

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
2081 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

CHAMBER = H

SOURCE = HRES

DATE = 900309

YEAR = 90

TIME = 1500

DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE

March 9, 1990

3:00 p.m.

MEMBERS PRESENT

Co-Chairman Curt Menard

Co-Chairman Cliff Davidson

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

Teleconference

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

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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

John Ringstad
British Petroleum Exploration (Alaska), Inc.

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P.O. Box 196612

Anchorage, Alaska 99510

463-5242

POSITION STATEMENT: OPPOSES HB 565, SUPPORTS HB 566,
SUPPORTS 567 WITH CHANGES

Michael Smith

Alaska Area Attorney

Exxon Company, U.S.A.

P.O. Box 196601

Anchorage, Alaska 99519

561-5331

Via Teleconference Anchorage

POSITION STATEMENT: SUPPORTS HB 566 WITH CHANGES,
OPPOSEHB 567

Bill Schoephoester

Petro-Marine Services

Anchorage, Alaska

Via Teleconference Anchorage

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TESTIMONY - HB 567

MY NAME IS DAVE BOUKER. I AM THE GENERAL MANAGER OF NUSHAGAK ELECTRIC COOPERATIVE, A SMALL RURAL NON-PROFIT ELECTRIC UTILITY WHICH PROVIDES POWER TO THE COMMUNITIES OF DILLINGHAM AND ALEKNAGIK.

I AM HERE TO TESTIFY ON HB 567 AND MORE SPECIFICALLY ON THAT SECTION WHICH MODIFIES AS 46.04.040 TITLED, "PROOF OF FINANCIAL RESPONSIBILITY."

AT THIS TIME, AN OIL TERMINAL OPERATOR OF A FACILITY WITH 10,000 BARRELS (BBLs) OF STORAGE, OR GREATER, IS REQUIRED TO SHOW ABILITY TO SELF-INSURE OR TO HAVE AN INSURANCE POLICY OF \$1 MILLION TO INDICATE PROOF OF FINANCIAL RESPONSIBILITY FOR A SPILL DURING TRANSFER OPERATIONS. THE POLICY WHICH WE CURRENTLY HAVE IN FORCE IS WRITTEN BY LLOYDS OF LONDON AND COSTS US IN EXCESS OF \$21,000 PER YEAR.

THE PROPOSED HB 567 WOULD INCREASE THE REQUIRED COVERAGE FROM \$1 MILLION TO \$50 MILLION. AN INCREASE OF 50 FOLD. WE HAD EXTREME DIFFICULTY IN OBTAINING THE EXISTING POLICY BECAUSE NO U.S. CARRIER WOULD TOUCH IT. OUR NET WORTH IS LESS THAN \$2 MILLION AND I DO NOT BELIEVE THAT WE ARE INSURABLE FOR ANYTHING OVER THAT AMOUNT.

WE ARE LOCATED NORTH OF DUTCH HARBOR AND THIS MEANS THAT WE CAN ONLY RECEIVE FUEL DELIVERY DURING THE SUMMER MONTHS. THEREFORE, WE

HB 567 Testimony, Page 2

HAVE TO HAVE THE STORAGE CAPACITY TO CARRY US THROUGH FROM SEPTEMBER TO MAY OR JUNE. THE LOCAL WHOLESALE DISTRIBUTOR IS IN MUCH THE SAME POSITION. IF THE INSURANCE COVERAGE REQUIREMENTS INCREASE 50 FOLD, YOU CAN BE ASSURED THAT THE ATTENDANT COSTS OF THAT INSURANCE WILL MEAN SUBSTANTIAL INCREASE IN COST OF POWER, HEATING FUEL, AND GASOLINE TO RURAL COMMUNITIES LEAST ABLE TO PAY.

ONE POSSIBLE ALTERNATIVE TO THIS ISSUE MIGHT BE TO INCREASE THE EXEMPTION IN AS 46.04.050 TO 50,000 BBLs OF REFINED PRODUCTS, BECAUSE THEY ARE FAR LESS DANGEROUS THAN CRUDE AND RAPIDLY DISSIPATE IN THE ATMOSPHERE IN THE EVENT OF A SPILL. IN ADDITION, AN EXEMPTION AT THIS LEVEL WOULD PROBABLY ACCOMMODATE MOST FUEL INVENTORIES IN WESTERN ALASKA. HOWEVER, THIS ASPECT SHOULD BE LOOKED INTO BEFORE ANY FINAL DECISION IS MADE.

WE BELIEVE THAT THE CATASTROPHE OF THE OIL SPILL IN PRINCE WILLIAM SOUND GENERATED THIS BILL. HOWEVER, IT SHOULD BE NOTED THAT THE OIL COMPANIES ARE NOT AS FINANCIALLY IMPACTED BY THE BILL AS THE SMALL RURAL COMMUNITIES BECAUSE MOST OF THE OIL COMPANIES ARE FINANCIALLY SOUND ENOUGH TO SELF-INSURE WHILE WE HAVE TO IMMEDIATELY PUT UP THE CASH TO BUY INSURANCE FROM SOME FOREIGN ENTITY OR PURCHASE A LETTER OF CREDIT AND, OBVIOUSLY, WE WILL HAVE DIFFICULTY IN PURCHASING A \$50 MILLION LETTER OF CREDIT. I WOULD URGENTLY RECOMMEND THE COMMITTEE TO REVIEW THESE PROPOSED REQUIREMENTS AND THEIR ECONOMIC IMPACT BECAUSE THEY APPEAR TO PRESENT IMPOSSIBLE CONDITIONS TO US. (3/9/90:lwb\rptdb)

15

Chevron



SAUPE ENTERPRISES, INC.
P.O. BOX 70510
FAIRBANKS, AK 99707

FAX TRANSMITTAL RECORD

FAX NUMBER - (907) 452-1033
Telephone - (907) 452-1238
Date Mar. 8, 1990

TO: House Resources Committee ATTN: _____
FAX# % Rep. Sharp (Gloria) SUBJECT: H.B.-567
21-465-2294 (#Pages Sent: This plus one)

Message: Testimony offered to members of the House Resource Comm.
relative to H.B.-567:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years.

I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It is heartening to me, and to others like me, to know that you all share the concern, confusion, and uncertainty that we feel regarding H.B.-567. I applaud any attempts to identify exactly what the Bill will require, and I share your fear that the regulations may not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "567" include little operations like my Fairbanks bulk plant! In fact, plants as small as 1/4 our size, along with many river barges, would also be put out of business by "567" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically use only about 5,000 Bbls. at any given time.)

The DEC has indicated an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "567" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to spill that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as unlikely a scenario as our being able to meet "567"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone our size to even suggest we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "567" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!

Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "567". It would be sheer hysteria for me to even anticipate \$50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The \$50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the \$1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of \$500,000 but the additional premium for just the $\frac{1}{2}$ million extra was \$53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received ~~Monday~~ from my insurance broker: Quote:

"The limit of \$50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!


Bernie Saupé

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Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No. 1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenonema specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.

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REGIONAL CITIZEN ADVISORY COMMITTEE

March 12, 1990

Representative Curt Menard
P.O. Box V
Juneau, AK. 99811

Dear Mr. Menard:

Attached is some information about the Regional Citizen's Advisory Committee (RCAC) and a memorandum with regards to our positions on pending State Legislation. Our Legislative Sub-Committee will be working to develop position papers, testimony, and in some cases specific language for oil spill related bills. The fifteen directors of RCAC look forward to working with the legislature as well as the oil industry to put in place the best laws possible to prevent, respond to, and mitigate the impacts from future oil spills.

Thank You.



Tim Robertson
V.P. Oil Spill Prevention & Response

TR/ph
cc: Marilyn Hyman

MAR 09 '90 19:15 CORDOVA CITY HALL

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THE FOLLOWING REPORT, AS CORRECTED, WAS APPROVED BY THE RCAC ON MARCH 9, 1990

Memorandum -- 9 March 1990

To: RCAC

From: Legislative Subcommittee

Your legislative subcommittee recommends RCAC take a supporting position on the following legislation:

1. SB359/Comparable House Measure

Establishes \$10 million within the Sec. 470 funds to support social and economic needs of a municipal response to a spill, through DCRA.

RCAC would support the efforts of the Oiled Mayors. In our statements, we would remind people of our stand that we feel the Alyeska plan, as submitted, is inadequate because it does not address social and economic impact of a spill.

2. SB 497/HB 409

Part of the Governor's oil spill package, the bill strengthens DEC access to terminal facilities, allows for administrative penalties, changes methods for compliance orders and provides for environmental audits.

The bill has passed committees of referral in the House and awaits floor action.

RCAC should support the legislation, as it brings Alaska environmental law in step with the rest of the country and strengthens RCAC's access.

In doing so, we should support proper funding and staffing of DEC for enforcement of this law and laws they already have.

3. SB504/HB567

The bill, submitted by Gov. Cowper and the Oil Spill Commission, would raise the standard for mandatory response plans. RCAC should support the bill with the following additions or caveats:

a. The bill should mandate prevention as well as response in contingency plans.

b. RCAC's should be recognized as a part of both the review of a

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RCAC Legislative Subcommittee Report -- page two

plan and as essential to the operation of any plan. This is a good place to further mandate agency cooperation with citizen's advisory committees. We feel this legislation, if sufficiently modified, is the best way to tackle the concerns behind the Resources Committee bill draft that would create RCAC's on the state level.

c. On the bill's most controversial provision, we suggest the RCAC support language which would have a spill contained within 72 hours and picked up within the shortest possible time. Language also implies that immediate response is not required under the law, and we should clarify that language. Finally, on the issue of "realistic maximum discharge" vs. "most probable discharge" we support the former in concept, but believe RCAC should review this specific language further until we better understand the effect it would have on the current plan.

d. We would like to see the bill mandate legal and social and economic provisions of a prevention/response plan, and to see the DEC-Alyeska agreement on handoff of a response to a spiller recognized and clarified in the law.

e. We should note in testimony that several parts of the current law seem not to have been enforced by DEC, and use that to support a strong fiscal note for this provision, including funding of community review of response plans.

4. The RCAC will follow HB 565, SB 502, SB 503, HB 566, HB 315, HB 316 and legislation concerning citizens advisory committees and citizens suits. We will gain committee concurrence before taking a position.

5. Resources required: For the amendments we propose to SB 304/HB 567 we will attempt to have an amendment written by legislative staff but may wish to hire drafting counsel and to bill back some secretarial time. We wish to have the ability for a member of the committee to be in Juneau at immediate notice. We will teleconference with the RCAC as a whole if any change from these positions is required. We do not believe a retained lobbyist is required. We would welcome participation from anyone on the committee not currently on the subcommittee.

Position papers we prepare on these issues will be distributed to RCAC members in advance of use in order to involve our constituents in the process and to keep them up to speed.

Pending approval of Messrs. Walker and Butler, Tim Robertson will serve as co-chair for state legislation. Mead Treadwell will serve as co-chair for federal legislation. RCAC will plan to have someone in Juneau during the session's last week.

REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee (RCAC) offers the best chance for the public to influence oil industry operations in this state. The RCAC is The Alaskan version of the successful system of citizen participation in the formulation of oil storage and transportation policy in the remote Shetland Islands of Scotland.

The formation of an interim RCAC, originally named the Alyeska Citizens Advisory Committee (ACAC), was initiated by the Alyeska Pipeline Service Company in June, 1989. Alyeska was responding to the need for citizens' participation in the process of formulating an effective oil spill prevention and response plan for Prince William Sound, as required by Alaska Department of Environmental Conservation in aftermath of the Exxon Valdez grounding.

The 15 committee members represent the communities of Prince William sound, the Kenai Peninsula and Kodiak Island, as well as fishing, conservation, aquaculture and native groups. No member of the committee represents Alyeska or the owner corporations.

As a fully independent entity, this interim committee has vigorously pursued its goals. The RCAC has begun its review of the Alyeska Oil Spill Response and Contingency Plan, and has taken on the additional responsibilities of monitoring the Alyeska Pipeline Terminal in order to help ensure its environmentally correct operation and the safe shipping of North slope Crude through Prince William Sound.

To guarantee the continued existence of a citizens advisory group, the committee is now in the process of developing bylaws and articles of incorporation as a nonprofit corporation, as well as negotiating a contract between RCAC and Alyeska for the permanent committee.

The interim committee has also involved itself in federal oil spill legislation. Most recently, RCAC modified Senate legislative language mandating a citizens advisory committee system, and in November sent a three-member subcommittee to Washington, D.C., to support the inclusion of this language in oil spill legislation before the House of Representatives. The concept of the advisory committee was introduced in the Senate by Senator Murkowski as a section of the oil spill liability bill passed in August.

The advisory committee language supported by RCAC was attached by Representative Young to the Coast Guard appropriations bill passed in October, rather than to the House version of the oil spill liability bill. The advisory committee language was later dropped from the legislation in conference, but Rep. Young's action succeeded in bringing the issue to the fore in the House, which is now on record as strongly supporting the concept. Senate and House members are expected to conference in March on the oil spill bill, chances are good that the Citizen Advisory Legislation will be part of the final bill.

The RCAC legislative subcommittee is planning to work towards better State Legislation related to Oil Spill Prevention and Response as well as Oil Spill Impact Mitigation. With its regional representation and independent status, the RCAC can add legislative refinements based on knowledge gained through real involvement.

The RCAC can act as an effective watchdog to the oil industry in Alaska. The first line of defense against oil spill or oil-related impacts is prevention. This is the field of endeavor which will be actively pursued by the environmental and technical subcommittees to be appointed by the RCAC. In addition, the RCAC will interact with federal and state regulatory agencies on an ex-officio basis.

3/9

ACAC MEMBERS

March 1, 1990

NAME	ADDRESS	PHONE	FAX
GEORGIA BUCK CITY OF WHITTIER	CITY OF WHITTIER P.O. BOX 606 WHITTIER, AK 99693	472-2327(WK)	472-2404
JIM BUTLER PENINSULA BORO. REP	144 N. BINKLEY AVE SOLDOTNA, AK 99689	262-7815(WK) 283-5633(HM)	262-1892
CHARLES CHRISTIANSEN MAYOR LARSEN BAY	BOX 8 LARSEN BAY, AK 99615	347-2203	
WAYNE COLEMAN KODIAK ISLAND BOROUGH	710 MILL BAY RD KODIAK, AK 99615	486-5736	486-2886
CHRIS GATES CITY OF SEWARD VP-PORT OPS/ VTS	5th & ADAMS BOX 167 SEWARD, AK 99684	224-3331(WK) 224-8667(HM)	224-3248
MARILYN LELAND C.D.F.U. SECRETARY	BOX 839 CORDOVA, AK 99574	424-3447(WK) 424-7778(HM)	424-3430
JOHN McMULLEN PSWAC	PWSAC OFFICE CORDOVA, AK 99574	424-7511(WK)	424-7514
STACIE PASCAL CHUGACH ALASKA CORP.	3000 A STREET SUITE 400 ANCHORAGE, AK 99503	563-8866(WK)	563-8402
TIM ROBERTSON CITY OF SELDOVIA VP-O.S.R.	DRAWER B SELDOVIA, AK 99623	234-7469(WK) 234-7491(HM)	234-7430
ANN ROTHE NAT'L WLD. FEDERATION CHAIRPERSON	750 W. 2ND AVE SUITE 200 ANCHORAGE, AK	258-4800(WK)	258-4811
LESLIE SMITH KODIAK CITY	710 MILL BAY RD. KODIAK, AK 99615	486-8642(WK)	486-8600
MARGE TILLION CITY OF HOMER	P.O. BOX 835 HOMER, AK 99603	235-7085(HM) (CITY)	235-7085 235-3140
MEAD TREADWELL P.O. BOX CORDOVA VP-SCIENCE	P.O. BOX 835 CORDOVA, AK 99574	424-0200(WK) 424-0000(HM)	424-0000
PHI WALKER CITY OF VALDEZ MEASURER	500 W. 3RD AVE. ANCHORAGE, AK 99501	263-6251(WK) 274-7522(WK)	263-8320
JASON WELLS VP-TERM/ENV.	P.O. BOX 835 CORDOVA, AK 99574	895-4874(WK)	

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CHAMBER = H
SOURCE = HRES
DATE = 900314
YEAR = 90
TIME = 1520
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE
MARCH 14, 1990
3:20 p.m.

MEMBERS PRESENT

Rep. Cliff Davidson, Co-Chairman
Rep. Curt Menard, Co-Chairman
Rep. Mike Davis
Rep. Richard Foster
Rep. Walt Furnace
Rep. Bill Hudson
Rep. George Jacko
Rep. Mike Navarre

SBC

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providing for an effective date."

NOT HEARD

HB 578 "An Act creating a citizens' oversight council on
oil and other hazardous substances and regional
advisory committees.

HELD IN COMMITTEE

Overview by Insurance Industry Representatives oHB 567

WITNESS REGISTER

Michael Padden
Ribelin Lowell & Co.
341 W. Tudor Rd., Suite 201
Anchorage, AK 99503
561-1250

POSITION STATEMENT: Provided information

SBC

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Paul Greenaway
Horace Holman Marine & Overseas Ltd.
12 Camomile St.
London, England
01-283-7522

POSITION STATEMENT: Provided information

John Gimblet
Horace Holman Marine & Overseas Ltd.
12 Camomile St.
London, England
01-283-7522

POSITION STATEMENT: Provided information

Walt Parker, Chairman
Oil Spill Commission
3724 Campbell Air Strip
Anchorage, AK 99504
333-5189

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POSITION STATEMENT: Provided information

Esther Wunnicke
Oil Spill Commission
3601 C St., Suite 400
Anchorage, AK 99510

POSITION STATEMENT: Provided information

Christopher Gates
Port Marketing Director
Box 167
Seward, AK 99664
224-3331

POSITION STATEMENT: Supports HB 578

Larry Smith
Kachemak Resources Institute
Fritz Cove
Homer, AK
235-7090

SBC

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POSITION STATEMENT: Supports HB 578

Jim Butler
144 N. Binkley
Soldotna, AK 99669
262-1218

POSITION STATEMENT: Supports HB 578

Wayne Coleman
710 Mill Bay Rd.
Kodiak, AK 99615
486-5736

POSITION STATEMENT: Supports HB 578

Milligan

21

, AK 99615

94

ION STATEMENT: Supports HB 578

Nancy Hillstrand

SBC

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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)
02/27/90 02576 (H) -CORRECTED ZERO FISCAL
NOTE(F&G) 2/22/90
02/27/90 02576 (H) (REPLACES PREVIOUS F&G ZERO FN)

ACTION NARRATIVE

TAPE HRC 90-284, SIDE A

Number 000

CHAIRMAN CLIFF DAVIDSON called the meeting to order at 3:25 p.m. Present were Co-chairman Menard, Representatives Hudson, Foster, and Navarre. He announced HB 432 would be moved to the bottom of the agenda, and the committee would first have the overview and then comments would be taken on

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HB 567. The committee would then take testimony on HB 578 and HB 566. Co-chairman Davidson noted Rep. Davis had joined the meeting. He then introduced John Gimblet, Paul Greenaway and Michael Padden.

Number 024

JOHN GIMBLET informed the committee he has been a marine insurance broker with Lloyd's of London for 33 years. He gave committee members his background.

MIKE PADDEN, a broker with the Ribelin and Lowell Company in Anchorage, Alaska, informed committee members he places marine insurance for primarily Alaskan businesses.

PAUL GREENAWAY introduced himself as a colleague of Mr. Gimblet's, and stated he sells marine insurance to the London market.

Number 036

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Chairman Davidson asked Mr. Padden, Mr. Gimblet and Mr. Greenaway to address HB 56 from the perspective of the insurance industry regarding risks. Mr. Gimblet responded there are a number of issues that need to be addressed from the insurance industry's perspective. He felt he would have difficulty convincing London insurers of the value of insuring Alaskan vessels as some of the provisions of HB 56 would be viewed as imprecise in certain features. He addressed the provision requiring a terminal operator to have a \$1,000,000 policy for a 10,000 barrel capacity and a \$50,000,000 policy if they had one additional barrel over the 10,000. He stated it would be difficult, for the insurance industry would prefer to see different limits for different tank capacities. Second, he believed there should be some thought given to differentiating between those who hold and store crude oil and those who hold and store refined products because crude oil and refined products represent completely different risks to insurance underwriters.

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Number 066

REP. MIKE DAVIS asked for clarification of the different risks. Mr. Gimblet replied the cost of cleanup of a crude oil spill is generally much higher than the cost of cleanup of a refined product spill because a larger percentage of the refined product evaporates into the atmosphere.

Number 078

REP. WALT FURNACE asked Mr. Gimblet if his company is currently providing insurance coverage to the petroleum industry in Alaska. Mr. Gimblet answered individual companies within the Lloyd's market do insure Alaskan petroleum companies. Rep. Furnace asked if the imprecision in HB 56 Mr. Gimblet referred to earlier would inhibit the availability of insurance for the petroleum industry. Mr. Gimblet stated it is extraordinarily difficult to follow the world insurance market at present, but he noted the

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existing level of coverage would cover cleanup costs only when there was evidence of a personal injury or property damage. He continued that this is a limitation to the statute requirements. Rep. Furnace asked Mr. Gimblet to project what the market looks like for the future, considering the difficulty he has experienced over the past five years. Mr. Gimblet stated the companies available through London underwriters have a \$1,000,000 limit for marine terminals, which incorporates the existing Alaska statute provision.

He stated senior underwriters at Lloyd's would be prepared to discuss the availability of a \$10,000,000 limit for marine terminals.

Number 124

Rep. Furnace asked what the approximate costs are of the \$1,000,000 policy and \$10,000,000 policy. Mr. Gimblet stated the cost would be determined by the layout of the

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terminal and various factors such as through-put of products, age of tanks, etc. Rep. Furnace asked if there are other providers, other than Lloyd's of London, capable of meeting the need of the petroleum industry in Alaska under the proposed statute change. Mr. Gimblet replied that a number of large American companies are capable but they have been unable to identify any other set of underwriters other than Lloyd's that actually provide insurance. He stated if Lloyd's is successful in increasing the limit to \$10,000,000, this may interest other underwriters in participating in a group program for the excess of \$10,000,000. He explained that his company is present at the meeting because they have taken a tremendous interest in the legislation in order to continue the protection of their existing clients.

Number 169

CO-CHAIRMAN CURT MENARD asked how they rate the differences between the cleanup of contamination on surface water

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versus groundwater contamination. Mr. Gimblet stated he cannot answer that question as he is not a specialist in that area. He explained they are there to learn what may be required of Alaskan companies and how they may respond to those requirements in the form of an insurance policy. Co-chairman Menard asked about the unavailability of insurance for leaking underground storage tank sites before and after the cleanup. Mr. Gimblet stated few underwriters wish to be involved in underground storage tank insurance as the tanks could have been leaking for a number of years and may have left residues in the soils. He explained the difficulty, from an underwriter's point of view, is determining at what point their liability will cease.

Number 208

REP. BILL HUDSON referred to the provision concerning inspections iHB 567. He asked Mr. Gimblet if his company underwrites oil tankers. Mr. Gimblet clarified that he is a broker, not an underwriter. Rep. Hudson asked, if he

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were an underwriter, would he be conducting inspections. Mr. Gimblet replied the classification society lays down very strict rules about the examination of both the internal and external inspection of the vessel, which he believed occurred every year. He added there are local and federal laws in the United States and in the United Kingdom pertaining to vessel construction. Rep. Hudson asked, in determining the rates for liability policies, what would be the increase in insurance. Mr. Gimblet responded that he would need a more restricted platform from which to answer that question, but he stated it would be a multiple of many times.

Number 260

REP. MIKE NAVARRE asked if Mr. Gimblet worked in other countries, and if so, what do other jurisdictions require in terms of client responsibility, and how doeHB 567 compare. Mr. Gimblet replied a number of the European countries are awaiting the common market governance to

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determine one set of rules and regulations for operators within the member countries of that group. He was unaware of responding to specific laws in other countries, his business has been at the request of a particular client who needs a broker to review its existing limits of liability and to offer advice as to fiscal and legal findings.

Number 291

Rep. Furnace asked if other states have increased their liability limits, and if so, how are those limits being met, and are they higher than Alaska's. Mr. Gimblet stated the average terminal operator is purchasing higher limits of liability in their 1990 policies but he was unaware whether the stimulus was coming from Congress or any external force. He suspected the higher limits were in response to the foreseen risks of a third party being injured or third party property being damaged by a spill and the potential for litigation.

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Number 315

Mr. Gimblet went on to explain that in the majority of policies being placed in the United States, the way in which a pollution-responding policy is structured, it is primarily not a pollution responding policy, it is a legal liability policy, therefore the pollution is the stimulus by which a claim is made against the insured. Under the terms of the standing insurance policy, no cleanup costs are recoverable by the insured, therefore before anything is done about a spill, there must be a suit against the insured or there must be physical bodily injury or property damage. He stated he and his colleagues do not feel that is not the perspective of the proposed legislation, which they believe is intended to elicit financial responsibility for cleanup costs immediately in the absence of a lawsuit.

Number 339

Rep. Furnace clarified that most clients are looking for

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coverage for bodily injury and property damage as opposed to cleanup costs, but Alaska is looking primarily for cleanup cost coverage. Mr. Gimblet explained that the Alaska legislation intends to elicit from insurers that in the event an insured operation has a spill, and in the absence of a legal liability or bodily injury or property damage, there may be an argument, based on insurance law, that they do not have to respond to insurance costs. He stated that they believe that any person who must be financially responsible to the existing statutes, and any amendments to the Alaska statutes must have, as its first base, the premise that it is much better to have people cleaning up the spill immediately after it happens, rather than waiting for a lawsuit to occur.

Number 375

Rep. Davis asked how much of the industry is self-insured, and given the fact that there is a lot of litigation underway as a result of the Exxon Valdez spill, does that

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affect the climate of issuing further policies. Mr. Gimblet responded the insurance industry will run, and the London market is composed of both Lloyd's and the representative insurance companies from virtually every country in the world. He explained it is common knowledge that the vast majority of insurers have looked at the Exxon Valdez situation and other pollution situations and they are frightened by the ramifications; the has caused some to withdraw from that market.

Number 422

Rep. Davis commented that it is in the state's best interest to ensure that adequate coverage exists. Mr. Gimblet stated if any government passes laws that the insurance industry is unable to respond to, it is very difficult for the brokering industry to obtain coverage for the clients.

Number 441

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Rep. Davis stated the recent climate helped to foster the vacuum, and the state is now trying to ensure that such a climate doesn't continue, which is why the legislation was introduced.

Number 465

Rep. Navarre stated the bottom line is that we are having a tough time finding people who will insure the financial responsibilities that we are asking for. He expressed concern that the state does not want to force operators out of business or to operate without coverage. The intention of the bill is to figure out a way to protect against the cost of environmental litigation. He stated maybe insurance pools or a state fund should be looked at since the risk may be too high for the insurance industry because they are in the business to make money.

Number 494

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Mr. Gimblet clarified the insurance market is trying to respond and he intends to continue to work with underwriters to put together policies to cover the basic \$10,000,000 liability requirement. He stated the insurance industry does not want to turn its back on this issue because it is too difficult; it is trying to grapple with the issue in a productive manner. He stated a terminal operator in Juneau would most likely be unable to provide \$50,000,000 in coverage and it is questionable whether the inherent risk would require even more than \$1,000,000.

Number 499

Chairman Davidson thanked Mr. Gimblet, Mr. Greenaway and Mr. Padden for their presentation.

TAPE HRC 90-284, SIDE B

Number 000

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MEMORANDUM

State of Alaska

TO: The Honorable Steve Cowper
Governor

DATE: March 16, 1990

FILE NO.:

THRU:

TELEPHONE NO.: 465-2600

FROM: Dennis D. Kelso *advised for*
Commissioner
Department of Environmental
Conservation

SUBJECT: Financial
Responsibility
and Contingency
Plans

Per your request, the following is a briefing/decision memorandum presenting alternatives to the provisions currently in HB 567/SB 504 on the issue of additional requirements for financial responsibility and oil spill contingency plans for non-crude oil facilities.

Summary of the Issue

The current House and Senate bills increase the amounts of financial responsibility required at most currently regulated facilities. They also lower the threshold at which oil terminals are required to have both contingency plans and proof of financial responsibility from 10,000 barrels to 5,000 barrels of storage capacity.

You have asked us to revisit this issue and propose alternatives that may be more workable for smaller operators.

Attached in Table 1 is a comparison of existing requirements for financial responsibility, the levels proposed in the 2/21 legislation, and proposed new levels.

Decision Required

It is necessary to decide whether to propose amendments to the governors bills on this subject.

The House Resources Committee is marking up all the oil spill bills within the next couple of days, and it would be prudent to propose any changes to this committee.

Key Agencies and Interest Groups

There was some concern expressed by the Department of Natural Resources over the financial responsibility requirements. They felt it was important not to prevent any further development of the oil industry by making the

requirements so onerous as to preclude exploration and production of oil.

DEC has felt that it is necessary to protect the state and its citizens by ensuring that shippers and handlers of oil have the financial capability and preparedness to deal effectively with spills. The exemption from current law for facilities or shippers of less than 10,000 barrels leaves a group of facilities with a significant spill potential without contingency plans or any demonstrated readiness to deal with a spill. Some method needs to be developed that will allow us to adequately protect the state's interests.

Various other groups have been testifying at the legislative hearings on these issues. Some of the owners and operators of oil distribution companies have said that the financial responsibility requirements are too high and that insurance to meet these requirements would be prohibitively expensive.

Concern has been expressed about the effect on villages bulk fuel storage tanks. No villages have testified on these issues, but the concern has been raised by others.

A variety of others have been involved with this issue, including many people from the communities affected by the Exxon oil spill. In general, these people seem to want strong legislation requiring contingency plans for facilities such as refineries, pipelines and onshore facilities. Some have suggested that financial responsibility levels for tankers should be \$1 billion.

Options

Options for contingency plans and financial responsibility are presented separately.

Contingency Plans

1. Leave the threshold for contingency plans at 5,000 barrels of storage, as currently proposed in the legislation.

Pro: Demonstrates a commitment by the administration to deal with a broader group of facilities with the potential for significant spills.

Con: Does not address the issue of requiring contingency plans for a whole new group of operators. By still requiring the contingency plan, this group of facilities and operators now become part of the regulated community.

2. Delete the new requirement for contingency plans at the

5,000 barrel level.

Pro: Removes the opposition to the bill that is coming from the newly regulated community.

Con: Leaves the state in exactly the same position we are in now without any means to deal with spill response for this group of potential spillers. May be construed that the administration is backing down at the slightest hint of controversy.

3. Replace the contingency plan requirements with statutory authority for DEC to survey, inventory and inspect facilities with less than 10,000 barrels storage capacity. This authority will direct DEC to conduct inspections, identify problem areas, and report back to the Legislature with findings.

Pro: Provides a method for the department to begin getting a handle on the facilities that fall into the 5-10,000 barrel category. This type of approach would allow us to prepare design standards, examine secondary containment methods, and take a more detailed look at what should be required for contingency plans for this size facilities. It would provide the data necessary to structure a program that has realistic standards that can be properly incorporated.

Con: May be construed that the administration is backing down on its original stance in favor of stronger environmental protection laws. Giving DEC the authority to begin inspecting new facilities will still meet some resistance.

Financial Responsibility

A. Leave the proof of financial responsibility levels for non-crude facilities as proposed in the existing legislation.

Pro: Assures that operators working in the state have the capability of dealing with the damages caused by a major spill.

Con: Guarantees opposition to the bill from small operators who feel that the cost of this proof would be prohibitively high.

B. Drop the financial responsibility requirements for non-crude facilities.

Pro: Removes all of the controversy over the increased

financial responsibility requirements for non-crude facilities.

Con: Leaves the state in a position to have to pay cleanup costs in the event of a spill by a party that cannot afford cleanup and damage costs. Also may be construed that the administration is backing down from its original proposal to tighten safeguards.

C. Modify the financial responsibility requirements to include a tiered approach for non-crude facilities. We have attached a proposal that does this.

Pro: Tries to deal fairly with the issue and makes the proposal less onerous than the existing legislation. Reinforces the concept that the administration wants to continue moving along a path that will help us have environmentally responsible development.

Con: Will not completely satisfy all parties, since there will be increased financial responsibility requirements for some operators (while others will be lowered from existing requirements).

Recommendations

We recommend a modification to both the financial responsibility requirements for non-crude facilities and the contingency plan requirements (options 3 and C). It is essential that the state have some assurance of financial responsibility and we believe that the tiered approach we have developed is fair and attainable. A recent presentation by representatives of the insurance industry showed that industry standards for tankers would be in line at the \$900 million level and that policies are available for terminals at the \$10 million level. (See the attached memo by Jeff Bush.)

The recommended approach to the contingency plan issue allows us to begin gathering the data necessary to develop the most appropriate standards to address spills at smaller facilities. This approach starts off by educating people about spill issues and contingency plans and provides them with technical assistance and recommendations. This would provide a nonregulatory approach for the small business person.

cc: Garrey Peska, Chief of Staff
Bob Evans, Deputy Chief of Staff
Denby Lloyd, Special Staff Assistant

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.

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Statement of
Jerry A. Aspland
President, ARCO Marine, Inc.
Before the Alaska House Resources Committee
House Bill 567
Juneau, Alaska
March 20, 1990

Dear Chairmen Davidson and Menard:

I appreciate the opportunity to express the views of ARCO Marine, Inc. on House Bill 567, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, is concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills, and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The first is sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying

environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management, all the contingency plans and equipment can not be utilized most effectively.

While ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of HB 567 with which we believe compliance is impossible. Section 1 of HB 567, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish

much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with proposed HB 567, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity to submit comments. ARCO Marine, Inc. stands ready to assist your committee. If you have any questions, I would be pleased to hear from you regarding this statement or any other related subjects.

Jerry Aspland
President
ARCO Marine, Inc.

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Ray Gillespie
Gillespie & Associates
Lobbying & Governmental Affairs



Please reply to: ☒ 10390 Mendenhall Loop Road ☐ 215 Fidalgo Ave., Suite 201
Juneau, Alaska 99801 Kenai, Alaska 99611
(907) 463-3375 (907) 283-5405

M E M O R A N D U M

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Ray Gillespie

DATE: March 21, 1990

SUBJECT: HB 565 and HB 567 - Civil Penalty and Financial
Responsibility for Non-Crude Oil Distributors

MAR 21 1990

I represent Petro Marine, Delta Western and Crowley Maritime, which are relatively small distributors of refined products, such as marine fuel and petroleum products, rather than crude oil. This memo contains thoughts and comments on the legislation as it may affect owners and operators of distribution facilities in Alaska:

- I. Appendix G to the Alaska Oil Spill Commission Report is entitled "The Role of Insurance for the Preparedness and Response to Oil Spills: Liability and Compensation Issues". This report should be carefully reviewed by the Committee and its recommendations seriously examined prior to action on HB 565 and 567. Neither the Alaska Oil Spill Commission report nor Appendix G recommends any specific changes to Alaska liability or penalty laws with respect to non-crude oil distributors.

On the contrary, Appendix G recommends that the Commission and the State Legislature review the analysis of the civil penalty scheme, oil spill liability and compensation thesis, written by W.J. Graham in 1989. This thesis was done at the University of Washington, Institute of Marine Studies and is entitled "Oil Spill Liability and Compensation: A Review of and Evaluation of Alaska's Civil Penalty Scheme." A copy of this paper has been provided to Committee staff.

- II. Other Observations and comments on Appendix G:

- A. The report references the U.S. Government Accounting Office, 1987 report, which states that the insurance industry has maintained that the basic concerns of underwriting, risk the process of identifying and evaluating risks and setting the premiums to be charged cannot be satisfied when assessing a pollution risk, making them sometimes uninsurable.
 - B. It suggests that insurance requirements of this nature have historically been addressed through national programs, such as the National Flood Insurance Program, the Flood Disaster Protection Act, the Federal Emergency Management Act and Earthquake Insurance Programs.
 - C. The House Resources Committee may wish to examine the pertinent provisions of Federal legislation to ensure that HB 567 is coordinated with pending Federal legislation, which may also contain liability provisions according to the report.
 - D. It may be advisable for the Resources Committee to hear from the author of Appendix G, Mr. Clancy Phillipsborn of Boulder, Colorado.
- III. With specific reference to HB 565 and 567, Delta Western, Petro Marine and Crowley Maritime offer the following general comments:
- A. Tank facilities owned and operated by these entities are located in the following communities: Unalaska, Nome, Kotzebue, Seward, Dutch Harbor, Kodiak, Nikiski, Anchorage and Juneau. With the exception of one small Anchorage lube plant and a small facility in Juneau, each of these facilities would be subject to the \$50 million financial responsibility requirement of HB 567.
 - B. Earlier testimony before the House Resources Committee by insurance representatives from Lloyds of London and an Anchorage marine insurance broker indicate that \$50 million is not available for many small companies operating these size facilities.

The testimony indicated that \$10 million might be available, depending upon the particular owner and operator, the size and age of the tanks and the type and nature of mitigation and prevention practices and policies in place at the specific location.

- C. The term "realistic maximum oil discharge" as the standard for demonstrating contingency spill plan cleanup capability needs further refinement. The tank farms referenced above range from a single tank to up to 18 tanks. Must these operators be prepared to cleanup a spill that presupposes full loss of the entire capacity of all the tanks, such as resulting from a catastrophic earthquake? If so, what manpower and equipment will be required and are the costs realistic for small operators of tank farms?
- D. It is apparent that some kind of transition mechanism should be in place while the new contingency plans are written and approved and the necessary manpower and equipment put on site after the effective date of the legislation and before final approval of the plans.
- E. With respect to tanks vessels or barges in excess of 300 gross tons, HB 567 would require \$20 million of coverage. This requirement does not necessarily reflect the risk of harm posed by tank vessels or barges nor does it necessarily reflect insurance which may be available in the market place. Much of the refined petroleum products sold in the state are transported by independent barge owners under charter to the distributors, such as Petro Marine, Crowley and Delta Western.
- F. There are several other issues that should be addressed by the committee such as:
 - 1. Must operators with multiple farms meet the financial responsibility requirement for each facility or will blanket coverage meet the requirements of HB 567?
 - 2. Will small operators be able to fairly compete with large operators if both must meet the same financial responsibility requirements?

3. Will it be necessary to insure against the civil penalties contained in HB 565 in addition to the financial responsibility requirements of HB 567? See Section 2(j) of HB 567 which indicates that both types of coverage or responsibility must be demonstrated prior to contingency plan approval. If this is true, then the financial responsibility requirements are placed further out of reach for small operators.
4. For tank vessels and barges does the financial responsibility refer to each vessel or is blanket coverage sufficient?

We believe the Committee should seriously consider deleting non-crude from the bills at this time, to allow further examination of the serious and complicated issues surrounding small operators.

Thank you for the opportunity to address these bills. The companies I represent are willing and anxious to work further with the Committee on these bills. We suggest that sufficient time and study be devoted to HB 565 and 567 so that the small operators and distributors of refined products can serve the Alaskan consumer in a safe and efficient manner at reasonable prices.

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Rep. Cliff Davidson
Juneau Alaska

March 21, 1989

Dear Cliff:

Re: HB 565 and HB 567

I have reviewed the contents of the above mention bills and have a couple of concerns about them.

The areas that concern me the most are Financial Responsibility and Penalties, in regards to refined oil terminals.

BACKGROUND

In Alaska, everything runs on Petroleum Products, fishing, timber, heating homes, airplanes, and automobiles. The fuel distributor (and his oil terminal) play a vital link in basic survival in Alaska.

If laws are passed that make it more expensive for a fuel distributor to operate, the Alaskan consumer is the only one who will pay the bill.

If laws are passed that force the fuel distributor out of business then the Alaskan consumer has no place to purchase the vital products he needs to run industry, heat his home, just basically survive.

When you get away from the parts of Alaska linked to the Oil Refineries on the Kenai Peninsula (or Fairbanks) by road, Oil Terminals have to be able to be able to supply the city, village or cannery for extended periods of time. So the size of the storage needs to be large.

Costs of ocean transportation increase as the quantity of fuel delivered decrease. Weather conditions can keep a fuel barge from reaching its destination for days, weeks or in some situations all winter. Because of conditions like this the fuel distributor needs to have adequate storage to take a large quantity of fuel and still not be in a "run out" situation.

FINANCIAL RESPONSIBILITY

There should be a sliding scale attached to financial responsibility. To classify all terminals over a 10,000 bbls the same is grossly unfair. An amount per barrel stored would be more fair, so a facility storing 15,000 barrels would not have the same responsibility as one storing 150,000 barrels.

The legislature needs to consider what is available for Terminals Operators to cover the financial responsibility requirement. We are not all Exxon or Arco with unlimited resources to pledge. To those of us that are Alaskan owned business, this means buying insurance. The coverage may not be available or the price may be out of sight.

At one point a few years ago many dealers were not covered because the coverage was simply not available.

More thought needs to go into the regulations covering Refined Oil Terminals in the State. It is not good government to pass laws that cause extreme hardship and have no solution.

PENALTIES

The emphasis on penaltys is obviously designed to catch companies like Exxon that do major damage and have lots of money. The net effect of these penaltys on a smaller company (fishing boat, freighter, independent oil company etc) could be devistaitng. A person may not be able to clean up the spill, fix the problem that caused the spill and still pay the penaltys.

PREVENTION

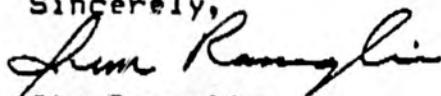
It is important that Oil Terminal Owners keep upgrading their facilities, if we have to put all our resources into paying insurance and saving accounts to pay fines in case we have a problem. There is that much less money to us to make our Facilities more enviromentaly safe.

CLOSING

We need to keep our environment safe and clean for ourselves and our children, but we need to do it in a manner that is reasonable and not destructive to business and consumers. There are only two types of individuals to pay these costs, taxpayers and consumers.

As you make you laws please consult with the industry which will be affected by the laws, the insurance companies which will need to provide the coverage. This will result in a system that works. To many times the legislature will pass a bill that creates an unworkable law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Ramaglia".

Jim Ramaglia
Vice President

23

MAR 28 '90 11:39 ATTORNEY GENERAL

Attachment 3

P.2/4

MEMORANDUM**State of Alaska****Department of Law**

TO: Amy Kyle
Deputy Commissioner
Department of Environmental
Conservation

DATE: March 20, 1990

FILE NO:

TEL NO: 452-1568

FROM: John A. McDonagh
Assistant Attorney General
Department of Law

SUBJECT: Oil Spill Legislation--
Small oil terminal
facilities survey

Pursuant to your request, here is draft legislative language on the small terminal facilities issue. The proposed language would authorize DEC to survey, inspect, and inventory non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. After completion of the survey, DEC would (i) provide a report to the legislature which includes the survey results and proposals for appropriate legislation, and (ii) notify each facility of the facility's inspection results and provide the facility with recommendations to correct deficiencies.

As I understand it, the administration will ask the House Resources Committee to add this proposed language to H.B. 567. In return, the administration will drop the H.B. 567 language that requires contingency plans and financial responsibility guarantees for non-crude oil terminal facilities in the 5,000 to 10,000 capacity range. The proposed language is as follows:

1. Amend H.B. 567 by adding a new section, AS 46.04.065, which provides as follows:

Sec. 46.04.065. SMALL TERMINAL FACILITIES SURVEY.

(a) The department shall survey, inspect, and inventory each non-crude oil terminal facility with a storage capacity of between 5,000 and 10,000 barrels in order to determine:

- (1) the specific storage capacity;
- (2) the type of non-crude oil products stored;
- (3) the age, design, construction, and general condition of the facility;
- (4) the design and construction standards applicable or relevant and appropriate for each type of facility;
- (5) the existence or absence of spill containment structures and equipment;
- (6) the ability to respond to a spill event;

MAR 29 '90 11:48 ATTORNEY GENERAL

P.3/4

Amy Kyle
Deputy Commissioner
Department of Environmental Conservation

March 20, 1990
Page 2

(7) the environmental sensitivity of the area in which the facility is located, and the potential risk to the environment if a spill occurs;

(8) the existence or absence of surface and subsurface pipelines and storage tanks; and

(9) any other appropriate factors.

(b) No later than January 31, 1991, the department shall report the results of the survey conducted under subsection (a) to the legislature. The department shall also recommend legislation to address oil spill prevention and response at new and existing non-crude oil terminal facilities with storage capacities of less than 10,000 barrels.

(c) Upon completion of the survey conducted under subsection (a), the department may notify each facility of the results of the facility's inspection and may provide the facility with recommendations concerning any identified deficiencies.

2. Amend H.B. 567 by changing the language of AS 46.04.050 (pg. 7, ln. 29--pg. 8, ln. 4) to read:

Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of the operations and the uncertain [MINIMAL] danger to the environment posed by the activities, AS 46.04.030 and [,] 46.04.040 [AND 46.04.060] do not apply to a non-crude oil terminal facility that has an effective storage capacity of less than 10,000 barrels of oil.

JAM/jah

Attachment 4

Proposed Amendments to HB 565 Regarding Dollars Per Gallon Penalties

1. Revise proposed AS 46.04.758(b) (1) (pg. 2, ln. 24--pg. 3, ln. 3) to read as follows:

Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

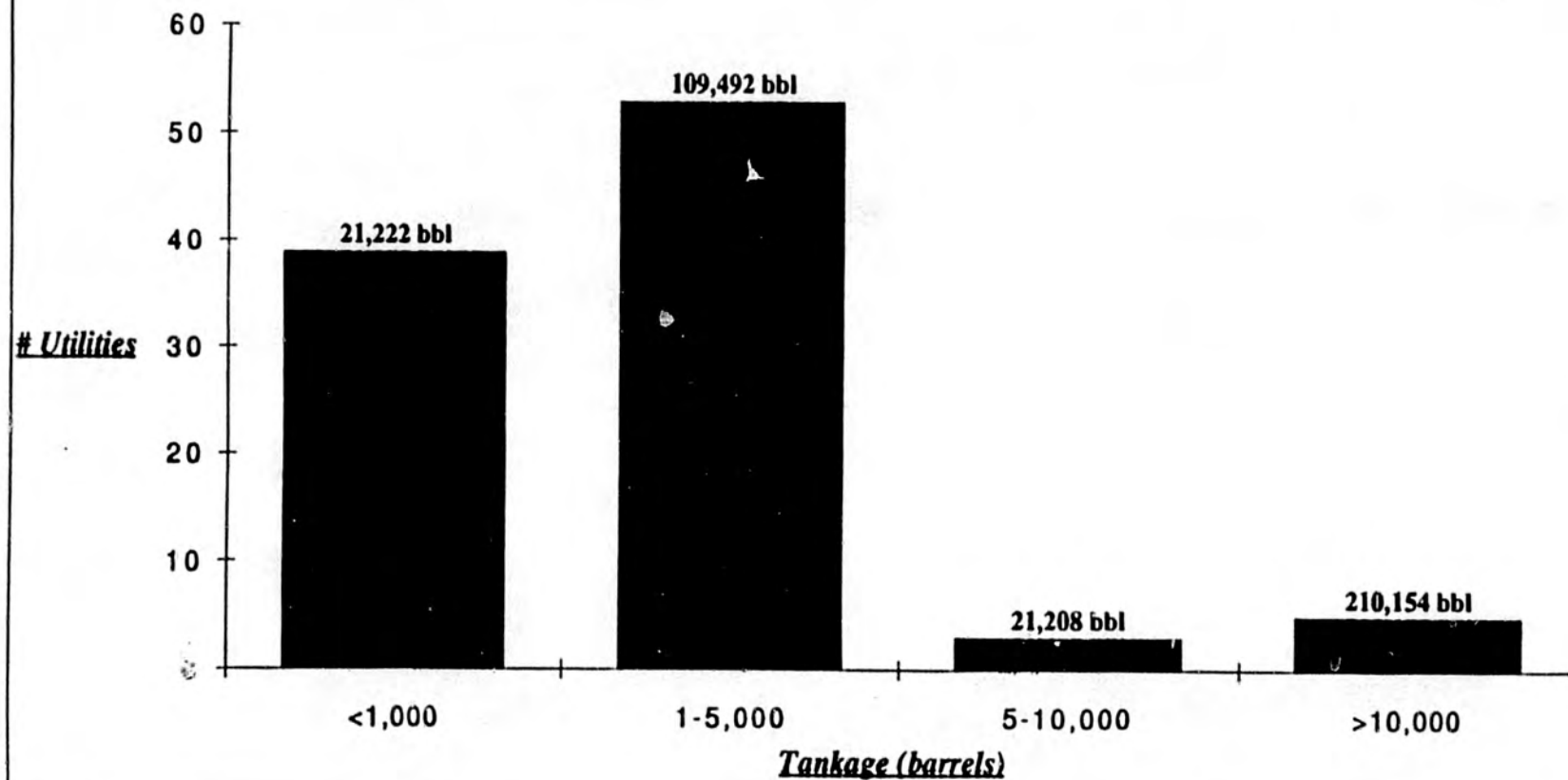
- (A) \$12.50 per gallon of oil that enters any surface or subsurface freshwater environment;
- (B) \$8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;
- (C) \$6.00 per gallon of oil that enters an unconfined saltwater environment or onto the land or subsurface land of the state.

2. Revise proposed AS 46.04.758(f) (pg. 4, ln. 27--pg. 5, ln. 6) to read as follows:

For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged onto a surface freshwater or saltwater environment or onto the surface land of the state, the court shall deduct the number of discharged gallons of oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, sinking agents, or other means is not considered removal for purposes of this subsection. This subsection does not apply to oil discharged into subsurface water or land of the state.

24

Fuel Tankage of 100 Rural Alaska Utilities



Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>< 1000 Barrels</u>		
1 Akiachak	30,000	714
2 Allakaket	20,000	476
3 Anaktuvuk Pass	35,000	833
4 Arctic Village	18,000	429
5 Atmautluak	28,000	667
6 Atkasuk	17,000	405
7 Beaver	30,000	714
8 Bethel	40,000	952
9 Birch Creek	8,000	190
10 Chuathbaluk	20,000	476
11 Circle	10,000	238
12 Clarks Point	10,000	238
13 Crooked Creek	20,000	476
14 Eagle	15,000	357
15 Ekwok	2,500	60
16 Hoonah	35,018	834
17 Hughes	10,000	238
18 Igiugig	25,000	595
19 Kaktovik	20,000	476
20 Kasaan	20,500	488
20 Klawock	1,140	27
21 Kokhanok Bay	20,000	476
22 Koliganek	25,000	595
23 Kwigillingok	30,000	714
24 Levelok	30,000	714
25 Newtok	20,000	476
26 Nuiqsut	40,000	952
27 Old Harbor	1,950	46
28 Pedro Bay	40,000	952
29 Platinum	10,000	238
30 Point Lay	20,000	476
31 Rampart	40,000	952
32 Red Devil	20,000	476
33 Ruby	7,000	167
34 Sheldon Point	30,000	714
35 Sleetmute	20,000	476
36 Stony River	20,000	476
37 Takotna	30,000	714
38 Telida	12,000	286
39 Venetie	15,000	357
	45,200	1,076
		21,222

Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>1,000 - 5,000 Barrels</u>		
<u>1</u> Alakanuk	124,534	2,965
<u>2</u> Ambler	101,546	2,418
<u>3</u> Angoon	45,200	1,076
<u>4</u> Anvik	51,903	1,236
<u>5</u> Central	45,000	1,071
<u>6</u> Chalkyitsik	65,000	1,548
<u>7</u> Chevak	137,530	3,275
<u>8</u> Cordova	55,000	1,310
<u>9</u> Eek	67,253	1,601
<u>10</u> Elim	67,899	1,617
<u>11</u> Emmonak	129,617	3,086
<u>12</u> Gambell	107,521	2,560
<u>13</u> Goodnews Bay	64,057	1,525
<u>14</u> Grayling	66,255	1,578
<u>15</u> Holy Cross	77,439	1,844
<u>16</u> Hooper Bay	158,642	3,777
<u>17</u> Huslia	66,255	1,578
<u>18</u> Kake	46,000	1,095
<u>19</u> Kaltag	87,103	2,074
<u>20</u> Kiana	113,393	2,700
<u>21</u> Kivalina	94,743	2,256
<u>22</u> Kongiganak	60,000	1,429
<u>23</u> Koyuk	69,110	1,645
<u>24</u> Lower Kalskag	81,184	1,933
<u>25</u> Marshall	76,324	1,817
<u>26</u> Mekoryuk	80,172	1,909
<u>27</u> Minto	42,000	1,000
<u>28</u> Mountain Village	176,055	4,192
<u>29</u> New Stuyahook	80,508	1,917
<u>30</u> Nightmute	47,000	1,119
<u>31</u> Nikolai	55,360	1,318
<u>32</u> Noatak	80,508	1,917
<u>33</u> Norvik	144,901	3,450
<u>34</u> Nulato	113,400	2,700
<u>35</u> Nunapichuk	152,197	3,624
<u>36</u> Pilot Station	94,633	2,253
<u>37</u> Point Hope	62,000	1,476
<u>38</u> Quinhagak	100,247	2,387
<u>39</u> Russian Mission	55,581	1,323
<u>40</u> Saint Michael	75,304	1,793
<u>41</u> Savoonga	133,623	3,182
<u>42</u> Scammon Bay	80,957	1,928
<u>43</u> Selawik	130,527	3,108

Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>1,000 - 5,000 Barrels (cont'd)</u>		
<u>44</u> Shageluk	53,032	1,263
<u>45</u> Shaktoolik	59,807	1,424
<u>46</u> Shishmaref	114,743	2,732
<u>47</u> Shungnak	113,655	2,706
<u>48</u> Stebbins	79,941	1,903
<u>49</u> Togiak	130,226	3,101
<u>50</u> Tooksook Bay	98,931	2,356
<u>51</u> Tuntutuliak	60,000	1,429
<u>52</u> Tununak	73,271	1,745
<u>53</u> Wales	51,590	1,228
		109,492
<u>5,000-10,000 Barrels</u>		
<u>1</u> Iliamna	315,000	7,500
<u>2</u> Saint Mary's	215,751	5,137
<u>3</u> Unalakleet	360,000	8,571
		21,208
<u>>10,000 Barrels</u>		
<u>1</u> Kotzebue	2,150,000	51,190
<u>2</u> Naknek	1,660,000	39,524
<u>3</u> Nome	3,400,000	80,952
<u>4</u> Nushagak	1,064,481	25,345
<u>5</u> Wainwright	552,000	13,143
		210,154
 <u>TOTALS 100 Utilities surveyed</u>		
	<u>15,207,217</u>	<u>362,077</u>
	Total gallons	Total Barrels
	<u>152.072</u>	<u>3.621</u>
	Average gallons	Average Barrels

25

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil and hazardous
9 substances, and inspection authority of the Depart-
10 ment of Environmental Conservation; authorizing
11 certain additional uses of the oil and hazardous
12 substance release response fund; and providing for an
13 effective date."

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

15 * Section 1. AS 46.03.759(c) is amended to read: *Ruckie*

6 (c) Subject to the \$500,000,000 maximum set under (a) of this
7 section the court shall assess four⁵ times the penalty set out in (a)
8 of this section if the court finds

9 (1) the discharge was caused by the gross negligence or
0 intentional act of the defendant;

1 (2) the defendant did not take reasonable measures to
2 contain and clean up the discharged oil; or

3 (3) the defendant did not act or respond in accordance with
4 an approved oil discharge prevention and contingency plan.

5 * Sec. 2. AS 46.04.020(e) is amended to read:

6 (e) The department shall enter into negotiations for memoranda
7 of understanding or cooperative agreements with the United States
8 Coast Guard, the United States Environmental Protection Agency, and
9 other persons in order to

1 (1) facilitate coordinated and effective oil discharge
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-
4 tion and contingency plans submitted to the department under AS 46.-
5 04.030;

6 (3) provide for cooperative inspections of oil terminal
7 facilities by the department and the United States Coast Guard or
8 United States Environmental Protection Agency; and

9 (4) provide for cooperative oil discharge notification
10 procedures.

11 * Sec. 3. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

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

24 (c) A person may not operate a tank vessel or ^{RICKIE} [an oil] barge
25 within the waters of the state, or cause or permit the transfer of oil
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
27 an oil barge, unless an oil discharge prevention and contingency plan
28 for the tank vessel or oil barge has been approved by the department
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER

1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan
9 that the department [WHICH IT] determines are necessary to ensure
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan
11 has access to sufficient resources to protect environmentally sensi-
12 tive areas and to contain, clean up, and mitigate potential oil dis-
13 charges at or from the facility or vessel as provided in (j) of this
14 section, and to ensure that the applicant properly implements the
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
16 CHARGE] contingency plan must provide for the use of the best avail-
17 able technology by the applicant. The department may require an
18 applicant or holder of an approved contingency plan to take steps
19 necessary to demonstrate its ability to carry out the contingency
20 plan, including

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

5 (f) The department, after notice and opportunity for hearing,
6 may modify its approval of a [AN OIL DISCHARGE] contingency plan if
7 the department [IT] determines that a change has occurred in the
8 operation of a facility [, MARINA] or vessel necessitating an amended
9 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after
2 notice and opportunity for hearing, may revoke its approval of a [AN
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-
11 CHARGE] contingency plan to properly implement the plan, or to have
12 access to the quality or quantity of resources identified in the plan
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as
14 required under (j) of this section in the event of a spill, [WITHIN
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]
18 contingency plan fails to respond to and conduct cleanup operations of
19 an unpermitted discharge of crude oil with the quality and quantity of
20 resources identified in the plan and in a manner required under the
21 plan, the holder is strictly liable, jointly and severally, for the
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760
23 against any other person for that discharge.

24 * Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

5 (h) The department is the only state agency that has the power
6 to approve, modify, or revoke a contingency plan for the purposes of
7 this section. The department shall exercise its power under this
8 section in a timely manner. Except for prosecutions under AS 46.03.-
9 790(b), it is not a defense to an action brought for a violation of

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DEC only

1 (a) - (c) of this section that the person charged believed that a
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency
4 plan under this section, the department shall provide a copy of the
5 contingency plan to the Department of Fish and Game and to the Depart-
6 ment of Natural Resources and shall provide those departments a rea-
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this
9 section shall maintain in its area of operation, singly or in conjunc-
10 tion with other operators in its area of operation, sufficient oil
11 discharge containment, storage, transfer, and removal equipment,
12 personnel, and resources to rapidly ^{respond} ~~contain~~ a

13 (1) realistic maximum oil discharge and to remove that
14 discharge within the shortest possible time if the contingency plan is
15 ~~designed for an oil discharge~~ ^{designed for an oil discharge} on shore + offshore
for an exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the
17 largest oil storage tank at the facility and to remove that discharge
18 within 72 hours if the contingency plan is for an oil terminal facil-
19 ity; if the department determines that the oil terminal facility is
20 located in an area of high risk because of natural or manmade condi-
21 tions outside of the facility, the department may increase the volume
22 requirement under this paragraph so that the contingency plan must be
23 designed for response to a discharge that is greater in amount than
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum
26 capacity of the vessel or barge and to remove that discharge within 72
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention

1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-
3 gency plan,
4

5
6 * Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil
8 terminal facility in the state unless the person has furnished to the
9 department, and the department has approved, proof of financial abil-
10 ity to respond in damages. Proof of financial responsibility for a
11 crude oil terminal may not be less than \$50,000,000 per incident.
12 Proof of financial responsibility for a noncrude oil terminal may not
13 be less than \$25 per barrel ^{or 2 million} for the first 80,000 barrels of total
14 noncrude oil storage capacity at the terminal and \$50 per barrel for
15 each barrel of noncrude oil storage capacity that exceeds 80,000
16 barrels [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY TO RE-
17 SPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT
18 (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPAC-
19 ITY AT THE OIL TERMINAL FACILITY: OR (2) \$1,000,000, WHICHEVER IS
20 GREATER]. *Maximum \$50 million*

21 * Sec. 6. AS 46.04.040(b) is amended to read:

22 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
23 operation of an offshore exploration or production facility in the
24 state unless the person has furnished to the department, and the
25 department has approved, proof of financial ability to respond in
26 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
27 responsibility for an exploration or production facility may not be
28 less than \$50,000,000 [\$35,000,000] per incident. *1/1/81 11:00*

29 * Sec. 7. AS 46.04.040(c) is amended to read:

Ricker
State of

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility under this subsection may not be less than

(1) ^{700,000,000} \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$100 per barrel of storage capacity or \$1,000,000, whichever is greater, for a tank vessel or barge carrying noncrude oil or other hazardous substance in an amount of 5,000 barrels or more
maximum: existing \$20 million
[RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

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

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

* Sec. 8. AS 46.04.040(d) is amended to read:

(d) Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of (a) - (c) [(c)] of this section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 * Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-
6 ance, insurance, surety, [OR] guarantee, or other security approved by
7 the department, under terms the department may prescribe. An action
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-
10 759] may be brought in a state court directly against the insurer or
11 another person providing evidence of financial responsibility. The
12 applicant, and an insurer, surety, [OR] guarantor, or other person
13 providing security approved by the department shall appoint an agent
14 for service of process in the state. An insurer must either be au-
15 thorized by the Department of Commerce and Economic Development to
16 sell insurance in the state or be an unauthorized insurer listed by
17 the Department of Commerce and Economic Development as not disapproved
18 for use in the state.

19 * Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires
21 (1) one year from its issuance for self-insurance;
22 (2) on the effective date of a change in the surety bond,
23 guarantee, [OR] insurance agreement, or other security approved by the
24 department; or
25 (3) on the expiration or cancellation of the surety bond,
26 guarantee, [OR] insurance agreement, or other security approved by the
27 department.

28 * Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is

1 accepted by the department under this section shall notify the depart-
2 ment at least 30 days before the effective date of a change, expira-
3 tion or cancellation in the surety bond, guarantee, [OR] insurance
4 agreement, or other security approved by the department. Application
5 for renewal of acceptance of proof of financial responsibility under
6 this section must be filed at least 30 days before the date of ex-
7 piration.

8 * Sec. 12. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
10 amounts in AS 46.04.040 change, as provided in this section, according
11 to and to the extent of changes in the Consumer Price Index for all
12 urban consumers for the Anchorage metropolitan area compiled by the
13 Bureau of Labor Statistics, United States Department of Labor (the
14 index). The index for January of the year in which this section
15 becomes effective is the reference base index.

16 (b) The dollar amounts change on October 1 of each year. After
17 calculation of the new amounts, the resulting amounts shall be rounded
18 to the nearest cent.

19 (c) If the index is revised, the percentage of change is cal-
20 culated on the basis of the revised index. If a revision of the index
21 changes the reference base index, a revised reference base index is
22 determined by multiplying the reference base index applicable by the
23 rebasing factor furnished by the United States Bureau of Labor Statis-
24 tics. If the index is superseded, the index referred to in this sec-
25 tion is the one represented by the Bureau of Labor Statistics as
26 reflecting most accurately changes in the purchasing power of the
27 dollar for Alaskan consumers.

18 (d) The department shall adopt a regulation announcing

19 (1) on or before June 30 of each year, the changes in

1 dollar amounts required by (b) of this section; and

2 (2) promptly after the changes occur, changes in the index
3 required by (c) of this section, including, if applicable, the numer-
4 ical equivalent of the reference base index under a revised reference
5 base index and the designation or title of any index superseding the
6 index.

7 (e) The department shall also provide notification of a change
8 in dollar amounts required under (b) of this section to the clerks of
9 court in each judicial district of the state.

10 * Sec. 13. AS 46.04.050 is amended to read:

11 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
12 the operations and the minimal danger to the environment posed by the
13 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
14 oil terminal facility that has an effective storage capacity of less
15 than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels
16 of noncrude oil.

17 * Sec. 14. AS 46.04.060 is amended to read:

18 Sec. 46.04.060. INSPECTIONS. ^{Adm.} In addition to other rights of
19 access or inspection conferred upon the department by law or other-
20 wise, the department may at reasonable times enter and inspect oil
21 [OIL] terminal facilities, [OFFSHORE] exploration and production
22 facilities, tank vessels, and oil barges within the territorial juris-
23 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-
24 PARTMENT] to

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

26 or

27 (2) examine the structural integrity of tank vessels and
28 oil barges. *terminals & pipeline*

29 * Sec. 15. AS 46.04.200 is amended to read:

1 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall
2 prepare and annually review and revise a statewide master oil and
3 hazardous substance discharge [AND] prevention and contingency plan.

4 (b) The state master plan prepared under this section must

5 (1) take into consideration the elements of an oil dis-
6 charge prevention and contingency plan approved or submitted for
7 approval under AS 46.04.030;

8 (2) clarify and specify the respective responsibilities of
9 each of the following in the assessment, containment, and cleanup of a
10 catastrophic oil discharge or of a significant discharge of a hazard-
11 ous substance into the environment of the state:

12 (A) agencies of the state;

13 (B) municipalities of the state;

14 (C) appropriate federal agencies;

15 (D) operators of facilities;

16 (E) private parties whose land and other property may
17 be affected by the oil or hazardous substance discharge; and

18 (F) other parties identified by the commissioner as
19 having an interest in or the resources to assist in the contain-
20 ment and cleanup of an oil or hazardous substance discharge;

21 (3) specify the respective responsibilities of parties
22 identified in (2) of this subsection in an emergency response; and

23 (4) identify actions necessary to reduce the likelihood of
24 catastrophic oil discharges and significant discharges of hazardous
25 substances.

26 (c) In preparing and annually reviewing the state master plan,
27 the commissioner shall

28 (1) consult with municipal and community officials, and
29 with representatives of affected regional organizations;

1 (2) submit the draft plan to the public for review and
2 comment;

3 (3) submit to the legislature for review, not later than
4 the 10th day following the convening of each regular session, the plan
5 and any annual revision of the plan; and

6 (4) require or schedule unannounced oil spill drills to
7 test the sufficiency of an oil discharge prevention and contingency
8 plan approved under AS 46.04.030 or of the cleanup plans of a party
9 identified under (b)(2) of this section.

10 * Sec. 16. AS 46.04.210(a) is amended to read:

11 (a) For any region of the state, the boundaries of which are
12 determined by the commissioner by regulation, in which the department
13 is required to review and approve an oil discharge prevention and
14 contingency plan submitted by a person under AS 46.04.030, the depart-
15 ment shall prepare and annually review and revise a regional master
16 oil and hazardous substance discharge [AND] prevention and contingency
17 plan.

18 * Sec. 17. AS 46.04.900(8) is amended to read:

19 (8) "[OFFSHORE] exploration or production facility" means a
20 platform, vessel, or other facility used to explore for or produce
21 hydrocarbons in the waters of the state or on land in the state; the
22 term does not include vessels used for stratigraphic drilling or other
23 operations that [WHICH] are not authorized or intended to drill to a
24 producing formation;

25 * Sec. 18. AS 46.04.900 is amended by adding a new paragraph to read:

26 (18) "realistic maximum oil discharge" means the maximum and
27 most damaging oil discharge that the department estimates could occur
28 during the lifetime of the vessel or facility based on the size,
29 location, and capacity of the vessel or facility; on the department's

1 knowledge and experience with the vessel or facility or with similar
2 vessels or facilities; and on the department's analysis of possible
3 mishaps at the vessel or facility or at similar vessels or facilities.

4 * Sec. 19. AS 46.08.040 is amended to read:

5 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
6 money from the fund to

7 (1) investigate and evaluate the release or threatened
8 release of oil or a hazardous substance, and contain, clean up, and
9 take other necessary action, such as monitoring and assessing, to
10 address a release or threatened release of oil or a hazardous sub-
11 stance that poses an imminent and substantial threat to the public
12 health or welfare, or to the environment;

13 (2) pay all costs incurred

14 (A) to establish and maintain the oil and hazardous
15 substance response office and for the expenses of the oil and
16 hazardous substance response corps and the oil and hazardous
17 substance response depots established by that office;

18 (B) to review oil discharge prevention and contingency
19 plans submitted under AS 46.04.030;

20 (C) to conduct training, response exercises, inspec-
21 tions, and tests, in order to verify equipment inventories and
22 ability to prevent and respond to oil and hazardous substance
23 release emergencies, and to undertake other activities intended
24 to verify or establish the preparedness of the state, a munic-
25 ipality, or a party required by AS 46.04.030 to have an approved
26 contingency plan to act in accordance with that plan; and

27 (D) to verify or establish proof of financial respon-
28 sibility required by AS 46.04.040;

29 (3) provide matching funds for participation in federal oil

1 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
2 hensive Environmental Response, Compensation, and Liability Act of
3 1980); [AND]

4 (4) recover the costs to the state or to a municipality of
5 a containment and cleanup resulting from the release or the threatened
6 release of oil or a hazardous substance; [.]

7 (5) prepare, review, and revise

8 (A) the state's master oil and hazardous substance
9 discharge [AND] prevention and contingency plan required by
10 AS 46.04.200; and

11 (B) a regional master oil and hazardous substance
12 discharge [AND] prevention and contingency plan required by
13 AS 46.04.210; and

14 (6) restore the environment by addressing the effects of an
15 oil or hazardous substance release.

16 * Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. By
17 January 25, 1992, the Department of Environmental Conservation shall sur-
18 vey, inspect, and prepare an inventory of noncrude oil terminal facilities
19 in the state with an effective storage capacity of 5,000 to 10,000 barrels
20 and report to the legislature its written recommendations concerning dis-
21 charge prevention and contingency requirements or design review require-
22 ments that should be enacted for these facilities.

23 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).
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Lauterbach
3/28/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil and hazardous
9 substances, and inspection authority of the Depart-
10 ment of Environmental Conservation; authorizing
11 certain additional uses of the oil and hazardous
12 substance release response fund; and providing for an
13 effective date."

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

15 * Section 1. AS 46.03.759(c) is amended to read:

16 (c) Subject to the \$500,000,000 maximum set under (a) of this
17 section the court shall assess four times the penalty set out in (a)
18 of this section if the court finds

19 (1) the discharge was caused by the gross negligence or
20 intentional act of the defendant;

21 (2) the defendant did not take reasonable measures to
22 contain and clean up the discharged oil; or

23 (3) the defendant did not act or respond in accordance with
24 an approved oil discharge prevention and contingency plan.

25 * Sec. 2. AS 46.04.020(e) is amended to read:

26 (e) The department shall enter into negotiations for memoranda
27 of understanding or cooperative agreements with the United States
28 Coast Guard, the United States Environmental Protection Agency, and
29 other persons in order to

1 (1) facilitate coordinated and effective oil discharge
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-
4 tion and contingency plans submitted to the department under AS 46.-
5 04.030;

6 (3) provide for cooperative inspections of oil terminal
7 facilities by the department and the United States Coast Guard or
8 United States Environmental Protection Agency; and

9 (4) provide for cooperative oil discharge notification
10 procedures.

11 * Sec. 3. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

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

24 (c) A person may not operate a tank vessel or an oil barge
25 within the waters of the state, or cause or permit the transfer of oil
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
27 an oil barge, unless an oil discharge prevention and contingency plan
28 for the tank vessel or oil barge has been approved by the department
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER

1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan
9 that the department [WHICH IT] determines are necessary to ensure
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan
11 has access to sufficient resources to protect environmentally sensi-
12 tive areas and to contain, clean up, and mitigate potential oil dis-
13 charges at or from the facility or vessel as provided in (j) of this
14 section, and to ensure that the applicant properly implements the
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
16 CHARGE] contingency plan must provide for the use of the best avail-
17 able technology by the applicant. The department may require an
18 applicant or holder of an approved contingency plan to take steps
19 necessary to demonstrate its ability to carry out the contingency
20 plan, including

- 21 (1) periodic training;
22 (2) response team exercises; and
23 (3) verifying access to inventories of available equipment,
24 supplies, and personnel.

25 (f) The department, after notice and opportunity for hearing,
26 may modify its approval of a [AN OIL DISCHARGE] contingency plan if
27 the department [IT] determines that a change has occurred in the
28 operation of a facility [, MARINA] or vessel necessitating an amended
29 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after
2 notice and opportunity for hearing, may revoke its approval of a [AN
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-
11 CHARGE] contingency plan to properly implement the plan, or to have
12 access to the quality or quantity of resources identified in the plan
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as
14 required under (j) of this section in the event of a spill, [WITHIN
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]
18 contingency plan fails to respond to and conduct cleanup operations of
19 an unpermitted discharge of crude oil with the quality and quantity of
20 resources identified in the plan and in a manner required under the
21 plan, the holder is strictly liable, jointly and severally, for the
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760
23 against any other person for that discharge.

24 * Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

25 (h) The department is the only state agency that has the power
26 to approve, modify, or revoke a contingency plan for the purposes of
27 this section. The department shall exercise its power under this
28 section in a timely manner. Except for prosecutions under AS 46.03.-
29 790(b), it is not a defense to an action brought for a violation of

1 (a) - (c) of this section that the person charged believed that a
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency
4 plan under this section, the department shall provide a copy of the
5 contingency plan to the Department of Fish and Game and to the Depart-
6 ment of Natural Resources and shall provide those departments a rea-
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this
9 section shall maintain in its area of operation, singly or in conjunc-
10 tion with other operators in its area of operation, sufficient oil
11 discharge containment, storage, transfer, and removal equipment,
12 personnel, and resources to rapidly contain a

13 (1) realistic maximum oil discharge and to remove that
14 discharge within the shortest possible time if the contingency plan is
15 for an exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the
17 largest oil storage tank at the facility and to remove that discharge
18 within 72 hours if the contingency plan is for an oil terminal facil-
19 ity; if the department determines that the oil terminal facility is
20 located in an area of high risk because of natural or manmade condi-
21 tions outside of the facility, the department may increase the volume
22 requirement under this paragraph so that the contingency plan must be
23 designed for response to a discharge that is greater in amount than
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum
26 capacity of the vessel or barge and to remove that discharge within 72
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention

1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-
3 gency plan,

4
5
6 * Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil
8 terminal facility in the state unless the person has furnished to the
9 department, and the department has approved, proof of financial abil-
10 ity to respond in damages. Proof of financial responsibility for a
11 crude oil terminal may not be less than \$50,000,000 per incident.
12 Proof of financial responsibility for a noncrude oil terminal may not
13 be less than \$35 per barrel of total noncrude oil storage capacity at
14 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY
15 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN
16 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE
17 CAPACITY AT THE OIL TERMINAL FACILITY; OR (2)] \$1,000,000, whichever
18 is greater, subject to a maximum of \$50,000,000.

19 * Sec. 6. AS 46.04.040(b) is amended to read:

20 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
21 operation of an [OFFSHORE] exploration or production facility in the
22 state unless the person has furnished to the department, and the
23 department has approved, proof of financial ability to respond in
24 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
25 responsibility for an offshore exploration or production facility may
26 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of
27 financial responsibility for an onshore exploration or production
28 facility may not be less than \$20,000,000 per incident.

29 * Sec. 7. AS 46.04.040(c) is amended to read:

1 (c) A person may not operate a tank vessel or an oil barge
2 within the waters of the state, or cause or permit the transfer of oil
3 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]
4 an oil barge, unless the person has furnished to the department, and
5 the department has approved, proof of financial ability to respond in
6 damages. Proof of financial responsibility under this subsection may
7 not be less than

8 (1) \$500,000,000 per incident for a tank vessel or barge
9 carrying crude oil;

10 (2) \$100 per barrel of storage capacity or \$1,000,000,
11 whichever is greater, subject to a maximum of \$35,000,000, for a tank
12 vessel or barge carrying noncrude oil or other hazardous substance in
13 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL
14 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-
15 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

16 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-
17 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE
18 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204
19 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

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

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

26 * Sec. 8. AS 46.04.040(d) is amended to read:

27 (d) Except for prosecutions under AS 46.03.790(b), it is not a
28 defense to an action brought for violation of (a) - (c) [(c)] of this
29 section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 * Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-
6 ance, insurance, surety, [OR] guarantee, or other security approved by
7 the department, under terms the department may prescribe. An action
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-
10 759] may be brought in a state court directly against the insurer or
11 another person providing evidence of financial responsibility. The
12 applicant, and an insurer, surety, [OR] guarantor, or other person
13 providing security approved by the department shall appoint an agent
14 for service of process in the state. An insurer must either be au-
15 thorized by the Department of Commerce and Economic Development to
16 sell insurance in the state or be an unauthorized insurer listed by
17 the Department of Commerce and Economic Development as not disapproved
18 for use in the state.

19 * Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires

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

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

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

28 * Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is