determines that

23 (1) approval was obtained by fraud or misrepresentation;
24 (2) the operator does not have access to the quality or
25 quantity of resources identified in the plan; [OR]
26 (3) a term or condition of approval or modification has
27 been violated; or
28 (4) the plan has not been properly implemented.

29 (j) [(g)] Failure of a holder of an approved or modified oil

1 discharge contingency plan to properly implement the plan, or to have
2 access to the quality or quantity of resources identified in the plan
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources
4 within the shortest feasible time in the event of a spill, is a
5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
6 46.03.790, and any other applicable law. If the holder of an approved
7 or modified oil discharge contingency plan fails to respond to and
8 conduct cleanup operations of an unpermitted discharge of crude oil
9 with the quality and quantity of resources identified in the plan and
10 in a manner required under the plan, the holder is strictly liable,
11 jointly and severally, for the civil penalty assessed under
12 AS 46.03.758, 46.03.759, or 46.03.760 against any other person for
13 that discharge.

14 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
16 person may not cause or permit the operation of a crude [AN] oil
17 terminal facility in the state unless the person has furnished to the
18 department, and the department has approved, proof of financial
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
20 DEPARTMENT]. Proof of financial responsibility may not be less than
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a
26 non-crude oil terminal or storage facility in the state unless the
27 person has furnished to the department, and the department has ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility may not be less than

1 (1) \$1,000,000 for terminal or storage facilities with a
2 total storage capacity of 5,000 to 10,000 barrels; and

3 (2) \$50,000,000 for terminal or storage facilities with a
4 total storage capacity of greater than 10,000 barrels.

5 (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the
6 operation of an offshore exploration or production facility in the
7 state unless the person has furnished to the department, and the
8 department has approved, proof of financial ability to respond in
9 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
10 responsibility may not be less than \$50,000,000 [\$35,000,000] per
11 incident.

12 (d) [(c)] A person may not operate a tanker vessel or an oil
13 barge within the waters of the state, or cause or permit the transfer
14 of oil to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR
15 FROM] or an oil barge, unless the person has furnished to the
16 department, and the department has approved, proof of financial
17 [RESPONSIBILITY] ability to respond in damages [FOR THE TANK VESSEL OR
18 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
19 responsibility may not be less than

20 (1) \$500,000,000 per incident for a tank vessel or barge
21 carrying crude oil;

22 (2) \$20,000,000 for a tank vessel or barge carrying
23 non-crude oil or other hazardous substance greater than 300 gross
24 tons;

25 (3) \$1,000,000 for a tank vessel or barge carrying
26 non-crude oil or other hazardous substance less than or equal to 300
27 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE
28 IN THE FOLLOWING AMOUNTS:

29 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

1 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY
2 THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.
3 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

9 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is
10 not a defense to an action brought for violation of (a) - (c) [(c)] of
11 this section that the person charged believed in good faith that proof
12 of financial ability to respond in damages had been furnished to, and
13 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
14 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

2 (1) one year from its issuance for self-insurance;

3 (2) on the effective date of a change in the surety bond,
4 guarantee, [OR] insurance agreement, or other security approved by the
5 department; or

6 (3) on the expiration or cancellation of the surety bond,
7 guarantee, [OR] insurance agreement, or other security approved by the
8 department.

9 (h) [(g)] The person whose proof of financial responsibility is
10 accepted by the department under this section shall notify the
11 department at least 30 days before the effective date of a change,
12 expiration or cancellation in the surety bond, guarantee, [OR]
13 insurance agreement, or other security approved by the department.
14 Application for renewal of acceptance of proof of financial
15 responsibility under this section must be filed at least 30 days
16 before the date of expiration.

17 (i) [(h)] The department, after notice and hearing, may revoke
18 acceptance of proof of financial responsibility if it determines that

19 (1) acceptance was procured by fraud or misrepresentation;
20 or

21 (2) a change of circumstance has occurred other than a
22 change specified in (f)(1) - (3) of this section, which would have
23 warranted denial of the application.

24 (j) [(i)] Financial responsibility under this section extends to
25 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
26 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
27 AS 46.04.030(g).

28 * Sec. 3. AS 46.04.050 is amended to read:

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

1 the operations and the minimal danger to the environment posed by the
2 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
3 oil terminal facility that has an effective storage capacity of less
4 than 5,000 [10,000] barrels of oil.

5 * Sec. 4. AS 46.04.060 is amended to read:

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
7 access or inspection conferred upon the department by law or
8 otherwise, the department may at reasonable times enter and inspect
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production
10 facilities, tank vessels, and oil barges within the territorial
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE
12 DEPARTMENT] to

13 (1) ensure compliance with the provisions of this chapter;

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum
19 and most damaging oil discharge that the department estimates could
20 occur during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Amend Cls / Bailly / Henry / McDon

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

*separate
copies*

1 IN THE HOUSE

2 HOUSE BILL NO. 567

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the strengthening of the state's
7 oil contingency plan requirements, financial respon-
8 sibility requirements, and inspection authority under
9 AS 46.04; and providing for an effective date."

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

11 * Section 1. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person
13 may not cause or permit the operation of an oil terminal facility in
14 the state unless an oil discharge contingency plan for the facility
15 has been approved by the department and has been properly implemented.
16 [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO
17 APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS
18 SECTION.]

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
20 the operation of an offshore exploration or production facility in the
21 state unless an oil discharge contingency plan for the facility has
22 been approved by the department and has been properly implemented.

23 (c) A person may not operate a tanker vessel or an oil barge
24 within the waters of the state, or cause or permit the transfer of oil
25 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
26 an oil barge, unless an oil discharge contingency plan for the tank
27 vessel or oil barge has been approved by the department and has been
28 properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),
29 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
3 APPROVED BY THE DEPARTMENT.]

4 (d) The department is the only state agency that has the power
5 to approve, modify, or revoke an oil contingency plan for the purposes
6 of this section, and the department shall exercise its power in a
7 timely manner. Except for prosecutions under AS 46.03.790(b), it is
8 not a defense to an action brought for a violation of (a) - (c) of
9 this section that the person charged believed that a current oil
10 discharge contingency plan had been approved by the department.

11 (e) Before the department approves or modifies an oil discharge
12 contingency plan under this section, the department shall provide a
13 copy of the oil discharge contingency plan to the Department of Fish
14 and Game and to the Department of Natural Resources and shall provide
15 those departments a reasonable opportunity to review and comment on
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required
18 by this section shall maintain in its area of operation, singly or in
19 conjunction with other operators in its area of operation, sufficient
20 oil discharge containment, storage, transfer, and removal equipment,
21 manpower, and resources to rapidly contain a realistic maximum oil
22 discharge and to remove that discharge within the shortest possible
23 time.

24 (g) An oil discharge contingency plan must be renewed at least
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and
27 conditions to its approval or modification of an oil discharge
28 contingency plan which the department [IT] determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ensure that the applicant properly implements the
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 discharge contingency plan must provide for the use of the best
7 available technology by the applicant. The department may require an
8 applicant or holder of an approved contingency plan to take steps
9 necessary to demonstrate its ability to carry out the contingency
10 plan, including

- 11 (1) periodic training;
- 12 (2) response team exercises; and
- 13 (3) verifying access to inventories of available equipment,
14 supplies, and personnel.

15 (i) [(f)] The department, after notice and opportunity for
16 hearing, may modify its approval of an oil discharge contingency plan
17 if the department [IT] determines that a change has occurred in the
18 operation of a facility[, MARINA] or vessel necessitating an amended
19 or supplemented plan, or the operator's discharge experience
20 demonstrates a necessity for modification. The department, after
21 notice and opportunity for hearing, may revoke its approval of an oil
22 discharge contingency plan if the department [IT] determines that

- 23 (1) approval was obtained by fraud or misrepresentation;
- 24 (2) the operator does not have access to the quality or
25 quantity of resources identified in the plan; [OR]
- 26 (3) a term or condition of approval or modification has
27 been violated; or
- 28 (4) the plan has not been properly implemented.

29 (j) [(g)] Failure of a holder of an approved or modified oil

1 discharge contingency plan to properly implement the plan, or to have
2 access to the quality or quantity of resources identified in the plan
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources
4 within the shortest feasible time in the event of a spill, is a
5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
6 46.03.790, and any other applicable law. If the holder of an approved
7 or modified oil discharge contingency plan fails to respond to and
8 conduct cleanup operations of an unpermitted discharge of crude oil
9 with the quality and quantity of resources identified in the plan and
10 in a manner required under the plan, the holder is strictly liable,
11 jointly and severally, for the civil penalty assessed under
12 AS 46.03.758, 46.03.759, or 46.03.760 against any other person for
13 that discharge.

14 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
16 person may not cause or permit the operation of a crude [AN] oil
17 terminal facility in the state unless the person has furnished to the
18 department, and the department has approved, proof of financial
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
20 DEPARTMENT]. Proof of financial responsibility may not be less than
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
23 INCIDENT, FOR EACH PARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a
26 non-crude oil terminal or storage facility in the state unless the
27 person has furnished to the department, and the department has ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility may not be less than

1 (1) \$1,000,000 for terminal or storage facilities with a
2 total storage capacity of 5,000 to 10,000 barrels; and

3 (2) \$50,000,000 for terminal or storage facilities with a
4 total storage capacity of greater than 10,000 barrels.

5 (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the
6 operation of an offshore exploration or production facility in the
7 state unless the person has furnished to the department, and the
8 department has approved, proof of financial ability to respond in
9 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
10 responsibility may not be less than \$50,000,000 [\$35,000,000] per
11 incident.

12 (d) [(c)] A person may not operate a tanker vessel or an oil
13 barge within the waters of the state, or cause or permit the transfer
14 of oil to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR
15 FROM] or an oil barge, unless the person has furnished to the
16 department, and the department has approved, proof of financial
17 [RESPONSIBILITY] ability to respond in damages [FOR THE TANK VESSEL OR
18 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
19 responsibility may not be less than

20 (1) \$500,000,000 per incident for a tank vessel or barge
21 carrying crude oil;

22 (2) \$20,000,000 for a tank vessel or barge carrying
23 non-crude oil or other hazardous substance greater than 300 gross
24 tons;

25 (3) \$1,000,000 for a tank vessel or barge carrying
26 non-crude oil or other hazardous substance less than or equal to 300
27 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE
28 IN THE FOLLOWING AMOUNTS:

29 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

1 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY
2 THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.
3 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

9 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is
10 not a defense to an action brought for violation of (a) - (c) [(c)] of
11 this section that the person charged believed in good faith that proof
12 of financial ability to respond in damages had been furnished to, and
13 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
14 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

2 (1) one year from its issuance for self-insurance;

3 (2) on the effective date of a change in the surety bond,
4 guarantee, [OR] insurance agreement, or other security approved by the
5 department; or

6 (3) on the expiration or cancellation of the surety bond,
7 guarantee, [OR] insurance agreement, or other security approved by the
8 department.

9 (h) [(g)] The person whose proof of financial responsibility is
10 accepted by the department under this section shall notify the
11 department at least 30 days before the effective date of a change,
12 expiration or cancellation in the surety bond, guarantee, [OR]
13 insurance agreement, or other security approved by the department.
14 Application for renewal of acceptance of proof of financial
15 responsibility under this section must be filed at least 30 days
16 before the date of expiration.

17 (i) [(h)] The department, after notice and hearing, may revoke
18 acceptance of proof of financial responsibility if it determines that

19 (1) acceptance was procured by fraud or misrepresentation;
20 or

21 (2) a change of circumstance has occurred other than a
22 change specified in (f)(1) - (3) of this section, which would have
23 warranted denial of the application.

24 (j) [(i)] Financial responsibility under this section extends to
25 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
26 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
27 AS 46.04.030(g).

28 * Sec. 3. AS 46.04.050 is amended to read:

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

1 the operations and the ~~maximum~~ damage to the environment posed by the
2 activities, AS 46.04.030, ~~46.04.040~~ and 46.04.060 do not apply to an
3 oil terminal facility that has an effective storage capacity of less
4 than 5,000 [10,000] barrels of oil.

5 * Sec. 4. AS 46.04.060 is amended to read:

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
7 access or inspection conferred upon the department by law or
8 otherwise, the department may at reasonable times enter and inspect
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production
10 facilities, tank vessels, and oil barges within the territorial
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE
12 DEPARTMENT] to

13 (1) ensure compliance with the provisions of this chapter;

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum
19 and most damaging oil discharge that the department estimates could
20 occur during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

4

Letter of Intent for HB 567

Subsection (k) (3) (C) of HB 567 provides that a contingency plan holder must demonstrate that the equipment, personnel, and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours.

Like all other provisions in Section (k), subsection (k) (3) (C) is subject to Section (l) which provides that the Section (k) provisions are not clean up or performance standards for the discharge response. Rather, the Section (k) requirements, including those in subsection (k) (3) (C), are planning requirements for determining what will be in any particular contingency plan.

The subsection (k) (3) (C) planning provisions require a demonstrated plan for moving equipment, personnel, and other resources necessary to deploy and operate that equipment and personnel to the discharge site. The provision includes deployment and operation of the equipment and personnel to ensure that there are systems and plans to actually use the additional equipment in a manner that is well orchestrated to supplement and enhance the equipment and personnel from the plan holder's region of operation.

However, both segments of the contingency plan -- the deployment of the in-region equipment and the transportation and deployment of the out-of-region equipment -- are subject to Section (l). Neither segment creates a performance standard under the terms of HB 567. So, if a contingency plan has been approved, based upon a demonstrated plan of action to get equipment, personnel, and other resources to the site, it would not be a violation of the terms of A.S. 46.04.030 if unforeseeable circumstances result in a failure to actually deploy and operate all equipment within 72 hours.

5

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 567 No. 2
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the strengthening
of the DEC's oil contingency plan
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environ Conservation
BRU: Environ Quality

Components: Environ Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	489.8	489.8	489.8	489.8	489.8	489.8
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	376.0	376.0	376.0	376.0	376.0	376.0
SUPPLIES	9.5	9.5	9.5	9.5	9.5	9.5
EQUIPMENT	47.5	47.5	47.5	47.5	47.5	47.5
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	952.8	952.8	952.8	952.8	952.8	952.8

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	952.8	952.8	952.8	952.8	952.8	952.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	952.8	952.8	952.8	952.8	952.8	952.8

POSITIONS:

FULL-TIME	9.0	9.0	9.0	9.0	9.0	9.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

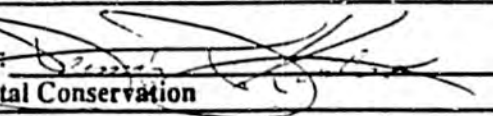
ANALYSIS: (Attach a separate page if necessary)
Impact on FY 90 depends upon effective date.

Prepared by: Dan Easton

Division: Environmental Quality

Phone: 465-2640

Date: 2/16/90

Approved by Commissioner: 

Agency: Environmental Conservation

Date: 2/19/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 567 No. 1
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act strengthening DEC's contingency plan and inspection requirements
Sponsor: Governor Riecke
Requestor: Governor
Agency Affected: Department of Fish and Game
BRU: Habitat Division
Components: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	156.5					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary) (Explanation Attached)

FY 90 Impact: Personal Services 51.9
(3/24-6/30/90 Travel 2.0
Contractual 4.0
Supplies 1.0
Equipment 7.0
TOTAL 65.9

Prepared by Frank Riecke

Division: Habitat

Approved by Commissioner: N. Riecke

Agency: ADF&G

Phone: 465-4105

Date: 2/14/90

Date: 2/14/90

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Continuation of fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. the state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Continuation of Explanation

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

6

FINANCIAL RESPONSIBILITY REQUIREMENTS
NON-CRUDE BARGES

<u>Barge Size (BBLs)</u>	<u>Existing Requirements</u>	<u>Proposed Requirements</u>
< 5,000	\$1 million	None
5,000 - 10,000	\$1 million	\$1 million
20,000	\$1 million	\$2 million
30,000	\$1 million	\$3 million
40,000	\$1 million	\$4 million
50,000	\$1 million	\$5 million
75,000	\$1 million	\$7.5 million
100,000	\$1 million	\$10 million
150,000	\$1 million	\$15 million

FINANCIAL RESPONSIBILITY REQUIREMENTS

EXISTING NON-CRUDE BARGE COMPANIES

<u>COMPANY</u>	<u>LARGEST BARGE SIZE (BBLs)</u>	<u>EXISTING REQUIREMENTS</u>	<u>NEW REQUIREMENTS</u>
Crowley	154,608	\$ 1 million	\$15.5 million
Foss	75,510	\$ 1 million	\$ 7.6 million
United Marine	74,100	\$ 1 million	\$ 7.4 million
Delta Western	50,000	\$ 1 million	\$ 5.0 million
Northland	39,000	\$ 1 million	\$ 3.9 million
Brix Maritime	21,750	\$ 1 million	\$ 2.1 million
Alaska Marine	16,031	\$ 1 million	\$ 1.6 million
White Pass	12,828	\$ 1 million	\$ 1.3 million
Yutana	7,600	\$ 1 million	\$ 1 million
Moody's	5,476	\$ 1 million	\$ 1 million
Kugkaktlike	3,600	\$ 1 million	None
Smith	1,768	\$ 1 million	None

Note: Barges listed are only those that have fulfilled financial responsibility requirements through June 30, 1990, and submitted contingency plans.

FINANCIAL RESPONSIBILITY REQUIREMENTS
NON-CRUDE TERMINALS

<u>Terminal Size (BBLs)</u>	<u>Existing Requirements</u>	<u>Proposed Requirements</u>
<10,000	None	None
10,000-40,000	\$1 million	\$1 million
50,000	\$1 million	\$1.25 million
100,000	\$1 million	\$2.5 million
500,000	\$5 million	\$12.5 million
1,000,000	\$10 million	\$25.0 million
1,500,000	\$15 million	\$37.5 million

FINANCIAL RESPONSIBILITY REQUIREMENTS

BARROW NON-CRUDE TERMINALS

<u>FACILITY</u>	<u>SIZE (BBLs)</u>	<u>EXISTING REQUIREMENTS</u>	<u>NEW REQUIREMENTS</u>
Block B Tank Farm (Eskimo Inc)	68,095	\$ 1 million	\$ 1.7 million
Barrow Oil Terminal (NSB)	24,240	\$ 1 million	\$ 1 million
Browerville (Eskimo Inc)	1,430	None	None

Block B Tank Farm and the Barrow terminal are currently required to have contingency plans and have submitted them to DEC for approval. The Browerville facility had a contingency plan in the past, but reduced its capacity and is no longer required to have a plan.

7

SB 504/HB 567

Facility Contingency Plans Strengthened

- o Strengthens DEC's authority to require and enforce oil discharge contingency plans.
- o Requires that plans be implemented.
- o Clarifies authority to approve, modify or revoke.
- o Requires response capability to remove a realistic maximum oil discharge within the shortest possible time.
- o Provides opportunity for other agencies to comment on contingency plans.
- o Authorizes DEC to revoke contingency plans if not implemented.

Financial Responsibility Requirements Strengthened

- o Strengthens financial responsibility requirements.
- o Establishes a 50,000,000 financial responsibility limit for crude oil terminal facilities.
- o Establishes a 1,000,000 financial responsibility for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels.
- o Establishes a 50,000,000 financial responsibility for non-crude terminal facilities with a storage capacity of more than 10,000 barrels.
- o Establishes 50,000,000 financial responsibility for offshore exploration and product facilities.
- o Establishes 50,000,000 financial responsibility for crude oil tank vessels and barges.
- o Establishes a 20,000,000 financial responsibility requirement for > 300 gross ton tank vessels and barges carrying non-crude oil. (300 gross tons = 224,400 gallons = 5342 bbls)
- o Establishes a 1,000,000 financial responsibility requirement for < 300 gross ton tank vessels and barges carrying non-crude.

Extend the Requirement for Contingency Plans

- o Lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Inspection Authority Strengthened

- o Authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.
- o Authorizes DEC to examine structural integrity of tank vessels and oil barges.

Spill Scenario

- o Defines "realistic maximum oil discharge" and requires facility plans to address this.

SENATE BILL 504/HOUSE BILL 567
Oil Contingency Plan Requirements
Financial Responsibility Requirements
Vessel Inspection
2/21/90 Version

This bill has three major components:

- 1) It strengthens the Department of Environmental Conservation's (DEC's) authority to require and enforce oil discharge contingency plans.
- 2) It strengthens the financial responsibility requirements for shippers of oil and hazardous substances.
- 3) Authorizes DEC to inspect facilities related to the production and shipping of oil, as well as examine the structural integrity of tank vessels and oil barges.

OIL CONTINGENCY PLAN REQUIREMENTS

- * Establishes an explicit standard for facility oil spill contingency plans to include a response capability for response to a realistic maximum discharge within the shortest possible time.
- * Requires that contingency plans be properly implemented and gives DEC authority to revoke the plan if not properly implemented.
- * Provides the Department of Fish & Game and the Department of Natural Resources an opportunity to comment on contingency plans.
- * Requires contingency plans for facilities with a storage capacity of 5,000 barrels or more.

FINANCIAL RESPONSIBILITY REQUIREMENTS

- * Requires proof of financial responsibility in the following amounts:

Crude oil terminal facilities	\$ 50 million
Non-crude oil terminal facilities	
5,000 - 10,000 barrel storage capacity	\$ 1 million
Non-crude oil terminal facilities	
10,000+ barrel storage capacity	\$ 50 million
Offshore exploration and production facilities	\$ 50 million
Onshore exploration and production facilities	Not addressed
Crude oil tank vessels and barges	\$500 million
Non-crude oil tank vessels and barges	
Larger than 300 gross tons	\$ 20 million
Non-crude oil tank vessels and barges	
Smaller than 300 gross tons	\$ 1 million
- * Ensures that shippers and handlers of oil and hazardous substances have the financial capability of dealing with the damages from a major spill.

VESSEL INSPECTION

- * Provides the state with the authority to inspect tankers to ensure their structural integrity.
- * Asserts affirmatively that the state may inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.

SB 503/HB 566

Use of Response Fund During Declared Disaster Emergency

- o Authorizes Governor to use money from response fund for declared disaster emergencies.

Expand Role of Division of Emergency Services (DES) during Declared Disaster Emergency

- o Clarifies DEC emergency order authority and distinguishes it from DES's authority to respond to declared disaster emergencies.
- o Returns duties of DES during catastrophic oil discharges from DEC during declared disaster emergencies.

State Emergency Response Commission

- o Establishes the Alaska State Emergency Response Commission.

SB 502/HB 565

Strengthen Civil Penalties

- o Modify legislative findings in non-crude oil damages and penalty provisions to make consistent.
- o Increase maximum per gallon civil penalties for non-crude oil discharges into various receiving environments.
- o Provides that spiller establish the amount of oil which entered each receiving environment.
- o Removes penalty exemption for non-crude oil discharges less than 18,000 gallons.
- o Allows spiller to deduct the number of gallons of non-crude oil recovered within 36 hours of the spill.
- o Allows that civil penalties may be offset without affecting ability to recover damages, restoration or other costs.
- o Removes penalty exemption for crude oil discharges of less than 18,000 gallons.
- o Changes the multiplier for negligence to five
- o Revises and streamlines civil penalties and damages statute.
- o Raises civil penalties for 500 to 2,500 per day for each violation.
- o Expands states authority to recover attorney fees.
- o Removes mitigation defense and makes other changes to Section 11.

Amends Rule 82, Alaska Rule of Civil Procedure

- o Rule 82 amended by Section 10.

8

To: All Teleconference Sites

From: Rep. Menard, Co-chair House Resources
Rep. Davidson, Co-chair House Resources

Attached is the Governor's new proposal regarding financial responsibility requirements in HB 567. The financial responsibility requirements in the original version of HB 567 have been withdrawn.

Both HB 565 and HB 567 are being modified by the House Resources Committee. Tonight we welcome additional assistance and comments on both bills as we continue our efforts to craft legislation that meets the needs of Alaskans and minimize costs for small utilities and fuel distributors.

NON-CRUDE ISSUES ADDRESSED IN HB 565 AND HB 567

<u>ISSUE</u>	<u>EXISTING LAW</u>	<u>ADMINISTRATION PROPOSAL 3/15/90</u>
Penalty Levels	\$10/gallon for anadromous stream or other freshwater environment; \$2.50/gallon for sensitive or confined saltwater areas; \$1/gallon for unconfined saltwater, public land or freshwater without significant aquatic resources. Subject to a schedule that varies for toxicity, degradability and dispersal characteristics, as well as receiving environment.	\$12.50/gallon for any surface or subsurface freshwater environment; \$8/gallon for sensitive or confined saltwater areas; \$6/gallon for unconfined saltwater, public land or subsurface land. Subject to the existing schedule that varies for toxicity, degradability and dispersal characteristics.
Exemptions	Spills of less than 18,000 gallons <u>are not</u> subject to penalties under AS 46.03.758.	Spills of less than 18,000 gallons <u>are</u> subject to penalties under AS 46.03.758.
Cleanup Credit	Allows the court to deduct the amount of oil removed from the environment when calculating penalties, with no regard for the length of time involved in the cleanup operation.	Allows the court to deduct the amount of oil removed from the environment within the first 36 hours of a discharge onto surface water or land when calculating penalties. Does not allow any credit for subsurface spills.
Financial Responsibility	SEE ATTACHED CHART	SEE ATTACHED CHART
Contingency Plans	Not required for facilities with less than 10,000 barrels storage capacity.	Not required for facilities with less than 10,000 barrels storage capacity. The department would be given the authority to survey, inspect, and inventory facilities with a storage capacity between 5,000 and 10,000 barrels. The department will report back to the legislature within a year with recommendations to address oil spill prevention and response for facilities under 10,000 barrels.

TABLE 1

**Oil Contingency Plan Requirements
Financial Responsibility Requirements
Vessel Inspection**

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	SB 504 HB 567	PROPOSED 3/15 REVISION
Crude Oil Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	10 to 20,000 bbl. = \$5 million > 20,000 bbl. = \$10 million
5 to 10,000 bbl.	None	\$1 million	None
Offshore exploration and production facilities			
	\$35 million	\$50 million	\$50 million
Crude Oil Tank Vessels and Barges			
	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$500 million
Non-Crude Oil Tank Vessels and Barges			
	Tank Vessels = \$20 million, Barges = \$1 million	\$20 million	< 5,000 bbl = None 5,000 to 10,000 bbl = \$5 million 10,000 to 50,000 bbl = \$1 million 50,000 to 100,000 bbl = \$10 million 100,000 + bbl = \$20 million

Note: the following notes are not based on a comprehensive review of vessels and facilities; rather, they are examples of how the proposed revisions might affect some operators.

Currently there are 6 Tanker Vessels chartered by Petro-Diamond and Petro-Marine that are under 50,000 bbl. capacity and are required to have \$20 million coverage. Under proposed revisions of 3/15 their Financial Responsibility requirement would drop to \$1 million.

From information provided in contingency plans, all of Yutana Barge Lines barges are under 10,000 bbl., therefore their Financial Responsibility requirement would be cut in half to \$500 thousand.

Crowley has 10 barges listed at over 100,000 bbl., but they are covered by surety bond and not a regular insurance policy.

United Marine Tug and Barge, Inc. has at least 2 barges over 50,000 bbl., so their coverage would increase from \$1 million to \$10 million.

9

CHAMBER = H
SOURCE = HRES
DATE = 900226
YEAR = 90
TIME = 1500
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE

February 26, 1990

3:00 p.m.

MEMBERS PRESENT

Representative Mike Davis
Representative Bill Hudson
Representative Mike Navarre
Representative Bert Sharp

MEMBERS ABSENT

Co-Chairman Cliff Davidson

SBC

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Co-Chairman Curt Menard
Representative Richard Foster
Representative Walt Furnace
Representative George Jacko

HOUSE MEMBERS PRESENT

Representative Sam Cotten

COMMITTEE CALENDAR

- * HB 565 - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HELD in Committee for further consideration.

SBC

M-M23 FX

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* HB 566 - "An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

HELD in Committee for further consideration.

HB 56- "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

HELD in Committee for further consideration.

WITNESS REGISTER

SBC

M-M23 FX

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John McDonagh
Assistant Attorney General
Department of Law
100 Cushman, Suite 400
First National Center
Fairbanks, AK 99701
452-1568

POSITION STATEMENT: Information/Questions

Carol Wilson
Special Assistant
Department of Natural Resources
400 Willoughby Avenue
Juneau, AK 99801
465-2400

POSITION STATEMENT: Information/Questions

PREVIOUS ACTION

SBC

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fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

JRN-DATE	JRN-PAGE		ACTION
02/22/90	02514	(H)	READ THE FIRST TIME - REFERRAL(S)
02/22/90	02514	(H)	RESOURCES, FINANCE
02/22/90	02514	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/22/90	02514	(H)	2 FISCAL NOTES (DEC, F&G)

BILL:HB 567

TITLE: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective

SBC

M-M23 FX

2 /2

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

JRN-DATE	JRN-PAGE		ACTION
02/22/90	02514	(H)	READ THE FIRST TIME - REFERRAL(S)
02/22/90	02514	(H)	RESOURCES, FINANCE
02/22/90	02515	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/22/90	02515	(H)	2 FISCAL NOTES (DEC, F&G) 2/22/90

ACTION NARRATIVE

Tape HRC 90-258, Side A

Number 000

REPRESENTATIVE MIKE DAVIS, Acting Chairman, called the meeting to order at 3:12 p.m., noting members in

SBC

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2 /2

Number 4

JOHN MCDONAGH, Assistant Attorney General, Department of Law, stated he would overview the oil spill bill package. He began by stating the overriding principle of the bills is that something has been learned from the Exxon Valdez accident which can be translated into three major themes: 1) deterrence and prevention; 2) response; and 3) recovery.

Mr. McDonagh advised committee members he would first overview HB 565 which is an act strengthening penalties for oil discharge. He said Sections 1-6 deal with one existing statute, AS 46.03.750. Those sections amend the statute to make it more consistent with legislation passed last year. He added the statute has been tightened in several respects.

Mr. McDonagh explained in Section 2, the maximum per gallon

SBC

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2 / 2

Representative Cotten felt HB 566 did not really give the Governor any additional authority. He asked if there had been concern that an internal conflict between the commissioner and the Governor might exist.

Mr. McDonagh said that was not a concern. He said the process one has to go through in DEC to get the money approved needs to be streamlined to be quicker and more effective.

(Representative Davis requested the following testimony be transcribed verbatim.)

Number 126

Mr. McDonagh:

House Bill 567 is an act strengthening DEC's oil spill contingency plan and financial responsibility authority. And I do want to mention those are separate concerns and I

SBC

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think it is important as we go through this bill to analyze those two separately. Number one, the requirement for a contingency plan and a requirement that the contingency plan be properly implemented and number two, separate and distinct from that, what, if any financial responsibility changes should be made in the existing financial responsibility structure.

Section 1 of the bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Interestingly enough, there is no expressed requirement and law that contingency plans, although they have to be prepared, that they be properly implemented. That was perceived as a major problem and we have corrected that problem in the legislation hopefully by requiring that contingency plans be properly implemented. Section 1 also clarifies and strengthens DEC's authority to approve, modify and revoke contingency plans. It requires contingency plan applicants to maintain in their areas of operations sufficient resources to contain and remove a

SBC

M-M23 FX

2 /2

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realistic maximum oil discharge within the shortest possible time. It provides the Alaska Department of Fish and Game (ADF&G) and the Department of Natural Resources (DNR) an opportunity to comment on contingency plans and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented. I want to come back to those in light of the actual language of the statute.

If you take a look at page 1 of the bill, you will see in AS 46.03.030 (a), (b), (c), the requirement that the plan be properly implemented has been added. Subsection (a) deals with the operation of an oil terminal facility. It requires a contingency plan for an oil terminal facility which is the case now, and requires it be properly implemented. Subsection (b) deals with offshore exploration and production facilities. Right now offshore exploration and production facilities do require an oil discharge contingency plan; the only change in here is to make sure that those are properly implemented. Subsection (c) right now requires that before one can transfer oil to

HRES90022615 DOCUMENT= 2 OF 15 PAGE = 23 OF 43

or from a tank vessel, a contingency plan must be prepared but look at that language for a minute. There is nothing at all which says one has to have a contingency plan for operating a tanker or an oil barge within state waters. You only have to have a contingency plan right now, under the language at least, if you are transferring oil to or from that body. We have learned from Exxon Valdez, those spills can occur while transporting as easily or more easily than they occur while loading or discharging the oil. It seemed to make a lot of sense to put in a requirement that a person cannot operate that tank vessel or oil barge in the state, unless they get a contingency plan and again, the proper implementation.

Representative Cotten:

It looks like you are going to get some new language and I know it is going to come up at some point so what we are talking about is offshore operations. It is common knowledge that at one point it was considered, that language

Mr. McDonagh:

I think the committee is well aware that there was, and I think the committee has been supplied with, a copy of the previous draft of this bill which had that language in it.

Representative Cotten:

I interrupted you in the middle of a thought there and I was hoping you would finish your discussion on the...maybe you had.

Mr. McDonagh:

Right now Mr. Speaker, the contingency plan authority does not extend to those onshore facilities and that becomes a policy call at that point, whether one wants to require such facilities to have contingency plans and/or, again they are separate issues as I pointed out, to meet

SBC

M-M23 FX

2 /2

financial responsibility requirements. I point out that the contingency plan requirement and the financial responsibility requirements under existing law, regardless of the nature of the facility, only kick in for oil terminals at least, where the storage capacity is greater than 10,000 barrels. That has been lowered to 5,000 in this bill. But it becomes a policy call as to whether or not it is appropriate or inappropriate to extend some kind of requirements to onshore facilities.

Representative Cotten:

Help me get into focus here, what kind of facilities are we talking about here which would be either included or excluded?

Number 242

Mr. McDonagh:

SBC

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2 /2

Mr. Speaker, take the North Slope. I suppose one could look to exploration wells, production facilities that would include - perhaps DEC could speak to this better than I can - but it would seem to me to include production wells, the gathering pipelines - it would include any exploratory wells.

Representative Cotten:

I thought you were involved when the discussions were taking place but it is helping me to focus in on whether it is a good idea or not by thinking about specific facilities and you have talked about exploration wells, production wells, pipeline gathering - was there anything else identified which people had different opinions about?

Mr. McDonagh:

I do not recall that any other specifics actually came up; it seemed to me there was another aspect of the discussion

SBC

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Number 294

Representative Sharp said it was pointed out that facilities with storage capacity over 10,000 barrels would be subject to proof of financial responsibility. He asked if that would include refineries which directly off-load from tankers to their crude oil storage tanks.

Mr. McDonagh responded it is important to remember that two different things are being considered; there are contingency plan requirements and there is also a requirement of whether or not to have financial responsibility proof and at what level that proof should be. He said if Rep. Sharp was referring to a terminal facility such as Valdez, it is covered under existing contingency plan authority. Mr. McDonagh reminded committee members that one of the reasons the onshore provision did not remain is because there was a view within the administration that it was already being handled under

SBC

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as set forth in Section 5 is unchanged and he asked members to look at the definition. Mr. McDonagh explained that the definition allows the department to look at the location, the capacity, the size of the vessel or facility, and other factors to make a determination of what the "realistic maximum expected" amount is.

Tape HRC 90-259, Side A

Number 000

Representative Cotten asked what the next step would be. Mr. McDonagh said the next step is for DEC to look at the facilities, vessels, tankers, etc. and determine a matrix, but what is essential is to get the information into the contingency plan. Rep. Cotten asked what happens if someone disagrees with DEC.

Mr. McDonagh responded the likely result is that DNR and DEC will promulgate regulations which more specifically

SBC

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look to the particular class of the tanker, the age of the vessel, the size, where it is located, etc.

Mr. McDonagh stated, in response to the "shortest possible time" question, the prior draft oHB 56 contained language which would have required containment, cleanup and mitigation within 72 hours after the event. He said DNR had serious reservations about it and there was discussion at the cabinet level about it; what resulted was a compromise.

Number 76

Representative Davis clarified that the response could be initiated after 72 hours and still be within the law.

Mr. McDonagh responded that was the concern with the language.

Number 85

SBC

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Mr. McDonagh informed committee members that in regard to the financial responsibility provisions, the goal was to set forth a framework which would respond to the notion that crude oil is different, small tanks and tankers are different than large tanks and tankers, etc. He asked members to look at page 4, Section 2, lines 15-24, which deal with crude terminal facilities and require financial responsibility of \$50,000,000. He noted previously, the maximum was \$50,000,000 down to as low as \$1,000,000; now it is a flat \$50,000,000 per incident for crude oil terminal facilities.

Mr. McDonagh stated under subsection (b) non-crude oil terminal and storage facilities are addressed. He pointed out the financial responsibility limits reflect the different sizes of the facilities. He said under subsection (c) the proof of financial responsibility has been raised.

Mr. McDonagh said subsection (d) states that one cannot

SBC

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operate a tanker vessel or an oil barge in the waters of the state without financial responsibility protection. He added the differing impacts of crude and non-crude oil and differing sizes of barges is reflected.

Mr. McDonagh noted in terms of financial responsibility, a provision expanding the types of financial responsibility which can be provided has been added.

Number 154

Representative Hudson asked in regard to financial responsibility, what does "per incident" mean.

Mr. McDonagh explained the \$50,000,000 insurance coverage has to be maintained at all times even if an incident has occurred.

Number 175

SBC

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REPRESENTATIVE WALT FURNACE wondered, in terms of financial responsibility, if a company can secure liability coverage for such a large amount.

Mr. McDonagh explained the coverage required is not for each vessel. He said he did not know how much it costs to have \$500,000,000 coverage for a fleet.

Representative Furnace further questioned if the insurance requirements were realistic and again asked if it was obtainable. He also asked Mr. McDonagh, referring to page 4, line 26, to give an example of a non-crude oil terminal or storage facility.

Mr. McDonagh responded an example would be a plant on a river supplying fuel to and from a barge.

Number 247

Mr. McDonagh said the final section on page 3 gives DEC the

SBC

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ability to inspect tankers for structural integrity.

Number 271

Representative Furnace wondered if DEC would absorb liability by performing inspections. Mr. McDonagh said the consideration behind the section is that someone needs to perform inspections and noted the U.S. Coast Guard has the authority now but does not exercise it to the degree that the state feels comfortable with. He said any time the state is given the responsibility there is always a possibility that someone might not exercise it properly.

Number 361

ADJOURNMENT

The time of adjournment was not noted.

END OF DOCUMENT

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10

PETRO STAR INC.

Telephone (907) 488-0730
Telecopier (907) 488-9057
TELEX 36-686

P.O. Box 56239
North Pole, Alaska 99705
Walt Schlotfeldt
President

March 7, 1990

Mr. Curt Menard
Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V (M-3100)
Juneau, Alaska 99811

RE: HB 567

Dear Chairmar Menard:

I would like to preface my comments on HB 567 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with HB 567. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from \$2,500 to \$100,000 per day may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific

recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...) appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring applicants for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its area of operation (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in

committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area. What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and equipment as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would

probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have \$50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a \$50 million risk. We currently have \$1 million insurance.

I have highlighted the many concerns I have with HB 567. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under HB 567. Lastly, and most significantly,

Chairman Curt Menard
March 7, 1990
Page 5

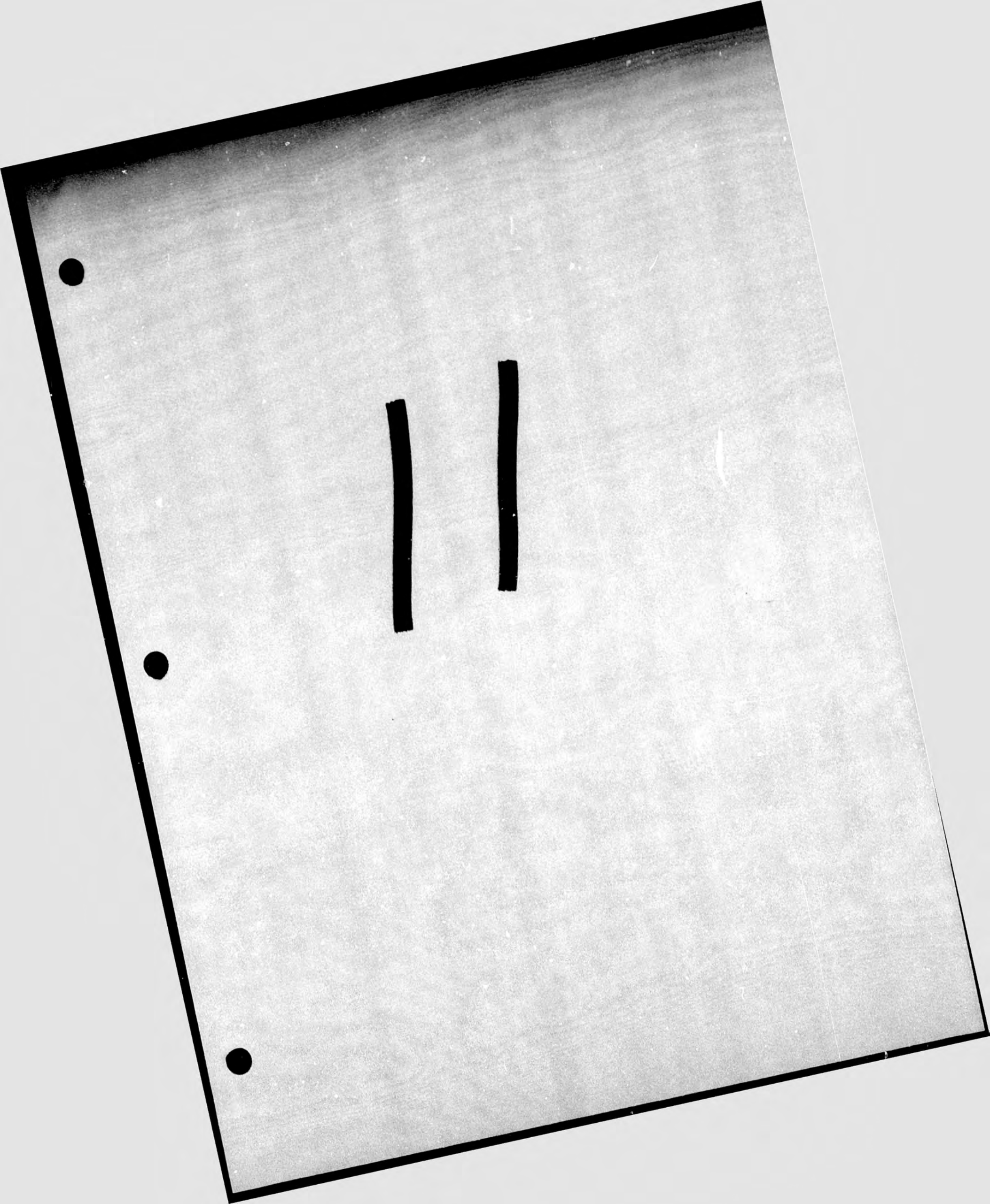
please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide these comments, and would be happy to answer any questions that you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walt Schlotfeldt".

Walt Schlotfeldt
President



CHAMBER = H
SOURCE = HRES
DATE = 900308
YEAR = 90
TIME = 1500
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE
March 8, 1990
3:00 p.m.

MEMBERS PRESENT

Co-Chairman Cliff Davidson
Co-Chairman Curt Menard
Representative Walt Furnace
Representative Bill Hudson
Representative George Jacko
Representative Mike Navarre

MEMBERS ABSENT

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Representative Mike Davis
Representative Richard Foster
Representative Bert Sharp

COMMITTEE CALENDAR

HB 565 - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HELD in Committee for further consideration.

HB 566 - "An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services

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during oil-spill-related declared disasters;
establishing the Alaska State Emergency Response
Commission; and providing for an effective
date."

HELD in Committee for further consideration.

HB 56- "An Act relating to the strengthening of the
state's oil contingency plan requirements,
financial responsibility requirements, and
inspection authority under AS 46.04; and
providing for an effective date."

HELD in Committee for further consideration.

WITNESS REGISTER

Larry Dietrick, Director
Division of Environmental Quality
Department of Environmental Conservation

SBC

M-M23 FX

2 / 2

P.O. Box 0

Juneau, AK 99811

465-2640

POSITION STATEMENT: Information/Questions

Walt Parker, Chairman
Alaska Oil Spill Commission
3724 Campbell Air Strip
Anchorage, AK 99504
333-5189
Via Teleconference Anchorage
POSITION STATEMENT: Concerns

John Sund, Member
Alaska Oil Spill Commission
2335 Sixth Avenue
Ketchikan, AK 99901
225-9292
Via Teleconference Ketchikan
POSITION STATEMENT: Concerns

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 7 OF 14
 02/22/90 02514 (H) 2 FISCAL NOTES (DEC, F&G)
 02/27/90 02576 (H) CORRECTED ZERO FISCAL NOTE (F&G)
 2/27/90
 02/27/90 02576 (H) (REPLACES PREVIOUS F&G FISCAL
 NOTE)

BILL:HB 567

TITLE: "An Act relating to the strengthening of the state's
 oil contingency plan requirements, financial respon-
 sibility requirements, and inspection authority
 under AS 46.04; and providing for an effective
 date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

JRN-DATE	JRN-PAGE		ACTION
02/22/90	02514	(H)	READ THE FIRST TIME - REFERRAL(S)
02/22/90	02514	(H)	RESOURCES, FINANCE
02/22/90	02515	(H)	GOVERNOR'S TRANSMITTAL LETTER

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 8 OF 14
 02/22/90 02515 (H) 2 FISCAL NOTES (DEC, F&G)
 2/22/90

ACTION NARRATIVE

Tape HRC 90-271, Side A

Number 000

CO-CHAIRMAN CLIFF DAVIDSON called the meeting to order at
 3:21 p.m. and stated they would be hearing from various
 people concerning HB 565, HB 566 and HB 567.

Number 009

LARRY DIETRICK, Director, Division of Environmental
 Quality, Department of Environmental Conservation (DEC),
 stated he would overview the oil spill prevention program
 and how the proposed legislation relates to the overall oil
 spill program from the prevention, preparedness and

SBC

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Mr. Dietrick summarized each bill for committee members.

Number 445

Co-Chairman Davidson asked if Section 2 of HB 56 is the area which affects additional facilities. Mr. Dietrick stated currently there is an exemption provision, Section 3, which picks up the additional facilities. Co-Chairman Davidson questioned how many facilities would be affected. Mr. Dietrick estimated approximately 30. Co-Chairman Davidson wondered if there was a determination of how the additional 30 businesses would be affected financially. Mr. Dietrick stated the cost would be for the preparation of a contingency plan but noted DEC had not determined individual costs but are in the process of determining what the premiums are. He added the difficulty with financial responsibility is that each facility is site

SBC

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 12 OF 14
specific and although they are insurable, it is difficult to make estimates because of the differences in each facility.

Co-Chairman Davidson asked if the costs are higher in rural Alaska than in more populated areas of the state. Mr. Dietrick said it depends on the spill scenario especially response capability.

Number 513

Representative Furnace asked for the list of the 30 facilities as well as financial data on each.

Number 542

WALT PARKER, Chairman, Alaska Oil Spill Commission, stated he would review HB 565, HB 566 and HB 56 and how each bill relates to the recommendations of the Alaska Oil Spill Commission. (Refer to Attachment #2 for Mr. Parker's

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Number 132

JOHN SUND, member of the Alaska Oil Spill Commission, stated the legislation proposed is a good start but does not go far enough to reduce the risk of a catastrophic oil spill. He added the fundamental point to remember is the only way to stop a catastrophic oil spill is to prevent it. He said the bills deal with contingency planning, financial responsibility and penalties and it is the committee's responsibility to go forward and deal more in the role of prevention, commenting on various prevention measures including transportation systems. Mr. Sund stated positive action is needed which will set a state transportation system in place. He added the Alaska Oil Spill Commission had many recommendations in connection with prevention.

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 14 OF 14
Mr. Sund emphasized the importance of the Citizens
Oversight Council which is not contained in any of the
bills.

ADJOURNMENT

The meeting was adjourned at 5:15 p.m.

END OF DOCUMENT

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Alaska Rural Electric Cooperative Association
Comments Regarding
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain \$50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association
Nome Joint Utilities
Nushagak Electric Cooperation (Dillingham)
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, \$50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for \$1 million. Quotations for pollution liability insurance policies with very restricted coverage* have ranged from \$23,000 to \$45,000 per year each.

Nushagak Electric presently maintains a \$1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of \$23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

* Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.

To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than \$2 million, and its annual revenues are about \$2.4 million. Approximately \$2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require \$1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The \$1,000,000 requirement for these very small utilities would be as impossible as the \$50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.

13

POSITION STATEMENT: OPPOSEHB 567

Annie McKenzie

Alaska Environmental Lobby Volunteer

P.O. Box 72

Seldovia, Alaska 99663

234-7816

POSITION STATEMENT: COMMENTS OHB 567

David Bouker

Nushagak Electric

Dillingham, Alaska

Via Teleconference Dillingham

POSITION STATEMENT: OPPOSEHB 56AND 59 504

Dan Stockdell

Kodiak, Alaska

Via Teleconference Kodiak

POSITION STATEMENT: SUPPORTHB 56WITH STRONGER
DEFINITIONS

SBC

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2 / 2

John Michaelson

Public Works Director

City of Seldovia

Seldovia, Alaska

Via Teleconference Seldovia

POSITION STATEMENT: GENERAL COMMENTS

Michael O'Meara

P.O. Box 1125

Homer, Alaska 99603

235-8635

Via Teleconference Homer

POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Dr. Riki Ott

Oil Reform Alliance

P.O. Box 1271

Cordova, Alaska

586-2820

SBC

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2 / 2

Larry Markley
ARECA
302-C Assembly Building
211 4th Street
Juneau, Alaska 99801
463-3636
POSITION STATEMENT: OPPOSED THB 567

Karen Wood
Alaska Center For The Environment
700 H. Street, #4
Anchorage, Alaska 99601
274-3621
Via Teleconference Anchorage
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567
WITH CHANGES

SBC

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Nancy Lethcoe
Alaska Wilderness Sailing Safaris
P.O. Box 1697
Valdez, Alaska 99686
835-8006
Via Teleconference Valdez
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567
WITH RESERVATIONS

Mike Milligan
Kodiak, Alaska
Via Teleconference Kodiak
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

John Caffarford
Seldovia, Alaska 99663
Via Teleconference Seldovia
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Marilyn Caffarford

SBC

M-M23 FX

2 / 2

Seldovia, Alaska 99663
Via Teleconference Seldovia
POSITION STATEMENT: COMMENTS

June Ruling
Seldovia, Alaska 99663
Via Teleconference Seldovia
POSITION STATEMENT: COMMENTS

Rose Specht
P.O. Box 1439
Homer, Alaska 99603
Via Teleconference Homer
235-7112
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Mary Eagleson
Prince William Sound Conservation Alliance
P.O. Box 1697
Valdez, AK 99686

SBC

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Via Teleconference Valdez
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Tim O'Leary
Homer, Alaska
Via Teleconference Homer
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Jennifer Dilly
Seldovia, Alaska
Via Teleconference Seldovia
POSITION STATEMENT: SUPPORTHB 56WITH CHANGES

William Rieth
P.O. Box 1398
Kodiak, Alaska 99615
POSITION STATEMENT: COMMENTS ON HB 565 AND HB 566

PREVIOUS ACTION

SBC

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2 / 2

2/22/90

02/27/90 02576 (H) (REPLACES PREVIOUS F&G ZERO FN)

BILL:HB 567

TITLE: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority

under

AS 46.04; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

JRN-DATE	JRN-PAGE		ACTION
02/22/90	02514	(H)	READ THE FIRST TIME - REFERRAL(S)
02/22/90	02514	(H)	RESOURCES, FINANCE
02/22/90	02515	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/22/90	02515	(H)	2 FISCAL NOTES (DEC, F&G) 2/22/90

ACTION NARRATIVE

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TAPE HRC-273, SIDE A

Number 000

CO-CHAIRMAN CURT MENARD called the meeting to order at 3:12 p.m., noting members in attendance. He informed members they would be hearing industry and public testimony on HB 565, HB 566, and HB 567. He added the meeting was being teleconferenced statewide.

Number 035

JOHN RINGSTAD, representing British Petroleum (Alaska), Inc. (BP), read a statement directed primarily to HB 565, HB 566, and HB 567 but also addressed the general subject of laws affecting the oil spill response program. (Refer to Attachment No. 1 for Mr. Ringstad's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room

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Co-chairman Davidson asked Mr. Ringstad if BP wanted the committee to examine historical legislative pieces that were taken out of Alaskan law in the 1970's. Mr. Ringstad said their concern was more general, in that BP felt the committee should consider the whole picture of the oil spill system when proposing legislation. Co-chairman Davidson requested that Mr. Ringstad and Mr. Raider provide a list of numbered legislation and specific statutes that BP would like the committee to consider. Mr. Ringstad agreed to provide such a list.

Number 366

MIKE SMITH, Alaska Area Attorney for Exxon Company, U.S.A., read a statement by teleconference from Anchorage addressed at HB 566 and HB 567. (Refer to Attachment No. 2 for Mr. Smith's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

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Co-Chairman Davidson explained that testimony heard during the oil commission hearings reported that more than 50 percent of the cracks in the United States tanker fleet existed in the traffic travelling to and from Alaska. He asked for Mr. Smith's comments. Mr. Smith disclosed that a significant part of the domestic fleet does come to Alaska. He stated, however, that he was not aware of a significant tanker incident in relation to the Valdez trade which resulted from failure to detect a fault during inspection.

Number 645

BILL SCHOEPHOESTER, representing Petro-Marine Services, an Alaska-owned petroleum marketer and distributor, next testified by teleconference from Anchorage oHB 567. Regarding the oil discharge contingency plans, he felt there should be a mechanism defined for companies to operate legally during the time new laws are being written. He also stated that adding departments to the review process would increase the time taken to implement the

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plans, and agencies, such as the Department of Natural Resources (DNR) and the Alaska Department of Fish and Game (ADF&G), should have a limited scope defined. Mr. Schoephoester said the financial responsibility and insurance requirements section oHB 56 should be reviewed with the insurance industry and revised to reflect what damage the facility could actually do. He projected that even responsible operators might not be able to purchase insurance proposed bHB 56 (specifically, Section 2(j)) at any cost. In closing, he expressed the opinion thaHB 56 must define the term "realistic maximum discharge" as being different for each operator. In this regard, Mr. Schoephoester suggested an appeal process for companies be provided for in this statute.

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Number 000

Co-Chairman Davidson asked Mr. Schoephoester if his company

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handled crude and he answered "No, only refined products." Co-Chairman Davidson then asked Mr. Schoephoester what guidelines his company would use to determine financial liability. Mr. Schoephoester responded that they have no set guidelines as such, but his company's financial responsibility is currently under \$2 million. However, he added current legislation which bases liability on the amount of storage at a facility is a reasonable approach.

Number 069

ANNIE MCKENZIE, Alaska Environmental Lobby, read a prepared statement directed at the inadequacy of contingency plans as proposed iHB 567. (Refer to Attachment No. 3 for Ms. McKenzie's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 178

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DAVID BOUKER, representing the Nushagak Electric Cooperation, presented his comments by teleconference from Dillingham regarding the negative impact on state electric utilities iHB 56 and Senate Bill 304 were enacted. A copy of his statement was being faxed to the committee. (Refer to Attachment No. 4 for Mr. Bouker's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.) He urged the committee to review the insurance requirements oHB 56 and the resulting economic impact on Alaska electric utilities.

Number 249

Co-Chairman Menard thanked Mr. Bouker for the good points raised in his testimony and assured him the committee would be considering these issues during the redraft process of HB 567.

Number 257

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Co-Chairman Davidson asked Mr. Bouker what product was used at Nushagak Electric. Mr. Bouker replied they use number two diesel.

Number 265

REPRESENTATIVE GEORGE JACKO questioned Mr. Bouker about Nushagak Electric's current insurance costs. Mr. Bouker stated 1989 premiums were approximately \$21,000 and 1988 premiums were \$23,000 annually and, as a point of reference, added that the 1989 cost for fuel was approximately \$650,000.

Number 284

Co-Chairman Menard asked Mr. Bouker what he felt would be a fair financial responsibility to the electric utilities industry. Mr. Bouker answered that the current insurance requirements were enough.

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Number 311

Representative Hudson asked what was the total fuel capacity of Nushagak. Mr. Bouker replied 1,040,000 gallons.

Co-Chairman Menard inquired as to the age of the fuel tanks. Mr. Bouker stated they were financed in 1985 and have never been inspected by the DEC.

Number 336

DAN STOCKDELL, a participant in the Kodiak environmental cleanup effort, testified oHB 56by teleconference from Kodiak. He felt it was critical to actually implement the oil discharge contingency plans once they became law. He was of the opinion that "a realistic maximum oil discharge" should be taken to mean the total capacity of the facility. Also, he objected to the term "shortest possible time" as

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undefined. Mr. Stockdell added that the financial responsibility for an oil discharge should be implemented on a sliding scale considering the size of the operation. He agreed that the DEC needs to be able to respond in a timely manner. He suggested changes to the section dealing with inspection authority to include pipelines, tanks, etc.

Number 389

The written testimony of JOHN MICHAELSON from Seldovia was read by teleconference by the moderator. He maintained that the people of Alaska have faith in their government to implement legislation to protect their interests.

MIKE O'MEARA next testified by teleconference from Homer. He maintained that HB 565, HB 566 and HB 56 are not extreme and he supports them wholeheartedly. Regarding SB 504 and HB 567 he stated that prevention should be an integral part of all response plans with implementation demonstrated; plans should be prepared for "worst case"

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scenarios; response should be immediate with targeted containment in 72 hours; plans should cover all onshore and offshore facilities including vessels and pipelines; and, evidence of financial responsibility should be required of all facilities. He added that regional indemnification could be provided through additional allocations to the response fund. Mr. O'Meara expressed support for the proposed citizen's oversight council. He added that a complete copy of his testimony was available from the Senate Oil and Gas Committee or the office of the Environmental Lobby. (Refer to Attachment No. 5 for Mr. O'Meara's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 511

DR. RIKI OTT, Oil Reform Alliance, stated the Oil Reform Alliance supported the intention of HB 565, HB 566 and HB 567 with changes. Dr. Ott felt that existing legislation

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booklets entitled THE CITIZEN'S GUIDE TO HAZARDOUS AND TOXIC WASTE SITES OF FAIRBANKS, ALASKA, and ENVIRONMENTAL COMPLIANCE AUDIT OF OIL AND GAS INDUSTRY IN KENAI, ALASKA, which they might find helpful. She stated emphatically that refined oil products are every bit as toxic as crude oil.

Dr. Ott suggested the cooperative effort by all applicants of oil discharge contingency plans in the formation of a centralized depot with equipment located throughout the state. She added that on the subject of financial responsibility, the Alliance felt the past performance of each particular industry should be considered as well as their size.

In closing, Dr. Ott expressed that the federal agencies did not have the adequate expertise to carry out thorough inspections and the state should get involved through the DEC.

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Number 000

Regarding HB 566, Dr. Ott stated the Oil Reform Alliance believed the DEC should be in charge over the DES. (Refer to Attachment No. 6 for Dr. Ott's testimony and enclosures which can be found at the Alaska Legislative Reference Library or at the House Resource Committee Room, Capitol Building, Room 124.)

Number 050

LARRY MARKLEY, Alaska Rural Electric Cooperative Association (ARECA), presented testimony to the committee in person. He advised the committee to look closely at the impact the propose HB 56 would have on small electric utilities and cited Naknek Electric Association as an example, which has less than 1,000 consumers and received an insurance quote two years ago of \$40,000 annually.

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Number 092

Representative Navarre asked Mr. Markley if some type of insurance pool has been studied for members of ARECA. Mr. Markley replied saying the cooperatives (other than Nushagek Electric) banded together and self-insured themselves for \$1 million each, because no other alternative was available. He added that the proposed legislation would also affect larger utilities, such as Chugach in Anchorage, which currently has insurance coverage of \$25 million for a premium of \$500,000.

Mr. Markley stated that very small electric utilities are already suffering financial hardship under current legislation. Also, the utilities industry has had a good record in the state. For these reasons, he proposed that refined products be exempted from the proposed legislation iHB 567 Section 2.

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In conclusion, Mr. Markley stated that the utilities industry supports giving DEC the necessary resources, and suggested some sort of time frame be included iHB 567, Section 1, for DEC approval of oil discharge contingency plans. (Refer to Attachment No. 7 for Mr. Markley's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 219

KAREN WOOD, Alaska Center for the Environment, stated she supported the intent of HB 565, HB 565 anHB 567but felt some changes should be made. Specifically, she felt the limit of 18,000 gallons of crude oil, as proposed in HB 565, was too high. Regarding HB 565, Ms. Wood wanted other hazardous substances besides oil included in the bill. She added that in regard to oil spill contingency plans iHB 567prevention of spills should also be addressed, and legislation should be expanded to include onshore

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facilities as well as offshore. Ms. Wood, responding to Mr. Markley's testimony, disagreed that refined products should be exempted from financial responsibility legislation iHB 567. In conclusion, she felt start of emergency cleanup operations should be required immediately after the discovery of an oil spill.

Number 310

NANCY LETHCOE, Alaska Wilderness Sailing Safaris, next testified by teleconference from Valdez. Although in favor of the oil industry in Alaska, she had been opposed to the tanker route to Valdez, preferring instead a pipeline through Canada and the mid-west. Ms. Lethcoe expressed support for HB 565, HB 566 anHB 56with some reservations. Specifically, she disagreed with the exemption of 18,000 gallons of crude; the DEC was the best equipped to handle quick response to a spill and that department should retain the lead role with the DES in a strong supportive role; adequate equipment to contain the

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