

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2095 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

113

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
(907)465-3744 or 4991

May 9, 1992

COMMITTEES

CHAIR
House Special Committee
on Oil & Gas
MEMBER
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Transportation
International Trade & Tourism

FINANCE SUBCOMMITTEE:

Department of Transportation
and Public Facilities

Senator Sam Cotten,
Chair - Senate Oil and Gas Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Cotten:

CSSSHB 540(Jud) am passed the House yesterday, and was referred to the Senate Oil and Gas Committee today.

This issue is a critical one, both in terms of the preservation of the contingency plan approval process for crude and non-crude shipment, as well as for over 500 jobs on the Kenai Peninsula.

You have devoted a tremendous amount of time and effort on this issue both last session and this session, and I appreciate your commitment to a solution this legislative session.

It would be very much appreciated if you would schedule CSSSHB 540 (Jud) am for a hearing in the Senate Oil and Gas Committee at the earliest possible time.

I have, for your convenient reference, attached a copy of the legislation.

Respectfully,



Bill Hudson

Attachment

cc: Senator Eliason
Senator Pearce
Senator Craft
Senator Hoffman
Senator Shultz



Alaska State Legislature

Senator Sam Cotten Chairman
Senator Drue Pearce, Vice-Chairman
Senator Shirley Craft
Senator Lyman F. Hoffman
Senator Dick Shultz



State Capitol
Juneau, AK 99801-1182
(907) 465-3711

Senate Committee on Oil and Gas

May 8, 1992

Scott Sterling, President
Prince William Sound Regional Citizens' Advisory Council
601 W. 5th Avenue
Anchorage, Alaska 99501

Dear Mr. Sterling:

In your role as president of the PWS RCAC we would appreciate your public testimony on the response action contractor liability legislation currently pending. As the legislation is experiencing significant substantive changes during the final days of the session, your organization's testimony on behalf of a large number of interested communities is appropriate.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Cotten".

Senator Sam Cotten

Alaska State Legislature

Senator Sam Cotten Chairman
Senator Drue Pearce, Vice-Chairman
Senator Shirley Craft
Senator Lyman F. Hoffman
Senator Dick Shultz



State Capitol
Juneau, AK 99801-1182
(907) 465-3711

Senate Committee on Oil and Gas

May 2, 1992

To: Members of the Senate Special Committee on Oil & Gas

From: Senator Sam Cotten, Chair 

RE.: Alyeska Amendments in Congressional Legislation

Attached are copies of the House Interior and Merchant Marine committees amendments to H.R. 776 the House "Energy" bill. Both amendments 1) clarify the existing duties of the Trans-Alaska Pipeline right-of-way holder to respond to, contain, and clean up oil spills and 2) require the right-of-way holder to submit an oil spill contingency plan for Prince William Sound. The differences between the two amendments are the agency with which the contingency plan would be filed. The Interior Committee refers to the Interior Department while the Merchant Marine Committee requires filing with the Department of Transportation. According to the Washington, D.C., Office of the Governor (Alaska), the Interior Committee amendment was passed on April 22 and the Merchant Marine Committee amendment was passed on April 30.

Attachments

AMENDMENT TO H.R. 776

by Mr. Young of Alaska

H.R. 776 is by inserting at the appropriate place in the bill the following:

"SEC. _____, EXXON VALDEZ SETTLEMENT FUND HABITAT ACQUISITION.

"(a) LIMITATION OF EFFECT. -- Nothing in this Act shall affect:

"(1) the expenditure of sums received by the United States as a result of the settlement of the EXXON VALDEZ litigation, as described in section 207 of Public Law 102-229; or

"(2) the implementation of, or the development of, a restoration plan and budget pursuant to the Memorandum of Agreement and Consent Decree entered into by the United States and the State of Alaska on August 7th, 1991, in the United States District Court in the District of Alaska.

"(b) AUTHORITY TO ACQUIRE HABITAT. -- The Federal Trustees identified in the Agreement and Consent Decree described in subsection (a) of this section are authorized and encouraged to purchase from willing sellers land or interests in land determined by the Federal Trustees to be important habitat for the conservation of fish and wildlife resources in the State of Alaska."

Subtitle B—Trans-Alaska Pipeline

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

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

"RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

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

YOUNG AMENDMENT #2Amendment to H.R. 276

At the end of title XXI of the bill, add the following new section:

"SEC. ---. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER.

"Title II of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding the following new section:

"RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

"Sec. 200. In addition to the existing duties to respond to, contain, and clean up oil spills within the State of Alaska, including Prince William Sound, under section 204(b) of this Act and other laws and requirements, the holder of the right-of-way shall submit an oil spill response plan for Prince William Sound to the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990."

(b) AUTHORITY TO ACQUIRE HABITAT. -- The Federal Trustees identified in the Agreement and Consent Decree described in subsection (a) of this section are authorized and encouraged to work with the State Trustees identified in that document to purchase from willing sellers, for federal or state ownership as may be appropriate, land or interests in land where such a purchase is determined by the Federal Trustees to be appropriate under the terms of the Agreement and Consent Decree.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450

FAX (907) 465-2029

Mail Stop 3101

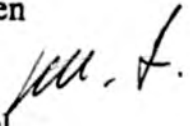
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

May 10, 1992

SUBJECT: Definition of "response action" (SCS CSSSHB 540(O&G))

TO: Senator Sam Cotten

FROM: Michael F. Ford 
Legislative Counsel

I have made a slight change to the definition that you requested be added to the above referenced bill. Because the definition of "response action services" that you requested was substantively identical to the definition of "response action" contained in AS 46.03, I have added a definition of "response action" to AS 46.04 that contains the language you requested. I have also slightly changed those provisions of SCS CSSSHB 540(O&G) relating to response action "services" to avoid any substantive change in the bill. This approach will maintain consistency in the use of the term "response action" between AS 46.03 and AS 46.04.

Please contact me if you have further questions.

MFF:lmb
92-116.lmb

DIVISION OF LEGAL SERVICES

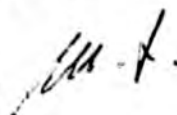
LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 20, 1992

SUBJECT: Response action contractors - (SSHB 540)
TO: Representative Bill Hudson
FROM: Michael F. Ford
Legislative Counsel 

The following is a section by section analysis of SSHB 540:

Section 1 - Provides that an oil spill response action contractor whose act or omission is not contrary to the state or national oil spill contingency plans, or if contrary, is not contrary to an order of the state or federal on-scene coordinator, receives protection from certain civil liability.

Section 2 - Repeals two current exceptions to the limited liability provisions of AS 46.03.825(a). The first being an action for damages to personal property not caused by oil, and the second being an action based on an act or omission that occurs more than 15 days after the release of oil.

Section 3 - Repeals the sunset provisions enacted in HB 196, that would repeal the limited liability of response actions contractors.

Section 4 - Retroactive clause for section 3.

Section 5 - Effective date.

MFF:pl
92-116.plm

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

February 19, 1992

State Capitol
Juneau, Alaska
99801-1182
(907) 465-3744 or 4991

COMMITTEES

CHAIR
House Special Committee
on Oil & Gas
MEMBER
Resources
Transportation
International Trade & Tourism

FINANCE SUBCOMMITTEE:
Department of Transportation
and Public Facilities

Mr. Charles E. Cole,
Attorney General
Department of Law
Capitol Building
Juneau, Alaska

Dear Mr. Attorney General:

Enclosed you will find a sponsor substitute for HB 540, relating to limited liability for response action contractors.

The original bill, HB 540, referenced AS 46.04.030. The sponsor substitute correctly references AS 46.04.200 and AS 46.04.210 on line 12 of page 1 and line 1 of page 2.

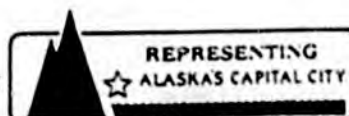
SSHB 540 is scheduled for a hearing in the House Special Committee on Oil and Gas on Monday, February 24, 1992 in Room 124 of the Capitol Building.

Accordingly, your earliest possible response to the joint letter by myself and Representative Mike Navarre of February 18, will be very much appreciated.

Respectfully,


Bill Hudson

Enclosure





Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

February 18, 1982

Mr. Charles E. Cole,
Attorney General
Department of Law
State of Alaska
Room 412 Capitol Building
Juneau, Alaska

Dear Mr. Attorney General:

The Citizens' Oversight Council on Oil and Other Hazardous Substances recently presented their report as required by Section 11 of HB 196, Chapter 92 SLA 1991. I am enclosing for your convenient reference a copy of that report.

Recommendation number seven, on page 11 states: "The Trans-Alaska Pipeline System ("TAPS") agent should clearly maintain the duty to control and remove pollution within state boundaries related to the transportation of TAPS crude oil."

It will be very much appreciated if you would review this recommendation, as well as the Council's rationale.

It is our understanding that there are contracts between Alyeska Pipeline Service Company and the state of Alaska for the state right-of-way agreements, between Alyeska Pipeline Service Company and the federal government for the federal right-of-way agreements, and between Alyeska Pipeline Service Company and the federal government for the Trans-Alaska Pipeline Authorization Act.

After your review of the report and the various state and federal contractual agreements, it would be very much appreciated if you would prepare a legal opinion discussing Alyeska's duty to control and remove pollution within state boundaries related to the transportation of TAPS crude.

We are also enclosing a copy of a document entitled "Memorandum of Alyeska Pipeline Service Company Regarding Liability Under Trans Alaska Pipeline Authorization Act for Oil Spills From Vessels." We believe your review of this memorandum will be necessary as you prepare your response to the questions we have posed.

Further, we would appreciate your discussion of the Legislature's passage of a statute to address Alyeska's duty to respond, and how it would affect the existing contractual agreements between Alyeska and the state of Alaska and the federal government.

Additionally, for the purposes of limiting liability for actions they take in spill response efforts, it has been suggested that response action contractors be categorized as 1. volunteers, 2. professional independent operators, 3. industry spill response cooperative organizations, and 4. industries' own spill response operations, specifically Alyeska Pipeline Service Company.

We would like your review of this recommendation. Is there an equal protection problem? Since the spiller is held strictly liable, is it in the state's best interest to delineate who is acting as a volunteer, especially given the fact that Alyeska Pipeline Service Company considers itself a volunteer response action contractor?

Finally, we are enclosing a copy of legislation introduced this morning, which we anticipate will be scheduled for committee deliberation as soon as possible. Accordingly, your written response at your earliest possible convenience will be very much appreciated.

Respectfully,



Bill Hudson



Mike Navarre

Enclosures



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
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February 18, 1992

COMMITTEES

CHAIR
House Special Committee
on Oil & Gas
MEMBER
Resources
Transportation
International Trade & Tourism

FINANCE SUBCOMMITTEE:
Department of Transportation
and Public Facilities

Mr. John Sandor, Commissioner
Alaska Department of Environmental
Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska

Dear Commissioner Sandor:

The Citizen's Oversight Council on Oil and Other Hazardous Substances recently presented their report as required by Section 11 of HB 196, Chapter 92 SLA 1991. I am enclosing for your convenient reference a copy of that report.

There are several recommendations set forth specifically addressing the issue of the state of Alaska's providing for certification of response action contractors. Specifically, recommendations two through six discuss response action contractor certification and the Council has set forth rationales for each of those recommendations.

I would appreciate your review of the issue of certification of response action contractors by the state of Alaska.

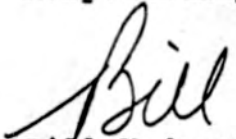
Please discuss the current efforts now underway by the task force comprised of coastal states, the public, the U.S. Coast Guard, and the oil industry to implement a national standard for certification of response action contractors, as required by the Oil Pollution Act of 1990. Specifically, I would like to know how far along the process is, and by when will the task force have in place certification standards?

It would be very much appreciated if you would provide in detail the task force, how it was organized, what states participate, the missions and goals, and any other aspects you feel will be beneficial to the Legislature as we consider pending legislation to limit the liability of response action contractors.



I am also enclosing a copy of legislation introduced this morning. I anticipate this legislation will be heard as soon as possible. Accordingly, your written response at your earliest possible convenience will be very much appreciated.

Respectfully,


Bill Hudson

Enclosures

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
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COMMITTEES

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House Special Committee
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MEMBER
Resources
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FINANCE SUBCOMMITTEE:
Department of Transportation
and Public Facilities

February 18, 1992

D. E. Ciancaglini,
Rear Admiral, U.S. Coast Guard
Commander, Seventeenth Coast
Guard District
Box 25517
Juneau, Alaska 99811

Dear Admiral Ciancaglini:

The Alaska State Legislature currently has before it the issue of limiting the liability of response action contractors who respond to marine oil spills. I am enclosing a copy of legislation introduced this morning.

It is my understanding that the U.S. Coast Guard, under provisions set forth in the Oil Pollution Act of 1990, is currently in the process of developing national standards to certify response action contractors.

Please discuss in detail the current efforts by the Coast Guard to establish such a certification program.

Additionally, I would appreciate your discussing in detail, the national contingency plan's requirements of the Marine Spill Response Corporation and how MSRC would be dispatched to respond to an oil spill in Alaska. As you know, MSRC has not placed one of the regional response centers in Alaska, and I am deeply concerned about the hundreds of miles of unprotected coast lines in Southeast Alaska and Western Alaska.

Additionally, I would appreciate your discussing in detail, the national contingency plan's requirements of the Ship Escort Response Vessels (SERV) and how SERV would be dispatched to respond to an oil spill by a tanker carrying TAPS crude from Prince William Sound to Cook Inlet as well as how the national contingency plan treats an offshore tanker spill on the down track followed by these crude oil laden tankers enroute to Lower 48 terminals.



I will be scheduling this legislation for a hearing in the House Special Committee on Oil and Gas as soon as possible. Accordingly, your written response at your earliest possible convenience will be very much appreciated.

Respectfully,

A handwritten signature, likely of Bill Hudson, consisting of stylized initials and a surname.

Bill Hudson, Chair

Enclosures

Senate CS SSHB 540 (O&G)- Overview of Provisions Regarding Liability Limitation and Registration of Response Action Contractors

Senate CS SSHB 540 (O&G) limits the civil liability of response action contractors (RACs) engaged in releases or threatened releases of oil. A responding RAC is not civilly liable for removal costs or damages as long as the RAC's actions were consistent with federal (33 U.S.C. 1321(d)), and state and regional contingency plans (AS 46.04.200 and .210). If the RAC is listed and agrees to be listed on an approved vessel/facility (AS 46.04.030) contingency plan, the RAC's actions must also be consistent with the applicable vessel/facility contingency plan. In either case, a RAC's liability is limited if its actions were directed by a state or federal on-scene coordinator. Under Senate CS SSHB 540 (O&G) rather than being held to a simple negligence standard, a RAC's civil liability would be limited to gross negligence, intentional misconduct, and personal injury or death.

This liability limitation is extended to all persons engaged in a response action including a professional, for-profit business; a regional, non-profit cooperative; a fishermen under contract to a RAC or a contingency plan holder; a vessel of opportunity; or a volunteer.

The liability limitation is extended to all responding parties through the definition of "response action contractor" which is not changed in Senate CS SSHB 540 (O&G). The current statutory definition broadly identifies a RAC as anyone responding to a release or threatened release of oil. The intent of this broad definition is to encourage response by providing RAC indemnification to a wide array of potential responders.

In Senate CS SSHB 540 (O&G), exceptions to limitations on RAC liability include:

- 1) an action for personal injury or death,**
- 2) the RAC acts with gross negligence or intentional misconduct,**
- 3) the RAC was otherwise liable for the release or threatened release under AS 46.03.822 (e.g., is the responsible party), or**

- 4) if the RAC was knowingly listed as the **primary responder** on a contingency plan approved by the Alaska Department of Environmental Conservation (DEC), but was not registered with DEC.

To ensure a prompt, aggressive, and competent response, Senate CS SSHB 540 (O&G) contains provisions for a **voluntary RAC registration and approval** process. However, for a RAC to be listed as a **primary responder** on a vessel or facility contingency plan approved under AS 46.04.030 by DEC, a RAC must be registered. DEC may not approve a vessel or facility contingency plan under AS 46.04.030 unless the **primary responder** identified on the contingency plan is registered with the department. *Under this program, volunteers, secondary responders, and any parties transporting equipment need not be registered with DEC.*

Provisions of the bill related to RAC registration and approval have a delayed effective date. *The liability limitation provisions are effective immediately.*

Response Action Contractor Liability Limitation Senate CS for SSHB 540 (O&G) Sectional Analysis

Section One. Purpose. Clarifies that the purpose of the legislation is not to affect the duties and responsibilities of the Alyeska Pipeline Service Company and its owners arising under the state and federal Trans-Alaska Pipeline System Right-of-Way Agreement, the lessees, the holders, and their common operating agent are required to contain and clean up crude oil spills in Prince William Sound.

Section Two. Amends AS 46.03.822(a), the definition of "damages" to cross reference AS 46.03.825.

Section Three. Clarifies that a responsible party is not relieved from liability for damages or clean-up costs as a result of acts or omissions of a RAC. Required to cross-reference AS 46.03.822 (b), that relieves financial liability for responsible parties for oil spill damages and clean-up costs; a responsible parties liability is not reduced as a result of an act or omission of a RAC.

Section Four. Clarifies that volunteers and vessels of opportunity engaged in a response action under the direction of a federal or state on-scene coordinator are not liable for damages or clean-up costs under AS 46.03.822.

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

Section Six. Establishes that a RAC who responds to a release or threatened release of oil is not civilly liable for damages or clean-up costs if the RAC's act or omission was consistent with federal (33 U.S.C. 1321(d)), and state and regional (AS 46.04.200 and .210) contingency plans. If the RAC is listed and agrees to be listed on an approved vessel or facility contingency plan (AS 46.03.030), the RAC's action must be consistent with the applicable contingency plan. In either case, a RAC enjoys limited liability if its actions were as directed by the state or federal on-scene coordinator.

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

- 1) an action for personal injury or death;
- 2) a RAC would otherwise be liable for the release or threatened release under AS 46.03.822, eg., the RAC was the responsible party that cause the spill; the RAC acts with gross negligence or intentional misconduct; a RAC who is the primary responder listed and agreed to be listed on an approved vessel or facility contingency plan is not registered with DEC as required; or establishes that the limitation of liability for RACs is not extended to RACS who do not respond or who caused the release or threaten release of oil.

Section Eight. Defines, "consistent," "primary response action contractor," and "registered" as defined under AS 46.03.835 established in this bill.

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

Section Ten. Amends AS 46.04.20 to clarify that the common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system (TAPS) shall (1) immediately contain and clean up a discharge of oil transported by or due to the operation of the pipeline system or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince William Sound and (2) provide these response action services under contract terms as provided under AS 46.04.030(r) (section 12).

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

Section Eleven. Amends AS 46.04.030(e) to establish that DEC may not approve a vessel or facility contingency plan that relies on a RAC to be a primary responder if the RAC is not registered by DEC or the U.S. Coast Guard. This section is not effective until January 1, 1994.

Section Twelve. Establishes contractual requirements for the approval of contingency plans under AS 46.04.030 for response services in Prince William Sound provided by the owners or operators or their common operating agent. Response service may not be terminated while a vessel is within Prince William Sound and on-going services may not be terminated or transferred without the prior approval of the federal and state on-scene coordinators.

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

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

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

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

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

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

Section Fourteen. Defines "response action,"

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

Section Sixteen. Allows DEC until July 1, 1993 to develop RAC registration regulations.

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

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

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

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

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

Summary of Changes to CS for SSHB 540 (Jud) am

Section One. Technical change: deletes *federal or state laws* because the legislation 1) affects state laws and 2) can not affect federal law.

Sections Two through Seven. No changes.

Section Eight. Change the definition of "consistent" to "means in substantial compliance with a contingency plan."

Section Nine. No changes.

Section Ten. Adds "immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince William Sound;" **This language was removed by an amendment on the House floor. It is being reinserted at the request of the governor and attorney general.**

Technical change adding "Prince William Sound" with "the meaning given in 33 C.F.R. 3.85-20." This amendment was unanimously passed in the House but was unintentionally removed by a later amendment.

Adds language clarifying that the provisions addressed in this section regarding financial responsibility provisions imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, their common operating agent, are also applicable to an agent or representative of either the holders and lessees or their common operating agent. This clarifies that if a cooperative or other entity were to provide response services in Prince William Sound that private financial responsibility requirements must be fair and reasonable.

Section Eleven. No change.

Section Twelve. Technical changes: 1) replaces transfers of "management and control" of response actions to transfer of "response action service" to clarify the intent that the control of all response actions would be transferred, not just the management. 2) removes "initial" and instead refers to the period until response action services are approved for transfer by the state and federal on-scene coordinators (drafting error also fixed on this line). This prevents confusion because initial means this

period prior to the transfer but was not defined in CS for SSHB 540 (JUD) am. 3) makes the "Prince William Sound has the meaning given in 33 C.F.R. 3.85-20." amendment made in the House, and 4) makes references to "vessels" consistent throughout the bill by removing "tank."

Section Thirteen. No changes.

Section Fourteen. Technical change clarifying the definition of response (see attached memorandum from the Division of Legal Services).

Section Fifteen. No changes.

Section Sixteen. At the request of Alaska Department of Environmental Conservation, changed January 1, 1993 to July 1, 1993 for the deadline to develop response action contractor registration regulations.

Section Seventeen and Eighteen. No changes.

Section Nineteen. At the request of the Alaska Department of Environmental Conservation, changed July 1, 1993 to January 1, 1994 for the deadline for the implementation of response action contractor registration regulations.

Section Twenty. No changes.

HOW ALYESKA GETS REIMBURSED FOR RESPONSE SERVICES

1. **Alyeska runs all stand-by and equipment response costs through the pipeline transportation tariff as required expenditures.** Therefore, initial capitalization expenses, on-going equipment acquisition and maintenance, and basic operations are already paid up front. These tariff costs are prorated on a pre barrel basis.
2. **When Alyeska provides response services, its contracts with the shippers provide for complete reimbursement for all direct and indirect expenses incurred by Alyeska's response.** This is true regardless of whether the response action is under the direction of Alyeska, the contracting vessel/responsible party, the Coast Guard, or any other government agency. These expenses specifically include:
 - all legal fees and costs, including for in-house attorneys;
 - salaries, benefit, taxes, including for in-house staff;
 - materials and supplies purchased or used, including transportation costs;
 - all communication expenses, including installation;
 - third party equipment and vessel charges;
 - reimbursement for use of Alyeska-owned equipment;
 - restoration of all Alyeska vessels;
 - all third party contract charges;
 - all incidental costs (transportation, housing, etc.) incurred supporting any participant;
 - all transportation charges;
 - all incidental expenses; and
 - administrative overhead.

The contracts provided for periodic invoices to be paid by wire transfer in immediately available funds without any deductions. After 30 days, interest is assessed at 2 percentage points above current prime rate at listed financial institutions.

3. **Alyeska's contracts also provide for complete indemnification regardless of fault.** The items specifically included are:
 - damage to equipment or property owned by Alyeska or another party;
 - bodily injury, including sickness, for all persons; and
 - environmental or resources damages.

The indemnification includes Alyeska, its owner companies, and their affiliates against all claims, including those caused by Alyeska's own actions, to the fullest extent permitted by law; indemnification is in addition to full reimbursement for response services. The indemnity includes coverage for all legal expenses.

4. To ensure funds for these requirements, **Alyeska requires financial responsibility in excess of \$1 billion demonstrated through self-insurance, insurance/bonding, or other security.** Alyeska could recoup its expenses or losses through this financial security as well as directly through the contracting vessel. Alyeska's contracts also set out detailed terms for arbitration of disputes. Alyeska may also have its own insurance protections, the costs of which are run through the tariff.
5. Likewise, Alyeska's *Port Information Manual* mandates that vessels calling upon the terminal are strictly liable to Alyeska, and must provide full reimbursement and complete indemnification for all expenses or claims.
6. Alyeska would also have all basic statutory and common law causes of action to recover any loss against the contracting vessel and all other parties liable under the law, including the owner of the oil.
7. Although regulations have not been completed regarding the use of federal response funds, **Alyeska would be eligible for payment from the \$1 billion federal response fund.** These funds would certainly be made available when Alyeska's response actions were requested by federal government officials. The state's funds are available to pay for response services directed by the state of Alaska.
8. **If, by remote chance, none of the above sources paid Alyeska as expected, Alyeska could recoup its expenses or losses through placing these costs through the tariff.** Therefore, these costs would ultimately be passed on to the public as consumers or in state tax or royalty losses.

Summary

Alyeska has remarkable financial protections. It is probably better protected than any other oil spill response entity by virtue of its aggressive contract terms, its monopoly on spill response services in Prince William Sound, and its extraordinary financial responsibility requirements. The most Alyeska has to lose is interest on response funds expended, because if the contracting

vessel, other responsible parties, government funds, and insurance/bonding all fail to pay for response costs, the costs can be put through the tariff.

If response costs cannot ultimately be passed on to the consumer, they will be borne collectively by those using the pipeline. This is the real source of Alyeska's fear: that if all financial recovery systems fail, the owner companies might have to pay for each other's mishaps.

The state has been repeatedly assured that granting limited liability to response action contractors is not risky for those suffering damages due to a spill because of the state and federal response funds and financial responsibility requirements. Alyeska's requirements for financial protection are significantly higher than the state's own financial responsibility requirements and response fund. Alyeska faces an extremely low risk of suffering a financial loss. However, if there is a risk to be faced, who should bear that risk -- the public or the common enterprise operating the activity?

Response Action Contractor Issue Summary

- Primary purpose of the legislation is to limit the potential liability of response action contractors for their acts or omissions in the course of responding to releases or threatened releases of oil. This does remove protections to the public but instead ensures that response action liabilities remain with the spiller.
- Theoretically, RAC indemnification by the contingency plan (c-plan) holder/responsible party should be sufficient to limit the liability of RACs. However, given the potentially high costs responsible parties may face as a result of an oil spill and our litigious society, many RACs fear lawsuits from responsible parties for any "errors" occurring in emergency situations. Probably of even greater concern, is RAC fear of third-party lawsuits if the responsible party is financially insolvent.
- Limiting the liability of RACs is desirable to encourage prompt, aggressive, and sustained response to oil spills, thereby reducing the potential damages and costs of spills. However, to ensure that RACs have the equipment, training, and ability to adequately respond, the bill provides for a DEC RAC registration program. The bill provides for costs of a registration program through registration fees.
- Bill clarifies the existing obligation of the owners and lessees and their common operating agent to respond to TAPS trade oil spills in Prince William Sound under the federal TAPS agreement, and state and federal right-of-way agreements.
- Asserting the **duty** to respond to TAPS trade oil spills has no impact on the **liability of the responsibility party or the duty to respond of the vessel contingency plan holder**. The vessel contingency plan holder is usually the vessel owner, operator, or charterer. The contingency plan holder may or may not be the responsible party who is liable for damages and clean-up costs (see attached chart).
- It has been suggested by some individuals that clarifying or asserting the duty to respond to TAPS related spills undermines the contingency planning process and shifts the liability for damages and clean-up costs to the responder. This is incorrect and a misunderstanding of the contingency planning process.

- **The responsible party is liable for oil spill response, damages, and clean-up costs.** Response actions are planned and implemented through the responsible party's contingency plan. To fulfill its response obligation as specified in its contingency plan, the responsible party/contingency plan holder usually contracts with a professional RAC to provide these services. However, the responsible party remains strictly liable for damage and clean-up costs.
- **Having a duty to response has no effect on this liability regime--the spiller remains strictly liable for damages and clean-up costs.** However, it does remove the ability to write contracts that allow for non-response. This is especially true regarding the potential situation of an insolvent responsible party or contingency plan holder.
- Alyeska, however, has remarkable financial protections (see discussion on How Alyeska Gets Reimbursed). Throughout our discussions, we have continually been reminded that the issue of an insolvent vessel owner/operator/responsible party should not be a concern because of the **\$1 billion federal response fund**. For the same reason, Alyeska should be assured that its response actions will be reimbursed in the case of an insolvent vessel.
- Obviously, the owner companies are concerned about how response costs are shared among themselves. This internal dispute is not justification for suspending decade-old agreed-upon duties to respond to oil spills in Prince William Sound.

Alyeska Response Requirement

Section 12 of SSSB 270 contains the "Alyeska provision," which reasserts Alyeska's existing duty to respond to releases or threatened releases of oil under state and federal law, and provisions of the state and federal Trans-Alaska Pipeline System right-of-way agreements. The bill's Alyeska response provision reflects the state and federal litigation positions, as well as legislation introduced in Congress and supported by the Alaska Governor's Office. The basis for this provision includes the following factors.

First, under the terms of the Trans-Alaska Pipeline Authorization Act of 1973, the holder of the pipeline right-of-way must control and remove any pollution attributable to the activity of the holder, whether the pollution is within or outside the right-of-way corridor. 43 U.S.C. 1653 (b). The holders, all pipeline companies which are subsidiaries of parent oil companies, have made Alyeska their agent. Other sections of the Act impose liability for the damages caused from that pollution. By separately addressing the duties to pay damages and duties to remove pollution, it appears that Congress was looking for a single entity to oversee pollution control without the entity simultaneously acquiring all the liability for damages. The pollution removal duty is mirrored in provisions of the U.S. Department of Interior *Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline* with the holders.

The legislative history of these provisions is not conclusive but generally recites the right-of-way holder's obligation to respond to pollution related to the TAPS oil trade, including marine spills. Damages for such spills was to be borne by the responsible party, but the duty to control and remove the pollution remained with the right-of-way holder.

Secondly, the right-of-way agreement requires Alyeska to have an approved oil spill contingency plan. After the flow of oil began through the Trans-Alaska pipeline, Alyeska submitted and received governmental approval of contingency plans covering spills that might occur from tankers berthed at the Valdez Marine Terminal; or elsewhere in Port Valdez, and in Prince William Sound. Alyeska's 1978 plan stated that Alyeska, as required by state and federal right-of-way agreements, would direct cleanup operations resulting from tankers carrying TAPS crude. Subsequent contingency plans reiterated Alyeska's obligation to respond to tanker spills (see attached). Following the *Exxon Valdez* oil spill, Alyeska

denied that it was required to respond to tanker spills in Prince William Sound, but instead is a "volunteer" response action contractor.

In Alyeska's current position as a "volunteer" response action contractor, it no longer formally submits a Prince William Sound contingency plan for approval with Alyeska as the contingency plan holder. Today, as distinct from years prior to the *Exxon Valdez* oil spill, tanker owners or operators, rather than Alyeska, submit contingency plans relying upon Alyeska as the principal response action contractor to direct field operations for the first 72 hours. Unlike previous terminal plans, Alyeska now states that it is not responsible for spills of tankers berthed at the terminal.

Alyeska's cites the Oil Pollution Act of 1990 (OPA 90) as part of the basis for this assertion. However, the Congressional record shows that section 204(a)(2) of the TAPS Act was amended such that a discharge from a vessel shall be governed by the **liability regime** established by OPA 90 (see attached). This means that the financial responsibility for damages and cleanup costs are to be consistent with OPA 90 financial responsibility requirements but this in no way reduces the obligation to respond under the TAPS Act.

Third, Alaska's annual revenues from oil and gas production are reduced because the pipeline companies include the entire costs of spill response in their tariff expenses. The pipeline tariff reduces state revenues by lowering 1) the value of the state's royalty share and 2) the taxes paid under AS 43.20 and AS 43.55. An analysis conducted by Horst & Frisch determined that 25 percent of Alyeska marine and terminal response costs are paid by the state through reduced tax revenues (see the attached figures). Not only can response costs be included in the tariff, but the common carrier status of the pipeline allows a rate of return on investments in response equipment. While this is currently being analyzed by Horst & Frisch, the rate of return is estimated to be approximately 6 percent.

The vast majority of Alyeska's total response costs relate to the prevention and cleanup of marine tanker spills which might occur in Prince William Sound rather than on-shore pipeline spills. If Alyeska is solely a volunteer in marine response efforts, the state of Alaska despite its 25 percent share of response costs, has no legal assurance that Alyeska will respond the next time a spill of TAPS oil occurs from a tanker in Alaska waters. In addition, because of the 25 percent state subsidy of Alyeska response costs, Alyeska essentially holds a monopoly position in spill response for Prince William Sound. Given this state share of costs, another response action

contractor could not economically compete with Alyeska's SERV response capabilities.

In addition to the legal considerations described above, it is sound public policy for asserting Alyeska's obligation to respond. The state has a valid duty to ensure response to protect the public health and the environment. Some of the public policy considerations include the confusing corporate structure of tankers calling at the Valdez Marine Terminal. These relationships create confusion regarding who prepares, submits, and implements contingency plans in Prince William Sound. In some cases, there are successive response action contractors and agents resulting in unclear lines of authority. The duty to respond replaces the confusion that stems from a mandatory transition with certainty and reliability in response. In addition, it is more administratively efficient because there is only one contingency plan to review, inspect, and drill.

To clarify Alyeska's response requirement proposed language for CS for SSSB 270 (O&G) section 12:

AS 46.04.020 is amended to read:

(g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans-Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the Trans-Alaska pipeline shall immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans-Alaska pipeline system or due to related activities, including vessels enroute to, berthed, or transiting from the Trans-Alaska terminal on waters lying within Prince William Sound. The obligations imposed under this subsection do not affect the response action duties of any other person or the liability of any other person for the discharge. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

(h) A charge or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans-Alaska pipeline system, or the holders and lessees' common operating agent, on or for a tank vessel traveling from a marine terminal related to containing and cleaning up a discharge of crude oil or the obligations imposed by (1) of this subsection:

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to any financial responsibility requirement in excess of \$10,000,000, must:

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge of crude oil from that tank vessel; and

(B) vary among each tank vessel in proportion to the volume of crude oil carried by each tank vessel from a marine terminal. For the purpose of this subparagraph, the volume of crude oil carried by the tank vessel must be reduced by the percentage of spill reduction credits granted that tank vessel under regulations developed by the department.

(i) The superior court, and, with respect to intrastate tanker voyages, the Alaska Public Utilities Commission under AS 42.05.361-.431, have concurrent jurisdiction to review any charge or financial responsibility requirement described under (h) of this section. An action to enforce this subsection may be brought in either forum at the election of a tank vessel owner, operator or lessee, or the owner of crude oil carried as cargo on the tank vessel.

In addition to clarifying the obligation to respond, section 12 amends AS 46.04.030 (a) to require that:

In addition to the existing obligations under state and federal law, and provisions of the state and federal Trans-Alaska Pipeline System right-of-way agreements, the common operating agent for the holders and lessees of the right-of-way agreement for the Trans-Alaska pipeline must include in its oil discharge prevention and contingency plan coverage for vessels enroute to, berthed at, or transiting from the Trans-Alaska pipeline terminal in all waters lying within Prince William Sound. In addition to this contingency plan requirement, the department may require individual tanker vessels to submit individual plans to cover specific vessel response and prevention equipment and procedures. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

Amend AS 46.04.030 (d) to specify that:

Except as otherwise provided, a contingency plan may be held by a person other than the tank vessel operator or the terminal operator, including a cooperative, joint venture response organization, or other holder.

In summary, this section would 1) clarify Alyeska's existing obligation to respond to tank vessel spills in Prince William Sound, 2) require Alyeska to hold the oil spill prevention and response contingency plan for crude oil tank vessels calling on the Valdez Marine Terminal, and 3) clearly authorize a party other than the tanker owner or operator to hold a contingency plan. The Alaska Department of Environmental Conservation would be authorized to require individual vessels to submit contingency plans to cover specific vessel equipment and response capabilities. These provisions are consistent with Alyeska operations prior to the *Exxon Valdez* oil spill, and the proposed Congressional legislation.

Ginny,

This is how it would read:

"The contract must contain the following provisions:

(3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators."

1 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, or their
2 common operating agent, (1) must be fair, reasonable, and nondiscriminatory; and (2) with
3 respect to any financial responsibility requirement in excess of \$10,000,000, (A) may not exceed
4 the potential cost of containment and cleanup that the operating agent may reasonably be
5 expected to incur under its contract with the owner, operator, or charterer of the tank vessel
6 before the transfer of cleanup and containment management and control to the responsible party;
7 in establishing the financial responsibility requirement, the common operating agent shall assume
8 that transfer of management and control will occur at the earliest practicable time following a
9 discharge or a threat of discharge; and (B) must vary among each tank vessel in proportion to
10 the volume of oil carried by each tank vessel per voyage from the marine terminal serving the
11 Trans Alaska Pipeline System; for purposes of this subparagraph, the volume of oil carried by
12 the vessel must be reduced by the percentage of spill reduction credits granted that vessel under
13 regulations adopted by the department.

14 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
15 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin
16 a financial responsibility or insurance provision described in this section at the request of a tank
17 vessel owner, operator, or lessee. Except as provided in this subsection, nothing in this section
18 affects the jurisdiction of the Alaska Public Utilities Commission.

19 (j) If an injunction is sought in a court under (i) of this section for a violation of (h) of
20 this section, the court shall grant a temporary restraining order or preliminary injunction if the
21 tank vessel owner, operator, or lessee demonstrates that the financial responsibility or insurance
22 provision probably violates (h) of this section, even if other requirements for a temporary
23 restraining order or preliminary injunction are not met. However, the court may require security
24 before issuing an injunction or temporary restraining order under this subsection.

25 * Sec. 11. AS 46.04.030(e) is amended to read:

26 (e) The department may attach reasonable terms and conditions to its approval or
27 modification of a contingency plan that the department determines are necessary to ensure that
28 the applicant for a contingency plan has access to sufficient resources to protect environmentally
29 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
30 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
31 contingency plan. If a contingency plan submitted to the department for approval relies on

Ginny,

This is how it would read:

"The contract must contain the following provisions:

(3) if a transfer of any of the services required in a response action to a discharge or threatened discharge either to an owner, operator, or charterer of the vessel following a discharge or threatened discharge occurs, not less than 72 hours of advance notice must be given to the owner, operator, or charterer of the vessel that is receiving a transfer of the services required in the response action and the transfer must first be approved by the federal and state on-scene coordinators."

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PLEASE DELIVER THE FOLLOWING PAGES TO:

Ginny Fay
Susan Cuthbert

FAX NO: 465-4979

Total Number of Pages including cover letter: 2

DATE: 5/11/92

TIME: 12:50

FROM: T. O'Steen/T. Henry Assistant Attorney General - Anchorage

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bonita nipper or Nina Rebischke at (907) 269-5274.

As drafted, the contract language, in section 12 of the bill allows the parties to include a provision which requires the transfer of the response action from Alyeska to the contracting vessel, so long as the approval of the fosc and sosc is obtained. The duty section (g) specifically allows for such a transfer upon approval of the state and federal osc.

You have asked for language that would require such a provision to be in the contract, thus removing it from the bargaining between the parties. We believe the language suggested below accomplishes that goal. While this change would not affect the duty section to respond in section 10, we do not take a position on whether this change in the contract section is appropriate policy.

Insert at line 4, page 8. .

(3) at the election of the common operating agent for the holder and lessees of the right-of-way agreement of the Trans Alaska Pipeline System, the transfer of services required in a response action to the owner, operator or charterer of the vessel following a discharge or threatened discharge, with not less than 72 hours notice to the owner, operator, or charterer of the vessel, and no transfer of any of the services required in a response action may occur unless such transfer is first approved by the federal and state on-scene coordinators

"The contract must contain the following provisions:

(3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators."

A M E N D M E N T No. _____

OFFERED IN THE SENATE

BY SENATOR

TO: CSSSHB 540 (JUDICIARY)

Page 6, line 6, after "party"

Insert: "and potential reimbursement of and indemnity to the common operating agent for claims, liabilities, and all other costs and obligations as required by the contract"

Page 6, line 10, after "vessel"

Insert: "and frequency of voyages by the tank vessel"

Delete: "per voyage"

Page 6, line 11, after "System"

Insert: "."

Delete: the semicolon and remaining material through line 13.

Page 6, line 14, after "court"

Insert: "has"

Delete: "and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent"

Page 6, line 15

Delete "and enjoin"

Page 6, lines 19 - 24

Delete all material.

Page 9, line 21

Delete Section 15 and renumber remaining sections.

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSSSHB 540 (JUDICIARY)

Page 7, line 22:

Delete "within 72 tanker lane miles"

Insert "in Prince William Sound"

Page 7, line 25, after "person.":

Insert "In this subsection "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20."

CSSSHB 540(JUD)

Excused: 0

Absent: 0

And so, Amendment No. 1 was not adopted.

ANNOUNCEMENTS

Twenty-four hour notice was given on the following:

State Affairs Committee

HB 591

HB 301

Capitol 102

8:30 am, 5/8

UNFINISHED BUSINESSCSSB 285(JUD)

Representative Lincoln, Co-chairman of the Health, Education & Social Services Committee, moved and asked unanimous consent that the following be waived from the Health, Education & Social Services Committee:

CS FOR SENATE BILL NO. 285 (JUDICIARY)

"An Act relating to civil liability of a hospital for nonemployees; and providing for an effective date."

Representative Donley objected and withdrew the objection.

There being no further objection, CSSB 285(JUD) was removed from the Health, Education & Social Services Committee and referred to the Labor & Commerce Committee.

SECOND READING OF HOUSE BILLS
(continued)CSSSHB 540(JUD)

Amendment No. 2 by Finkelstein:

Page 7, line 22:

Delete "within 72 tanker lane miles"

Insert "in Prince William Sound"

Page 7, line 25, after "person.":

Insert "In this subsection "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20."

May 7, 1992
CSSSHB 540(JUD)

Representative Finkelstein moved and asked unanimous consent that Amendment No. 2 be adopted.

Representative Barnes objected and withdrew the objection. There being no further objection, Amendment No. 2 was adopted.

CSSSHB 540(JUD) am

Amendment No. 3 by Navarre:

Page 7, line 31, after "vessel":

Insert "before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following discharge or threat of discharge"

Page 8, line 1, after "by each tank vessel":

Insert "per voyage"

Page 8, line 2, after "System":

Insert "; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department"

Page 8, line 3, after "court":

Delete "has"

Insert "and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361-42.05.431, have concurrent"

Representative Navarre moved and asked unanimous consent that Amendment No. 3 be adopted.

Objection was heard.

Representative Brown declared a conflict of interest.

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PLEASE DELIVER THE FOLLOWING PAGES TO:

Ginny Fay ✓
Senator Cotten

FAX NO: 465-4979

Total Number of Pages including cover letter: 3

Language discussed in House
Judiciary. We wanted to
make sure you had a copy

DATE: 5/4/92

TIME: 5:30

FROM: Breck Tobler, Assistant Attorney General - Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL:

bonita nipper or Nina Rebischke at (907) 269-5274.

10 SB 270
5/1/92 work
Draft

Amendments Proposed by the Department of Law

- 1) Create a new section to include Alyeska in the definition of a response action contractor so that they have the benefit of limited liability for response actions.

Amend AS 46.03.826(11) to add:

(D) a person required to respond under AS 46.04.020(g).

- 2) Amend Sec. 12 to use the term vessel which includes tank barges as well as tankers and to provide for response transition upon the approval of both the federal and state on-scene coordinators.

Sec. 46.04.020 (g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska pipeline shall immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a [tank] vessel enroute to, berthed, or transiting from the Trans Alaska Pipeline System marine terminal or while traveling on waters lying within

Prince William Sound. The obligations imposed under this subsection do not affect the response action duties of another person or the liability of another person for a discharge.

Upon the request of ~~any~~ ^{the party} party required to respond ^{under this subsection} to a discharge, ^{the obligation imposed by} ~~response under this subsection~~ may be transferred ^{to} any other person or entity required by law to respond to the discharge upon the approval of both the federal and state on-scene coordinator. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

3) Amend Sec. 7. to include an exception to RAC immunity for duties under the state and federal Trans Alaska Pipeline Right of Way Agreements:

(4) an action based on contractual duties arising out of the state and federal Trans Alaska Pipeline Right of Way agreements.

4) Amend section 14 to read vessel rather than tank vessel.

Sorry, just received this amendment to the amendment

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To <i>mike ford</i>	From <i>g fay</i>	
Co. <i>LAA</i>	Co. <i>Coffin</i>	
Dept. <i>Law</i>	Phone # <i>3711</i>	
Fax # <i>2029</i>	Fax # <i>4979</i>	

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strengthen
so liability
for spill is
transferred to
Alaska

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→ (4) an action based on contractual duties arising out of the state and federal Trans Alaska Pipeline Right of Way agreements.

4) Amend section 14 to read vessel rather than tank vessel.

AMENDMENT

By: REPRESENTATIVE NAVARRE

TO: CSSSHB 540(JUD)
7-LS2045/E

Page 7 Line 31

Insert before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following discharge or threat of discharge after the word "vessel".

Page 8 Line 1

Insert per voyage after the word "vessel".

Page 8 Line 2

Insert ; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department. after the word "System".

Page 8 Line 3

Insert and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 -42.05.431, have concurrent after the word "court". Delete the word "has" after the word "court".

Impact of Amendment to CSSSHB 540 (Judiciary) by Representative Hudson

1. Entirely deletes the statutory duty imposed upon Alyeska to respond to TAPS crude spills in Prince William Sound; the amendment replaces a statutory duty to the public with private contracts between Alyeska and its shippers. The Attorney General has stated that leaving response assurance to the vagaries of private contracts leaves the people of the state unprotected. Nonetheless, this amendment allows Alyeska substantial contractual freedom to dictate the terms of when it will or will not respond, even though the state have already paid 25 percent of every penny that they have spent on response preparedness.
2. The statutory duty to respond language was included in the bill after extensive public debate in both the House Resources and Judiciary committees. Now, at the demand of Alyeska, the provision would be deleted and redrafted with absolutely no public comment or debate.
3. When the oil industry sought permission to operate TAPS, it assured Congress and the state that through its common operating agent, Alyeska, it would contain and clean up pollution related to the movement of TAPS crude. These promises are reflected in the state and federal right-of-way agreements, as well as all subsequent contingency plans, that contained marine response provisions for Prince William Sound, submitted by Alyeska until the Exxon Valdez oil spill. These promises were breached in the hours after the spill when Alyeska denied that it had a duty to perform. Through this amendment, Alyeska now seeks the public's blessing on the abdication of these promises and the responsibility by asserting artificial corporate shields between Alyeska and its owners who made the promises.
4. If this amendment succeeds, the state has no authority to keep Alyeska operating in the field after 72 hours. Even the response during the first 72 hours is only established in private contracts that would not commence until Alyeska notifies the owner, operator, or charterer of the vessel that it will provide the initial service. The state On-Scene Coordinator (OSC), under this amendment, is only consulted before Alyeska can walk away from the field. In other words, Alyeska will determine when its service will start and when it will end unless the Coast Guard steps in to direct the response with public money. This amendment would leave the state in a worse position than it was the night before the Exxon Valdez spill. We saw Alyeska turn over spill response after only 24 hours after the tragedy, over the state's objections. This amendment would legitimize Alyeska's newly posited position that it is solely a "volunteer" and owes no duty to the public.

7-LS2045N

Ford

5/10/92

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&G)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SESSION****BY THE SENATE OIL AND GAS COMMITTEE**

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to liability for release or threatened release of a hazardous substance;
2 relating to the liability of an oil spill response action contractor for release or threatened
3 release of a hazardous substance; relating to contracts by and obligations of the common
4 operating agent for the holders and lessees of the right-of-way agreement for the Trans
5 Alaska Pipeline System to provide initial response services to vessels; relating to financial
6 responsibility and insurance provisions imposed on vessels; relating to oil discharge and
7 contingency plans; relating to registration of an oil spill response action contractor;
8 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
9 date."

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

11 * Section 1. PURPOSE. It is not the purpose of this Act to affect duties and
12 responsibilities of Alyeska Pipeline Service Company and its owners arising under federal or

1 state law or the state and federal Trans Alaska Pipeline System agreements.

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

3 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
4 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
5 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
6 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
7 action incurred by the state, a municipality, or a village, and for the additional costs of a function
8 or service, including administrative expenses for the incremental costs of providing the function
9 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
11 village, resulting from an unpermitted release of a hazardous substance or, with respect to
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

1 of a hazardous substance.

2 * Sec. 3. AS 46.03.822(b) is amended to read:

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

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

7 (A) an act of war;

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

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

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

14 (C) an act of God; and

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

17 (A) discovered the release or threatened release of the hazardous
18 substance; and

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

20 * Sec. 4. AS 46.03.822(h) is amended to read:

21 (h) The state, a municipality, [OR] a village, a person who acts as a volunteer and is
22 engaged in a response action under the direction of the federal or state on-scene
23 coordinator, and a vessel of opportunity engaged in a response action under the direction
24 of the federal or state on-scene coordinator [IS] not liable under this section for costs or
25 damages as a result of actions taken in response to an emergency created by a release or
26 threatened release of a hazardous substance generated by or from a facility or vessel owned by
27 another person unless the actions taken by the state, the municipality, [OR] the village, the
28 volunteer, or the vessel constitute gross negligence or intentional misconduct.

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

30 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
31 [INCLUDE] damage to persons or to public or private property, damage to the natural resources

1 of the state or a municipality, and damage caused by acts or omissions of a response action
2 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

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

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

7 (1) consistent with a contingency plan

8 (A) approved under AS 46.04.030 if the response action contractor is listed
9 in the contingency plan; or

10 (B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the
11 response action contractor is not listed in the contingency plan; or

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

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

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

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

16 (2) a response action contractor who

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

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

20 (C) has agreed in writing to be listed as a primary response action
21 contractor, who is listed as a primary response action contractor in a contingency
22 plan approved under AS 46.04.030, and who fails to respond to a release or
23 threatened release of oil that the primary response action contractor was required
24 to respond to under its contract with the applicable contingency plan holder; this
25 subparagraph does not apply to a primary response action contractor if the failure
26 to respond to a release or threatened release of oil results from a prior and ongoing
27 response under another contingency plan approved under AS 46.04.030 in which the
28 primary response action contractor has the primary duty to respond and a
29 significant portion of the response action contractor's oil spill cleanup equipment
30 listed in the contingency plan approved under AS 46.04.030 is in use [AN ACTION
31 FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL;

1 OR

2 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
3 THE RELEASE].

4 * Sec. 8. AS 46.03.825(d) is amended to read:

5 (d) In this section,

6 (1) "consistent" means in substantial compliance with a contingency plan;

7 (2) "primary response action contractor" has the meaning given in

8 AS 46.04.035;

9 (3) "registered" means registered under AS 46.04.035;

10 (4) "response action" means an action taken to respond to a release or threatened
11 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, marine salvage, or
12 removal of a release or threatened release of oil.

13 * Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

17 (f) Except as provided in (e) of this section, this section does not affect the liability under
18 this chapter or under any other state law of a person other than a response action contractor.

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

22 * Sec. 10. AS 46.04.020 is amended by adding new subsections to read:

23 (g) In addition to existing obligations under state and federal law, and the provisions of
24 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
25 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
26 pipeline shall (1) immediately contain and clean up a discharge or threatened discharge of oil
27 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
28 activities, including activities related to a vessel en route to, berthed at, or transiting from the
29 Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince
30 William Sound; and (2) make response action services available under contract terms as provided
31 under AS 46.04.030(r). The obligations imposed under this subsection do not affect the response

1 action duties of another person or the liability of another person for a discharge or threatened
2 discharge. Upon the request of the person required to respond to a discharge or threatened
3 discharge under this subsection, the obligation imposed by this subsection may be transferred to
4 another person required by law to respond to the discharge or threatened discharge if the transfer
5 is approved by the federal and state on-scene coordinators. In this subsection, "Prince William
6 Sound" has the meaning given in 33 C.F.R. 3.85-29.

7 (h) A charge or financial responsibility requirement imposed by the holders and lessees
8 of the right-of-way agreement for the Trans Alaska Pipeline System, or the holders and lessees'
9 common operating agent, on or for a vessel traveling from a marine terminal and related to
10 containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed
11 under (g) of this section

12 (1) must be fair, reasonable, and nondiscriminatory; and

13 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,

14 must

15 (A) not exceed the potential cost of containment and cleanup as provided
16 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
17 expected to incur from a discharge or threatened discharge of oil from that vessel before
18 the transfer of cleanup and containment management and control to the responsible party;
19 in establishing the financial responsibility requirement, the common operating agent shall
20 assume that transfer of management and control will occur at the earliest practicable time
21 following the discharge or threat of discharge; and

22 (B) vary among each vessel in proportion to the volume of oil carried by
23 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
24 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
25 credits granted that vessel under regulations adopted by the department.

26 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
27 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review a charge
28 or financial responsibility requirement described under (h) of this section. An action to enforce
29 this subsection may be brought in either forum at the election of a vessel owner, operator, or
30 lessee, or the owner of oil carried as cargo on the vessel.

31 * Sec. 11. AS 46.04.030(e) is amended to read:

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

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

* Sec. 12. AS 46.04.030 is amended by adding new subsections to read:

(r) Except as provided in (n) of this section and in order to receive approval from the department for an oil discharge prevention and contingency plan submitted under this section, the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by the Trans Alaska Pipeline System shall obtain by contract the initial response action services of the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System. The contract must contain the following provisions: (1) the common operating agent, as a primary response action contractor shall, unless response services are transferred as provided in (2) of this subsection, provide initial response services for a discharge or a threatened discharge of oil to the owner, operator, or charterer of the vessel while the vessel is berthed at, en route to, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; (2) that its coverage for any particular vessel may not be terminated by the common operating agent while that vessel is within Prince William Sound; this provision may not be interpreted to limit the department's

1 authority to revoke approval under this section for an oil discharge prevention and contingency
2 plan submitted by the owner, operator, or charterer of a vessel; and (3) if the contract provides
3 for a transfer of the management and control of the response action to a discharge or threatened
4 discharge either, to an owner, operator, or charterer of the vessel or to the federal government
5 following a discharge or threatened discharge, the contract must provide for not less than 72
6 hours notice to the owner, operator, or charterer of the vessel that transfer of management and
7 control will be required and must stipulate that any transfer of the management and control of
8 the response action must first be approved by the federal and state on-scene coordinators. In
9 addition to the requirements of this subsection, the department may require individual vessels to
10 submit additional contingency plans to cover specific vessel response, prevention equipment, and
11 procedures. Nothing in this subsection is intended to preclude the federal or state government
12 from assuming management and control of an oil spill response to a discharge or threatened
13 discharge from a vessel under appropriate circumstances. In this subsection, "Prince William
14 Sound" has the meaning given in 33 C.F.R. 3.85-20.

15 * Sec. 13. AS 46.04 is amended by adding a new section to read:

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

21 (1) minimum training standards for personnel;

22 (2) verification requirements that ensure the existence of resources, including
23 personnel, equipment, services, and an adequate deployment plan necessary to a response action
24 or as required by a contingency plan in which the contractor has agreed in writing to be listed
25 and is listed;

26 (3) minimum professional response action standards and practices; and

27 (4) minimum planning standards for oil spill primary response action contractors
28 listed in an oil spill contingency plan approved under AS 46.04.030.

29 (b) Notwithstanding (a) of this section, the department may substitute a primary response
30 action contractor approval program, and a subsequent process to approve primary response action
31 contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for

1 regulations required under (a)(1) - (3) of this section if the approval program and subsequent
2 process are developed by the United States Coast Guard.

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

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

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

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

14 (g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup
15 or performance standard that must be met by a holder of a contingency plan or a response action
16 contractor.

17 (h) In this section,

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

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

24 (3) "response action" has the meaning given in AS 46.03.825.

25 * Sec. 14. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

26 * Sec. 15. TRANSITION. The Department of Environmental Conservation shall adopt regulations
27 to implement AS 46.04.035(a), enacted in sec. 13 of this Act, on or before January 1, 1993.

28 * Sec. 16. If sec. 14 of this Act takes effect after June 30, 1992, sec. 14 of this Act is retroactive to
29 June 30, 1992.

30 * Sec. 17. APPLICABILITY. (a) The amendments to AS 46.03.822 and 46.03.825, made by secs.
31 2 - 9 of this Act, apply only to causes of action accruing on or after the effective date of secs. 2 - 9 of

1 this Act.

2 * Sec. 18. Section 11 of this Act takes effect January 1, 1994.

3 * Sec. 19. Except as provided in sec. 18 of this Act, this Act takes effect immediately under

4 AS 01.10.070(c).

7-LS2045G

Ford

3/5/92

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting the liability of an oil spill response action contractor for release or
2 threatened release of a hazardous substance and for an act or omission that is not
3 contrary to a state or national oil spill contingency plan or, notwithstanding the state or
4 national plan, that is not contrary to an order of an on-scene coordinator; repealing the
5 requirements that liability is not limited in an action for damages to personal property
6 not caused by oil and is only limited if the act or omission occurs within 15 days after
7 the release of oil; repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing
8 for an effective date."

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

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

11 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
12 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the

1 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
2 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
3 action incurred by the state, a municipality, or a village, and for the additional costs of a function
4 or service, including administrative expenses for the incremental costs of providing the function
5 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
6 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
7 village, resulting from an unpermitted release of a hazardous substance or, with respect to
8 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

29 * Sec. 2. AS 46.03.825(a) is amended to read:

30 (a) A person who is a response action contractor with respect to a release or threatened
31 release of oil [WHOSE ACT OR OMISSION IS NOT CONTRARY TO 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 initial release or threatened release under AS 46.03.822 even if that contractor had not carried out a response action;

(2) the response action contractor acted with gross negligence or intentional misconduct; [OR]

(3) the act or omission of the response action contractor was contrary to an order of the federal on-scene coordinator, or to the extent that the federal on-scene coordinator has not otherwise ordered, to an order of the state on-scene coordinator; or

(4) the act or omission of the response action contractor

(A) was contrary in a material or substantial respect to the national contingency plan prepared under 33 U.S.C. 1321(d), or to the extent that the national contingency plan has not otherwise provided, to the state contingency plan prepared under AS 46.04.200 or 46.04.210; and

(B) did not result from an order of the federal on-scene coordinator, or to the extent that the federal on-scene coordinator has not otherwise ordered, from an order of the state on-scene coordinator [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].

* Sec. 3. AS 46.03.825(b) is amended to read:

(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
- 3 NOT CAUSED BY OIL; OR
- 4 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
- 5 THE RELEASE].
- 6 * Sec. 4. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.
- 7 * Sec. 5. If this Act takes effect after June 30, 1992, sec. 4 of this Act is retroactive to June 30, 1992.
- 8 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

May 7, 1992

Honorable Ben Grussendorf
Speaker
Alaska House of Representatives
Room 208
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

The Department of Law supports section 12 of H.B. 540 CSSS (Judiciary) clarifying Alyeska Pipeline Service Company's statutory duty to respond to oil spills from TAPS tankers in Prince William Sound. This provision is needed to ensure that Alyeska, the only entity with pre-positioned spill response equipment in the Sound, responds to spills.

At present Alyeska only acknowledges a private contractual obligation to respond to tanker spills. The State is not a party to these agreements and cannot, therefore, adequately ensure that these agreements provided iron-clad response guarantees to the public.

The present private contracts can be immediately terminated upon indication of the tank vessel operator's insolvency. This raises the specter of an one-ship corporation on the rocks, spilling oil, and facing \$2.5 billion in liabilities and only \$300 to \$600 million in required insurance. Alyeska states that it will respond in this situation under its private contracts but denies any legal obligation to do so. If Alyeska did not respond, critical time may be lost and further oil spill damages could result while state and federal resources are brought in to control the spill. Alyeska now states that it does not have enough equipment to respond to a spill beyond the first three days. This raises the important question of who will respond in the above scenario. The present legislation would allow Alyeska to transfer containment and cleanup management upon the approval of the state and federal on-scene coordinators. However, without guarantees that Alyeska will respond with the necessary equipment until transfer is approved by the state and federal government, serious questions exist as to whether Alyeska will respond and for how long.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

May 7, 1992

Honorable Ben Grussendorf
Speaker
Alaska House of Representatives
Room 208
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

The Department of Law supports section 12 of H.B. 540 CSSS (Judiciary) clarifying Alyeska Pipeline Service Company's statutory duty to respond to oil spills from TAPS tankers in Prince William Sound. This provision is needed to ensure that Alyeska, the only entity with pre-positioned spill response equipment in the Sound, responds to spills.

At present Alyeska only acknowledges a private contractual obligation to respond to tanker spills. The State is not a party to these agreements and cannot, therefore, adequately ensure that these agreements provided iron-clad response guarantees to the public.

The present private contracts can be immediately terminated upon indication of the tank vessel operator's insolvency. This raises the specter of an one-ship corporation on the rocks, spilling oil, and facing \$2.5 billion in liabilities and only \$300 to \$600 million in required insurance. Alyeska states that it will respond in this situation under its private contracts but denies any legal obligation to do so. If Alyeska did not respond, critical time may be lost and further oil spill damages could result while state and federal resources are brought in to control the spill. Alyeska now states that it does not have enough equipment to respond to a spill beyond the first three days. This raises the important question of who will respond in the above scenario. The present legislation would allow Alyeska to transfer containment and cleanup management upon the approval of the state and federal on-scene coordinators. However, without guarantees that Alyeska will respond with the necessary equipment until transfer is approved by the state and federal government, serious questions exist as to whether Alyeska will respond and for how long.

Honorable Ben Grussendorf
Speaker

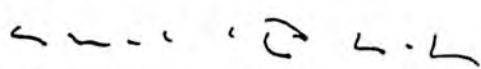
May 7, 1992
Page 2

The Department's objections to Alyeska having to respond only because of its contractual obligations with the shipper rests on the fact that the State is not a party to the contract and therefore has no control over the contractual terms upon which Alyeska has a contractual obligation to respond and the scope of its response. Because it is vital that a full, prompt response be made to a spill, these issues are simply too important to be left outside the realm of State control.

A distinction should be made between a duty to provide oil spill response and the liability for the costs of that response. This legislation imposes a duty to respond but also maintains liability for damages and the cost of Alyeska's response on the tank vessel. These provisions give the public the needed statutory assurance that Alyeska will provide the critical immediate response to contain and cleanup a spill. Alyeska in turn would be compensated for its response through its response action contract with the tank vessel, its Port Manual indemnification agreements with the tanker vessels (which are a condition of Alyeska's loading tankers at the terminal) and potentially the federal \$1 billion spill response fund.

The provisions of the Judiciary Substitute strike a fair balance between the public's need for an immediate effective response by Alyeska and Alyeska's interest in being compensated from the liable parties for the costs of that response.

Very truly yours,


Charles E. Cole
Attorney General

cc: All House members
Paul Fuhs, Legislative Liaison
Deborah Behr, Legislation Attorney

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
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May 6, 1992

The Honorable Bill Hudson
Alaska House of Representatives
Room 114, State Capitol
Juneau, AK 99801-1182

Re: CS for Sponsor Substitute for HB 540

Dear Representative Hudson:

You have asked whether the amendment proposed by the Department of Law which is now included at Section 7, page 5 line 31 and page 6 line 1 of the above referenced bill, is absolutely necessary to the bill from a legal perspective. In short the answer is no. That language was proposed to ensure that the RAC immunity provisions were not mistakenly construed as extending to the owner companies of the RAC (Alyeska) in such a way as to impair any contractual obligations they may have under the right-of-way agreements. Such a construction is not likely and for that reason we would not view the deletion as legally impairing the bill. I would also note that this language was never intended to have any effect on existing litigation and we do not believe that either its passage or deletion will effect existing litigation, such as that against Exxon, either way. In light of this and considering the critical importance to the state of the central portions of this bill, we have no objections to the deletion.

You have also asked whether the bill as a whole is satisfactory to the Department of Law. With the proposed changes that have been provided to you with this letter, it is. We are particularly pleased that your work and thoughts on the contractual elements of the response scheme created by this bill have made the bill a more complete and logical plan.

Very truly yours,



Charles E. Cole
Attorney General

CEC:bkn

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 8, 1992

The Honorable Cliff Davidson
Chairman, House Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99811

Dear Chairman Davidson:

You requested an opinion from the Department of Law concerning House Bill 540, a bill involving the liability of oil spill response action contractors.

You inquired whether or not an oil spill response action contractor, under HB 540 (O&G), retains its immunity if the contractor breaches the terms of its contract with the spiller or the contingency plan holder. In particular, you asked whether a response action contractor's failure to respond to a spill as provided in its contract with the spiller would deprive it of immunity. It is our understanding that the Committee is interested in the question because of its bearing on whether this potential liability will act as some assurance that a response action contractor listed on a oil spill contingency plan will actually respond to the spill.

I. Immunity of a RAC Under HB 540 Should It Failure to Respond.

Short Answer: Establishing a RAC's liability for damages under a "gross negligence or intentional misconduct" theory, while not impossible, would be very difficult. The reasoning of such a theory is very circuitous and fact specific, and, as a result, would be expensive for a claimant to litigate. If the Committee's goal is to create liability incentives or other assurances that RACs will respond, then clearer, more direct language is advisable.

Analysis: HB 540 (O&G) contains a general grant of immunity from civil liabilities for oil spill response action contractors ("RAC"). This immunity disappears, however, if any of the following are proven by a claimant:

(a) The RAC would have been liable for the initial release under AS 46.03.822 even if the contractor had not

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been carrying out a response action (in other words, a party cannot cause a spill and then claim RAC immunity while carrying out its own response action);

(b) the RAC acted with gross negligence or intentional misconduct;

(c) the RAC's act or omission was contrary to an order of the federal or state on-scene coordinator, or

(d) the RAC's act or omission was contrary "in a material and substantial respect" with the national contingency plan or the state contingency plan under AS 46.04.200 or AS 46.04.210 and was not the result of an order of the federal or state on-scene coordinator.

The scenario as posed by the Committee involves a contractor listed on an oil spill contingency plan simply not responding as provided in its contract with the spiller. The only potential exception to immunity in this situation is the gross negligence or intentional misconduct exception.¹

1 Unless an emergency is declared under AS 46.03.865, the Department may not directly order a Response Action Contractor to respond to a spill. The only other exceptions are when a RAC agrees to be subject to state direction as part of its listing on an individual contingency plan or when the RAC directly contracts with the State to provide response services.

Under AS 46.03.825 as presently in force, a RAC is stripped of its immunity if

without the approval of the federal or state on-scene coordinator, [the RAC] substantially deviated from an [individual industry] oil spill contingency plan previously approved under AS 46.04.030, and the plan was prepared by that contractor for a party responsible for the release under AS 46.03.822 or that contractor previously agreed to comply with that plan under a contract with parties responsible for the release under AS 46.03.822.

This language has been removed in HB 570⁵⁴⁰ (O&G) and thereby casts further doubt on whether compliance with response action contract is a prerequisite for immunity. Deletion of this language clearly removes the requirement that a response action contractor act in substantial compliance with an individual oil

Under such a theory, the claimant would first have to demonstrate a breach of the private contract between the spiller and the contractor. If the claimant established this first element, it would then be required to show that the RAC's breach constitutes "gross negligence or intentional misconduct."

With regard to the first element -- proving a breach of the private contract -- it is important to note that the Department of Environmental Conservation does not legally review or pass judgment on the validity of these contracts and the State (or other potentially injured persons) is not a party to them. As a result, these private contracts may contain preconditions and other requirements to a RAC's response which might arguably justify a RAC's inaction in the face of a spill situation.² In addition, as a matter of contract law, the prospective inability of the spiller to pay the contractor may be asserted in an effort to justify the contractor's inaction. Given recent attempts by some companies to structure their financial affairs in order to avoid liability (e.g. the so called "one-ship corporations") the financial solvency of some companies in the face of a major spill could be open to question by a RAC.

Should a claimant demonstrate an unjustified breach of contract by the RAC, the next element to be established by the claimant is whether the breach constitutes "gross negligence or intentional misconduct." While there is no Alaska case law directly on point, Alaska Supreme Court cases discussing gross negligence in other contexts as well as the "wilful misconduct" standard found in the federal Clean Water Act provides some guidance on an Alaska court's likely application of these terms.

In the context of common law punitive damages, the Alaska Supreme Court has characterized "gross negligence" in terms of recklessness under the Restatement (Second) of Torts Sec. 500. Storrs v. Lutheran Hosp. & Homes Soc. of Am., 661 P.2d 632, 634 (Alaska 1983); Leavitt v. Gillaspie, 443 P.2d 61 (Alaska 1968). As the Restatement of Torts explains, "reckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of

1 (cont.) spill contingency plan that it prepared or contracted to respond under.

2 These preconditions include notices to proceed, receipt of work orders, bid proposals and other technical requirements that must be fulfilled before a response is undertaken by the RAC.

Letter to the Honorable Cliff Davidson
Chairman, House Resources Committee

April 8, 1992
Page 4

facts which would disclose this danger to any reasonable man." Restatement (Second) of Torts Sec. 500 comment g (1966).

Wilful misconduct as used in the federal Clean Water Act's oil spill provisions, while perhaps setting a more difficult test, has been similarly construed. See Steuart Transp. Co. v. Allied Towing Corp., 596 F.2d 609, 614 (4th Cir. 1979); Tug Ocean Prince, Inc. v. United States, 584 F.2d 1151 (2d Cir. 1978). The Second Circuit defined "wilful misconduct" as an "act, intentionally done, with knowledge that the performance will probably result in injury, or done in such a way to allow an inference of a reckless disregard for the probable consequences." Tug Ocean Prince, 584 F.2d at 1163. The court stated that if the harm results from an omission, the omission must be intentional, and the actor must know the omission will result in damage or the circumstances surrounding the failure to act must allow a reckless disregard of the probable consequences. Id. See also Korean Air Lines v. State, 779 P.2d 333, 337 (Alaska 1989) (jury finding of wilful misconduct under Warsaw Convention).

Thus, in order for the breach of the contract to constitute "gross negligence or intentional misconduct" the breach would have to either be "a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man" or alternatively, an intentional omission that the contractor knows will result in damage or with a reckless disregard of the probable consequences." This is a very high standard of proof. Anytime a claimant must demonstrate intentional or knowing acts (as is common in the criminal context) the burden of proof increases considerably.

It is important to note that these cases and tests were formulated in the context of the spiller's act or omissions in causing the oil spill or other harm. The scenario presented here is one step removed from that of the actor who causes a spill. In this situation recovery is sought against a third party for not stepping in to reduce or control the damage caused by another actor. Thus, the claimant would have to demonstrate that the RAC had some duty to act on its behalf in order to prevent damage to that third-party claimant. Without statutory³ or contractual⁴

3 As noted elsewhere in this memorandum, by not responding a RAC would not come within the reach of the state's strict liability statute. See AS 46.03.822. Similarly, the RAC would not have a statutory duty to "remove" the discharge unless it "caused or permitted the discharge." See AS 46.04.020. Finally, as discussed in note 1 above, the state cannot directly order a RAC to

duties for a RAC to act in order to protect a claimant, the claimant would have to rely on general tort law principles to find a duty to act on the part of the RAC.

Our state Supreme Court has relied on the principle set forth in the Restatement (Second) of Torts Section 323 to impose liability on a defendant that negligently performs an undertaking to render services. See Alaskan Village, Inc. v. Smalley, 720 P.2d 945, 947 (Alaska 1987). The Restatement provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts, §323. The Supreme Court has adopted a seven part test in determining whether such a duty exists: 1) the foreseeability of harm to the plaintiff, 2) the degree of certainty that the plaintiff suffered injury, 3) the connection between defendant's conduct and plaintiff's injury, 4) the moral blame attached to the defendant's conduct, 5) the policy of preventing future harm, 6) the burden and consequences to the community of imposing the duty, and (7) the availability, cost and prevalence of insurance for the risk. Alaskan Village, 720 P.2d at 947-58. See also Mattingly v. Sheldon Jackson College, 743 P.2d 356 (Alaska 1987); Busby v. Municipality of Anchorage, 741 P.2d 230 (Alaska 1987).

3 (cont) respond unless an emergency is declared pursuant to AS 46.03.865 or other authority.

4 A private claimant could argue that it is a third party beneficiary of the RAC's contract with the spill and therefore should be able to sue under the contract for damages. Such a theory would require the injured private claimant to demonstrate that at least one purpose of the contract was to benefit them as third parties. See Stewart-Smith Haidinger, Inc. v. Avi-Truck, Inc., 682 P.2d 1108, 1112 (Alaska 1984).

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Establishing such liability would be a difficult and expensive proposition for claimants. Not only would the claimant need to demonstrate a duty by the RAC to act but then would have to show that the failure to act constituted gross negligence or wilful misconduct as discussed above.

An additional issue under a common law tort theory against a RAC is the problem of who caused what damages. For example, by not responding, the RAC does not become one of the responsible parties set out in the state's statutory joint and several liability scheme. See AS 46.03.822. Under that scheme each party is responsible for the entire harm even if they in fact only contributed to a small portion of the problem. However, once outside the joint and several liability scheme a claimant may be required to demonstrate which portion of their oil spill damages were attributable to the RAC. This is a serious concern and, in fact, Alyeska has raised a similar defence in the Exxon Valdez litigation. The uncertainty over what portion of damages a non-responding RAC might be responsible throws additional uncertainty on the entire obligation to respond issue.

In conclusion, establishing a RAC's liability for damages under a "gross negligence or intentional misconduct" theory, while not impossible, would be very difficult. The reasoning of such a theory is very circuitous and fact specific, and, as a result, would be expensive for a injured claimant to litigate. Similarly, if it is the Committee's goal is to create liability incentives or other assurances that ensure RACs will respond, then clearer, more direct language is advisable.

II. Spiller Liability for RAC Caused Damages.

Second, you inquired whether or not, under H.B. 540 (O&G), a spiller would always be liable for additional damages caused by an immunized RAC. Your concern was that there not be any inadvertent "gaps" in the liability net.

The present version of AS 46.03.822, Strict Liability for the Release of Hazardous Substances, includes in its definition of "damages" the following language:

In this section, "damages" include damages to persons or to the public or private property, damage to the natural resources of the state or 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 AS 46.03.825.

Letter to the Honorable Cliff Davidson
Chairman, House Resources Committee

April 8, 1992
Page 7

AS 46.03.822(k) (emphasis added). The intent of this language clearly seems to be to address your concern that the spiller remain liable for the immunized actions of its response action contractor. There are, however, two technical corrections to HB 540 that would ensure this intent is fully realized.

The first correction is to ensure that the definition of damages in AS 46.03.824 is cross-referenced in AS 46.03.822(k). This would clarify that both definitions are applicable to determining the scope of damages recoverable in AS 46.03.822.

The second correction would be to include in .825 the language in AS 46.03.823(b)-(f) involving hazardous substance response action contractors. This language clarifies the "scope" of the immunity provided to a RAC. This language originally covered both oil spill and hazardous substance RACs but seems to have been inadvertently omitted when the sections were separated and a new oil spill section in .825 created in the last session of the Legislature. Inclusion of the language in .823(c) is important to ensure that the "third party" defense in .822(b)(1)(B) does not apply to a spiller's relationship with its RAC and thereby absolve the spiller of the additional damages cause by its RAC. By incorporating these provisions into .825, it would be clear that the Legislature intended that the scope of the immunity to be identical.

We appreciate this opportunity to be of assistance. If we can be of further assistance, please let us know.

CHARLES E. COLE
ATTORNEY GENERAL

By: 

Breck Tostevin
Assistant Attorney General

BCT:bkn

cc: Deborah Behr
Paul Fuhs
Janice Adair
Senator Sam Cotten
Representative Bill Hudson



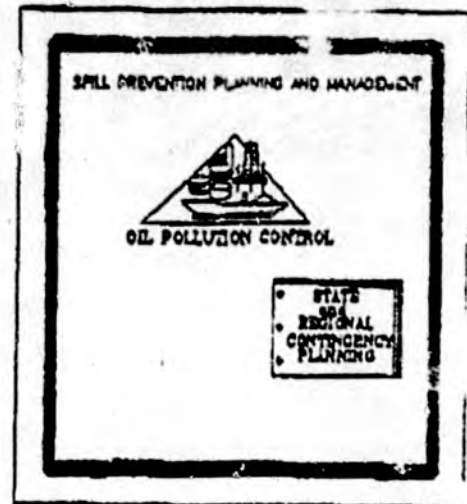
FACSIMILE TRANSMITTAL

**Spill Prevention
Planning and Management**

**410 Willoughby, Suite 105
Juneau, AK 99801-1795**

(907) 465-5220

FAX: (907) 465-5244



**ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

TO: ~~Sen~~ Senator Sam Cotten

FAX#: _____

FROM: Tracy T. Shemer for Lynn Kent

NUMBER OF PAGES INCLUDING COVER SHEET: 8

COMMENTS: RAC letter

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF SPILL PREVENTION AND RESPONSE
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

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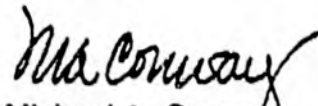
February 26, 1992

Senator Sam Cotten, Chair
~~State Oil and Gas Commission~~
RM 11, Capitol
P. O. Box V
Juneau, AK 99811

Dear Senator Cotten:

The two enclosed lists of Response Action Contractors (RAC) are provided per the request of the Committee at the February 20 hearing. The first list was utilized by the Department to conduct the survey required by H.B. 196. The second and longer list was compiled from companies and individuals who responded to the Department's recent draft Request for Proposal (RFP), to establish emergency response contracts with RAC's, to provide coverage for spill response when the State must step in and assume control of a spill incident. Neither list is considered all inclusive, but will provide a good representation of the RAC's in Alaska. If my staff or I can be of any further assistance, please contact the SPAR Division at 465-5250.

Sincerely,


Michael A. Conway

Enclosures: RAC List # 1 & # 2

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF SPILL PREVENTION AND RESPONSE

RESPONSE ACTION CONTRACTORS

LIST # 1

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

Alaska Clean Seas
Pouch 34022
Prudhoe Bay, AK 99734

Alyeska Pipeline Service Co.
Alyeska Terminal
Valdez, AK 99686

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

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

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

Hartec Management Consultants
8220 Briarwood Street
Anchorage, AK 99518

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

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

Shannon & Wilson, Inc.
5821 Arctic Blvd.
Anchorage, AK 99518

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

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

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

VRCA Environmental Services
6700 Arctic Spur Road
Anchorage, AK 99518

VRCA Environmental Services
Pouch 34
Prudhoe Bay, AK 99734

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF SPILL PREVENTION AND RESPONSE

**RESPONSE ACTION CONTRACTORS
LIST # 2**

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

Ms. Sharon Richey
Alyeska Pipeline Service Co.
Alyeska Terminal
Valdez, AK 99686

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

Hartec Management Consultants
8220 Briarwood Street
Anchorage, AK 99518

Mr. Larry Wilkinson
Northwest EnviroService, Inc.
6700 Arctic Spur Road
Anchorage, AK 99501

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

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

Michael Paris
VRCA Environmental Services
Pouch 34
Prudhoe Bay, AK 99734

Underwater Construction, Inc.
8740 Hartzell Road
Anchorage, AK 99507

DOH Environmental
10012 Jensine
Juneau, AK 99801

Alaska Clean Seas
Pouch 34022
Prudhoe Bay, AK 99734

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

Harding-Lawson & Assoc.
801 E. 56th Place
Anchorage, AK 99518

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

Shannon & Wilson, Inc.
5430 Fairbanks Street, #3
Anchorage, AK 99518-1263

Mr. Tom McKee
VECO, Inc.
810 W. Northern Lights Blvd
Anchorage, AK 99503-2495

VRCA Environmental Services
6700 Arctic Spur Rd.
Anchorage, AK 99518

John Gitkov
22745 Glacier Hwy.
Juneau, AK 99801

Brechan Enterprises, Inc.
2705 Mill Bay Road
Kodiak, AK 99615

Randolph Bayliss
119 Seward Street
Juneau, AK 99801

Environaid
12175 Mendenhall Loop Road
Juneau, AK 99801

R & M Consultants
9101 Vanguard Drive
Anchorage, AK 9950

Kuskokwim Planning & Management
429 "D" Street
Suite 307
Anchorage, AK 99501

Regional Citizens Advisory Committee
for Cook Inlet
11355 Frontage Road
Suite 228
Kenai, Ak 99611

Mr. Rod Chipka
O I T Inc.
1008 16th Ave
Suite 200
Fairbanks, AK 99701

The Alliance
4220 "B" Street
Suite 200
Anchorage, AK 99503-5911

Mr. Michael Galginaitis
Impact Assessment, Inc.
911 West 8th Ave. Suite 402
Anchorage, AK 99501

Frank Dillon
Alaska Trucking Association
3443 Minnesota Drive
Anchorage, Ak 99503

Ed Flanagan
Laborers Local 942
315 Barnette St.
Fairbanks, AK 99701

Mr. Jeff Webb
C.E.T., Inc.
9706 4th Ave. N.E. Suite 201
Seattle, WA 98115

Alaska Science & Technology
700 W. 58th St., Suite J
Anchorage, AK 99518

Soil Processing Inc.
207 East Northern Lights Blvd
Suite 103 A
Anchorage, Ak 99503

Sharon Been
6221 Cornertree
Anchorage, AK 99516

America North Inc.
201 East 56th Street
Suite 300
Anchorage, AK 99518

Mr. Al Snelling
Samson Tug & Barge
P.O. Box 559
Sitka, AK 99835

ECO Engineering Inc.
1356 Cape St Claire Rd.
Annapolis, MD 21401

Mr. Joe Smith
Burlington Environmental Inc.
P. O. Box 230147
Anchorage, AK 99523-0147

Joe Banta
RCAC
601 West 5th Ave #500
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Seldovia, AK 99663

Mr. Ralph Doyl
BEPCO
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Chigiak, AK 99567

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Golder Associates
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Anchorage, AK 99503

Ms. Jane Whitsett
Colombia Analytical Services, Inc
4684 Business Park Blvd.
Anchorage, AK 99503

Mr. John Simpson
Environmental Management
907 E. Dowling Rd. Suite 21
Anchorage, AK 99518

Mr. Carl M. Hild
Alaska Health Project
1818 Northern Lights Blvd.. Suite 103
Anchorage, AK 99517

Mr. Jordan Suhr
J M Consulting
4000 Credit Union Dr., S# 600
Anchorage, Ak 99503

Mr. Chuck Ronan
Chemtrack, Inc.
117 11 South Gamble
Anchorage, AK 99515

Ray Parsons
440 Old Richardson Hwy
Fairbanks, AK 99701

Mr. Michael Paris
VRCA Environmental
6700 Arctic Spur Road
Anchorage, AK 99518

Mr. Pat Hammond
Hammond Environmental
1013 East Diamond, Suite 146
Anchorage, AK 99515

Mr. Kerry Walsh
Fred Devine Diving & Salvage
6211 North Ensign
Portland, OR 97217

Coldwater Contractors Inc
4790-E4 Business Park Blvd.
Anchorage, AK 99503
Att: Hal

Mr. Neil Cameron
Jackson Environmental
241 Aspen
Soldotna, AK 99689

Mr. Charles B. Samuels
Fairweather Forecasting
715 L Street
Anchorage, AK 99501

Mr. Jim Seeberger
Alaska Railroad Corp.
P.O. Box 107500
Anchorage, AK 99502

Mr. Jim Maltby
Alaska West Express
1095 Sunduri
Fairbanks, Ak 99701

Mr. Forrest Smith
Irish Trucking
8240 Sandalwood
Anchorage, AK 99507

Mr. Sam Taylor
N C Machine Co.
6450 Arctic Blvd.
Anchorage, AK 99516

Mr. Jim Gill
Hart Crowser
2550 Denali Blvd., Suite 705
Anchorage, AK 99503

Mr. Mike Holman
City of Ketchikan
700 Water Street
Ketchikan, AK 99901

Mr. Stephen Rae
KIC Lab
Pouch 340065
Prudhoe Bay, AK 99734

Mr. Ron Lazenby
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Kenai, AK 99611

Mr. Leon Van Wyhe
Lake Colleen Enterprises
P.O. Box 10687
Fairbanks, Ak 99710

Mr. Doug Glenn
Glenn Air
P.O. Box 1924
Palmer, AK 99645

Mr. Trevor Smee
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911 West 8th Avenue, Suite 401
Anchorage, AK 99501