

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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response action contractor for which the RAC is immune under the bill.

Sever oil from hazardous substance RAC section

S.B. 270: Sec. 4

H.B. 196: Sec. 4

These identical sections remove "oil" from the current statutory section dealing with response action contractors, leaving the section applicable only to hazardous substances other than oil.

Sever oil from "response action" definition

S.B. 270: Sec. 5

H.B. 196: Sec. 6

These identical sections remove "oil" from the current definition of "response action," leaving the definition only applicable to hazardous substances other than oil.

New section for "oil" response action contractors

S.B. 270: Sec. 6

H.B. 196: Sec. 8

These sections are the heart of the bill, setting liability standards for oil spill response action contractors.

The sole difference between the two is that the House bill provides limited immunity for 15 days, while the Senate bill provides that immunity for 30 days.

Both bills limit immunity to actions not contrary to the state or federal on-scene coordinator; to spills for which the RAC was not originally responsible; to situations in which the RAC does not substantially deviate from a C-plan that the RAC either wrote or agreed to abide by; and to actions other than for personal injury, death, or damages to personal property not caused by oil. Both provide that -- except when the RAC was the original spiller -- the RAC is subject to an ordinary negligence standard when the immunity does not apply. (If the RAC was the originally spiller, the RAC is subject to strict liability.)

Reorganization of definitions for "response action contract" and "response action contractor"

S.B. 270: Sec. 7

H.B. 196: Sec. 9

These identical sections move the definitions of these two terms to the definitions section of the chapter, so that they will apply to provisions for both non-oil and oil. Both sections add volunteers to the definition of RAC.

Sunset provisions

S.B. 270: None

H.B. 196: Sec's. 2,5,7,10,12

The Senate bill does not contain a sunset provision. The House bill repeals the newly enacted sections (sec. 10) and reenacts the old (current) provisions (sec's. 2,5 and 7), effective July 1, 1992 (sec. 12). These together provide for a sunset of the legislation on July 1, 1992.

Effective date

S.B. 270: Sec. 8

H.B. 196: Sec. 13

Both bills take effect immediately.

SPONSOR STATEMENT IN SUPPORT OF CSHB 196 (FINANCE)
Bill Hudson Chairman, House Special Committee on Oil and Gas

May 3, 1991

The need for strong and prompt oil spill cleanup capability is well recognized by the public. Spills from the *Torrey Canyon*, the Santa Barbara oil well incident, the IXTOC #1 blowout, the grounding of the *Arco Merchant*, the *Amoco Cadiz* and finally the *Exxon Valdez* incidents all gravely punctuated the need for new laws.

With the advent of Alaska's legislation requiring strict liability for spill damages (Ch. 112, SLA 1972), oil spill response action cleanup contractors (RAC's) became exposed to unlimited strict liability. This created a difficult situation for RACs and legislative efforts were then made to reduce the threat of such law suits (Ch. 39, SLA 1989 & Ch. 191, SLA 1990). Nevertheless, current Alaska law does not provide the same emergency response immunity to RACs as it does for other emergency responders.

CSHB 196 amends AS 46.03.822 and .823 and adds section .825 which proposes to shift the liability for certain acts of simple negligence during the first 15 days following the spill, so long as the RAC's act or omission is not contrary to the order of the state or federal On Scene Coordinator (OSC), or substantially deviates from the applicable oil spill contingency plan. "Substantial deviation" does not include minor departures from a plan that are inevitable in a crisis situation. Instead the phrase refers to a significant, and/or unjustifiable departure of a RAC from the fundamental requirements of an applicable plan.

CSHB 196 also calls for a complete study of the issues of RAC liability to be made by the legislature's Citizen's Oversight Council by January 15, 1992. To ensure that this will be done, the bill also contains a sunset provision of one year.

The benefits of this bill extend beyond encouragement of rapid initial response. The implementation of HB 567 in June of this year will require the demonstration of significant oil spill cleanup capabilities by the industry. Statewide, oil facilities and operations without the financial resources to have their own cleanup capability, will have to turn to spill cleanup cooperatives and cleanup RACs for the cleanup services required by law. At this time these operators have been reluctant to join cleanup co-ops partly because of their exposure to unlimited liability. In addition, cleanup contractors have become sensitized to the liability issue and are now reconsidering offering their services. This bill is intended to reduce some of the initial impediments to start-up of potential cleanup businesses and the formation of co-ops.

This bill also is expected to assist in the successful resolution of response action contracts in Prince William Sound that will assure uninterrupted supply and distribution of ANS crude to a wide array of companies that have been negatively impacted by Alyeska's requirements for \$1 Billion in financial responsibility from shippers. This bond requirement was established in response to Alyeska's interpretation of RAC liability under existing Alaska law. As a result some companies have already been excluded from the maritime transport of ANS crude (Cove Shipping, U. S. Refining); others have withdrawn from the trade (Mobil and reportedly Shell this summer); while others have had their supply and/or distribution threatened (Tesoro and Conoco).

In addition, by being more consistent with other states and the federal law, large RACs such as the Marine Response Corporation (MSRC) should be more inclined to respond to spills in Alaska and perhaps even locate here. This bill has no effect on the responsibilities for cleanup or on the planning standards enacted by the legislature in 1990.

In summary, CSHB 196

1. Shifts the liability for damages caused a RAC's simple negligence during the first 15 days of oil spill cleanup to the spiller so long as the RAC.

- a. Does not cause personal injury.

- b. Does not violate an order of the On Scene Coordinator.

- c. Does not substantially deviate from the applicable oil spill contingency plan.

2. Calls for a study of the state's liability laws to be done by next legislative session.

3. Sunsets these provisions in one year so this legislature will be able to reconsider the issue.

CSHB 196 has seen extensive hearings in four committees and has changed as all parties were heard and concerns addressed. I ask for your support in passing CSHB 196 out of the House and over to the Senate.

SECTION-BY-SECTION ANALYSIS OF CSHB 196 (FINANCE)

The 13 sections of CSHB 196 (Finance) fall into three categories:

1. Substantive sections: that is, those sections that either define the liability of oil spill response action contractors (RACs) or transfer that liability to the spiller;
2. conforming amendments to existing law; and
3. sections which merely set out existing law -- which will be "restored" after this legislation sunsets.

1. The Substantive Sections:

Section 8. This is the most significant section of the bill. It provides that oil spill RACs are responsible for damages caused by their cleanup activities if they were grossly negligent or acted with intentional misconduct. This limited liability, however, applies only during the first 15 days following the spill, and only if the oil spill RAC was not responsible for the spill itself. Nor is the oil spill RAC's liability limited if it substantially deviates from an approved oil spill contingency plan that was either prepared by that RAC, or which the RAC agreed to follow in a cleanup contract with the spiller.

Subsection (b) provides, in addition, that limited liability does not apply to actions for personal injury or death, or for actions for damages to tangible personal property not caused by the oil.

Subsection (c) provides that if, for any of the reasons stated above, the oil spill RAC's liability is not limited to "gross

negligence," the injured party will have to prove simple negligence in order to hold the oil spill RAC liable. However, if the oil spill RAC also caused the spill, the RAC will still be strictly liable.

Subsection (d) limits those "response actions" for which liability is limited only to activities undertaken in response to an actual or imminently threatened spill.

Section 3. This section provides that, if an oil spill RAC's liability is limited under Section 8, the spiller is strictly liable for those damages.

Section 9. This section sets out the type of people who are covered by the limitation of liability in Section 8. It uses existing law's definitions of "response action contract" and "response action contractors," with one important addition -- volunteers are now covered by the limitation of liability. See p. 7, l. 8.

Section 11. This section provides that the Citizens' Oversight Council on Oil and Hazardous Substances will prepare and submit a report to the legislature by January 15, 1992 on the liability issues covered by this bill. Since this legislation will "sunset" on July 1, 1992 (see below), the report is intended to aid the legislature in considering this issue next year.

2. The Conforming Amendments.

Section 1. Section 3, as we have seen, transfers certain liabilities from the oil spill RAC to the spiller. It does so by adding a definition of "damages" for which the spiller is

responsible to Alaska's basic strict liability law (AS 46.03.822). Since Section 3 now sets out the damages for which the spiller is liable, there is no longer any need to repeat the now-redundant list in Section 822(a). Section 1 therefore deletes this now-surplus language (p. 1, ls. 11-13); otherwise, it makes no change in the liability statute. Except for the bracketed and capitalized language on page 1, all of Section 1 merely sets out existing law.

Section 4 and Section 6. Section 8 creates limitations on liability specific to oil spill response action contractors. AS 46.03.823 is an existing liability statute dealing with all hazardous waste cleanup contractors (including oil spill RACs). Section 4 and Section 6 remove oil spill RACs from the coverage of Section 823 by inserting the words "other than oil" on p. 3, l. 28 and p. 4, l. 19. Except for these words, the remainder of these sections simply set out existing law, which will still be applicable to people involved in other types of hazardous substances cleanup.

Section 13. This section provides an immediate effective date.

3. "Sunset" Provisions.

Section 10 repeals the substantive provisions of this bill, and Section 12 makes that repeal effective July 1, 1992. Once the new law is repealed, it is necessary to restore the law as it exists today. Section 2, Section 5 and Section 7 of the bill accomplish this by setting out presently existing law, while Section 12 then provides that these existing laws will be "restored" on July 1, 1992.

SECTIONAL ANALYSIS

PROPOSED RESPONSE ACTION CONTRACTOR LEGISLATION

(Draft dated 4/25/91)

- Section 1. Finds that the issue of response action contractor liability needs further study, and states that the legislature intends to review the subject and complete a report by the beginning of the next session.
- Section 2. Amends current law establishing strict liability for certain persons (persons who own or control oil or other hazardous substances) for damages to persons or property or natural resources. The amendments (1) clarify that the subsequent sections of the bill (secs. 3 and 4) take precedence over the "notwithstanding" language in current law; and (2) delete the definition of "damage," which definition is revised and reinstated in section 3 of the bill.
- Section 3. Adds a new subsection to the strict liability section (above), defining damages. The term is expanded to include damages for which a response action contractor (RAC) is immunized from liability by subsequent sections of the bill. Has the effect of clarifying that if a RAC is immunized from liability for an action by the bill, the liability for that action flows back to the spiller or owner of the oil.
- Section 4. Amends current law dealing with hazardous substance RAC's to limit the applicability of the section to substances other than oil. Has the effect of retaining simple negligence as the standard for those responding to releases of hazardous substances other than oil. (Note that a RAC responding to a non-oil release may be strictly liable for damages in certain circumstances; for example, if the RAC's acts are "contrary to a response plan or order by a state or federal agency having jurisdiction over the release...")
- Section 5. Amends the definitions portion of the (current) section dealing with response action contractors to (1) limit the definition of "response action" in this section to actions not involving oil; and (2) deletes the

definitions of "response action contract" and "response action contractor". These last two definitions are moved (Section 7, below) to a general definitions section.

Section 6. Creates a new section dealing with the liability of RAC's responding to the release of oil. Limits liability to acts of gross negligence or intentional misconduct, with certain exceptions. The exceptions are:

- (1) The RAC is the spiller or owner of the oil;
- (2) The RAC substantially deviated from a contingency plan that that RAC either prepared the C-plan or agreed to comply with the terms of it, unless the federal or state on-scene coordinator ordered the deviation;
- (3) The RAC's act or omission caused personal injury or death;
- (4) The RAC's act or omission caused damage to personal property; or
- (5) The RAC's act or omission occurred more than 30 days after the release.

States that if an RAC's liability is not limited (that is, if the act or omission falls within one of the exceptions above), the RAC is liable for acts of simple negligence. This simple negligence standard does not apply if the RAC is also the spiller.

Defines "response action" to include only actions taken during mitigation and clean-up. Current law, applicable to both oil and other hazardous wastes, includes a broad spectrum of other activities such as planning, mapping and engineering in the definition. The bill would leave this definition unamended for hazardous substances other than oil, but limit the definition for oil.

Sections 7. Moves the definitions of "response action contract" and "response action contractor" from AS 46.03.823 (dealing, after amendment, only with response actions for hazardous substances other than oil) to the general definition section. Thus, the definitions would apply to both response action contractor sections.

Section 8. Immediate effective date.

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- of it, unless the federal or state on-scene coordinator ordered the deviation;
- (3) The RAC's act or omission caused personal injury or death;
 - (4) The RAC's act or omission caused damage to personal property; or
 - (5) The RAC's act or omission occurred more than 30 days after the release.

States that if an RAC's liability is not limited (that is, if the act or omission falls within one of the exceptions above), the RAC is liable for acts of simple negligence. PROBLEM: This language may have an unintended effect: When the RAC is also the spiller, the language could be interpreted to set the liability standard at simple negligence instead of strict liability.

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Sections 5 and 6. Moves the definitions of "response action contract" and "response action contractor" from AS 46.03.823 (dealing, after amendment, only with response actions for hazardous substances other than oil) to the general definition section. Thus, the definitions would apply to both response action contractor sections.

Section 7. Sets up an interim review of response action contractor liability, with a report to the legislature by January 15, 1992. The structure of the review is left open for the committee/legislature to fill in as appropriate.

Section 8. Immediate effective date.

CLASSES OF RESPONSE ACTION CONTRACTORS

- I. Response Group - RAC actually controls the response for some period of time.

A. Alyeska Pipeline Service Company

Alyeska prepared an initial (72 hour) spill response plan and gave it to shippers with which Alyeska contracts for response. The initial response plan was to be incorporated into the shipper's contingency plan as ultimately approved by the state. Alyeska, by contract with the shipper, responds immediately, even without a request by the contingency plan holder. Alyeska remains as the lead responder and controls the response until the spiller takes over or the spill response is federalized. Alyeska only performs this function in Prince William Sound for TAPS traffic to and from the Valdez terminal.

- II. Response/Resource Group - Cooperative organizations responding as a resource on behalf of members.

A. Cook Inlet Spill Prevention Response, Inc.

CISPRI is currently a 10-member cooperative providing spill response resources for its members. CISPRI is preparing a technical reference manual for use by its members. The co-op members are contingency plan holders who contract with CISPRI for response services that the spiller or plan holder directs. CISPRI operates in Cook Inlet.

B. Alaska Clean Seas

ACS is a cooperative similar to CISPRI. It currently has 13 members, most of whom are contingency plan holders. ACS developed a manual of services or response strategies that each member could incorporate into a contingency plan, such as procedures for in-situ burning or preparation of an equipment database. ACS provides response services on behalf of its members at the request of a member. ACS works as part of the unified response team which includes ACS employees, independent suppliers' employees, and village response teams. ACS operates in the North Slope.

- III. Resource Suppliers - Companies which contract with

QUESTIONS AND ANSWERS REGARDING CSHB 196 (JUDICIARY)

1. DOESN'T EXISTING LAW ALREADY LIMIT THE LIABILITY OF CLEANUP CONTRACTORS?

AS 46.03.823 adopts the common law liability rule of simple negligence. For RACs who had no involvement in the spill itself, that is not a limitation on liability. Additionally, AS 46.03.823 provides that, under a number of poorly defined circumstances, the innocent RAC may be strictly liable for any damage caused during spill cleanup.

2. WHY SHOULD WE LIMIT THE LIABILITY OF OIL SPILL RACS?

Oil spill RACs are responding to an emergency in a crisis atmosphere. As a result, they are particularly vulnerable to lawsuits. Alaska has recognized this by limiting liability to "gross negligence" for people who respond to other kinds of emergencies -- including medical emergencies and disaster emergencies. AS 09.65.090-091.

The threat of lawsuits can deter people from becoming oil spill cleanup contractors, and can cause unnecessary delays by existing contractors in implementing spill response.

3. BUT DOESN'T ALASKA HAVE PLENTY OF OIL SPILL CLEANUP CAPABILITY EVEN UNDER EXISTING LAW?

Yes, a lot of people came forward to help cleanup the Exxon Valdez spill. However, this was after Exxon, one of the largest companies in the world, acknowledged responsibility for cleanup. This is not always the case.

Moreover, there are many areas of the State that do not have

spill cleanup capability. Last year, the legislature significantly increased oil spill cleanup capability requirements. The new law takes effect this June, and in most places in the state, oil terminals and shippers -- particularly small ones -- are expected to be unable to meet those requirements.

We have already seen Alaska's cleanup liability laws threatening the availability of necessary oil spill cleanup services in Prince William Sound. People have been reluctant to join the new Cook Inlet spill coop (CISPRI) because of potential liability. A Juneau contractor testified in the House Resources Committee that it was reconsidering its entry into the field because of liability concerns. The oil industry's new nationwide cleanup corporation -- MSRC -- has made it clear that it is uninterested in locating assets in any state that does not limit oil spill cleanup contractor liability.

Aggravating the problem is the fact that the United States Congress, and the legislatures of California, Hawaii, Washington, Texas, Florida, Virginia and Delaware have already adopted a "gross negligence" standard for oil spill cleanup contractors. A number of other states will be following suit shortly. Being among a shrinking minority of states with unlimited cleanup contractor liability, Alaska will find itself at an even greater competitive disadvantage in attracting necessary resources.

4. ISN'T HB 196 A SPECIAL-INTEREST BAIL-OUT BILL TO HELP TESORO OBTAIN CLEANUP COVERAGE FROM ALYESKA?

As a result of existing law, Alyeska has conditioned the availability of cleanup services for Tesoro's transportation of

crude oil through Prince William Sound on financial responsibility terms that Tesoro can't meet. Whether or not Alyeska's demands are reasonable or constitute an overreaction to the problem, the existing liability problem that prompted Alyeska's decision is real. The Alyeska situation presents the most current, dramatic illustration of this larger problem. It is, however, only a symptom of Alaska's unreasonable liability rules for oil spill cleanup contractors -- one that has already spread to other areas of the state, and will spread further as Alaska's new cleanup requirements take effect.

5. ALYESKA HAS INDICATED THAT IT IS UNSATISFIED WITH CSHB 196 (JUDICIARY). WHY PASS THIS BILL IF IT WON'T FIX THE TESORO/CONOCO/ALYESKA PROBLEM?

The goal of this legislation is not to "fix" a private dispute. However, the Alyeska/Tesoro situation was precipitated, in substantial part, by an unreasonable liability environment. That is a legitimate legislative concern. CSHB 196 (Judiciary) would define an oil spill RAC's liability in essentially the same way as new federal law, and the laws of our sister coastal states. Whether a particular RAC -- be it Alyeska or anyone else -- chooses to remain unreasonable is not something that should influence this basic public policy decision.

6. CAN'T WE JUST PROVIDE THAT OIL SPILL RACS CAN BE INDEMNIFIED FOR THEIR SIMPLE NEGLIGENCE?

Congress, and other states, have considered, and rejected, indemnification as an alternative approach to limited liability. Indemnification has three different problems:

1. When a crisis occurs, there will be no time to negotiate

an indemnification agreement. Indemnification has been used to limit the liability of hazardous chemicals cleanup contractors, since that type of cleanup is normally preceded by months of study and negotiation. However, since oil spill cleanup RACs operate in a different environment, the federal government and other states have realized that the indemnification approach doesn't work here;

2. Indemnification does not prevent a person from being sued. It merely promises that someone might pick up the bill for the lawsuit later. The point of limited liability legislation is to remove the threat of litigation itself; and

3. Under HB 196, the liability for the cleanup contractor's negligence is transferred to the spiller. However, since oil spill cleanup is often done under contract with the state, an indemnification approach would transfer that liability from the RAC to the public. The spiller, rather than the people of Alaska, should pay for the consequences of good faith cleanup actions.

7. DOES THIS BILL "WEAKEN" ALASKA'S LIABILITY LAWS?

With respect to the spiller, the bill strengthens Alaska law by making it clear that the spiller is responsible for damages caused by cleanup contractors.

With respect to the cleanup contractor, the legislation strengthens existing law by attaching consequences to the cleanup contractor's failure to substantially comply with a contingency plan which it authored, or which it agreed to follow by contract. Remember that, under existing law, the RAC is neither the holder

of, nor legally responsible for, the contents of the contingency plan. That responsibility falls on the spiller (i.e. the tanker operator). This positive aspect of the legislation was a principal reason why the Prince William Sound Regional Citizens Advisory Committee, and the Citizens Oversight Council, withdrew any objections to the legislation.

8. TRANSFERRING THE LIABILITY TO THE SPILLER IS FINE, BUT WHAT HAPPENS IF THE SPILLER IS INSOLVENT, OR CAN'T BE FOUND?

As a result of recent state and federal legislation, the possibility of inadequate compensation from the spiller has been minimized.

First, with respect to tankers, Alaska law subjects both the tanker owner/operator and the owner of the oil to unlimited strict liability for all damages. This will often result in two "deep pockets" in the event of a spill.

Moreover, all major oil handling activities in the state must post substantial financial responsibility under both federal and state law. These financial guarantees are accessible by any injured party, irrespective of the spiller's financial solvency.

Finally, there now exists a state fund to insure the adequacy of state cleanup funds. More importantly, Congress has now created a \$1 billion/incident federal fund which is available to anyone who cannot obtain satisfaction from the responsible parties themselves.

SPONSOR STATEMENT IN SUPPORT OF SB _____

("An Act Relating to Civil Liability for Actions
of a Response Action Contractor")

Over the past two years, this legislature has substantially increased the requirements for both public and private oil spill cleanup capability. Unfortunately, Alaska's existing laws both deter new businesses from entering the oil spill cleanup field, and burden existing cleanup contractors with unnecessary legal uncertainties.

An oil spill cleanup contractor works in a crisis atmosphere, where immediate judgments must often be made with incomplete information. As a result, cleanup contractors become an easy target for post-spill lawsuits -- even if the contractor had absolutely no involvement in the spill itself, and even if the contractor acted in good faith.

This legal environment has prompted new cleanup businesses like the Marine Spill Response Corporation to defer entry into Alaska. During the initial critical moments following a spill, existing contractors will be calling their attorneys, rather than promptly and unhesitantly responding to the spill.

This is not just an Alaska problem. In the wake of the EXXON VALDEZ, both the federal government and many sister states have acted to demand additional cleanup capability. In doing so, however, these other jurisdictions have recognized the need to limit the liability of innocent oil spill cleanup contractors. As

a result, Congress (in the 1990 Oil Pollution Act), and states such as Hawaii, Virginia, Florida, Pennsylvania, Delaware and California, have passed legislation protecting innocent cleanup contractors from ordinary negligence claims. Similar legislation has been unanimously passed just this month by both the Mississippi and Georgia senates.

SB_____ would function just like these other laws. Innocent oil spill cleanup contractors could not be sued for ordinary negligence; rather, that liability would be expressly transferred to the spiller, where it belongs. The oil spill response contractor would remain liable where it acts with gross negligence or intentional misconduct; caused personal injury or death; or violated an order by the on-scene coordinator, or a provision of the Alaska state or regional master plan.

Although this bill is fast becoming the general rule among coastal states, it is nothing new for Alaska where our law already protects those who respond to other kinds of disasters from simple negligence claims. It is ironic that current Alaska law singles out those who respond to oil spill disasters as warranting less protection, and therefore less encouragement, than those who respond to other types of disasters.

The failure to enact this legislation this session will have immediate consequences. Generally speaking, as the state begins implementing its new cleanup requirements, marine oil delivery operations throughout the state will find either that cleanup

contractors are unavailable, or that they are available only under unbearable insurance and indemnification terms.

This problem has already surfaced for several Alaska companies. Tesoro obtains its crude supply from Prince William Sound, and its contract tanker must rely on Alyeska to provide necessary spill response services to maintain contingency plan coverage. Even though neither Alyeska nor its owner companies would have any involvement in a tanker spill caused by a Tesoro chartered tanker, existing liability laws would probably envelop Alyeska in any spill litigation. This has prompted Alyeska to condition the availability of cleanup services on Tesoro providing \$1 billion in direct action insurance coverage -- a condition that Tesoro cannot meet.

If we fail to resolve this issue, Tesoro could lose its crude supply, and its refinery operations at Nikiski would be jeopardized. And, while Alyeska has provided Tesoro a grace period, that period expires this June.

Failure to enact this legislation will also directly result in state revenue losses. Conoco, for example, finds itself in a situation comparable to Tesoro. If Alyeska's insurance demands are implemented, Conoco estimates that the resultant increased costs will decrease the wellhead value of its North Slope production by up to \$4.00 to \$5.00/barrel. Particularly since the state takes its royalties from Conoco in kind, this could result in a \$400,000/month drop in state oil revenues.

SB_____ is very simple. It merely transfers liabilities arising from simple negligence from the innocent cleanup contractor to the spiller who will be strictly liable for the damages. Second, it is backed by substantial precedent from Congress, and a growing number of our sister states. Third, it is critically and immediately necessary in order to assure that Alaska commerce can continue to operate in a reasonable legal and commercial environment, without impairing the public's interests.

FACT SHEET ON OIL SPILL
CLEANUP CONTRACTOR LIABILITY LEGISLATION

1. What the legislation does.

When a cleanup contractor responds to an oil spill emergency, it must make snap judgments in a crisis atmosphere. Under current Alaska law, the contractor is held to a much higher standard than responders under the federal Oil Pollution Act of 1990 and the laws of other large coastal states. The result is that the Alaska responder is an easy target for lawsuits, which makes some cleanup organizations reluctant to enter Alaska. Moreover, this liability exposure causes even existing cleanup contractors to spend inordinate time and resources in obtaining legal advice and clearances from state and federal authorities before responding to a spill.

This bill would partially limit the liability of innocent oil spill cleanup contractors. Cleanup contractors would continue to be liable for gross negligence, willful misconduct, personal injuries and death; however, they would be excused from the prospect of strict liability and simple negligence claims, as long as the contractor acts in good faith.

2. Who does this bill apply to?

The bill applies only to innocent cleanup contractors -- that is, those who had no involvement in the spill itself.

3. Is this concept something new or untried?

This bill merely conforms Alaska law to recent federal law, and the laws of a growing number of coastal states (such as Virginia, Florida, Hawaii and California). The concept of limiting liability is not new in Alaska law, as evidenced by similar statutory limits on the liability of people responding to other kinds of emergencies and disasters in the state.

4. Does the bill somehow lessen the spiller's liability?

No. To the contrary, the bill makes it absolutely clear that the spiller's liability for damages includes those damages caused by those cleanup contractor's actions for which liability is limited under the bill.

5. Does the bill somehow affect a contingency plan holder's responsibility to maintain cleanup equipment?

Absolutely not. Alaska law is very tough for oil spill contingency plan approval, and the plan holder is liable for penalties and damages if it does not respond to a spill in accordance with the promises made in that plan. This bill does nothing to change that.

6. Doesn't Alaska law already provide some protection for cleanup contractors?

Unfortunately, Alaska law actually encourages litigation against the cleanup contractor. Not only does it provide no limitation for negligence suites, it leaves open the possibility that a cleanup contractor could be strictly liable -- that is, without any fault on its part whatsoever - for any damage that results from its cleanup actions. Imagine how firemen would react if they were liable for any damage caused by their firefighting, even if they did nothing wrong?

7. Isn't this a complicated problem that needs more study?

No. The question, in fact, is very simple:

WHO SHOULD PAY FOR SPILL DAMAGES:

THE SPILLER, OR THE CLEANUP CONTRACTOR?

THIS BILL
MAKES IT CLEAR THAT THE SPILLER IS RESPONSIBLE FOR ANY LIABILITY
EXCUSED FROM THE CLEANUP CONTRACTOR.

Moreover, this bill does nothing that hasn't already been done, in the same way, by Congress and other coastal states.

EXAMPLES OF RESPONSE ACTION CONTRACTOR (RAC) LIABILITY
UNDER CURRENT LAW AND PROPOSED BILL
SENATE OIL AND GAS COMMITTEE, APRIL 11, 1991

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed</u>	<u>Current Law</u>	<u>Proposed Law</u>
Major RAC (Alyeska; CISPRI; Clean Seas) substantially deviates from C-plan by not having proper equipment; hatchery oiled.	Hatchery ruined	Simple negligence (Possibly strict liability).	Simple negligence (RAC immune if substantially deviates from C-plan).	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
RAC accidentally looses boom in high seas (assume there is some negligence).	Hatchery ruined	Simple negligence	Gross negligence	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil.
RAC, authorized under C-plan to use dispersants in Area A but not B, decides to use in Area B anyway.	Natural resources damage	Simple negligence (Possibly strict liability)	Simple negligence (RAC not immune if substantially deviates from C-plan)	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
Above facts, but dispersant accidentally blows into Area B.	Natural resources damage	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.
Above facts, on-scene coordinator orders RAC to use dispersant in Area B.	Natural resources damage	Simple negligence (Possibly strict liability)	Gross negligence (immunity not lost if orders of OSC).	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Volunteer mistakenly turns off power in bird drying facility.	Birds die	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Volunteer.	Tanker owner; Owner of oil.
RAC employee rams fishing vessel.	Fishing vessel sinks	Simple negligence	Simple negligence (RAC not immune when property damage not caused by oil.)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.
Skipper of fishing boat (above) goes down with boat.	Skipper killed	Simple negligence	Simple negligence (RAC not immune if personal injury or death)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.

CAVEAT: This table is intended only to give a sense of how the liability provisions of current law and the proposed law would probably work in certain circumstances. Actual litigation in many of the above examples would depend on the particular facts, and might include legal arguments not dealt with here.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 10, 1991

SUBJECT: Civil liability of response action contractors (CSHB 196(Fin))

TO: Representative Bill Hudson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked for my comments on three amendments offered to CSHB 196(Fin). Each amendment will be addressed in turn.

1. Adding a definition of "substantially deviated" - The suggested definition is an effort to narrow the potential liability of a response action contractor by limiting responsibility for deviations to departures by "executives, managers and incident commanders". The definition, in my opinion, simply shifts the focus of argument to what is meant by "significant, unjustifiable, and unauthorized departures." The problem of defining a term such as "substantially deviated" is underscored by this type of amendment. Again, my advice is to not attempt to define the term.
2. Changing the period of limited liability to 60 days - This amendment is a policy question, and does not in itself pose any legal problems.
3. Include language regarding amendment of AS 46.03.030(1) and creating a cleanup standard - This amendment does not appear to make any substantive changes. If the language has to be included, I would advise placing this in an intent section of the bill and not within Sec. 46.03.825(a).

Please contact me if you have further questions.

MFF:lmb
91-181.lmb

DIVISION OF LEGAL SERVICES

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Mail Stop 3101

MEMORANDUM

April 29, 1991

SUBJECT: Proposed amendment to CSHB 196 (Judiciary)
(Work Order No. 7LS0797J.2, 4-24-91)

TO: Representative Johnny Ellis

FROM: Michael F. Ford *MF*
Legislative Counsel

You have asked whether there are any constitutional problems with the above-referenced amendment to CSHB 196 (JUD). This amendment allows a person who contracts with an oil spill response action contractor to show financial responsibility using any of the forms allowed by AS 46.04.040(e). The amendment does not apply to existing contracts.

SHORT ANSWER. While the amendment requires examination under due process provisions, it does not appear to be unconstitutional under those or other provisions of the federal or state constitutions.

DISCUSSION. Art. I, sec. 7, of the state Constitution and art. 14, sec. 1, of the United States Constitution prohibit the state from depriving a person of life, liberty, or property without due process of law. Under the proposed amendment, the property or liberty being affected is the response contractor's right to require a specific form of demonstrated financial responsibility.

In Alaska substantive due process would be denied in this case if the amendment does not bear a reasonable relationship to a legitimate governmental purpose. Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 452 (Alaska 1975).

There is a legitimate governmental purpose behind the amendment. That purpose is to prevent a response contractor from setting a contractual indemnification term that is too onerous for the smaller user. This amendment arguably helps to equalize their respective contracting positions and make response contractors available to the smaller service users.

Representative Johnny Ellis
April 29, 1991
Page 2

On its face this amendment appears to bear a reasonable relationship to a legitimate state goal. Therefore, the amendment does not appear to violate the due process provisions of the state or federal constitutions. There does not appear to be any significant basis to believe that the amendment would violate other constitutional provisions.

If I may be of further assistance, please advise.

MFF:pl:gc
91-310.plm

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

April 18, 1991

SUBJECT: Response Action Contractors
(CSHB 196 (Res))

TO: Representative Bill Hudson

FROM: Michael M. Ford *MM - F*
Legislative Counsel

Enclosed is an amendment requested by Andy Spear. It limits the extent to which an oil spill response action contractor can shift to an oil spiller the contractor's liability for damages caused by the contractor during cleanup of a spill.

As I understand it, the public policies behind this limitation are at least twofold: (1) to help keep oil industry companies in business (by prohibiting contractors from setting terms that are too onerous); and (2) to keep some incentive in place for the contractor to act with care when performing its response action duties.

However, I have one caveat to mention: inherent in any approach that limits agreements between parties where one party provides services to another is that the limit can simply cause the services to become unavailable. If enough response action contractors do not "like" the limitation of the enclosed amendment, the contractors can simply refuse to contract.

Please let me know if I can be of further assistance.

MFF:pl:gc
91-274.plm

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029*

*Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

January 28, 1991

SUBJECT: Response action contractor liability (Work Order 7LS-0552)

TO: Representative Bill Hudson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked for our opinion on legislation proposed by Tesoro Alaska Petroleum Company, regarding the liability of oil spill response action contractors. The proposed legislation would narrow the potential liability of a response action contractor with respect to a release or threatened release of oil, by eliminating liability for negligence in most instances.

Under AS 46.03.823, the potential liability of a response action contractor is generally limited to negligence, gross negligence and acts of intentional misconduct. This section also establishes a negligence standard that a claimant must show was violated in order to prove liability, and contains several exceptions to the general rule of liability. The exceptions are specific instances in which the legislature has decided that the general rule on liability should not apply.

The proposed legislation would narrow the liability of a response action contractor who responds to a release or threatened release of oil by limiting the liability to (1) gross negligence, (2) intentional misconduct, and (3) acts or omissions that would result in liability, even if the contractor had not carried out a response action. Therefore acts of negligence would not result in liability, unless the act or omission would be negligent even if the contractor had not carried out a response action. Finally, you should note that the proposed new section on oil spill response action contractors does not contain the exceptions to the general rule of liability written into law as AS 46.03.823(b)(2), (c), (d), (e), and (f).

The proposed legislation also raises a constitutional equal protection issue. If the exception for oil spill response contractors was enacted, there would be two different rules of liability, one for oil spill response contractors and one for all other response contractors. While this type of distinction does not always offend the constitutional equal protection clause, there must be a rational reason to distinguish between similar

Representative Bill Hudson
January 28, 1991
Page 2

groups in this manner. This may be the kind of distinction that would not survive a court challenge based on the equal protection clause. See Turner Construction Co. v. Scales, 752 P.2d 467 (Alaska 1988).

Please contact me if you have further questions.

MFF:gc
91-039.glc

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800

WALTER J. HICKEL, GOVERNOR

TELEPHONE
(907) 465-2600

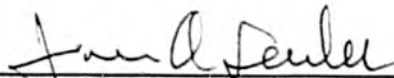
March 11, 1991

POSITION PAPER

HB 196

House Bill 196 proposes to shift the liability for simple negligence from an innocent oil spill response action contractor (RAC) to the party responsible for the spill so long as the RAC's act or omission is not contrary to a response plan or an order of the Federal or State on-scene coordinator.

The Department of Environmental Conservation supports HB 196 for the reasons set out in Section One of the Legislation, Findings and Purpose.



John A. Sandor
Commissioner



SENATE SPECIAL COMMITTEE ON
OIL AND GAS

DATE: 4/2/91

Limited liability of oil spill contractors

SIGN - IN

NAME**ADDRESS**

(MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

[illegible]

SCOMM

78:50

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIDSON

TO: CSHB 196(RESOURCES)

Page 4, following line 3:

Insert a new subsection to read:

"(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release ^{that RRA's act or omission with respect to it} ~~unless the release or threatened release is caused by an act or omission of the oil spill response action contractor that is negligent,~~ ^{unless the act} grossly negligent, or constitutes intentional misconduct."

Reletter the following subsection accordingly.

and except as provided in (d)(1) of this §

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 196 (RESOURCES)

Page 1, following line 6:

Insert a new bill section to read:

"* Section 1. FINDING AND INTENT. The legislature finds that the entire subject of response action contractor civil liability is in need of review. The legislature intends to review the subject of response action contractor civil liability and to complete a report on this subject before January 15, 1992. The legislature also intends to include in the report modifications necessary to state laws on response action contractor civil liability, and an analysis of whether the present state laws that require shippers and owners to contract with response action contractors to carry out contingency plans are adequate to protect the public in the event of an oil spill."

Page 1, line 7:

Delete "**Section 1.**"

Insert "**Sec. 2.**"

Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HUDSON

TO: CSHB 196 (RESOURCES)

Page 1, line 3, after ";;":

Insert "relating to agreements between response action contractors and other persons;"

Page 6, after line 21:

Insert a new subsection to read:

"(d) A response action contract entered into by a person who is required to show financial responsibility under AS 46.04.040 and a response action contractor under this section may contain a term that requires the person to insure or indemnify and protect the response action contractor or demonstrate financial ability to respond in damages in a form and amount that is separate and in addition to the financial responsibility the person must demonstrate to the state under AS 46.04.040 and regulations adopted under that section. However, the response action contract may not require, nor may it be conditioned on a separate agreement that requires, that the insurance, indemnification, or financial ability demonstrated or provided under this subsection be in a form or an amount that exceeds the financial responsibility requirements for the person under AS 46.04.040 and regulations adopted under that section. A term that violates this subsection is void and severable from the remainder of the agreement."

Reletter the following subsection accordingly.

Page 7, after line 15:

Insert a new bill section to read:

"* **Sec. 12.** AS 46.03.825(d), enacted by sec. 9 of this Act, applies to a response action contract entered into or renewed on or after the effective date of sec. 9 of this Act."

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ELLIS

TO: CSHB 196 (JUDICIARY)

Page 1, line 4, after "":

Insert "relating to agreements between response action contractors and other persons;"

Page 6, after line 15:

Insert a new subsection to read:

"(d) A response action contract entered into by a person who is required to show financial responsibility under AS 46.04.040 and a response action contractor under this section that requires the person to demonstrate financial ability to respond to the response action contractor in damages must provide that the person may demonstrate financial responsibility in any of the forms allowed under AS 46.04.040(e) and regulations adopted under that section. A term that violates this subsection is void and severable from the remainder of the agreement."

Reletter the following subsection accordingly.

Page 7, after line 17:

Insert a new bill section to read:

"^a Sec. 12. AS 46.03.825(d), enacted by sec. 8 of this Act, applies to a response action contract entered into or renewed on or after the effective date of sec. 8 of this Act."

Renumber the following bill sections accordingly.

*Sec. 1. The legislature finds and declares that;

1. Oil spill response action contractors operate in a crisis atmosphere, and are required to make immediate decisions on the basis of often incomplete information and poor communications. The emergency nature of oil spill cleanup sets it apart from other, more long-term forms of environmental remediation;

2. As a result, even oil spill response action contractors with no involvement in the oil spill itself, and who responded to the oil spill in good faith, face an unreasonable risk of involvement in litigation over the oil spill;

3. The magnitude and immediacy of the risk to Alaska's environment from the production, transportation and storage of oil in large quantities, particularly near and across state waters, requires that special measures be taken to ensure that adequate containment and cleanup assets are promptly available within the state. No other commercial or industrial activity in the state presents the same risk of sudden and catastrophic harm, or requires the same extensive advance provision of local response services;

4. The unreasonable legal risks borne by oil spill response action contractors disserves the state's goal of encouraging prompt and sufficient oil spill response by:

(A) discouraging oil spill response action contractors from doing business in the state;

(B) causing oil spill response action contractors to hesitate during the first critical hours following the spill; and

(C) causing oil spill response action contractors to make their services available to the private and public sectors only under impractical insurance and indemnification terms;

5. The United States Congress, and the legislatures of several coastal states, have recently enacted legislation insulating innocent oil spill response action contractors from these unreasonable legal risks. This has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill response services to the state; and

6. Damages occasioned by the good faith actions of an innocent oil spill response action contractor, and the burdens of resultant litigation, should be borne by the persons responsible for the spill, rather than the response action contractor.

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 196

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Page 1, line 3:

Delete "definition"

Insert "definitions"

Page 1, line 3, following "'response action'":

Insert "and 'response action contractor'"

Page 5, line 11:

Delete "and"

Page 5, line 14, following "contract":

Insert "; and

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

Add to "(16) response action contractor" (p.5, l. 15):

(c) a ^{volunteer} ~~person~~ authorized by the department, ~~or a federal~~
~~agency with jurisdiction over the release,~~ ^{ing} to engage in response
action;

To my old friend & mentor
R. DeLoach

02/11/91

J. R. Zyl

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of oil whose act[S] or omission[S] [ARE] is not contrary to [A RESPONSE PLAN] the state or applicable regional master plan under AS 46.04.200-210, or order [BY A STATE OR FEDERAL AGENCY HAVING JURISDICTION OVER THE RELEASE OR THREATENED RELEASE OF OIL] of the federal or state on-scene coordinator is not civilly liable for injuries, costs damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act[S] or omission[S] in response to the release or threatened release unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a)

A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to the state or applicable regional master plan under AS 46.04.200-210, or order of the federal or state on-scene coordinator is not civilly liable for injuries, costs damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

Deborah - John T.
brought these
amendments to the
bill based on
my conversation
w/ Gene. I'm
here whenever
you can talk.
Paul 7907

OLD

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a)

A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to [A RESPONSE PLAN OR] an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

(1) the response action contractor would have been liable for the release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

(2) the response action contractor acted with gross negligence or intentional misconduct.

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

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

(2) an act or omission contrary to the applicable contingency plan under AS 46.04.030, if any, where the response action contractor's deviation from the plan was the result of gross negligence or intentional misconduct.

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a)

A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to [A RESPONSE PLAN OR] an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

(1) the response action contractor would have been liable for the release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

(2) the response action contractor acted with gross negligence or intentional misconduct.

(b) The limitation on liability contained in (a) of this section does not apply to an action for personal injury or death.

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a)

A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to [A RESPONSE PLAN OR] an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

(1) the response action contractor would have been liable for the release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

(2) the response action contractor acted with gross negligence or intentional misconduct.

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

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

(2) an act or omission contrary to a representation of the response action contractor, where:

(A) the representation was incorporated into the approved contingency plan under AS 46.04.030 of a person responsible for the release under AS 46.03.822; and

(B) the response action contractor's deviation from the representation was the result of gross negligence or intentional misconduct.

(b) The purposes of this act are to:

(1) define the liability of oil spill response action contractors in light of the crisis atmosphere in which they operate, and the uniquely severe consequences to the state of inadequate locally available oil spill cleanup capability;

(2) remove the existing deterrent to prompt and sufficient oil spill cleanup in this state;

(3) place Alaska on an equal competitive footing with other jurisdictions in attracting oil spill cleanup capability to the state; and

(4) place the liability for good faith response action on the persons responsible for the spill, rather than the response action contractor.

MODIFICATIONS OF HB 196

1. Add to Sec. 8 (Sec. 46.03.825(a)):

(4) In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

2. Change the 15 days in Sec. 8 (Sec. 46.03.825(b)(3)) to 60 days (commensurate with the new California statute).

3. Add to Sec. 8 (Sec. 46.03.825 (b)(3)):

(5) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor.

MODIFICATIONS OF HB 196

BP
suggestions

1. Add to Sec. 8 (Sec. 46.03.825(a)):
 - (4) In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.
2. Change the 15 days in Sec. 8 (Sec. 46.03.825(b)(3) to 60 days (commensurate with the new California statute).
3. Add to Sec. 8 (Sec. 46.03.825 (a)):
 - (5) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor.

what will happen
in June w/ out
unjustifiable

under 2

ALYESKA PROPOSED MODIFICATION TO HB 196

Modify the definition for "response action" at AS 46.03.825 (d) on page 5, lines 9 and 10 to read:

→ } ~~"In this section "response action" means~~ all actions taken to respond to an oil release or threatened release, including but not limited to mitigation, cleanup, or removal.

imminent

~~for imminent~~

SENATE BILL NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS**

Introduced:

Referred:

A BILL**FOR AN ACT ENTITLED**

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; and providing for an effective date."

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

6 * **Section 1.** FINDING AND INTENT. The legislature finds that the entire subject of response action
7 contractor civil liability is in need of review. The legislature intends to review the subject of response
8 action contractor civil liability and to complete a report on this subject before January 15, 1992. The
9 legislature also intends to include in the report modifications necessary to state laws on response action
10 contractor civil liability, and an analysis of whether the present state laws that require shippers and
11 owners to file contingency plans and to provide response action are adequate to protect the public in the
12 event of an oil spill.

13 * **Sec. 2.** AS 46.03.822(a) is amended to read:

14 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

1 set out in (b) of this section and the exception set out in (i) of this section, the following persons
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
7 threat of an unpermitted release of a hazardous substance:

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

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

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

18 (4) except for a response action contractor, any person who by contract,
19 agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for
20 transport for disposal or treatment, of hazardous substances owned or possessed by the person,
21 other than domestic sewage, or by any other party or entity, at any facility or vessel owned or
22 operated by another party or entity and containing hazardous substances, from which there is a
23 release, or a threatened release that causes the incurrence of response costs, of a hazardous
24 substance;

25 (5) except for a response action contractor, any person who accepts or accepted
26 any hazardous substances, other than refined oil, for transport to disposal or treatment facilities,
27 vessels or sites selected by the person, from which there is a release, or a threatened release that
28 causes the incurrence of response costs, of a hazardous substance.

29 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

30 (k) In this section, "damages" include damage to persons or to public or private property,
31 damage to the natural resources of the state or a municipality, and damage caused by acts or

1 omissions of a response action contractor for which the response action contractor is not liable
2 under AS 46.03.823 or 46.03.825.

3 * Sec. 4. AS 46.03.823(a) is amended to read:

4 (a) A person who is a response action contractor with respect to a release or threatened
5 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
6 response plan or order by a state or federal agency having jurisdiction over the release or
7 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
8 results from the release or threatened release unless the release or threatened release is caused
9 by an act or omission of the response action contractor that is negligent or grossly negligent or
10 constitutes intentional misconduct. To show negligence by a response action contractor, a
11 claimant must show that the acts or omissions of the contractor under the response action contract
12 were not in accordance with generally accepted professional standards and practices at the time
13 the response action services were performed.

14 * Sec. 5. AS 46.03.823(g) is repealed and reenacted to read:

15 (g) In this section, "response action" means an action taken in connection with the
16 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
17 including investigation, evaluation, plan development, mapping and surveying, engineering,
18 design and construction, removal, and equipment provision.

19 * Sec. 6. AS 46.03 is amended by adding a new section to read:

20 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
21 is a response action contractor with respect to a release or threatened release of oil whose act or
22 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
23 liable for injuries, costs, damages, expenses, or other liability that results from the release or
24 threatened release, or from the response action contractor's act or omission in response to the
25 release or threatened release, unless the person bringing a claim against the response action
26 contractor proves by a preponderance of the evidence that

27 (1) the response action contractor would have been liable for the initial release
28 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
29 action;

30 (2) the response action contractor acted with gross negligence or intentional
31 misconduct; or

(3) the response action contractor, without approval by the federal or state on-scene coordinator, substantially deviated from an oil spill contingency plan previously approved under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

(1) an action for personal injury or death;

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

(3) an act or omission that occurs more than 30 days after the release.

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

(d) In this section, "response action" means an action taken to respond to a release or threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release or threatened release of oil.

* Sec. 7. AS 46.03.826 is amended by adding new paragraphs to read:

(14) "response action contract" means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release

1 under state or federal law;

2 (15) "response action contractor" means

3 (A) a person who enters into a response action contract with respect to a
4 release or threatened release of a hazardous substance and who is carrying out the
5 contract, including a cooperative organization formed to maintain and supply response
6 equipment and materials that enters into a response action contract relating to a release
7 or threatened release;

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

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

12 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

7-LS0797J ✓
Ford
4/23/91

CS FOR HOUSE BILL NO. 196 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; relating to a report by the Citizens Oversight Council on Oil
5 and Other Hazardous Substances; providing for the repeal of changes made by this Act
6 in one year; and providing for an effective date."

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

8 * Section 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
10 set out in (b) of this section and the exception set out in (i) of this section, the following persons
11 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
12 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
13 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,

1 containment, removal, or remedial action incurred by the state or a municipality, resulting from
2 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
3 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

24 * Sec. 2. AS 46.03.822(a) is repealed and reenacted to read:

25 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
26 set out in (b) of this section and the exception set out in (i) of this section, the following persons
27 are strictly liable, jointly and severally, for damages to persons or property, whether public or
28 private, including damage to the natural resources of the state or a municipality, and for the costs
29 of response, containment, removal, or remedial action incurred by the state or a municipality,
30 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
31 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

21 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

22 (k) In this section, "damages" include damage to persons or to public or private property,
23 damage to the natural resources of the state or a municipality, and damage caused by acts or
24 omissions of a response action contractor for which the response action contractor is not liable
25 under AS 46.03.823 or 46.03.825.

26 * Sec. 4. AS 46.03.823(a) is amended to read:

27 (a) A person who is a response action contractor with respect to a release or threatened
28 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
29 response plan or order by a state or federal agency having jurisdiction over the release or
30 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
31 results from the release or threatened release unless the release or threatened release is caused

1 by an act or omission of the response action contractor that is negligent or grossly negligent or
2 constitutes intentional misconduct. To show negligence by a response action contractor, a
3 claimant must show that the acts or omissions of the contractor under the response action contract
4 were not in accordance with generally accepted professional standards and practices at the time
5 the response action services were performed.

6 * Sec. 5. AS 46.03.823(a) is repealed and reenacted to read:

7 (a) A person who is a response action contractor with respect to a release or threatened
8 release of a hazardous substance whose acts or omissions are not contrary to a response plan or
9 order by a state or federal agency having jurisdiction over the release or threatened release is not
10 civilly liable for injuries, costs, damages, expenses, or other liability that results from the release
11 or threatened release unless the release or threatened release is caused by an act or omission of
12 the response action contractor that is negligent or grossly negligent or constitutes intentional
13 misconduct. To show negligence by a response action contractor, a claimant must show that the
14 acts or omissions of the contractor under the response action contract were not in accordance
15 with generally accepted professional standards and practices at the time the response action
16 services were performed.

17 * Sec. 6. AS 46.03.823(g) is repealed and reenacted to read:

18 (g) In this section, "response action" means an action taken in connection with the
19 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
20 including investigation, evaluation, plan development, mapping and surveying, engineering,
21 design and construction, removal, and equipment provision.

22 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

23 (g) In this section,

24 (1) "response action" means an action taken in connection with the mitigation or
25 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
26 plan development, mapping and surveying, engineering, design and construction, removal, and
27 equipment provision;

28 (2) "response action contract" means a written contract or agreement to provide
29 response action with respect to a release or threatened release of a hazardous substance, entered
30 into by a person with

31 (A) the department;

1 (B) another person who has entered into an agreement with the department
2 that provides for response action subject to the department's oversight and control;

3 (C) a federal agency with jurisdiction over the release or threatened
4 release; or

5 (D) another person potentially liable for the release or threatened release
6 under state or federal law;

7 (3) "response action contractor" means

8 (A) a person who enters into a response action contract with respect to a
9 release or threatened release of a hazardous substance and who is carrying out the
10 contract, including a cooperative organization formed to maintain and supply response
11 equipment and materials that enters into a response action contract relating to a release
12 or threatened release; and

13 (B) a person who is retained or hired by and is under the control of a
14 person described in (A) of this paragraph to provide services related to the response
15 action contract.

16 * Sec. 8. AS 46.03 is amended by adding a new section to read:

17 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
18 is a response action contractor with respect to a release or threatened release of oil whose act or
19 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
20 liable for injuries, costs, damages, expenses, or other liability that results from the release or
21 threatened release, or from the response action contractor's act or omission in response to the
22 release or threatened release, unless the person bringing a claim against the response action
23 contractor proves by a preponderance of the evidence that

24 (1) the response action contractor would have been liable for the initial release
25 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
26 action;

27 (2) the response action contractor acted with gross negligence or intentional
28 misconduct; or

29 (3) the response action contractor, without approval by the federal or state on-
30 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
31 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible

1 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
2 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

6 (3) an act or omission that occurs more than 15 days after the release.

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

16 (d) In this section, "response action" means an action taken to respond to a release or
17 threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release
18 or threatened release of oil.

19 * Sec. 9. AS 46.03.826 is amended by adding new paragraphs to read:

20 (14) "response action contract" means a written contract or agreement to provide
21 response action with respect to a release or threatened release of a hazardous substance entered
22 into by a person with

23 (A) the department;

24 (B) another person who has entered into an agreement with the department
25 that provides for response action subject to the department's oversight and control;

26 (C) a federal agency with jurisdiction over the release or threatened
27 release; or

28 (D) another person potentially liable for the release or threatened release
29 under state or federal law;

30 (15) "response action contractor" means

31 (A) a person who enters into a response action contract with respect to a

1 release or threatened release of a hazardous substance and who is carrying out the
2 contract, including a cooperative organization formed to maintain and supply response
3 equipment and materials that enters into a response action contract relating to a release
4 or threatened release;

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

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

9 * Sec. 10. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

10 * Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances
11 (AS 24.20.600) shall review the entire subject of response action contractor civil liability and the status
12 of oil spill contingency plan holders. The review of both subjects shall be completed and a report
13 submitted to the legislature before January 15, 1992. The report must address whether further
14 modifications are necessary to state laws on response action contractor civil liability, and include an
15 analysis of whether the present state laws that require shippers and owners to hold contingency plans
16 and that enable shippers and owners to contract with response action contractors to carry out contingency
17 plans are adequate to protect the public in the event of an oil spill.

18 * Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

19 * Sec. 13. Sections 1, 3, 4, 6, 8, 9, and 11 of this Act take effect immediately under AS 01.10.070(c).

To : Legal Services

7-LS0797NG

SB ———
~~CS FOR HOUSE BILL NO. 196 (RESOURCES)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

~~SENATE~~
~~BY THE HOUSE RESOURCES COMMITTEE~~

Offered:

Referred:

~~SENATE~~
Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

OK
1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; and providing for an effective date."

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

Delet
6 * Section 1. FINDING AND INTENT. The legislature finds that the entire subject of response action
7 contractor civil liability is in need of review. The legislature intends to review the subject of response
8 action contractor civil liability and to complete a report on this subject before January 15, 1992. The
9 legislature also intends to include in the report modifications necessary to state laws on response action
10 contractor civil liability, and an analysis of whether the present state laws that require shippers and
11 owners to contract with response action contractors to carry out contingency plans are adequate to protect
12 the public in the event of an oil spill.

13 * Sec. 2. AS 46.03.822(a) is amended to read:

14 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

AS 46.03.823 and
AS 46.03.823

1 set out in (b) of this section and the exception ^S set out in (i) of this section, the following persons
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
7 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

28 ~~Sec. 3. AS 46.03.822(a) is repealed and reenacted to read:~~

29 ~~delete~~ (a) Notwithstanding any other provision or rule of law and subject only to the defenses
30 set out in (b) of this section and the exception set out in (i) of this section, the following persons
31 are strictly liable, jointly and severally, for damages to persons or property, whether public or

1 private, including damage to the natural resources of the state or a municipality, and for the costs
2 of response, containment, removal, or remedial action incurred by the state or a municipality,
3 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
4 the substantial threat of an unpermitted release of a hazardous substance:

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

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

11 *delete* (3) any person who at the time of disposal of any hazardous substance owned or
12 operated any facility or vessel at which the hazardous substances were disposed of, from which
13 there is a release, or a threatened release that causes the incurrence of response costs, of a
14 hazardous substance;

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

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

25 * Sec. ² 4 AS 46.03.822 is amended by adding a new subsection to read:

26 (k) In this section, "damages" include damage to persons or to public or private property,
27 damage to the natural resources of the state or a municipality, and damage caused by acts or
28 omissions of a response action contractor for which the response action contractor is not liable
29 under AS 46.03.823 or 46.03.825.

30 * Sec. ³ 4 AS 46.03.823(a) is amended to read:

31 (a) A person who is a response action contractor with respect to a release or threatened

1 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
2 response plan or order by a state or federal agency having jurisdiction over the release or
3 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
4 results from the release or threatened release unless the release or threatened release is caused
5 by an act or omission of the response action contractor that is negligent or grossly negligent or
6 constitutes intentional misconduct. To show negligence by a response action contractor, a
7 claimant must show that the acts or omissions of the contractor under the response action contract
8 were not in accordance with generally accepted professional standards and practices at the time
9 the response action services were performed.

10 * Sec. 6. AS 46.03.823(a) is repealed and reenacted to read:

11 (a) A person who is a response action contractor with respect to a release or threatened
12 release of a hazardous substance whose acts or omissions are not contrary to a response plan or
13 order by a state or federal agency having jurisdiction over the release or threatened release is not
14 civilly liable for injuries, costs, damages, expenses, or other liability that results from the release
15 *delete* or threatened release unless the release or threatened release is caused by an act or omission of
16 the response action contractor that is negligent or grossly negligent or constitutes intentional
17 misconduct. To show negligence by a response action contractor, a claimant must show that the
18 acts or omissions of the contractor under the response action contract were not in accordance
19 with generally accepted professional standards and practices at the time the response action
20 services were performed.

21 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

22 (g) In this section, "response action" means an action taken in connection with the
23 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
24 including investigation, evaluation, plan development, mapping and surveying, engineering,
25 design and construction, removal, and equipment provision.

26 * Sec. 8. AS 46.03.823(g) is repealed and reenacted to read:

27 (g) In this section,

28 (1) "response action" means an action taken in connection with the mitigation or
29 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
30 plan development, mapping and surveying, engineering, design and construction, removal, and
31 equipment provision;

1 (2) "response action contract" means a written contract or agreement to provide
2 response action with respect to a release or threatened release of a hazardous substance, entered
3 into by a person with

4 (A) the department;

5 (B) another person who has entered into an agreement with the department
6 that provides for response action subject to the department's oversight and control;

7 (C) a federal agency with jurisdiction over the release or threatened
8 release; or

9 (D) another person potentially liable for the release or threatened release
10 under state or federal law;

11 (3) "response action contractor" means

12 (A) a person who enters into a response action contract with respect to a
13 release or threatened release of a hazardous substance and who is carrying out the
14 contract, including a cooperative organization formed to maintain and supply response
15 equipment and materials that enters into a response action contract relating to a release
16 or threatened release; and

17 (B) a person who is retained or hired by and is under the control of a
18 person described in (A) of this paragraph to provide services related to the response
19 action contract.

20 * Sec. 9. AS 46.03 is amended by adding a new section to read:

21 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
22 is a response action contractor with respect to a release or threatened release of oil whose act or
23 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
24 liable for injuries, costs, damages, expenses, or other liability that results from the release or
25 threatened release, or from the response action contractor's act or omission in response to the
26 release or threatened release, unless the person bringing a claim against the response action
27 contractor proves by a preponderance of the evidence that

28 (1) the response action contractor would have been liable for the initial release
29 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
30 action;

31 (2) the response action contractor acted with gross negligence or intentional

1 misconduct; or

2 (3) the response action contractor, without approval by the federal or state on-
3 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
4 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible
5 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
6 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

10 (3) an act or omission that occurs more than ³⁰15 days after the release, ~~the 15-day~~
11 ~~period provided in this paragraph may be extended for an additional 15 days if approved by the~~
12 ~~state on-scene coordinator.~~

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

22 (d) In this section, "response action" means an action taken to respond to a release or
23 threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release
24 or threatened release of oil.

25 * ⁶Sec. ~~N~~ AS 46.03.826 is amended by adding new paragraphs to read:

26 (14) "response action contract" means a written contract or agreement to provide
27 response action with respect to a release or threatened release of a hazardous substance entered
28 into by a person with

29 (A) the department;

30 (B) another person who has entered into an agreement with the department
31 that provides for response action subject to the department's oversight and control;

1 (C) a federal agency with jurisdiction over the release or threatened
2 release; or

3 (D) another person potentially liable for the release or threatened release
4 under state or federal law;

5 (15) "response action contractor" means

6 (A) a person who enters into a response action contract with respect to a
7 release or threatened release of a hazardous substance and who is carrying out the
8 contract, including a cooperative organization formed to maintain and supply response
9 equipment and materials that enters into a response action contract relating to a release
10 or threatened release;

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

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

15 ~~* Sec. 11. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.825(15) are repealed.~~

16 ~~* Sec. 12. Sections 3, 6, 8, and 11 of this Act take effect July 1, 1994.~~

17 ~~* Sec. 13. Sections 1, 2, 4, 5, 7, 9, and 10 of this Act take effect immediately under AS 01.10.070(c).~~

* Sec. 7. The [] shall review the entire subject of response action contractor liability, and report to the legislature prior to January 15, 1992 as to whether any further modifications to rules of liability are required, and whether the present laws which require shippers and carriers to file contingency plans and to provide for response action are adequate to protect the public in the event of an oil spill.

* Sec. 8. This Act takes effect immediately under AS 01.10.070(c)

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action contractor
2 and establishing strict liability on responsible parties for certain acts or omissions of a
3 response action contractor; amending the definitions of 'response action' and 'response
4 action contractor'; and providing for an effective date."

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

6

7

8 *Sec. 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the
10 defenses set out in (b) of this section and the exceptions set out in (i) of this section, AS
11 46.03.823 and AS 46.03.825, the following persons are strictly liable, jointly and severally, for
12 damages [TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE,

SB _____

-1-

New Text Underlined [DELETED TEXT BRACKETED]

SB _____

April 18, 1991
1:39pm

1 INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A
2 MUNICIPALITY,] and for the costs of response, containment, removal, or remedial action
3 incurred by the state or a municipality, resulting from an unpermitted release of a hazardous
4 substance or, with respect to response costs, the substantial threat of an unpermitted release
5 of a hazardous substance:

6 (1) the owner of, and the persons having control over, the hazardous
7 substance at the time of the release or threatened release; this paragraph does not apply to
8 a consumer product in consumer use;

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

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

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

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

5 *Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

6 (k) In this section, "damages" include damage to persons or to public or private
7 property, damage to the natural resources of the state or a municipality, and damage caused
8 by acts or omissions of a response action contractor for which the response action contractor
9 is not liable under AS 46.03.823 or 46.03.825.

10 *Sec. 3. AS 46.03.823(a) is amended to read:

11 (a) A person who is a response action contractor with respect to a release or
12 threatened release of a hazardous substance other than oil whose acts or omissions are not
13 contrary to a response plan or order by a state or federal agency having jurisdiction over the
14 release or threatened release is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the release or threatened release unless the release or
16 threatened release is caused by an act or omission of the response action contractor that is
17 negligent or grossly negligent or constitutes intentional misconduct. To show negligence by
18 a response action contractor, a claimant must show that the acts or omissions of the
19 contractor under the response action contract were not in accordance with generally
20 accepted professional standards and practices at the time the response action services were
21 performed.

1 *Sec. 4. AS 46.03 is amended by adding a new section to read:

2 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person
3 who is a response action contractor with respect to a release or threatened release of oil
4 whose act or omission is not contrary to an order of the federal or state on-scene
5 coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that
6 results from the release or threatened release, or from the response action contractor's act
7 or omission in response to the release or threatened release, unless the person bringing a
8 claim against the response action contractor proves by a preponderance of the evidence that

9 (1) the response action contractor would have been liable for the initial
10 release or threatened release under AS 46.08.822 even if that contractor had not carried out
11 a response action;

12 (2) the response action contractor acted with gross negligence or intentional
13 misconduct; or

14 (3) the response action contractor, without approval by the federal or state
15 on-scene coordinator, substantially deviated from an oil spill contingency plan previously
16 approved under AS 46.04.030, and the plan was either prepared by that contractor for a
17 party responsible for the release under AS 46.03.822 or that contractor previously agreed
18 to comply with the terms of that plan in its contract with parties responsible for the release
19 under AS 46.03.822.

20 (b) The limitation on liability of (a) of this section does not apply to

21 (1) an action for personal injury or wrongful death;

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

3 (3) acts or omissions which occur more than 30 days after the release.

4 (c) If the liability of an oil spill response action contractor is not limited under (a)
5 of this section or if the provisions of (a) of this section do not apply because of (b) of this
6 section, the oil spill response action contractor is not civilly liable for injuries, costs, damages,
7 expenses, or other liability that result from that response action contractor's act or omission
8 with respect to a release or threatened release unless the act or omission of the response
9 action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This
10 subsection does not apply if the response action contractor would have been liable under AS
11 46.03.822 for the initial release or threatened release even if that contractor had not carried
12 out a response action.

13 (d) In this section, "response action" means all actions taken to respond to an oil
14 release or threatened release, including but not limited to mitigation, cleanup, or removal.

15 *Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

16 (14) "response action contract" means a written contract or agreement to
17 provide response action with respect to a release or threatened release of a hazardous
18 substance entered into by a person with

19 (A) the department;

1 (B) another person who has entered into an agreement with the
2 department that provides for response action subject to the department's oversight
3 and control;

4 (C) a federal agency with jurisdiction over the release or threatened
5 release; or

6 (D) another person potentially liable for the release or threatened
7 release under state or federal law;

8 (15) "response action contractor" means

9 (A) a person who enters into a response action contract with respect
10 to a release or threatened release of a hazardous substance and who is carrying out
11 the contract, including a cooperative organization formed to maintain and supply
12 response equipment and materials that enters into a response action contract relating
13 to a release or threatened release;

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

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

19 *Sec. 6. AS 46.03.823(g)(2) and (3) are repealed.

20 *Sec. 7. The [] shall review the entire subject of response action contractor liability,
21 and report to the legislature prior to January 15, 1992 as to whether any further

1 modifications to rules of liability are required, and whether the present laws which require
2 shippers and owners to file contingency plans and to contract with response action
3 contractors to carry out the plans are adequate to protect the public in the event of an oil
4 spill.

5 *Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

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7-LS0797NG
Ford
4/12/91

Rep. Davidson

CS FOR HOUSE BILL NO. 196 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; relating to a report concerning liability of response action
5 contractors and oil spill contingency plans; and providing for an effective date."

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

7 * Section 1. AS 46.03.822(a) is amended to read:

8 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
9 set out in (b) of this section and the exception set out in (i) of this section, the following persons
10 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
11 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
12 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
13 containment, removal, or remedial action incurred by the state or a municipality, resulting from

an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

* Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

(k) In this section, "damages" includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

* Sec. 3. AS 46.03.823(a) is amended to read:

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or

1 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
2 results from the release or threatened release unless the release or threatened release is caused
3 by an act or omission of the response action contractor that is negligent or grossly negligent or
4 constitutes intentional misconduct. To show negligence by a response action contractor, a
5 claimant must show that the acts or omissions of the contractor under the response action contract
6 were not in accordance with generally accepted professional standards and practices at the time
7 the response action services were performed.

8 * Sec. 4. AS 46.03.823(g) is repealed and reenacted to read:

9 (g) In this section, "response action" means an action taken in connection with the
10 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
11 including investigation, evaluation, plan development, mapping and surveying, engineering,
12 design and construction, removal, and equipment provision.

13 * Sec. 5. AS 46.03 is amended by adding a new section to read:

14 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
15 is a response action contractor with respect to a release or threatened release of oil whose act or
16 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
17 liable for injuries, costs, damages, expenses, or other liability that results from the release or
18 threatened release, or from the response action contractor's act or omission in response to the
19 release or threatened release, unless the person bringing a claim against the response action
20 contractor proves by a preponderance of the evidence that

21 (1) the response action contractor would have been liable for the release or
22 threatened release under AS 46.03.822 even if that contractor had not carried out a response
23 action;

24 (2) the response action contractor acted with gross negligence or intentional
25 misconduct; or

26 (3) the response action contractor, without approval by the federal or state on-
27 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
28 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible
29 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
30 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

3 (3) an act or omission that occurs more than 15 days after the release; the 15-day
4 period provided in this paragraph may be extended for an additional 15 days if approved by the
5 ~~federal~~ or state on scene coordinator.

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

15 (d) In this section, "response action" means an action taken during mitigation, cleanup,
16 or removal of a release or threatened release of oil.

17 * Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

18 (14) "response action contract" means a written contract or agreement to provide
19 response action with respect to a release or threatened release of a hazardous substance entered
20 into by a person with

21 (A) the department;

22 (B) another person who has entered into an agreement with the department
23 that provides for response action subject to the department's oversight and control;

24 (C) a federal agency with jurisdiction over the release or threatened
25 release; or

26 (D) another person potentially liable for the release or threatened release
27 under state or federal law;

28 (15) "response action contractor" means

29 (A) a person who enters into a response action contract with respect to a
30 release or threatened release of a hazardous substance and who is carrying out the
31 contract, including a cooperative organization formed to maintain and supply response

- 1 equipment and materials that enters into a response action contract relating to a release
2 or threatened release;
- 3 (B) a person who is retained or hired by and is under the control of a
4 person described in (A) of this paragraph to provide services related to the response
5 action contract; and
- 6 (C) a person who acts as a volunteer and is engaged in a response action.
- 7 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

A BILL
FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action contractor
2 and establishing strict liability on responsible parties for certain acts or omissions of a
3 response action contractor; amending the definitions of 'response action' and 'response
4 action contractor'; and providing for an effective date."

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

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8 *Sec. 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the
10 defenses set out in (b) of this section and the exceptions set out in (i) of this section, AS
11 46.03.823 and AS 46.03.825, the following persons are strictly liable, jointly and severally, for
12 damages [TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE,