

SCOMM

78:54

ALASKA STATE LEGISLATURE



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SENATOR SAM COTTEN

May 12, 1992

To: Members of the House

From: Sen. Sam Cotten 

Subject: SSHB 540

The Senate has just passed, and sent to the House for concurrence, Senate CS for SSHB 540. The Senate legislation makes it clear that Alyeska will respond to oil spills in Prince William Sound; limits the liability of oil spill cleanup contractors; and protects shippers in their effort to obtain cleanup services.

I also understand that the bill is supported by the Administration. I strongly urge my colleagues to concur in the legislation within the brief time remaining.

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
Resources
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 *M. F.*
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

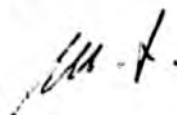
LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(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.

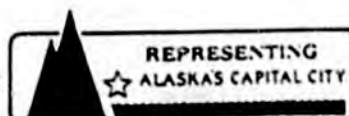
SSHB 540 is scheduled for a hearing in the House Special Committee on Oil and Gas on Monday, February 24, 1992 in Room 124 of the Capitol Building.

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
(907) 465-3744 or 4991

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.

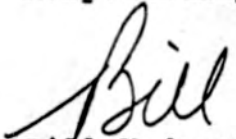
Please discuss the current efforts now underway by the task force comprised of coastal states, the public, the U.S. Coast Guard, and the oil industry to implement a national standard for certification of response action contractors, as required by the Oil Pollution Act of 1990. Specifically, I would 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
99801-1182
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COMMITTEES

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

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:

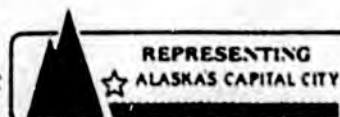
The Alaska State Legislature currently has before it the issue of limiting the liability of response action contractors who respond to marine oil spills. I am enclosing a copy of legislation introduced this morning.

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 Toole, Assistant Attorney General - Anchorage

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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

465-2029

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	mike ford	
From	g fay	
Co.	LAA	
Co.	Coffin	
Dept.	Law	
Phone #	3711	
Fax #	2029	
Fax #	4979	

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strengthen
so liability
for spill is
transferred to
Alaska

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.

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
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May 7, 1992

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Speaker
Alaska House of Representatives
Room 208
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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

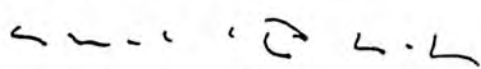
May 7, 1992
Page 2

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
FAX: (907) 463-5295

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

WALTER J. HICKEL, GOVERNOR

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JUNEAU, ALASKA 99811-0300
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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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Page 6

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

Telephone: 465-5250
FAX: 465-5244

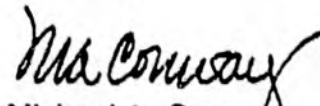
February 26, 1992

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
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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
Anchorage, AK 99501

Ms. Kate Lamal
Darnes and Moore
3540 International Way
Fairbanks, Ak 99701

Mr. Karl Pulliam
SOS
P.O. Box 194
Seldovia, AK 99663

Mr. Ralph Doyl
BEPCO
P.O. BOX 670249
Chigiak, AK 99567

Mr. Mark Musical
Golder Associates
139 E 51st Ave
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 99669

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
RL Construction Services Inc.
P.O. Box 1136
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
SAIC (Science App. Intrntl. Corp.)
911 West 8th Avenue, Suite 401
Anchorage, AK 99501

STATE OF

To Ginny Fan

GUYENHON

DEPT. [REDACTED]

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

Have you seen this?

Michele Brown

070

February 25, 1992

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

Dear Representative Hudson:

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

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

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

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

Representative Bill Hudson

February 25, 1992

Page 2

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

Notwithstanding what might be done at the federal level, the elements of a certification program could be accomplished under existing authority by including appropriate parameters in the Department's oil and hazardous substances (commonly referred to as HB 367) regulations. A certification program in this case would only apply to response action contractors who have a contract with a contingency plan holder and the certification would occur in conjunction with the existing contingency plan review process. A separate certification review process would not be necessary. The program being contemplated at the federal level would likely require a separate review and approval process.

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

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

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

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

Representative Bill Hudson

February 25, 1992

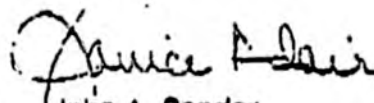
Page 3

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

We have a DEC staff member at REGNEG meetings this week. The next committee meeting is scheduled for the week of March 8 through 13 in Washington D.C. The Coast Guard plans to publish the "Notice of Proposed Rulemaking" in the Federal Register on or about May 1. The goal is to have an adopted rule in place, which may include RAC certification, by August, 1992 and in effect by February, 1993.

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

Sincerely,


for John A. Sandor
Commissioner

CJP/MAC/JA/tls

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

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



Alaska Department of
**Environmental
Conservation**

P.O. Box 0
Juneau, Alaska 99811-1800

Release

Walter J. Hickel, Governor

John A. Sandor, Commissioner

Contact: Debby Bloom, 563-6529
L.J. Evans, 563-1126

DEC COMMISSIONER SANDOR SIGNS NEW OIL SPILL REGULATIONS AFTER EXTENSIVE PUBLIC PROCESS

October 26, 1991. Anchorage... DEC Commissioner John Sandor has signed oil spill regulations which raise spill prevention and response standards for approximately 300 tankers, barges, terminals, and on-shore exploration and production facilities operating in Alaska, as well as the Trans-Alaska Pipeline System, after 16 months of drafting and public review.

The regulations, which Sandor said are "the toughest in the nation--if not the world," set new standards for spill prevention and readiness on the part of companies handling oil; establish the amount of oil that a company must be prepared to control and contain in the first hours of a spill; and broaden the range of options for meeting financial responsibility requirements.

Alaska will require crude oil tankers to have enough equipment and personnel in the region within 72 hours of the onset of a spill to control or cleanup 60% of a vessel's total cargo capacity; operators must plan to clean up 100% of a spill as soon as practicable. In contrast, federal law does not set a minimum time period.

"With the help of the public, environmental and industry groups, citizens' organizations, and an outstanding working group, we have reached a key milestone in Alaska's effort to develop the regulations called for by the Legislature in 1990 in House Bill 567," said Commissioner Sandor. "These new rules will put Alaska out front in effective spill prevention and response. For that, and for their countless hours of good work, we sincerely thank all those who attended our many public meetings, and especially the citizens' working group that assisted the department in resolving several key controversies about how this law should be implemented."

- More -

"Our job now is to make sure equipment is in place and readiness is maintained," Sandor said. "All the equipment on earth will do no good unless people are trained to use it." The Commissioner said that DEC will enforce the law with frequent drills, including surprise drills, to test and maintain readiness and the effectiveness of plans and equipment.

The HB 567 Working Group was established in 1990 by DEC with representatives from state and federal agencies, citizen oversight groups, industry, and environmental organizations. The public participation process for the regulations included 18 public meetings last winter and spring throughout Alaska in addition to formal public hearings held last summer. The working group met many additional times throughout the process to advise the department on development of the regulations. DEC staff reviewed and considered 800 pages of comments on the draft regulations from members of the public.

"The response to the Exxon Valdez spill involved nearly all Alaskans, either in actual response activities or in terms of their concerns. We felt it necessary to likewise involve as many Alaskans as we could in developing a system to prevent future spills or to respond effectively if they ever happened. Now we need continued participation of Alaskans to implement the system and make sure it works," said Sandor. The Commissioner said that he has invited the Working Group to continue to advise DEC on implementation of the new regulations.

If the regulations are filed by Lt. Governor Jack Coghill following a review by the Department of Law, crude oil facilities will be asked to amend their current plans to conform with the new regulations by February 1, 1992.

Sandor said that Alaskans can already have more confidence in spill preparedness within the state. In most cases, the large companies have in place the necessary response equipment, personnel, and prevention measures. Alyeska Pipeline Company's SERVS system of escort vessels for tankers in Prince William Sound is an example.

The Commissioner indicated that the department will work with small companies covered by the law to form spill response co-ops throughout the state. The regulations encourage cost-sharing for increased prevention and response capabilities. Non-crude operators come under the law effective June 1, 1992.

The final step in developing the regulations was a set of decisions reached by the department on several key policy issues that remained unresolved at the conclusion of the public participation process.

DEC Deputy Commissioner Mead Treadwell said, "One of our toughest calls was the decision on the planning standard for crude oil carriers. In the public comments and working group there was no consensus on how much of a vessel's cargo the operator

should have to plan to clean up beyond the first 72 hours of a spill. HB 567 requires the department to set this standard, and operators must design their response plans accordingly. In the end we relied on statistical studies of spill situations and what we could expect to happen during an actual spill. It turned out that a 60% planning standard, the ability to clean up 60% of the cargo capacity, was the right answer in this case." Two DEC consultants independently reached this conclusion and made the recommendation to the department, Treadwell explained.

Under this requirement a plan holder must plan to clean up a total spill, but must demonstrate the availability of sufficient equipment and personnel deployed and operating within the region within the first 72 hours to clean up 60% of a vessel's cargo. The planning standard can be lowered through "prevention credits," but only for hydrostatic loading, double hulls or bottoms, or escort vessels. In no case will the planning standard be less than 30% of a vessel's cargo capacity.

"Another critical decision was whether to specifically enable DEC to require a facility or tanker to restrict operations, if conditions arise that would make it impossible for a plan holder to employ the methods outlined in this plan," said Treadwell.

He explained that this concern was for situations where conditions such as earthquakes, volcanoes, storms or other situations make an operator's proposed response methods ineffective. The regulations require a plan holder to describe scenarios when weather or environmental conditions would exceed maximum response limitations. Shutting down a facility is a decision limited to the DEC commissioner, either through an emergency order or by seeking a court injunction.

The department also decided:

- To adopt the majority of the proposed prevention provisions now and make a commitment to continue to work on unresolved issues with the HB 567 Working Group, rather than delay the entire "prevention" package.

- To retain language to guard against company employee substance abuse or medical problems diminishing abilities to perform tasks that could prevent or reduce the size of a spill. The language has been reviewed by the Departments of Law and Health and Social Services.

- For non-crude carriers, to adopt a current planning standard that requires the operator to plan to contain or control 15% of the capacity of the vessel or barge within a 48-hour time limit, and clean up the full amount of any size spill within the shortest feasible time.

- To maintain provisions for drilling relief wells in the event of a blowout. The department was concerned about the possibility of a sustained major discharge from an oil formation occurring during adverse winter conditions that could make it impossible to regain control of the well until the following season. Language was

- More -

added to include plans for other methods of well control in addition to relief wells.

-- To modify the review procedures for oil spill contingency plans related to the Alaska Coastal Management Program (ACMP). DEC regulations do not require a plan holder to go through full ACMP review, but during the decision-making process DEC will itself respond to the comments of coastal districts, regional citizens' advisory councils, and the Departments of Natural Resources and Fish and Game. DEC decisions can still be appealed by coastal districts through administrative procedures.

-- To follow the lead of the U.S. Coast Guard not to allow companies to use foreign assets as proof of their ability to self-insure against losses and damages resulting from oil spills. A provision is being added to the regulations to allow waiving working capital requirements for operators who conclusively show their financial strength through other means such as bond ratings.

For further information, or a copy of the regulations package, contact Lynn Kent, DEC Spill Prevention, Planning and Management, in Juneau at 465-2630.

#

OCTOBER 26, 1991 DRAFT REGULATIONS

18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY
PLAN CONTENTS.

PART 2 -- PREVENTION PLAN

(H) RESPONSE CONTRACTOR INFORMATION - if a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of each contractor, with name, address, telephone number, and affiliation by company, a summary of each agreement or contract, and the response equipment and services provided; the use of a contractor does not relieve the plan holder's responsibility to provide the information required by this subsection, and to meet all other applicable requirements of this chapter;

18 AAC 75.445. APPROVAL CRITERIA.

(i) RESPONSE CONTRACTOR INFORMATION. If a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of all contractors, with names, addresses, telephone numbers, and affiliation by company, and a copy of the contract or a summary which clearly demonstrates

(1) the contractor's obligation to respond if a discharge occurs, and the contractor's liability to the plan holder for the contractor's failure to respond or for an inadequate response;

(2) the contractor's availability to respond to a department-conducted discharge exercise as well as an actual discharge; and

(3) that equipment and other spill response resources to be provided by the contractor are maintained in a state of readiness and are compatible with the type of facility or operation and the oil product handled by the plan holder.

(G:\SPPM\CLERICAL\HB567\cplanrw.ltr)

OIL DISCHARGE PREVENTION
AND CONTINGENCY PLAN APPROVAL

Name of plan holder
Address

Dear:

Re: (Name of facility) Oil Discharge Prevention and Contingency Plan

The Alaska Department of Environmental Conservation (ADEC) has completed review of the (date of application) application for approval of the following oil spill contingency plan:

Plan Title: _____, consisting of _____ volumes

Supporting Documents, if any (list): _____

Plan Holder: _____

[Be specific, as in "ABC Oil Co., A Delaware Corporation."]

Covered Vessels or Facilities: _____

[If vessel, U.S. Official Number: _____]

PLAN APPROVAL: The (name of plan) plan is hereby approved, effective [_____, 199_].

A certificate of approval stating that the contingency plan has been approved by the department is enclosed. This approval is subject to the following terms and conditions:

TERMS AND CONDITIONS:

1. Revisions to contingency plans demonstrating full compliance with the implementing regulations for HB 567 must be submitted to the Department within 90 days of their effective date. The Department's implementation schedule for demonstrating compliance with the new regulations is contained in the enclosed January 7, 1992 letter from the Commissioner.

2. Notice of Changed Relationship with Response Contractor [DELETE THIS PARAGRAPH IF NO RESPONSE CONTRACTOR INVOLVED IN THE PLAN].
Because the plan relies on the use of response contractor(s) for its

implementation, the plan holder must immediately notify the Department in writing of any change in the contractual relationship with the plan holder's response contractor(s), and of any event including but not limited to any breach by either party to the response contract that may excuse a response contractor from performing, that indicates a response contractor may fail or refuse to perform, or that may otherwise affect the response, prevention, or preparedness capabilities described in the approved plan.

This condition is reasonably necessary because there are certain risks associated with allowing a plan holder to rely in part or total upon a response contractor instead of obtaining its own response capability. The risks arise, in part, because the certainty of the contractor's response is dependent upon the continuation of the legal relationship between it and the plan holder. Given this risk, the Department must be promptly informed of any change of the contractual relationship between the plan holder and the response contractor, and of any other event that may arguably excuse the response contractor from performing or that would otherwise affect the response, prevention, or preparedness capabilities described in the approved plan. The Department may seek appropriate modifications to the plan or take other steps to ensure that the plan holder has continuous access to sufficient resources to protect the environment and to contain, cleanup, and mitigate potential oil spills.

3. (Additional facility specific conditions and their basis should be included here)

EXPIRATION: This approval expires ____, 199__. After the approval expires, operation of the facility/vessel is prohibited by Alaska law until an approved plan is once again in effect.

RENEWAL: To renew the approval, the plan holder must submit a complete renewal application to this office on or before ____, 199__.

REVOCATION, SUSPENSION, OR MODIFICATION: This approval is effective only while the plan holder is in "compliance with the plan" and with all of the terms and conditions described above. The Department may, after notice and opportunity for a hearing, revoke, suspend, or require the modification of an approved plan if the plan holder is not in compliance with it, or for any other reason stated in AS 46.04.030(f). In addition, Alaska law provides that a vessel or facility that is not in "compliance with the plan" may not operate (AS 46.04.030). The department may terminate approval prior to the expiration date if deficiencies are identified that would adversely affect spill prevention, response or preparedness capabilities.

DUTY TO RESPOND: Notwithstanding any other provisions or requirements of this contingency plan a person causing or permitting the discharge of oil is required by law to immediately contain and cleanup the discharge regardless of the adequacy or inadequacy of a contingency plan (AS 46.04.020).

BEST AVAILABLE TECHNOLOGY: The contingency plan must provide for use by the applicant of the best available technology at the time it is submitted or renewed (AS 46.04.030 (e)).

NOTIFICATION OF NON-READINESS: Within three days after any significant response equipment specified in the plan becomes nonoperational or is removed from its designated storage location the plan holder must notify the department in writing and provide a schedule for the equipments substitution, repair, or return to service (18AAC 75.375).

CIVIL AND CRIMINAL SANCTIONS: Failure to comply with the plan may subject the plan holder to civil liability for damages and to civil and criminal penalties. Civil and criminal sanctions may also be imposed for any violation of AS 46.04, any regulation issued thereunder, or any violation of a lawful order of the Department.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: The Department has the right to verify the ability of the plan holder to carry out the provisions of its contingency plan and access to inventories of equipment, supplies and personnel through such means as inspections and discharge exercises, without prior notice to the plan holder. The Department has the right to enter and inspect the covered vessel or facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms and conditions (AS 46.04.030(e) and AS 46.04.060). The plan holder shall conduct exercises for the purpose of testing the adequacy of the contingency plan and its implementation (18 AAC 75.385).

FAILURE TO PERFORM: In granting approval of the plan, the Department has determined that the plan, as represented to it by the applicant in the plan and application for approval, satisfies the minimum planning standards and other requirements established by applicable statutes and regulations, taking as true all information provided by the applicant. The Department does not warrant to the applicant, the plan holder, or any other person or entity: (1) the accuracy or validity of the information or assurances relied upon; (2) that the plan is or will be implemented; or (3) that even full compliance and implementation with the plan will result in complete containment, control, or clean-up of any given oil spill, including a spill specifically described in the planning standards. The plan holder is encouraged to take any additional precautions and obtain any additional response capability it deems appropriate to further guard against the risk of oil spills and to enhance its ability to comply with its duty under AS 46.04.020(a) to immediately contain and clean up an oil discharge.

COMPLIANCE WITH APPLICABLE LAWS: If amendments to the approved plan are necessary to meet the requirements of any new laws or regulations, the plan holder must submit an application for amendment to the Department at the above address. The plan holder must adhere to all applicable state statutes and regulations as they may be amended from time to time. Copies of those currently in effect are enclosed. The department is currently developing regulations to implement Ch. 191, SLA 1990.

Amendments to comply with the regulations will be necessary upon promulgation.

ADJUDICATORY HEARING: Any person who disagrees with the decision may request an adjudicatory hearing by serving upon the Commissioner a request for hearing that complies with the requirements of 18 AAC 15.200-310. The hearing request must be received by the Commissioner within 30 days from the date of this letter. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation at 3220 Hospital Drive, P.O. Box 0, Juneau, AK 99811-1800 within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to a hearing is waived and the decision becomes final.

If you have any questions, please do not hesitate to contact _____ of this office.

Sincerely,

Regional Administrator
or
Regional Environmental Supervisor

Enclosures:

1. Certificate of Approval
2. Alaska Statutes 46.03, 46.04, 46.08 and 46.09 (white statute book)
3. 18 AAC 75, Article 4
4. October 26 Draft Regulations
5. Commissioner's January 7, 1992 letter

cc: (To be completed by the regions. Standard distribution should include one copy to Central Office SPPM c/o Larry Dietrick)

NEW STANDARDS FOR CONTINGENCY PLANS

OIL TERMINAL FACILITIES
must plan to contain and control and clean up a discharge equal to the capacity of the largest tank at the facility within 72 hours.

CRUDE OIL TANK VESSELS OR BARGES:

- vessels smaller than 500,000 barrels of storage capacity must plan to contain and clean up a 300,000 barrel discharge

- Vessels with more than 500,000 barrel capacity must plan to contain and clean up a 300,000 barrel discharge

- All crude oil tank vessels or barges must demonstrate access to shore equipment outside the region of operation to clean up a release of maximum discharge and the ability to have shore equipment deployed and operating at the discharge site within 72 hours.

NON-CRUDE TANK VESSELS OR BARGES—

- must plan to contain and control the gross amount of the total oil capacity of the vessel

- must clean up a discharge within the shortest possible time consistent with minimizing damage to the environment.

OIL SPILL PREVENTION, RESPONSE AND FINANCIAL RESPONSIBILITY

The Regulations Say:



Regulations written to implement HB 567 tackle spill preparedness through the spill prevention and response plans that oil facilities and vessels are required to submit for State approval. The regulation now requires plans from onshore exploration and production facilities and pipelines in addition to oil rigs, tank vessels and oil barges. Plus, higher standards are required of all plans in three major ways:

Planning Standards — "Response Planning Standards" are one of the cornerstones of the new regulations, specifying the size of spill each vessel or facility operator must be prepared to clean up within 48 hours or 72 hours. The Response Planning Standard varies by amount of oil stored or transported, while response time depends upon type of facility.

Response Planning Standards directly affect the amounts—and thus costs—of equipment, supplies and personnel that companies must keep ready at all times in case of a spill.

Prevention — While vessels and facility operators have always been expected to prevent spills, the State now requires prevention plans and specific prevention measures that must be taken. The state will also consider the reduced risks of companies that incorporate significant voluntary prevention measures. This means that companies employing preventative techniques such as double hulls, for example, may have their required Response Planning Standard adjusted downward according to formulae written into regulations.

Financial Responsibility — Operators of vessels and facilities handling oil must give proof that they possess the financial resources to pay for cleanup and damages from potential spills. The regulations have been revised to broaden the acceptable forms of proof to include letters of credit and protection and indemnity clubs.

HB567 requires vessels and facilities to comply by June 1, 1992. Regulations are projected for adoption in December, 1991. Plan holders are required to upgrade their contingency plans as may be necessary to meet their new requirements and submit any amendments in time to receive approval by June 1, 1992.



Alaska
Department of
Environmental
Conservation

DEVELOPMENT OF ALASKA'S OIL SPILL REGULATIONS



Alaska
Department of
Environmental
Conservation

1989 **MARCH 24**
Exxon-Valdez oil spill

1990 **JUNE 27, 1990**
House Bill 567 takes effect

1991 **MARCH 4, 1991**
Mail out working draft of regulations
for C-plan standards and workshop
schedule

MARCH 15
Distribute working draft of regulations
for financial responsibility

MARCH 19
First meeting of HB 567 work group

MAR. 20 - MAY 2
Hold informational workshops at 18
locations

JUNE 1
Incorporate public comments
Amendments to response plans due

JULY 8
Complete draft prevention regulations
Issue public notice for all regulations

JULY 8-AUGUST 21
Hold public hearings on all
regulations

AUGUST 21-OCTOBER 10
Incorporate final revisions

OCTOBER 10
Department of Law review begins

NOVEMBER
Lt. Governor review

DECEMBER
Final adoption of regulations on or
about Dec. 1. Effective date 30 days
later.

1992 **FEBRUARY 1, 1992**
Owners/operators complete amend-
ments to response plans

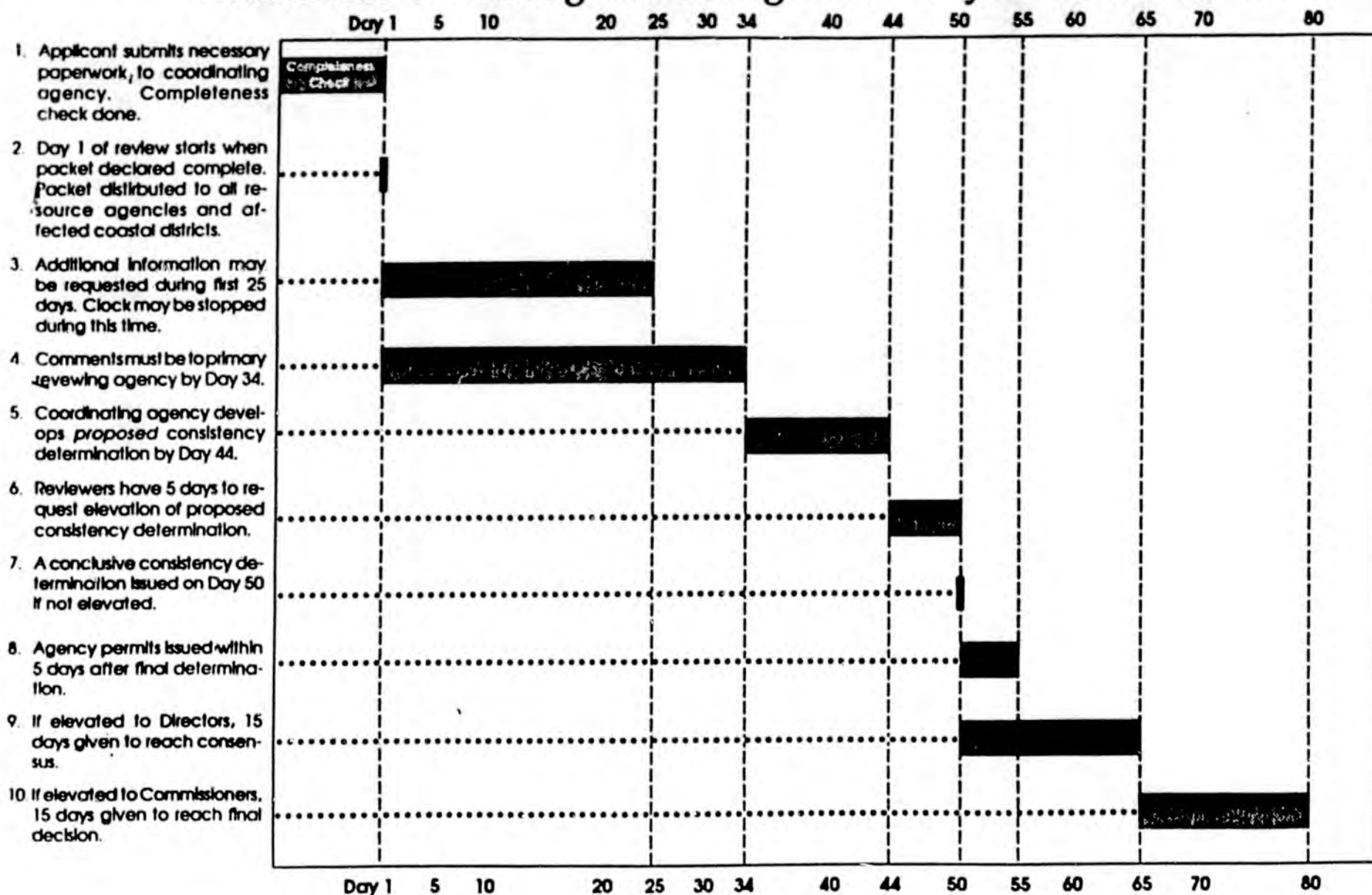
PROOF OF FINANCIAL RESPONSIBILITY

Type of Facility	Before June 1, 1991	After June 1, 1991
OIL TERMINALS		
Oil Terminals/Crude (5,000 barrel (bbl.) and up)	\$10 per bbl. of storage capacity or \$1,000,000, whichever is greater, \$50,000,000 maximum	\$50,000,000 per incident
Oil Terminals/Non-Crude (10,000 bbl. and up)	Same as above	\$25 per bbl. of storage capacity or \$1,000,000, whichever is greater, \$50,000,000 maximum
Oil Terminals/Crude and Non-Crude combined	Same as above	If mostly crude - \$50,000,000 per incident. If mostly non-crude - \$25 per bbl. of total capacity
PIPELINES & EXPLORATION FACILITIES		
Pipelines and Offshore Exploration or Production	\$35,000,000 per incident	\$50,000,000 per incident
Onshore Production	EXEMPT	\$20,000,000 per incident
Onshore Exploration	EXEMPT	\$5,000,000 per incident
VESSELS & BARGES		
Tank Vessel & Oil Barge/Crude	Trans-Alaska Pipeline related: \$14,000,000. Other tankers: per Clean Water Act or \$20,000,000, whichever is greater. Other barges: per CWA or \$1,000,000.	\$300 per bbl. per incident storage capacity or \$100,000,000, whichever is greater
Tank Vessel & Barge/Non-Crude	Same as above	\$100 per bbl. storage capacity per incident or \$1,000,000, whichever is greater, \$35,000,000 maximum

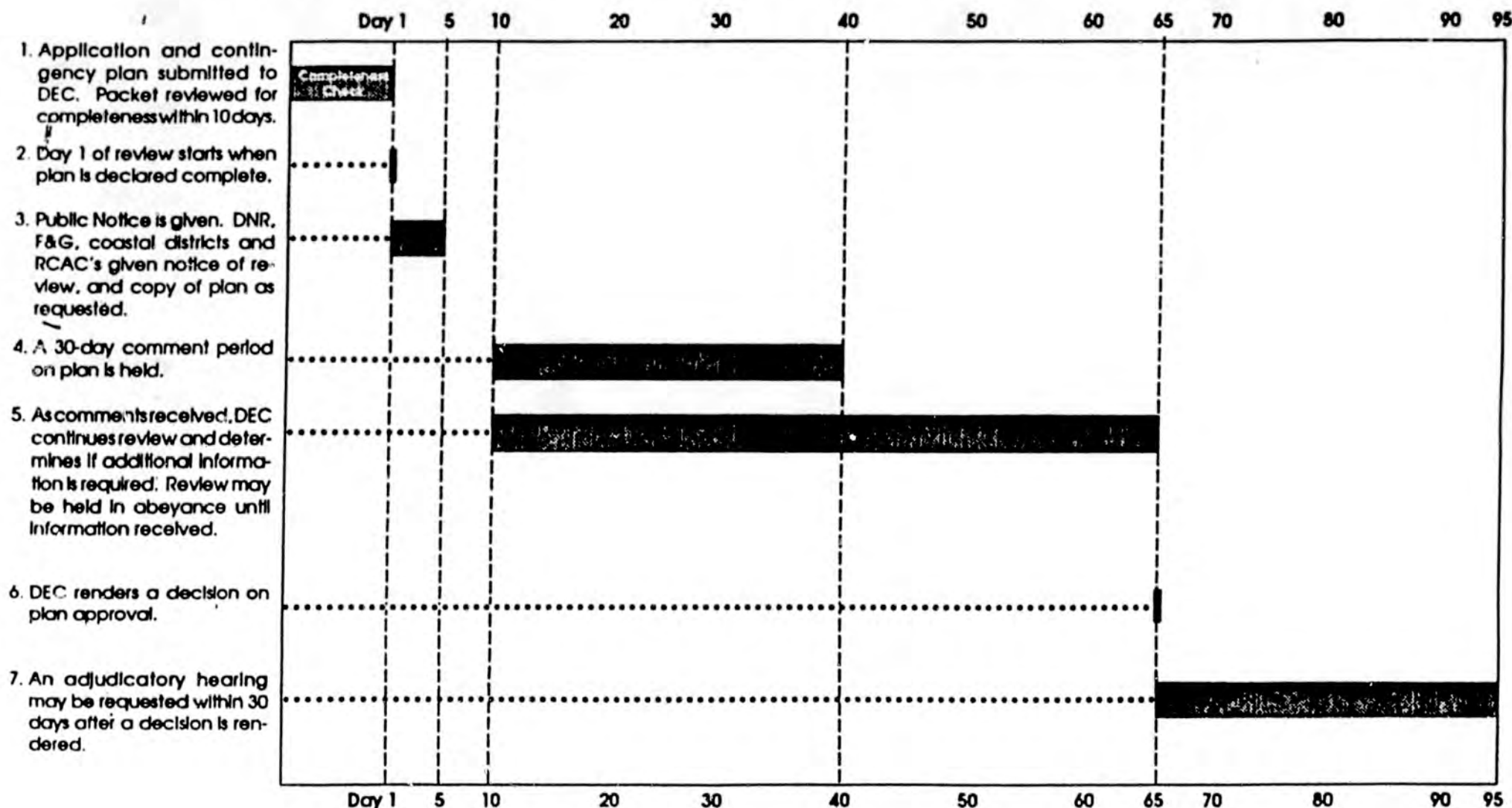


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Conservation

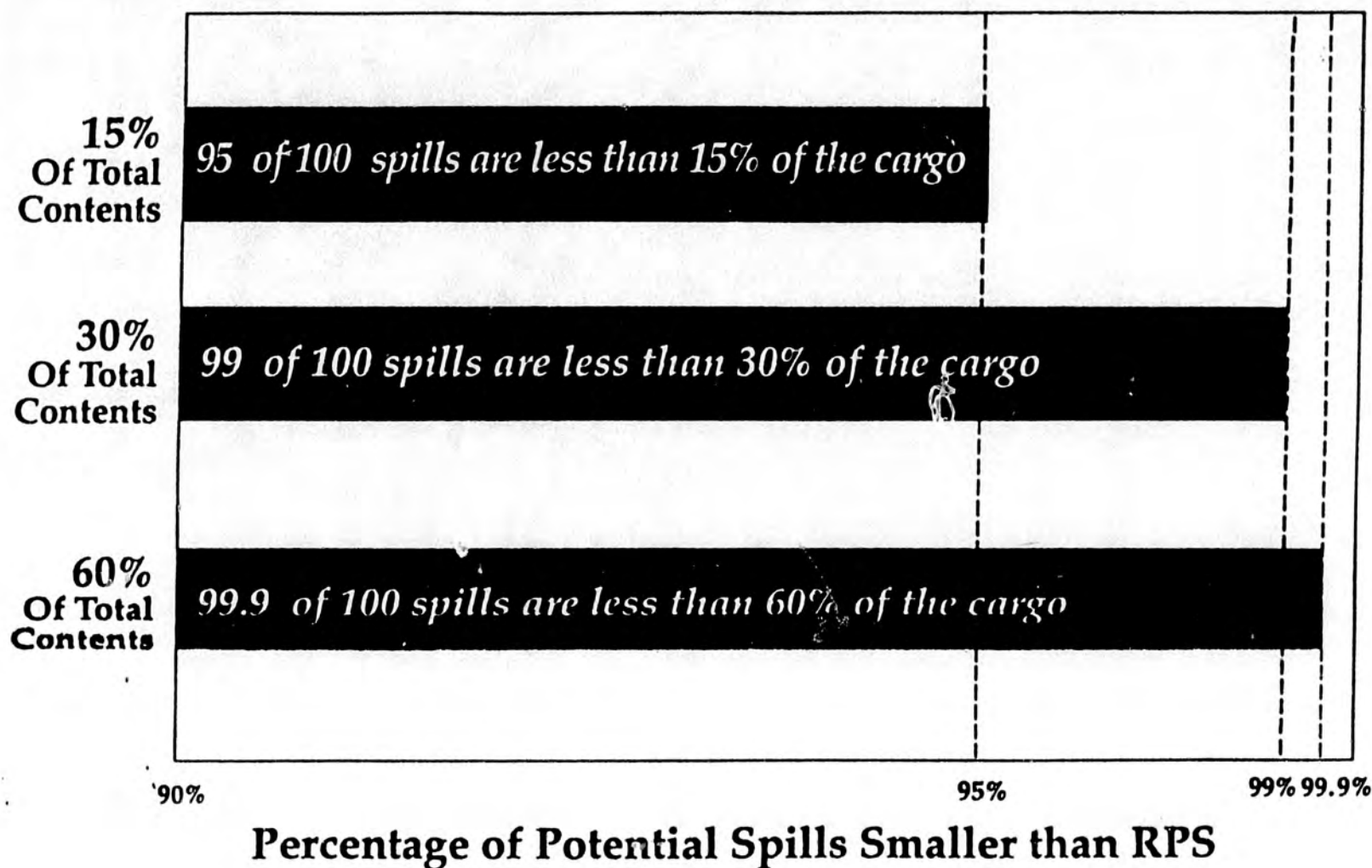
Alaska Coastal Management Program 50-Day Review Schedule



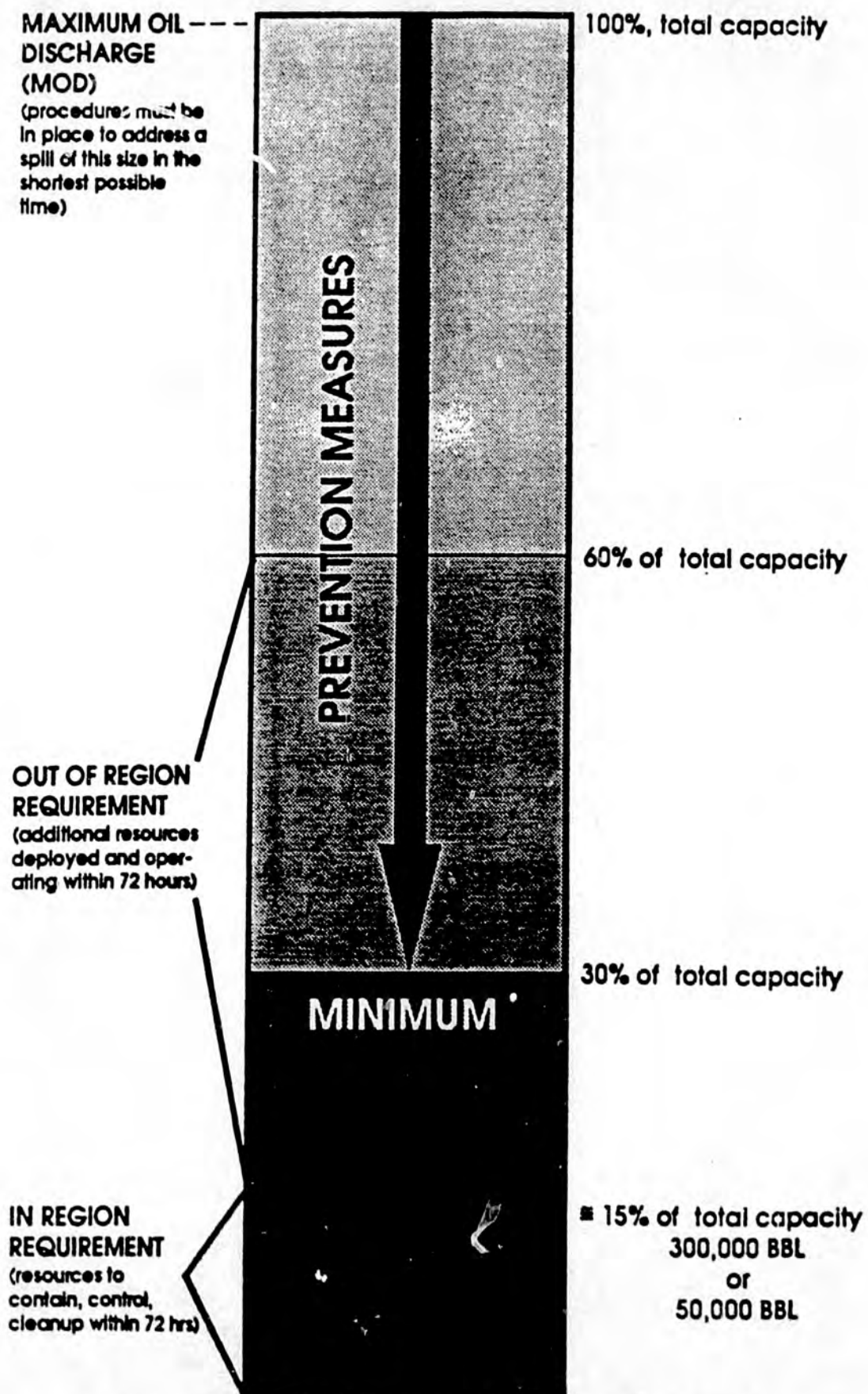
Oil Spill Contingency Plan Review Schedule Under HB567 Regulations



Vessel Response Planning Standards (RPS) vs Risk



Crude Oil Tank Vessel Response Planning Standards*



*Response planning standards do not constitute cleanup standards that must be met by the holder of a response plan

AN ACT

Limiting civil liability for acts or omissions of an oil spill response action contractor and establishing strict liability on responsible parties for certain acts or omissions of a response action contractor; amending the definitions of "response action" and "response action contractor"; relating to a report by the Citizens Oversight Council on Oil and Other Hazardous Substances; providing for the repeal on July 1, 1992, of changes made by this Act; and providing for an effective date.

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

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages (TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,) and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

-1-

CSHB 194(FIN)

Chapter 11

(2) the owner release, or a threatened release, of a hazardous substance;

(3) any person operated any facility or vessel there is a release, or a threatened release, of a hazardous substance;

(4) any person treatment, or arranged with substances owned or possessed or entry, at any facility or hazardous substances, from incurring of response cost.

(5) any person refined oil, for transport to a facility from which there is a release of a hazardous substance.

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

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages (TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,) and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

(2) the owner release, or a threatened release, of a hazardous substance;

CSHB 195(FIN)

46.03.822(a)

Chapter 92

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

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

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

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

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

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

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

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

46.03.822(a)

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subsequent:

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

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

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

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

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

* Sec. 6. AS 46.03.823(a) is amended to read:

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

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the response action services were

* Sec. 5. AS 46.03.823(a) is repealed

(a) A person who is a response action contractor with respect to a release of a hazardous substance ordered by a state or federal agency is not civilly liable for injuries, costs, damages, or other liability that results from the release or threatened release unless the response action contractor's acts or omissions constitute negligence or intentional misconduct. To show negligence, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

* Sec. 6. AS 46.03.823(g) is repealed

(g) In this section, "mitigation or cleanup of a release" includes investigation, evaluation, design and construction, removal, and other response action services.

* Sec. 7. AS 46.03.823(g) is repealed

(g) In this section,

(1) "response action" means the cleanup of a hazardous substance, including investigation, evaluation, design and construction, removal, and other response action services;

(2) "response action contractor" means a person who enters into a contract with a state or federal agency for the performance of response action services with respect to a release or threatened release of a hazardous substance;

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1 the response action services were performed.

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

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

46.03.823(a)

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

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

46.03.823(g)

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

19 (g) In this section,

46.03.823(g)

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

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

27 (A) the department;

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

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

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release; or

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

(3) "response action contractor" means:

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

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

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

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to 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 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 a party responsible for the release under AS 46.03.822.

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46.03.825

(b) The limitation on:

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(c) If the liability of a section or if the provisions of oil spill response action contractor is negligent, gross duties that apply to an oil spill initial release or threatened release carried out a response action

(d) In this section,

threatened release of oil, including or threatened release of oil.

* Sec. 9. AS 46.03.826 is amended

(14) "response action with respect into by a person with

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

- (1) an action for personal injury or death;
- (2) an action for damages to tangible personal property not caused by oil; or
- (3) an act or omission that occurs more than 15 days after the release.

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

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

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

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

- (A) the department;
- (B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;
- (C) a federal agency with jurisdiction over the release or threatened release; or
- (D) another person potentially liable for the release or threatened release under state or federal law;

(15) "response action contractor" means

- (A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the

46.03.826(14),
(15)

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contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

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

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

* Sec. 10. AS 46.03.822(3), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

* Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances (AS 21.20.600) shall review the entire subject of response action contractor civil liability and the status of oil spill contingency plan holders. The review of both subjects shall be completed and a report submitted to the legislature before January 15, 1992. The report must address whether further modifications are necessary to state laws on response action contractor civil liability, and include an analysis of whether the present state laws that require shippers and owners to hold contingency plans and that enable shippers and owners to contract with response action contractors to carry out contingency plans are adequate to protect the public in the event of an oil spill.

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

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

Repealer

Eff. §§ 2,
5, 7, and
10 take
effect
7/1/92;
remainder
of Act
takes
effect
7/3/91

Relating to persons who

* Section 1. LEGISLATIVE P
handships endured by the member
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* Sec. 2. AS 05.15.210(34) is

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* Sec. 3. AS 16.05.341 is re
Sec. 16.05.341. F

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18 AAC 75.580. PROSECUTORIAL DISCRETION. In appropriate cases, the department will, in its discretion, either settle actions out of court under AS 46.03.758 for less than the full penalty provided for under this chapter, or decline to file an action under AS 46.03.758. This section is intended to confirm the department's litigation discretion, and may not be construed as creating a reviewable decision. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.590. ANNUAL REPORT. Within 10 days after the convening of each regular legislative session, the department will report to the legislature on all actions brought during the preceding calendar year, and the status and disposition of those actions. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.600. DEFINITIONS. As used in secs. 500 — 600 of this chapter

(1) "estuary" means a semienclosed, coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(2) "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;

(3) "inside waters of Southeast Alaska" includes all those marine waters lying inside the boundary line established in 33 C.F.R. secs. 82.1705-1730, 42 Federal Register 35791 (July 11, 1977);

(4) "marine water" means all saltwater environments, including saltwater wetlands, estuaries, and the intertidal zone;

(5) "permafrost" means soil or other earth material supporting vegetation with a temperature which remains below 0 degrees Celsius (32 degrees Fahrenheit) for two or more years;

(6) "Prince William Sound" includes all marine water lying inside the boundary line established in 33 C.F.R. sec. 82-1740, 42 Federal Register 35791 (July 11, 1977); and

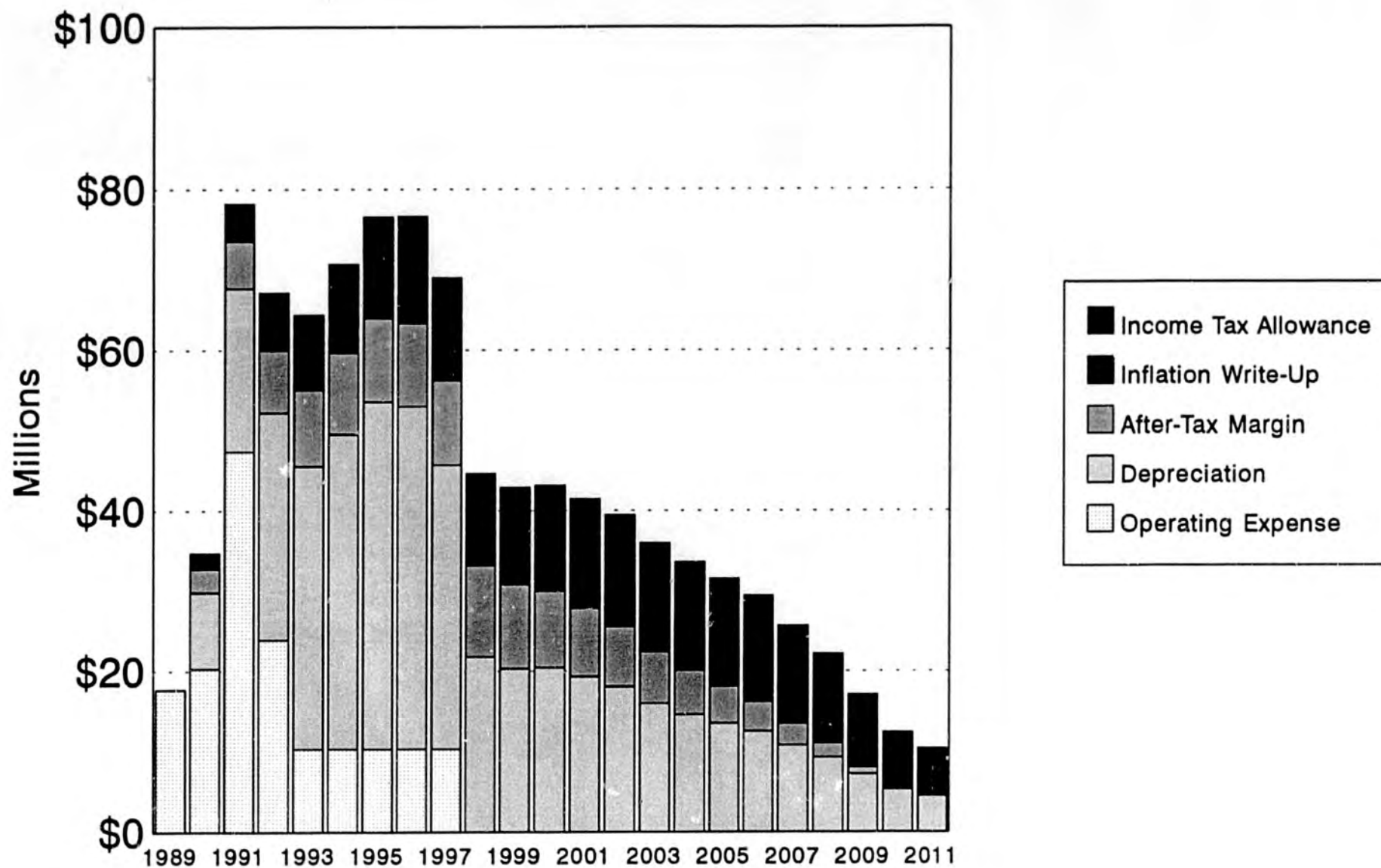
(7) "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

"Prince William Sound" means all ^{marine} waters within
the boundary line established at Cape Puget ^{south} easterly to
Cape Cleare, along Montique Island to Zaihof Pt
easterly to Cape Hinchinbrook, along Hinchinbrook
Island to Pt. Bentinck easterly to Pt. Whitshed.

EFFECT OF OIL SPILL EXPENDITURES ON TAPS REVENUES

Oil Spill Expenditures Estimated from 1989 through 1997



AGREEMENT FOR OIL SPILL RESPONSE SERVICES

AGREEMENT FOR OIL SPILL RESPONSE SERVICES, dated October 30th, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska"), agent for its Owner Companies (defined in Section 1.11), and BP America, Inc., a Delaware corporation with its principal place of business at 200 Public Square Cleveland, Ohio 44114 ("Contracting Vessel"), owner, operator or charterer of the tank vessels listed in Exhibit A.

W I T N E S S E T H:

WHEREAS, Alaska law requires each tank vessel loading oil at the Valdez Marine Terminal ("Terminal") to have an Oil Discharge Contingency Plan approved by the Alaska Department of Environmental Conservation;

WHEREAS, Alyeska has developed a Prince William Sound Tanker Spill Prevention and Response Plan and sections of a Valdez Terminal Spill Prevention and Response Plan hereinafter collectively referred to as ("Tanker Plan"), which can be incorporated into Contracting Vessel's Oil Discharge Contingency Plan;

WHEREAS, Contracting Vessel recognizes that it must have access to sufficient resources to contain, clean up, and mitigate

a potential oil spill, which may affect the Prince William Sound, from a tank vessel owned, operated or chartered by Contracting Vessel;

WHEREAS, Alyeska, as operator of the Terminal, is willing to provide Spill Prevention Services and act as an oil spill response contractor on behalf of Contracting Vessel in accordance with the Tanker Plan, to the extent that it is incorporated into Contracting Vessel's Oil Discharge Contingency Plan, and as limited by the terms of this Agreement, to respond to any oil spill from a Tanker that may affect Prince William Sound; and

WHEREAS, the Services of Alyeska provided hereunder shall be made available to Contracting Vessel upon an expense reimbursement basis and in accordance with the terms set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth below, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "ADEC" means the Alaska Department of Environmental Conservation.

1.2 "Agreement" means this Agreement for Oil Spill Response Services.

1.3 "Alyeska Vessel" means a vessel owned, operated or chartered by Alyeska.

1.4 "Contracting Vessel" means the party to this Agreement that is the owner, operator, or charterer of the tank vessels listed in Exhibit A.

1.5 "Core Equipment" means equipment that regulatory agencies require Alyeska to have available in order to continue, or to resume, normal operations at the Terminal after an Oil Spill;

1.6 "Core Personnel" means personnel that regulatory agencies require Alyeska to have available in order to continue, or to resume, normal operations at the Terminal after an Oil Spill.

1.7 "Financial Responsibility" means an insurance policy, certificate of financial responsibility, certificate of self-insurance, letter of credit, surety bond, guaranty, or combination thereof, in the aggregate minimum amount provided in Section 6.2, obtained by Contracting Vessel that is satisfactory to Alyeska and sufficient to cover Contracting Vessel's obligations to Alyeska and to reimburse and indemnify the Indemnified Parties under this Agreement.

1.8 "ODCP" means the Oil Discharge Contingency Plan required by Alaska Statute Section 46.04.030(c) and approved by ADEC.

1.9 "Oil Spill" means an oil discharge (crude oil, natural gas liquids, oily ballast water or bunker fuel) from the Tanker

that originates in PWS or originates outside PWS and progresses or threatens to progress into PWS.

1.10 "Oil Spill Response Services" means services provided to Contracting Vessel by Alyeska to contain, clean up, and mitigate Oil Spills as provided in the Tanker Plan.

1.11 "Owner Companies" means Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

1.12 "Prince William Sound" or "PWS" means the area described in Title 18 Alaska Administrative Code Section 75.600(6) and state waters outside and adjacent to the entrance to Prince William Sound located between (i) a line drawn due south from Point Whitt on the Alaska mainland at position 60°36.7 N, 145°52.7 W to the three-mile limit for state waters and (ii) a line drawn due south from a point on the western end of Montague Island at position 59°50.2 N, 147°54.4 W to the three-mile limit for state waters, and is the same as the definition of Plan Area in the Tanker Plan.

1.13 "Response Equipment" means the Alyeska Vessels, booms, skimmers, pumps and other equipment set forth in the Tanker Plan to be available for Oil Spill Response Services.

1.14 "Response Personnel" means the Alyeska personnel who participate in the Oil Spill Response Services.

1.15 "Services" means those services specifically allocated to Alyeska under the Tanker Plan for (i) Spill Prevention

Services and (ii) Oil Spill Response Services to the extent incorporated into Contracting Vessel's ODCP.

1.16 "Spill Prevention Services" means services provided to Contracting Vessel by Alyeska in connection with the Tanker's transit to and from the Terminal through Prince William Sound as provided in the Tanker Plan.

1.17 "Tanker" means a tank vessel listed in Exhibit A.

1.18 "Tanker Plan" means (i) the Prince William Sound Tanker Spill Prevention and Response Plan as conditionally approved by ADEC and accepted by Alyeska on or about November 1, 1990, which may from time to time be amended and (ii) those sections of the Oil Spill Contingency Plan - Valdez Terminal dated January 1987 describing oil spill response services for vessels in the vicinity of the Terminal which may be replaced, or from time to time be amended.

1.19 "Terminal" means the Valdez Marine Terminal.

1.20 "USCG" means the United States Coast Guard.

1.21 "Valdez Emergency Operations Center" means the emergency center at a location to be determined from time to time by Alyeska.

The Tanker Plan, and each Exhibit referred to in and attached to this Agreement, are incorporated herein and shall be deemed to be part of this Agreement. If there is a conflict between this Agreement, the Tanker Plan and the Exhibits, the terms of this Agreement shall govern.

ARTICLE II

SERVICES TO BE PROVIDED BY ALYESKA

2.1 Alyeska shall provide the services to Contracting Vessel.

2.2 Alyeska shall maintain Response Equipment at the Terminal, or elsewhere in the area of Prince William Sound, on a twenty four (24) hour a day, seven (7) day a week, basis capable of being dispatched with Response Personnel to provide Oil Spill Response Services as provided herein.

2.3 When Alyeska discovers or is advised that an Oil Spill has occurred, it shall promptly (i) notify Contracting Vessel of the Oil Spill and (ii) provide the initial response to the Oil Spill employing Response Equipment and Response Personnel in accordance with the Tanker Plan.

2.4 Alyeska shall provide the initial Oil Spill Response Services for an Oil Spill. Unless otherwise directed by Contracting Vessel or USCG, Alyeska shall manage and control the response to an Oil Spill of a total volume not to exceed one thousand (1000) barrels that can, in the sole judgment of Alyeska, clearly be contained and cleaned up, in accordance with the Tanker Plan, using the Response Equipment and Response Personnel without the employment of additional equipment or personnel. Alyeska shall, as promptly as practicable after it has undertaken the initial response, (i) notify Contracting Vessel that Alyeska will manage and control the Oil Spill response to its conclusion or (ii) request Contracting Vessel to

assume management and control of the response. Alyeska shall have the right, at any time that it is providing Oil Spill Response Services, to require Contracting Vessel to assume management and control of the Oil Spill response and cleanup, as provided in Article III, within seventy-two (72) hours after receiving notice from Alyeska. Contracting Vessel shall have claims representatives at the Valdez Emergency Operations Center or at another appropriate location in the Valdez area within forty-eight (48) hours after receiving notice from Alyeska that their presence is required to handle third-party claims resulting from an Oil Spill.

2.5 The Oil Spill Response Services shall be limited to the employment of Response Equipment and Response Personnel in accordance with the Tanker Plan to attempt to contain and clean up an Oil Spill from the Tanker. Alyeska shall be under no obligation under this Agreement to provide salvage services to the Tanker. Alyeska shall have the right in its sole discretion, but shall have no obligation, to replace any Alyeska Vessel or equipment that is part of the Response Equipment if such vessel or equipment suffers a breakdown or becomes inoperative or unavailable for Oil Spill Response Services as a result of deficiency of men or stores, breakdown of machinery, collision, stranding, fire or other accident or damage to such vessel or equipment. Alyeska, in its sole discretion, may charter additional vessels, acquire the services of additional personnel and acquire whatever additional materials and supplies it

considers necessary to use in providing Oil Spill Response Services.

2.6 Contracting Vessel may, subject to the approval of Alyeska, have Alyeska install Contracting Vessel equipment and load Contracting Vessel cargo on board any Alyeska Vessel that is part of the Response Equipment to the extent reasonably necessary in connection with the Oil Spill Response Services. Alyeska shall have sole discretion whether to make any structural modifications to any Alyeska Vessel in connection with the installation of equipment belonging to the Contracting Vessel. All such equipment shall remain Contracting Vessel's property and shall be removed within a reasonable period after the Oil Spill Response Services have been completed. Each Alyeska Vessel shall be restored, at Contracting Vessel's expense, to the same good order and condition as it was prior to the installation of equipment or the making of structural modifications. Alyeska shall have no liability or responsibility of any kind whatsoever for loss of, or damage to, Contracting Vessel's equipment or cargoes on board Alyeska Vessels, however such loss or damage may occur.

ARTICLE III

CONTRACTING VESSEL'S MANAGEMENT OF RESPONSE TO OIL SPILL

3.1 Immediately upon notification by Alyeska pursuant to Section 2.3(i), and unless Alyeska otherwise advises Contracting

Vessel that it will manage and control the Oil Spill response to its conclusion, as provided in Section 2.4, Contracting Vessel shall commence and manage all efforts to obtain necessary response equipment and personnel from third-party suppliers for the Oil Spill response and cleanup operation.

3.2 Within seventy-two (72) hours of (i) a request by Contracting Vessel that it elects to take over management and control of the Oil Spill response or (ii) a request by Alyeska pursuant to Section 2.4, management personnel designated by Contracting Vessel shall be set up at the Valdez Emergency Operations Center and shall have formally assumed management and control of the Oil Spill response from Alyeska, in accordance with Contracting Vessel's ODCP. Exhibit B lists the names, addresses, telephone numbers and telecopy numbers of management personnel designated (i) by Alyeska to manage and control the Oil Spill response on an initial basis and (ii) by Contracting Vessel to arrive on-scene to manage and control the response in accordance with its ODCP. Alyeska and Contracting Vessel shall notify each other in writing within seven (7) days after each change in their respective management personnel listed in Exhibit B. It shall be Contracting Vessel's sole responsibility to report promptly any change in Contracting Vessel's designated management personnel to ADEC and any other government agencies having jurisdiction.

3.3 Contracting Vessel's management and control of the Oil Spill response shall be carried out with the response organization described in Exhibit C. During the term of this

Agreement, Contracting Vessel shall notify Alyeska in writing of each change in its response organization within seven (7) days after such change. It shall be Contracting Vessel's sole responsibility to notify ADEC and any other government agencies having jurisdiction of any change in Contracting Vessel's response organization.

3.4 The transition from Alyeska's Response Personnel and Response Equipment to Contracting Vessel's response organization and equipment shall be conducted in an orderly manner. As soon as reasonably practicable, Contracting Vessel shall replace Alyeska's Core Equipment and Core Personnel with Contracting Vessel's response organization and equipment so that Alyeska can continue or resume normal operations at the Terminal.

- Thereafter, the remainder of the Response Equipment and Response Personnel shall be replaced with Contracting Vessel's equipment and personnel in an orderly manner. In the event that the parties are unable to agree on the transition procedures, Alyeska shall determine how and on what time schedule Contracting Vessel's response organization shall assume control of the Oil Spill response operations. To the extent that Alyeska's Response Equipment and its employees are not part of its Core Equipment or Core Personnel, they may be made available, in the sole discretion of Alyeska, to Contracting Vessel for continued use in the Oil Spill response on terms to be mutually agreed to by Alyeska and Contracting Vessel.

3.5 If Contracting Vessel fails to assume management and control of an Oil Spill response within seventy-two (72) hours

after the request by Alyeska, or fails to comply with its obligation to replace Alyeska's Response Personnel and Response Equipment as soon as reasonably practicable thereafter, Contracting Vessel shall be in default of its obligations under this Agreement. In that event Alyeska will take such action as it deems appropriate on Contracting Vessel's behalf, which may, inter alia, include a formal tender of management of the Oil Spill response to the USCG, acquisition of additional equipment and personnel or replacement of Alyeska's Response Equipment and Response Personnel with third-party sources, all at Contracting Vessel's sole expense.

ARTICLE IV

REIMBURSEMENT OF EXPENSES

4.1 Contracting Vessel shall reimburse Alyeska for all direct and indirect expenses incurred by Alyeska in providing (i) Spill Prevention Services to Contracting Vessel that are in addition to the regular vessel escort services and (ii) Oil Spill Response Services in connection with Alyeska's response to an Oil Spill whether under the direction of Alyeska, Contracting Vessel, USCG, or any other government agency. Expenses shall include but not be limited to the following:

(a) All actual legal expenses incurred by Alyeska (including but not limited to attorneys' fees, costs and allocated expenses for in-house legal services).

(b) Salaries, wages, benefits and taxes ("SW&B") for Alyeska employees. For those employees for which standard hourly rates are established annually by Alyeska, SW&B shall be billed at such standard hourly rates. For all other Alyeska employees SW&B shall be billed at actual hourly rates. The parties understand that standard hourly rates incorporated herein are subject to adjustment and intended (i) to be approximate actual costs incurred by Alyeska for identified groups of employees (e.g., Valdez Marine Terminal technicians) and (ii) to facilitate billing procedures.

(c) Materials and supplies purchased or used. Materials and supplies from inventory shall be billed at average costs. All purchases of materials and supplies shall be billed at acquisition costs, plus all premiums and transportation expenses incurred to deliver such materials and supplies in response to the Oil Spill. All materials and supplies ordered specifically for and in response to the Oil Spill shall be billed to Contracting Vessel upon receipt, regardless of actual utilization. Contracting Vessel may take possession of any unused special ordered materials and supplies, for which Alyeska has received payment from Contracting Vessel, within a reasonable period after the Oil Spill Response Services have been completed unless the special ordered materials and supplies are replacements for items that Alyeska had on hand whether or not listed as part of its inventory.

(d) Communication expenses incurred for all long-distance and toll charges, facilities, equipment and rental charges, plus installation and removal charges.

(e) Third-party equipment, vessel charges, transportation to and from spillsite, and mobilization and demobilization charges.

(f) Alyeska-owned or leased equipment reimbursed at established rates. Alyeska-owned equipment that, in Alyeska's opinion, cannot be reused will be reimbursed at replacement costs or replaced with in-kind equipment acceptable to Alyeska.

(g) Alyeska Vessels reimbursed at established rates. All expenses incurred in restoring any Alyeska Vessel to the same good order and condition, ordinary wear and tear excepted, as existed at the time such Alyeska Vessel was mobilized for the Oil Spill Response Services and all expenses incurred in replacing an Alyeska Vessel that is determined to be a constructive or total loss.

(h) All third-party contract services and personnel charges.

(i) All expenses incurred supporting Alyeska, third-party contractor, vessel, governmental agency and other personnel, including transportation, housing, catering and related incidental charges.

(j) All transportation charges.

(k) All other expenses incidental to Alyeska providing (i) Spill Prevention Services that are in addition to the regular vessel escort services and (ii) Oil Spill Response Services to

Contracting Vessel, including but not limited to mobilization and demobilization of vessels and equipment, all provisions, fuel, stores and all other expenses.

(1) Administrative overhead rates applied to all charges listed in items (a) through (k) above. Such rates shall be established annually and are intended to recover all indirect expenses incurred by Alyeska in supporting the Oil Spill response.

4.2 Following the rendering of Spill Prevention Services that are in addition to the regular vessel escort services provided to Contracting Vessel or following a response by Alyeska to an Oil Spill, Alyeska will send Contracting Vessel invoices on a periodic basis detailing expenses incurred and due from Contracting Vessel to Alyeska. Each incremental invoice following the first invoice may include any expenses not previously billed. Within thirty (30) days of the Contracting Vessel's receipt of each invoice, payment by Contracting Vessel to Alyeska shall be made in United States Dollars by wire transfer to National Bank of Alaska in Anchorage, Alaska for deposit to Account Number 01-63-569-7 for Alyeska Pipeline Service Company in immediately available funds without deduction of any taxes, fees, remittance, exchange, setoff or other charges of any nature whatsoever. Payment of any invoice shall not prejudice the right of Contracting Vessel to protest or question the correctness thereof. Any payment that is not received by Alyeska within thirty (30) days of receipt of invoice by Contracting Vessel will bear interest at the rate of two (2)

percentage points above the then current prime rate being charged its principal customers by Citibank, N.A., in New York City, New York. In the absence of such rate the applicable interest rate will be at the rate of two (2) percentage points above that set forth in The Wall Street Journal in the column "Money Rates" or "Prime Rate," being the base rate on corporate loans at large U.S. money center commercial banks, but in no event in excess of the rate permitted by applicable law.

4.3 Alyeska shall preserve, and shall cause its subcontractors to preserve, all documents and papers in support of any invoices presented to Contracting Vessel for payment for a period of three (3) years after Contracting Vessel is billed. For the purpose of verifying the expenses to be reimbursed under this Agreement, Contracting Vessel's authorized accounting representatives shall have access at reasonable times, with adequate advance notice, to Alyeska's personnel, job descriptions, accounting records, correspondence, instructions, plans, drawings, receipts, vouchers, pertinent data stored in computers, and memoranda pertaining to the services under this Agreement. However, Alyeska shall not be obligated to allow such access to personnel and subcontractors while they are actively engaged in responding to an Oil Spill. Contracting Vessel's accounting representatives shall have the right to reproduce any of the aforesaid documents at Contracting Vessel's expense. Alyeska shall use its best efforts to include in any contracts with its subcontractors a provision similar to the foregoing so that Contracting Vessel shall have access to pertinent records of

such subcontractors for the purpose of verifying the accuracy of Alyeska's costs in performing services under this Agreement.

ARTICLE V

INDEMNITY

5.1 Alyeska and Contracting Vessel recognize that, in connection with the performance of this Agreement: (i) Alaska Statutes 46.03.823(g)(3) defines a response action contractor as a person who is retained by a person potentially liable for a release or threatened release of a hazardous substance to provide response actions to such release; (ii) Alaska Statutes AS 46.03.823(a) provides that a person who is a response action contractor with respect to a release or threatened release of a hazardous substance whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct; (iii) the Services to be performed by Alyeska are in the public interest to protect the environment and are in the best interests of Contracting Vessel to attempt to minimize its exposure to liabilities; (iv) accidents and events may occur that result in the damage to or loss of property, in the injury to or death of

persons, in spillage, or pollution, or environmental damage; (v) the extraordinary nature of the Services may require actions by Alyeska, its Owner Companies or their respective subcontractors that can give rise to fines, penalties, and claims, including but not limited to claims based on negligence; (vi) Alyeska has based the charges for its Services on the understanding that Contracting Vessel, or anyone asserting rights on its behalf, will not challenge Alyeska's right to be indemnified as provided in this Article V and that without such assurances Alyeska considers its potential risks and liabilities to be too substantial to provide the Services for the charges set forth herein; and (vii) certain risks and liabilities may be covered by Financial Responsibility or other means not addressed in this Agreement. Notwithstanding any such Financial Responsibility or other means that Alyeska or Contracting Vessel may have or acquire to cover such risks and liabilities, and notwithstanding that certain legal authorities may have questioned the concept of one party contractually agreeing to indemnify another party for its sole negligence, Alyeska and Contracting Vessel fully understand and recognize that the nature of the Services to be provided under the terms set forth in this Agreement make it appropriate and equitable to allocate the risks and liabilities as set forth in this Article V. Therefore Alyeska and the Contracting Vessel agree that responsibility for risks and liabilities arising out of the performance of (or the failure to perform) the Services by Alyeska shall be allocated to Contracting Vessel in the manner set forth in Sections 5.2 and

5.3, regardless of who may be at fault or otherwise responsible under any statute, rule, or theory of law; even if the subject damage, loss, injury, or death is wholly or partially attributable to the active or passive negligence of Alyeska or its Owner Companies or Alyeska's subcontractors or to the unseaworthiness of any vessel.

5.2 The following risks and liabilities that may occur as a result of or in connection with the Services performed by Alyeska are allocated solely to the Contracting Vessel:

(a) Any damage to or loss of: barges, lighters, tugs and other vessels owned, chartered or used by Alyeska or third-parties, specifically including but not limited to all items set forth in Sections 4.1 (e), (f) and (g) of this Agreement; docks, berths, wharfs, shoreside facilities and installations; and navigation aids, and any other property that may be damaged or lost.

(b) Bodily injury including but not limited to physical injury, sickness, disease or any other type of injury to: employees of Alyeska, its Owner Companies or the Contracting Vessel; employees of subcontractors of Alyeska, its Owner Companies or Contracting Vessel; and all other persons.

(c) Any fines, penalties, or other charges or costs imposed by any federal, state or local authority.

(d) Any claims for environmental damage to, or loss of, natural resources, wildlife, or public and private property; any other claims concerning the environment; any claims by

fishermen, boat owners, or any other party or interest asserting any claim.

5.3 For the risks and liabilities set forth in Section 5.2, Contracting Vessel shall indemnify, defend and hold harmless Alyeska, its Owner Companies, their affiliates (including any person or entity controlling, controlled by, or under common control with Alyeska or any of its Owner Companies), subcontractors of Alyeska who assert claims against Alyeska, and each of their respective directors, officers, employees, agents, successors, and assigns (collectively, the "Indemnified Parties") against all claims, liabilities, obligations, demands, losses, deficiencies, or damages (including but not limited to compensatory, incidental, consequential; or damages, to the fullest extent permitted by law) that may be asserted against the Indemnified Parties by any party. The obligations undertaken by Contracting Vessel in this Article V are in addition to the reimbursement of expenses provided in Article IV.

5.4 The Contracting Vessel shall, at its sole expense, investigate, respond to, and provide defense for, any claim, demand or suit for which it gives an indemnity herein. Nothing in this Article V is intended to, or shall be construed to, constitute an admission of liability on the part of either Alyeska, its Owner Companies or Contracting Vessel with respect to third parties, and Alyeska and Contracting Vessel expressly disclaim any intention that any third party (other than the Indemnified Parties and third parties providing evidence of

Financial Responsibility) shall be a third party beneficiary of the provisions of this Article V.

5.5 Contracting Vessel shall reimburse the Indemnified Parties for all legal expenses (including but not limited to actual attorneys' fees, costs and allocated expenses for in-house legal services) related directly or indirectly to (i) the Spill Prevention Services that are in addition to the regular vessel escort services and Oil Spill Response Services provided by Alyeska, (ii) any claim against the Indemnified Parties for which liability is allocated to Contracting Vessel, or (iii) any action or proceeding to enforce the rights provided the Indemnified Parties under this Article.

ARTICLE VI

FINANCIAL RESPONSIBILITY

6.1 Contracting Vessel, prior to the effective date of this Agreement, shall provide written evidence to Alyeska of Financial Responsibility.

6.2 The minimum amount of Financial Responsibility that Contracting Vessel shall provide to cover Contracting Vessel's obligations under this Agreement shall be in an amount equal to one billion dollars (\$1,000,000,000).

6.3 In addition to the terms of the Financial Responsibility being satisfactory to Alyeska and sufficient to cover Contracting Vessel's obligations to Alyeska and to reimburse and indemnify the Indemnified Parties under this

Agreement, (i) if the Financial Responsibility is in whole or in part an insurance policy, the policy must specifically guarantee to reimburse and indemnify the Indemnified Parties under this Agreement and must state that it cannot be cancelled without thirty (30) days advance written notice to the insured and to Alyeska; (ii) if the Financial Responsibility is in whole or in part a certificate of financial responsibility, certificate of self-insurance, letter of credit, surety bond or guarantee, such security shall be irrevocable for the term of this Agreement; and (iii) the documents evidencing such security shall provide for not less than thirty (30) days prior written notification to Alyeska of termination of or any modification to such Financial Responsibility.

6.4 Without limiting in any way its right to proceed directly against Contracting Vessel, if Contracting Vessel defaults on its payment obligation hereunder, Alyeska shall have the right to seek reimbursement directly from the source or evidence of Financial Responsibility without first having to seek reimbursement from the Contracting Vessel. Alyeska's right to seek and receive reimbursement shall not be subordinate to any other claim against the source or evidence of Financial Responsibility.

6.5 At least forty-five (45) days before the expiration date of Contracting Vessel's Financial Responsibility, Contracting Vessel shall provide Alyeska with satisfactory evidence that the then existing Financial Responsibility or an alternative satisfactory to Alyeska will continue in effect.

6.6 Alyeska may require, and Contracting Vessel shall deliver to Alyeska within forty-eight (48) hours of a written request by Alyeska, current documentation of Contracting Vessel's Financial Responsibility.

6.7 Contracting Vessel shall notify Alyeska in writing within five (5) days of any material change in circumstances that reduces or eliminates the Contracting Vessel's ability to meet obligations under this Agreement.

6.8 On or before April 30 of each calendar year that this Agreement remains in effect, the Contracting Vessel shall renew its written evidence of Financial Responsibility.

ARTICLE VII

TERM

7.1 This Agreement shall become effective on the date that all of the following conditions are met:

(a) Contracting Vessel's ODCP is approved, or conditionally approved (whichever is earlier), by ADEC and Alyeska has been duly notified of such approval by ADEC;

(b) This Agreement is executed by authorized officers of Alyeska and Contracting Vessel; and

(c) Alyeska receives written documentation, satisfactory to Alyeska, of Contracting Vessel's Financial Responsibility.

7.2 This Agreement shall terminate immediately:

(a) If Contracting Vessel's ODCP conditional approval, or subsequently obtained approval, expires or is revoked by ADEC for any reason;

(b) If Contracting Vessel fails to maintain in effect evidence of Financial Responsibility satisfactory to Alyeska;

(c) If Contracting Vessel breaches any term of this Agreement and fails to cure such breach within five (5) days after receipt of notice from Alyeska of such breach;

(d) If Contracting Vessel is informed by Alyeska, in writing, that Contracting Vessel is disregarding the provisions of the Port Information Manual or any other rules of the Terminal and Contracting Vessel fails to provide written assurance within twenty four (24) hours of receipt of such notice that it will comply with the Port Information Manual and other applicable Terminal rules;

(e) If Contracting Vessel makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated a bankrupt or insolvent; files any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief; files any answer admitting or not contesting the material allegations of a petition filed against Contracting Vessel; or seeks to consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Contracting Vessel or any substantial part of the properties of Contracting Vessel; or

(f) If upon ten (10) days written notice from Alyeska, Contracting Vessel fails to make any payment to Alyeska.

7.3 Either party may terminate this Agreement within thirty (30) days after receipt of notice of any significant amendment to the Tanker Plan occurring after November 1, 1990.

7.4 Either party may terminate this Agreement six (6) months after giving the other party written notice of its desire to terminate this Agreement.

7.5 The obligations of Contracting Vessel in Articles IV, V, and VI hereof shall survive termination of this Agreement with respect to any liability of Contracting Vessel to Alyeska arising out of events occurring before the termination date.

7.6 The term of this Agreement shall be for a period of two years ending on December 31, 1992 and thereafter for annual periods. Either party may terminate this Agreement six (6) months after giving the other party written notice of its desire to terminate this Agreement.

ARTICLE VIII

CONTRACTING VESSEL'S

OIL SPILL PLAN

8.1 Alyeska shall have no obligation to permit the berthing of any Tanker unless Alyeska is satisfied that Contracting Vessel has a current, valid, ADEC approved ODCP for PWS that covers each Tanker.

8.2 Contracting Vessel shall notify Alyeska immediately in writing of any modifications to, or changes in, the approval status of its ODCP for PWS.

ARTICLE IX

ARBITRATION

9.1 Alyeska and Contracting Vessel agree that binding arbitration pursuant to the Federal Arbitration Act (Title 9 United States Code section 1 et. seq.) and as set forth herein, shall be their sole remedy to resolve any dispute relating to any claim or cumulative claim submitted under this Agreement to the Contracting Vessel by Alyeska for payment of any claim or cumulative claim not exceeding five million dollars (\$5,000,000). Any such dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified in the Rules Of Arbitration For Agreement For Oil Spill Response Services included herein as Exhibit ^D~~E~~. Any dispute as to the scope of the matters to be submitted to arbitration shall be resolved by the Federal District Court in Anchorage, Alaska.

9.2 Judgment on the award rendered by the arbitrator(s) and any maritime liens may be entered in the United States District Court of Alaska, or any other court in any jurisdiction where the vessel or parties are found. Contracting Vessel consents to the jurisdiction of an arbitration panel as referenced herein and of the United States District Court.

9.3 Each arbitration shall be limited solely to a claim or cumulative claim between the parties arising out of a single occurrence and shall not include any claims asserted on behalf of or against any third person. The parties do not consent to and will vigorously oppose the consolidation of any arbitration commenced under this Agreement with any other arbitration that may involve either party with any other entity whether or not such other matter involving a third person arises out of or is in any way related to the claim submitted to arbitration hereunder.

9.4 The fact that arbitration or litigation has been requested or that arbitration or litigation proceedings are pending shall not suspend or modify any of Contracting Vessel's or Alyeska's obligations under this Agreement; each party shall continue to perform hereunder until this Agreement is terminated in accordance with Sections 7.2 through 7.3.

ARTICLE X

NOTICES

10.1 The parties hereby appoint the following designated representatives to receive formal notices as required for all matters hereunder. These designated representatives are vested with full authority to act on behalf of the party they represent in all matters related to this Agreement.

Contracting Vessel

BP America Incorporated
Roger Gals - Manager
Marine Transportation
Standard Oil Company
200 Public Square
Cleveland, Ohio 44114-2375

Alyeska

Alyeska Pipeline Service Company
1835 South Bragaw Street
Anchorage, Alaska 99512
Telephone: (907) 265-8740
Fax: (907) 265-8983
(Confirmation: (907-265-8740)
Designated Representative (Acting):
Robert L. Stoltenberg
Beeper No: (907) 268-9943

All notices and other communications required or permitted under this Agreement shall be in writing, shall be sent to the above address of recipient by registered express mail, telecopy, telex, or shall be hand delivered to such address and shall be effective when received. Any address for notices may be changed by written notice thereof to the other party as provided in this Section.

ARTICLE XIGENERAL

11.1 This Agreement, including all matters of construction, validity and performance, shall in all respects be governed and enforced in accordance with the general maritime laws of the United States. Any litigation arising out of or relating to any provision of this Agreement shall be brought in the United States District Court in Anchorage, Alaska. The parties irrevocably and unconditionally consent to this choice of law and choice of forum and agree that service of process may be served upon them by delivery in accordance with the terms of Section 10.1.

11.2 This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and

assigns of the parties hereto. However, nothing herein shall allow either party to make any assignment or delegation whether voluntary, involuntary, or by operation of law, of any rights or obligations to any other person, without the other party's consent, in each instance, which may be given or withheld in that party's sole discretion.

11.3 The parties acknowledge that Alyeska's providing the Services under this Agreement does not relieve Contracting Vessel of any of its legal responsibilities or liabilities.

11.4 This Agreement constitutes a "personal contract" for services, to which the federal Limitation of Liability Act, Title 46 United States Code sections 181-89, as amended, is inapplicable.

11.5 Alyeska shall perform all Services hereunder as an independent contractor, not as an agent, employee, or representative of Contracting Vessel. Contracting Vessel shall have no authority to supervise the employees, representatives or subcontractors of Alyeska; and accomplishing all the activities or services contemplated to be performed by Alyeska under this Agreement shall be under and in all respects subject to the exclusive control and direction of Alyeska.

11.6 Alyeska is not, and shall not be deemed to be, the "holder" of an ODCP for Contracting Vessel or for the Tanker under Alaska Statute Section 46.04.040(g) or under any other law relating to oil discharge contingency plans.

11.7 This Agreement contains the entire understanding and agreement between the parties and supersedes all prior and

contemporaneous contracts, correspondence, and agreements between the parties relating to the subject matter hereof. Any amendment or modification of this Agreement must be in writing and duly executed by both parties in order to be binding. This Agreement, except as expressly provided herein, is not intended to, and shall not create any rights or confer any benefits upon anyone other than the parties hereto, and their respective assigns and successors. No third person may claim any right or interest in and under this Agreement.

11.8 No waiver by either party of any provision of this Agreement shall be binding unless expressly confirmed in writing by the party intending to be bound. Further, any waiver shall relate only to such matter, noncompliance or breach to which it expressly relates and shall not apply to any subsequent or other matter, noncompliance or breach.

11.9 The headings of the various Articles and paragraphs of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

11.10 In the event a legal action or arbitration proceeding is commenced in connection with the enforcement of this Agreement and any instrument or agreement required under this Agreement, the prevailing party shall be entitled to actual attorneys' fees, costs and allocated expenses for in-house legal services incurred in connection with such action or proceeding, as determined by the court or arbitrator.

11.11 If a court or other tribunal rules that this Agreement is invalid, unenforceable, or void in part, it is understood and agreed by the parties hereto that only the specific clause or part that is the object of the ruling is to be affected. In all other respects, this Agreement is to remain in full force and effect.

W ~~11.12 This Agreement shall be executed in the State of Alaska.~~

11.13 Unless exempted by federal law, regulation or order, Alyeska will comply with (i) Executive Order 11246 - Nonsegregated Facilities; (ii) Executive Order 11701 - Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; (iii) Executive Order 11758 - Affirmative Action for Handicapped Workers; and the supporting regulations found in Title 41 of the Code of Federal Regulations. Further, Alyeska will execute the attached Certificate of Nonsegregated Facilities and will file Standard Form 100 with the Office of Federal Contract Compliance or its designated agency as required.

It is understood by both parties to this Agreement that Alyeska is an Equal Opportunity Employer and that in the performance of this Agreement Alyeska shall not engage in any conduct or practice that violates any applicable law, order, or regulation prohibiting discrimination against any person on the basis of race, color, religion, national origin, sex, marital status, age, handicap/disability, or veteran status.

11.14 Alyeska's Spill Response personnel and its subcontractors' personnel shall abide by Alyeska's corporate

policy prohibiting such personnel from being impaired by drug(s) or alcohol while performing services. Any violation of this policy can result in termination of an employee or subcontractor.

IN WITNESS WHEREOF, Alyeska and Contracting Vessel have executed this Agreement as of the date first above written.

ALYESKA PIPELINE SERVICE COMPANY

FOR
CONTRACTING VESSELS

By: *J. B. Hermiller*
J. B. Hermiller

Name: James H. Ross

145 Title: President

By: *James H. Ross*
Chairman and Chief
Title: Executive Officer
BP America, Inc.

EXHIBIT A

Vessels under charter to BP Oil Shipping Company, U.S.A. that are subject to this agreement.

<u>VESSEL</u>	<u>OWNER/OPERATOR</u>
ADMIRALTY BAY	Trinidad Corporation
ASPEN	Trinidad Corporation
GLACIER BAY	Trinidad Corporation
AMERICAN TRADER	American Trading Transportation Company, Inc.
ATIGUN PASS	Keystone Shipping Company
KENAI	Keystone Shipping Company
KEYSTONE CANYON	Keystone Shipping Company
TONSINA	Keystone Shipping Company
BROOKS RANGE	Interocean Management Corporation
THOMPSON PASS	Interocean Management Corporation
OMI COLUMBIA	OMI Corporation
OVERSEAS ALASKA	Maritime Overseas Corp. and Subsidiaries
OVERSEAS ARCTIC	Maritime Overseas Corp. and Subsidiaries
OVERSEAS BOSTON	Maritime Overseas Corp. and Subsidiaries
OVERSEAS CHICAGO	Maritime Overseas Corp. and Subsidiaries
OVERSEAS NEW YORK	Maritime Overseas Corp. and Subsidiaries
OVERSEAS OHIO	Maritime Overseas Corp. and Subsidiaries
PRINCE WILLIAM SOUND	Sun Transport, Incorporated <i>/ See Amendment V</i>
NORTHERN LION	Maritime Overseas Corp. and Subsidiaries
SOUTHERN LION	Maritime Overseas Corp. and Subsidiaries
EASTERN LION	Maritime Overseas Corp. and Subsidiaries
WESTERN LION	Maritime Overseas Corp. and Subsidiaries
SAINT LUCIA	Amerada Hess Corporation
MT. CABBITE	Amerada Hess Corporation
SEAL ISLAND	Amerada Hess Corporation

COMMAND STAFF
September 1990

Mike Williams, Incident Commander	x8544	345-7364 (H)
	Beeper	268-9970
	Cellular phone	229-1731
Nick Mitchell, Deputy Incident Commander	x8875	345-6842 (H)
	Beeper	268-9877
	Cellular phone	229-1732
Marnie Isaacs, Media Officer	x8312	279-8900 (H)
	Beeper	268-9986
Gary Bader, Liaison Officer	x8858	346-2719 (H)
	Beeper	268-6016
Lyle Von Bargaen, Liaison Officer-Valdez	x6284	835-2248 (H)
Tim Plummer, Marine Officer	x6526	835-2688 (H)
Rob Shoaf, Legal Officer	x8565	346-3918 (H)
Pat Wellington, Security Officer	x8362	338-2653 (H)
	Beeper	268--9776
Duane Taylor, Safety Officer	x8850	349-6432 (H)
Tom Casey, Command Section Coach	x8979	274-5816 (H)
	Beeper	268-7109

ALY-SEA EXHIBIT BPage 2

OPERATIONS SECTION
September 1990

Larry Shier, Operations Section Chief
x6902

835-5074 (H)

Bob Adkins, Ops Chief Pipeline

x8974

257-2264 (H)

Beeper 268-8123

Dave Neilson, Onwater Group Supervisor
x6903

835-4773 (H)

Lance Gilpatrick, Deputy-Onwater Group Supervisor
x6904

745-6748 (H)

Graham Lascelles, Nearshore Group Supervisor
x8981

257-2252 (H)

Jake Meadows, Staging Area Manager
x6921

835-4045(H)

Mark Hutton, Fishing Vessel Unit Leader
x8879

278-8056 Anc.
595-1351 Cooper Ldg.
268-9984

Beeper

Don Fuller, Operations Section Coach

279-0495 Anch
268-7123 Beeper
479-0990 Fairbanks

PLANNING SECTION
September 1990

Gene Dickason, Plans Chief

x8678

278-6343 (H)

Kathy Gallaher, Deputy-Plans Chief

x8524

835-5898 (H)

Fred Bethune, Plans Coach

279-0495(Anch)

457-6982 (Fairbanks)

Beeper Anch 268-7110

Elden Johnson, Resource Unit Leader

x8225

345-3132 (H)

Kate Montgomery, Documentation Unit Leader

x8727

338-4837 (H)

Elvia Myrie, Documents

8878

279-2116 (H)

Marnie Starck, Documents

8197

344-3360 (H)

Wendy Rousalis, Documents

8634

279-1191 (H)

Carl Rutz, Situation Unit Leader

x8979

688-2635 (H)

Sharon Hillman, Environment Unit Leader

x8827

338-2774 (H)

Ingrid Gadpaille, Environment Unit

x8981

257-2265 (H)

LOGISTICS SECTION
September 17, 1990

Dave Greenlee, Logistics Section Chief	x8780	345-5774 (H)
Beeper # 268-9860		
Wayne Fredeen, Deputy-Logistics Section Chief	x8472	896-0011 (H)
Beeper # 268-9918		
Maggi Thickstun, Service Branch Director	x8567	333-2922 (H)
John Hankee, Support Branch Director	x5539	694-3937 (H)
Beeper # 268-9923		
Frank Heffernan, Aviation Branch Director	x8534	888-3363 (H)
Beeper # 268-9901		
Joe Lieta, Deputy-Aviation Branch Director	x8538	248-5201 (H)
Beeper # 229-1628		
Cellular# 229-1628		
Jim Cole, Communications Unit Leader	x8876	337-0790 (H)
Beeper # 268-9911		
Hai Phung, Deputy-Communications Unit Leader	x8317	563-1805 (H)
Dave Sunday, Facilities Unit Leader	x5509	344-8987 (H)
Charlene Hutton, Supply Unit Leader	x8425	346-3783 (H)
Bill Pearson, Transportation Unit Leader	x5506	345-5898 (H)
Cellular # 229-0471		

Amy Miller, Deputy-Transport Chief

x5534

344-6555(H)

Roy Goodman, Food Unit Leader

x8833

745-2257 (H)

Leo Morresey, Medical Unit Leader

x8304

346-1647 (H)

Beeper # 268-8059

Lonnie Sullivan, Deputy-Medical Unit Leader

x8635

688-2170 (H)

ALY-RA EXHIBIT

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BP AMERICA
EMERGENCY RESPONSE CALL-OUT LIST
PRINCE WILLIAM SOUND INCIDENTS
OCTOBER 15, 1990

COMMAND STAFF

FRED G. GARIBALDI, Incident Commander

Office (216) 586-4102

Home (216) 331-7254

Beeper 1-800-759-7243 Pin # 267-8401

BRIAN DAVIES, Deputy Incident Commander

Office (907) 564-4773

Home (907) 277-5547

JAMES A. PALMER, Government/Public Affairs

Office (907) 564-5403

Home (907) 694-2753

CHARLES L. WEBSTER, Liaison Officer

Office (216) 586-5546

Home (216) 835-9711

Beeper 1-800-759-7243 Pin# 267-8389

STAFF HEADS

JOHN MASLEN, Operations Section Chief

OFFICE (216) 586-5215

HOME (216) 331-1402

BEEPER 1-800-759-7243 PIN # 267-8403

EDWARD JOHNSON, Planning Section Chief

Office (216) 586-3170

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WILLIAM WEBB, Finance Section Chief

Office (216) 586-4558

Home (216) 831-9412

CHARLES KENLEY, Logistics Section Chief
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Home (907) 346-2266

RULES OF ARBITRATION FOR AGREEMENT
FOR OIL SPILL RESPONSE SERVICES

The Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as herein modified, shall apply to any arbitration between Alyeska and Contracting Vessel as provided in Article IX of the Agreement For Oil Spill Response Services ("Agreement"). In the event of any inconsistency between the AAA Rules and these arbitration provisions, these provisions shall supersede the AAA Rules. The Commercial Rules of the AAA are modified as follows:

1. Rule 11 - Fixing of Locale: Unless otherwise agreed, all arbitration proceedings pursuant to these rules shall be held only in Anchorage, Alaska. If circumstances require that evidence be taken in other locations, this may be done unless either party objects.
2. Provisional Remedies: No judicial proceedings by a party relating to the subject matter of arbitration shall be deemed a waiver of the party's right to arbitrate. No arbitration proceedings shall constitute a waiver of a maritime lien or the right to pursue the enforcement of a maritime lien as security for the satisfaction of an award. Specifically, the right to obtain provisional remedies, such as seizure of a vessel described in Title 9 United States Code Section 8, is preserved.

3. Rule 14 - Direct Appointment of Arbitrators: Unless the parties agree in writing to a sole Arbitrator, each party shall, within fourteen (14) calendar days after notice of a demand for arbitration has been received as provided in Article X of the Agreement, appoint in writing one Arbitrator ("Party Arbitrator"). The two (2) Party Arbitrators so appointed shall, within fourteen (14) calendar days after the second of them has been appointed, attempt in good faith to agree upon a neutral third arbitrator ("Neutral Arbitrator"). The Party Arbitrators and the Neutral Arbitrator are not required to be members of the National Panel of Commercial Arbitrators provided under AAA Rule 4 or otherwise associated with the AAA. If the two (2) Party Arbitrators are unable, within the fourteen (14) calendar day period, to agree on the Neutral Arbitrator then either party may request that the AAA offices in Seattle, Washington appoint the Neutral Arbitrator as provided in Rule 15 of the AAA Rules. Unless the parties agree otherwise, each arbitrator appointed hereunder shall (i) have at least ten (10) years of business or professional experience, (ii) be knowledgeable in the subject matter of the dispute, and (iii) be neither affiliated with, nor employed by, nor have any financial or equity interest in, either party, or in a company owning, directly or indirectly, over fifty percent (50%) of the shares of stock of a party, including any subsidiary of such owner company.

4. Rule 17 - Number of Arbitrators: Unless the parties have agreed to have the dispute heard and determined by one arbitrator, the matter shall be heard by the three (3) arbitrator panel and the dispute shall be decided by a majority vote of the three (3) arbitrators.
5. Rule 10 - Discovery: In addition to the provisions of Rule 10, the parties shall comply with the following:
 - a. Alyeska. Within forty five (45) days after notice of the initiation of arbitration, Alyeska shall provide to designated representatives of Contracting Vessel:
 - (1) All documents in Alyeska's possession directly related to the subject matter of the dispute that would be discoverable under the Federal Rules of Civil Procedure.
 - (2) A list of names and addresses of all Alyeska employees and contractor personnel directly involved in the subject matter of the dispute.
 - b. Alyeska shall make its employees available in Alaska on proper notice for pre-hearing depositions. Depositions will commence within one hundred twenty (120) days after initiation of arbitration.

c. Contracting Vessel. Within forty five (45) days after notice of the initiation of arbitration, Contracting Vessel shall provide to designated representatives of Alyeska:

(1) All documents in Contracting Vessel's (including the vessel owners', operator's and agent's) possession directly related to the subject matter of the dispute that would be discoverable under the Federal Rules of Civil Procedure.

(2) A list of names and addresses of all personnel acting on behalf of Contracting Vessel directly involved in the subject matter of the dispute.

d. Contracting Vessel shall make the above identified personnel available in Alaska on proper notice for pre-hearing depositions. Depositions will commence within one hundred twenty (120) days after initiation of arbitration.

e. Either party may request such additional discovery as it deems appropriate. If a party fails to comply with discovery as described herein or does not agree to comply with a request for additional discovery, then the party making the request may seek a discovery order

from the Neutral Arbitrator, who shall resolve the request consistent with the standards set forth in the Federal Rules of Civil Procedure.

- f. If the Neutral Arbitrator determines that a party has failed to comply with discovery as prescribed herein or as ordered by the Neutral Arbitrator, the Neutral Arbitrator shall impose sanctions on the party consistent with Rule 37 of the Federal Rules of Civil Procedure.

6. Time for Arbitration to Begin

- a. The arbitration hearing shall commence within two hundred forty (240) days of the initiation of arbitration, unless delay is caused by the mutual agreement of the parties.
- b. The Neutral Arbitrator is hereby authorized to extend the two hundred forty (240) day deadline for other good cause shown. However, each forty five (45) day increment of an extension under this authority shall result in a one percent adjustment of the interest rate applicable to an award. If Contracting Vessel causes the delay, the interest rate shall increase. If Alyeska causes the delay, the interest rate shall

decrease. The Neutral Arbitrator shall have the authority to determine which party caused the delay.

7. Rule 23 - Stenographic Record: All proceedings before the arbitrators shall be recorded by an officer authorized to administer oaths by the United States or by the State of Alaska. The parties shall share equally the cost of this service.
8. Rule 25 - Attendance at Hearings: No person other than the parties, their representatives and witnesses may attend depositions and hearings before the arbitrators. The arbitrators shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.
9. Rule 32 - Evidence by Affidavit and Filing Documents: Unless agreed to by the parties, the arbitrators will not accept evidence by affidavit. Deposition testimony may be admitted as evidence by the arbitrators if the party against whom the testimony is offered had the opportunity to examine or cross-examine the witness at deposition.
10. Rule 43 - Scope of Award: The arbitrators shall not issue an award relating to any claim or cumulative claim that was made for an amount in excess of five million dollars (\$5,000,000), nor shall the arbitrators have the power to

award any legal or equitable relief other than monetary damages. The five million dollar (\$5,000,000) claim limit does not include arbitration fees, attorneys fees, interest and costs. Arbitration fees shall be paid by the party against whom the award is rendered. Consistent with Federal Civil Procedure Rule 54(d), the arbitrators shall award costs. The arbitrators shall also award the prevailing party all of its actual attorneys' fees, except such portion of such fees that the non-prevailing party proves to be clearly unreasonable, together with interest on the award. Interest shall commence from the date the obligation to make payment accrued and shall run until the date payment of the award is made to the prevailing party as computed in Section 4.2 of the Agreement.

11. Offer of Judgment: At any time more than ten (10) days before the arbitration hearing begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the amount specified in the offer, with costs, interest and actual attorneys fees then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is acceptable, either may then proceed to have the clerk of the Federal District Court in Anchorage, Alaska enter judgment, as provided in Title 9 United States Code Section 9 and Rule 68 of the Federal Rules of Civil Procedure. An offer not accepted shall be

deemed withdrawn and evidence thereof is not admissible in the arbitration proceedings. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs and actual attorneys fees incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

AMENDMENT ONE TO THE
AGREEMENT FOR OIL SPILL RESPONSE SERVICES

The AGREEMENT FOR OIL SPILL RESPONSE SERVICES ("Agreement"), dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska"), agent for its Owner Companies (defined in Section 1.11), and BP America, Inc. a Delaware corporation with its principal place of business at 200 Public Square, Cleveland, Ohio 44114 ("BP"), as Contracting Vessel for the charterer of the tank vessels listed in Exhibit A to the Agreement, is hereby amended by this Amendment One effective November 1, 1990.

The Standard Oil Company, an Ohio corporation and a wholly owned subsidiary of BP with a principal place of business at 200 Public Square, Cleveland, Ohio 44115 ("Standard") is hereby added to the Agreement as an additional Contracting Vessel party as defined in Section 1.4 of the Agreement with the rights and obligations of such party for its wholly owned subsidiary, BP Oil Shipping Company, USA which is the Charterer of the tank vessel listed in Exhibit A of the Agreement.

This amendment is made pursuant to Section 11.7 of the Agreement. Except as stated herein, this amendment does not change the Agreement in any other way.

IN WITNESS WHEREOF, Alyeska, BP and Standard have executed this Amendment as of November 1, 1990.

ALYESKA PIPELINE SERVICE COMPANY

By: _____

Title: _____

BP AMERICA, INC.

By: James H. Rou

Title: President and CEO

THE STANDARD OIL COMPANY

By: James H. Rou

Title: Chairman and CEO

AMENDMENT TWO
TO THE
AGREEMENT FOR OIL SPILL RESPONSE SERVICES

Section 7.6 of the AGREEMENT FOR OIL SPILL RESPONSE SERVICES ("Agreement"), dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska"), agent for its Owner Companies (defined in Section 1.11), and BP America, Inc. a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation, with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 (collectively called "Contracting Vessel"), for the charterer of the tank vessels listed in Exhibit A to the Agreement, is hereby amended effective November 1, 1990.

Section 7.6 of the Agreement is replaced by the following: "7.6 The Term of this agreement shall be for a period from November 1, 1990, through November 16, 1990, inclusive."

This amendment is made pursuant to Section 11.7 of the Agreement. Except as stated herein, this amendment does not change the Agreement in any other way.

IN WITNESS WHEREOF, Alyeska and Contracting Vessel have executed this Amendment as of November 1, 1990.

ALYESKA PIPELINE SERVICE COMPANY

By: _____

Title: _____

CONTRACTING VESSEL

By: James Roy

Title: CEO

AMENDMENT THREE
TO THE
AGREEMENT FOR OIL SPILL RESPONSE SERVICES

Section 7.6 of the AGREEMENT FOR OIL SPILL RESPONSE SERVICES ("Agreement"), effective November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska"), agent for its Owner Companies (defined in Section 1.11), and BP America, Inc., a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation, with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 (collectively called "Contracting Vessel"), for the charterer of the tank vessels listed in Exhibit A to the Agreement, is hereby amended effective November 16, 1990.

Section 7.6 of the Agreement shall read:

"7.6 The term of this agreement shall be for a period from November 16, 1990, through December 31, 1992 and thereafter for annual periods. Either party may terminate this Agreement six (6) months after giving the other party written notice of its desire to terminate this Agreement."

This amendment is made pursuant to Section 11.7 of the Agreement. Except as stated herein, this amendment does not change the Agreement in any other way.

Amendment 3
Page 2

IN WITNESS WHEREOF, Alyeska and Contracting Vessel have
executed this Amendment as of November 16, 1990.

ALYESKA PIPELINE SERVICE COMPANY

CONTRACTING VESSEL

RNS By: Shirley L. Kulash

By: _____

Title: VP Operations

Title: _____

AMENDMENT NO. 4
TO THE
AGREEMENT FOR OIL SPILL RESPONSE

The Agreement for Oil Spill Response Services ("Agreement") dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska") and BP America Inc., a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation ("Standard") with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 ("BP") as Contracting Vessel for the tank vessels listed in Exhibit A to the Agreement is hereby amended by this Amendment effective November 30, 1990.

Alyeska, BP and Standard agree that Exhibit A to the Agreement is hereby amended by adding the following vessel to those named in Exhibit A:

OVERSEAS ALASKA

This amendment is made pursuant to section 11.7 of the Agreement. Except as stated herein, this amendment does not change the agreement in any other way.

IN WITNESS WHEREOF, Alyeska, BP and Standard executed this as of November 30, 1990.

Alyeska Pipeline Service Company

By: [Signature]

Title: W. P. Operations

Contracting Vessel

BP America Inc.

By: [Signature]

Title: President and CEO

The Standard Oil Company

By: [Signature]

Title: Chairman and CEO

AMENDMENT NO. 5
TO THE
AGREEMENT FOR OIL SPILL RESPONSE

The Agreement for Oil Spill Response Services ("Agreement") dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska") and BP America Inc., a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation ("Standard") with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 ("BP") as Contracting Vessel for the tank vessels listed in Exhibit A to the Agreement is hereby amended by this Amendment effective December 12, 1990.

Alyeska, BP and Standard agree that Exhibit A to the Agreement is hereby amended by changing the owner/operator for the vessel PRINCE WILLIAM SOUND from Sun Transport to Keystone Shipping Company.

This amendment is made pursuant to section 11.7 of the Agreement. Except as stated herein, this amendment does not change the agreement in any other way.

IN WITNESS WHEREOF, Alyeska, BP and Standard executed this as of December 12, 1990.

Alyeska Pipeline Service Company

By: [Signature] T.B. Hamilton
Title: V.P. Operations 12-13-90

Contracting Vessel

BP America Inc.

By: [Signature]
Title: President and CEO

The Standard Oil Company

By: [Signature]
Title: Chairman and CEO

webb2049.agr

holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, or their common operating agent, (1) must be fair, reasonable, and nondiscriminatory; and (2) with respect to any financial responsibility requirement in excess of \$10,000,000, (A) may not exceed the potential cost of containment and cleanup that the operating agent may reasonably be expected to incur under its contract with the owner, operator, or charterer of the tank vessel before the transfer of cleanup and containment management and control to the responsible party; ^{*Insert see below} 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 a discharge or a threat of discharge; and (B) must vary among each tank vessel in proportion to the volume of oil carried by each tank vessel ^{and frequency of voyages by the tank vessel} per voyage from the marine terminal serving the Trans Alaska Pipeline System; ~~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.~~

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

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

* 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

^{*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"}

Response Services Agreement

1.13 "Prince William Sound" or "PWS" means the area described in Title 18 Alaska Administrative Code Section 75.600(6) and state waters outside and adjacent to the entrance to Prince William Sound located between (i) a line drawn due south from Point Whittard on the Alaska mainland at position $60^{\circ}26.7$ N, $145^{\circ}52.7$ W to the three-mile limit for state waters

9/91

-4-

and (ii) a line drawn due south from a point on the western end of Montague Island at position $59^{\circ}50.2$ N, $147^{\circ}54.4$ W to the three-mile limit for state waters, ~~and is the same as the definition of Plan Area in the Tanker Plan.~~

mike williams
265-8544-w

148°

147°

146°

145°

144°

143°

142°

141°

CAUTION THIS CHART IS NOT TO
BE USED FOR NAVIGATIONAL PURPOSES

MSO VALDEZ AREA OF RESPONSIBILITY

The State of Alaska that falls
within the following boundary line:

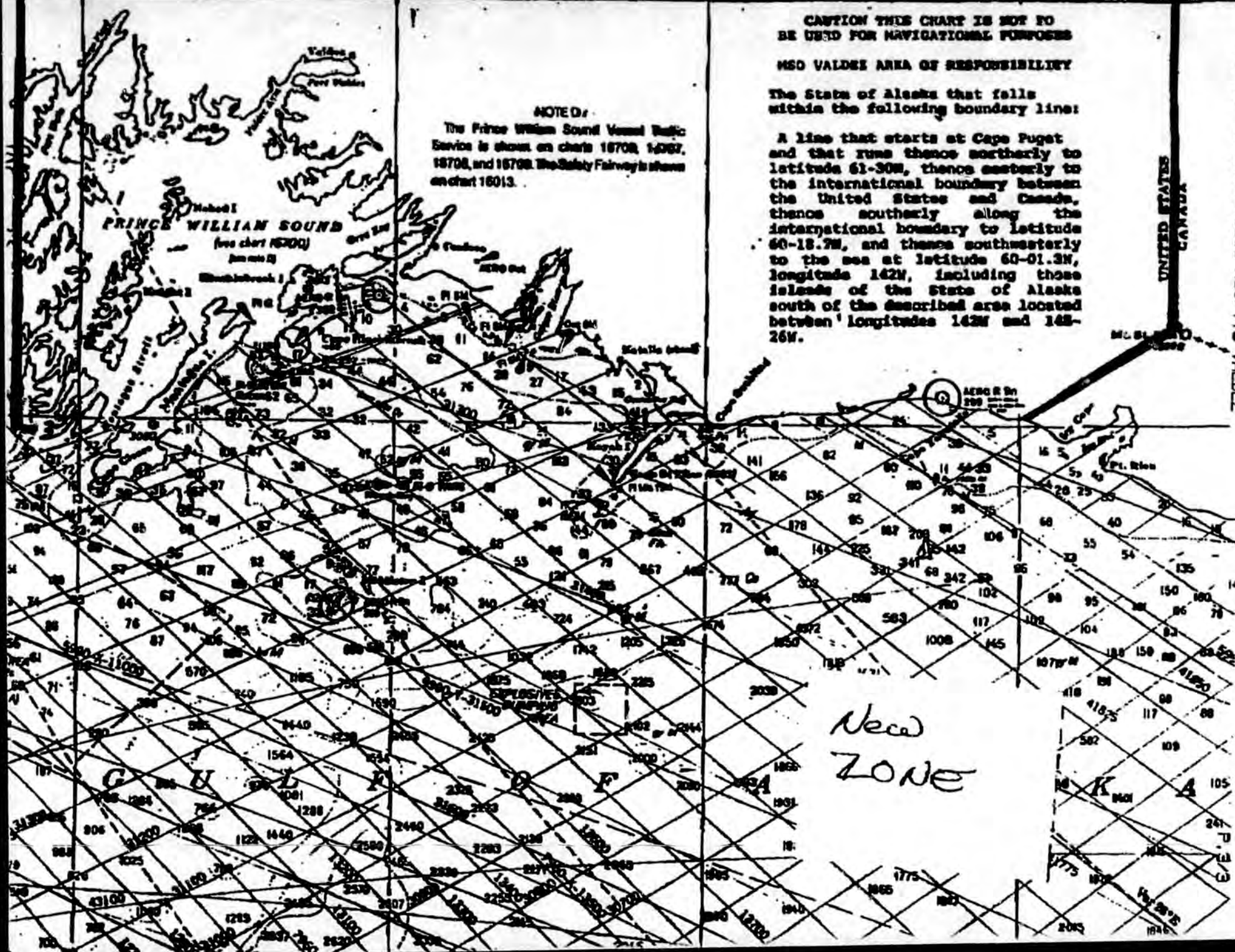
A line that starts at Cape Puget
and that runs thence northerly to
latitude 61-30N, thence easterly to
the international boundary between
the United States and Canada,
thence southerly along the
international boundary to latitude
60-18.7N, and thence southwesterly
to the sea at latitude 60-01.3N,
longitude 142N, including those
islands of the State of Alaska
south of the described area located
between longitudes 142W and 142-
26W.

NOTED:

The Prince William Sound Vessel Traffic
Service is shown on charts 18708, 14367,
18708, and 18708. The Safety Fairway is shown
on chart 18013.

UNITED STATES
CANADA

MAY 08 '92 09110 USCG MSO/MTS VALDEZ

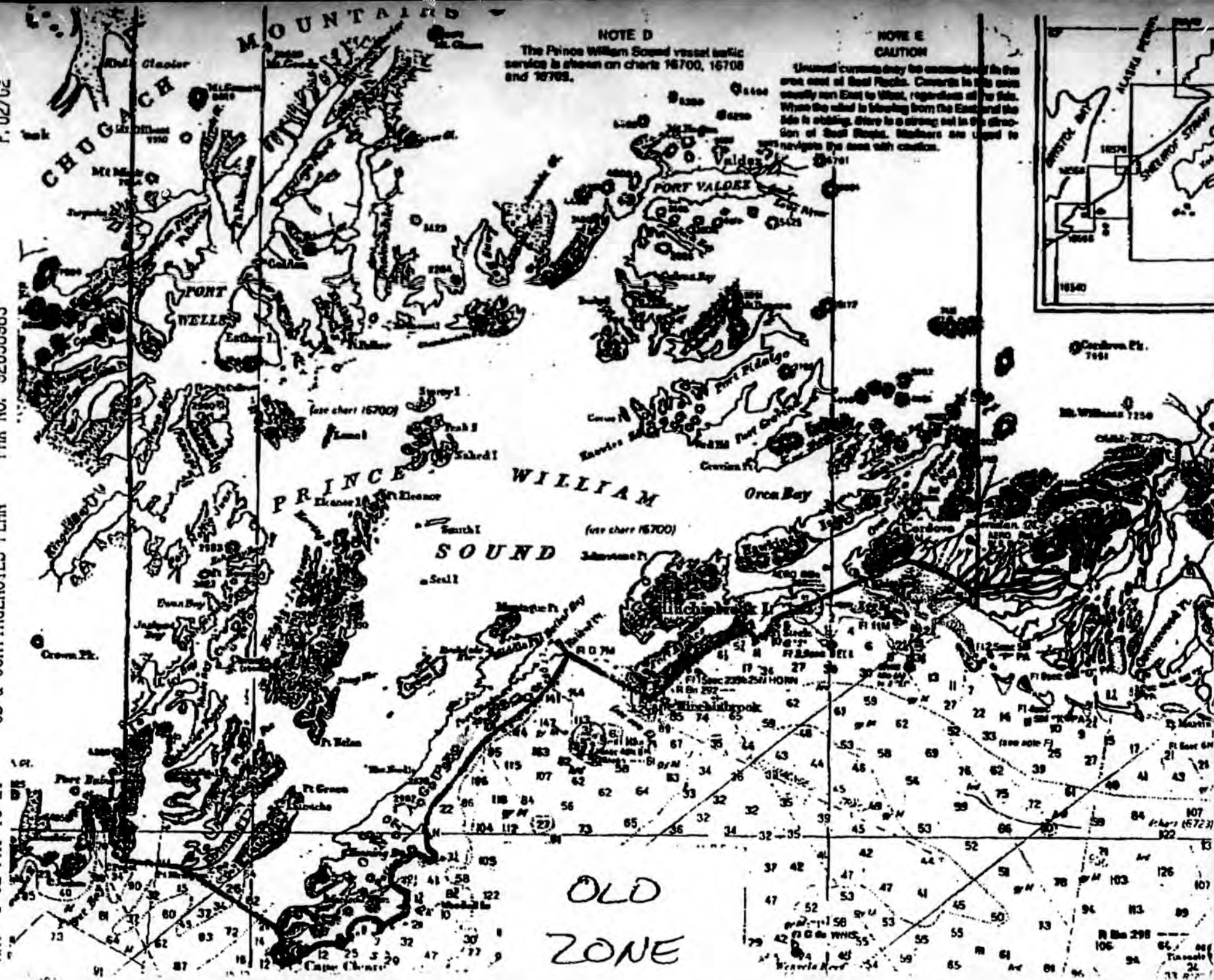


MAY- 8-92 FRI 10:21

OS & CONTINGENCIES PLAN

FAX NO. 92658983

P. 02/02



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

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

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

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

14 **SEC. 2711. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER**

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

18 "RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

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

May 5, 1992

11:36 pm

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Conservation Act ("ANILCA") prior to issuing any five-year program under section 18 of the OCSLA, conducting any lease sale, or approving any plan or permit for exploration, development, or production activities in the Alaska region. In a 1987 decision, Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987), the Supreme Court ruled that ANILCA did not apply to OCS leasing. Accordingly, section 2702 is necessary since the Department of the Interior is not compelled to comply with the subsistence review requirements of ANILCA, and yet has greatly expanded OCS leasing activities in Alaska. Nearly one-half of the total acres to be leased under the current five-year plan are in Alaska waters.

In section 810 of ANILCA, Congress required all Federal agencies, prior to undertaking actions that could affect subsistence activities, to publicly review the proposed Federal actions to determine whether they would significantly restrict subsistence uses and to take steps to minimize adverse impacts upon subsistence uses and resources.

To protect the health, sustenance, traditional local economies and culture of Alaska Natives and other residents of rural Alaska, Congress included title VIII in ANILCA. Section 804 of title VIII established a priority for subsistence use of fish stocks in all waters in Alaska and wildlife populations on Federal public lands in Alaska. In extending the application of section 810 of ANILCA to OCSLA leasing in section 2702, the Committee reaffirms its strong commitment to the protections of subsistence resources and uses set forth in Title VIII of ANILCA.

Section 2702 specifically requires the Secretary to comprehensively consider the effects of exploration, development, and production upon subsistence resources and uses at the lease sale stage. The existence of later governmental reviews and approvals under the OCSLA and other applicable laws shall not affect the Secretary's duties to undertake comprehensive consideration at the lease sale stage. The Committee notes the significance of the lease sale decision and the major commitment it entails by both government and industry. To the extent that the reasoning in Secretary of the Interior v. California, 464 U.S. 312 (1984), Tribal Village of Akutan v. Hodel, 869 F. 2d 1185 (1989) and Village of False Pass v. Clark, 733 F.2d 605 (9th Cir. 1984) is inconsistent with the Committee's recognition of the significance of the lease sale stage, it is rejected.

Subtitle B--Trans-Alaska Pipeline

Section 2711 amends the 1973 Trans-Alaska Pipeline

May 5, 1992

11:36 pm

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Authorization Act ("TAPAA") by adding a new section 208 which requires Alyeska Pipeline Service Company ("Alyeska"), in addition to existing duties to respond to, contain and clean up oil spills within the State of Alaska, to file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior. The Committee notes that, notwithstanding the Secretary's role in oil spill matters under section 204(b) of TAPAA, Alyeska (designated agent for British Petroleum, Exxon, Arco and four other companies which possess the pipeline right-of-way), has not been required by the Secretary to submit an oil spill cleanup plan for review.

Since the Exxon Valdez oil spill in 1989, Alyeska has taken a revisionist history position that it is a "voluntary response contractor" and not obligated to respond to any spill of oil transported by the Trans-Alaska Pipeline once it is loaded on tankers in Valdez. Alyeska's current position contrasts vividly with its past commitments, including the Oil Spill Contingency Plan for Prince William Sound (January 1987) in effect at the time of Exxon Valdez disaster.

The Committee rejects Alyeska's position in the strongest possible terms as contrary to existing law and agreements and irresponsible in light of Alyeska's past oil spill contingency plans and public assurances. Congress and the Administration have consistently intended that Alyeska - the entity on site with oil spill response equipment - has a binding, legally enforceable duty to respond to and clean up oil spills.

Section 204(b) of TAPPA, as amended by section 8101 of the Oil Pollution Act of 1990 (P.L. 101-380), requires the "control and total removal" of any pollutant within the State of Alaska by the holder of the right-of-way and at the holder's expense. This statutory duty is mirrored in provisions of the Department of the Interior's Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline with the holders. Once oil carried by the Trans-Alaska pipeline is loaded on a vessel at Valdez, the liability regime of the Oil Pollution Act applies. However, nothing in that Act diminished Alyeska's longstanding duty to respond to and clean up oil spills in Prince William Sound and elsewhere within the boundaries of the State of Alaska.

Section 2712 amends TAPPA to establish a new section 209 which requires that no less than 80 percent of any amounts received by the United States in settlement of claims arising from the Exxon Valdez oil spill litigation shall be used to acquire land or otherwise protect fish and wildlife habitat in Prince William Sound and Gulf of Alaska areas impacted by the

COMPREHENSIVE NATIONAL ENERGY POLICY ACT

MAY 5, 1992.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries,

submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 776]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 776) to provide for improved energy efficiency, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to the bill as reported by the Committee on Energy and Commerce are as follows:

Page 153, lines 7 through 9, amend the section head of section 205 to read as follows:

SEC. 205. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL
POLICY ACT OF 1969 AND OTHER ENVIRONMENTAL
LAWS.

Page 156, after line 12, insert the following new subsection:

(c) NEPA COMPLIANCE.—Unless explicitly superseded or waived by this Act, the Federal Energy Regulatory Commission shall comply with the National Environmental Policy Act of 1969 in implementing section 7 of the Natu-

(f) **INAPPLICABILITY TO MEDICAL DEVICES.**—Subsections (a) through (c) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(g) **INAPPLICABILITY TO MILITARY USES.**—Subsections (a) through (c) shall not apply to plutonium in the form of nuclear weapons or to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(h) **PAYMENT OF COSTS.**—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through the United States in containers specified by the Commission.

(i) **DEFINITION.**—The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

SEC. 2102. OIL POLLUTION AMENDMENTS.

(a) **FEDERAL WATER POLLUTION CONTROL ACT.**—Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by adding at the end the following:

"(12) **WITHHOLDING CLEARANCE.**—The Secretary of the Treasury, at the request of the Administrator or the Secretary of the department in which the Coast Guard is operating, shall withhold or revoke—

"(A) the clearance required by section 4197 of the Revised Statutes of the United States;

"(B) a permit to proceed required under section 4367 of the Revised Statutes of the United States; and

"(C) a permit to depart required under section 443 of the Tariff Act of 1930;

as applicable, for a vessel that is subject to, or the owner, operator, or person in charge of which is subject to, a penalty under paragraph (6) or (7). Clearance or a permit withheld or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Administrator or the Secretary."

(b) **OIL POLLUTION ACT.**—Section 1002 of the Oil Pollution Act of 1990 (Public Law 101-380; 104 Stat. 503) is amended by adding the following new subsection:

"(e) The costs and damages described in subsection (b) shall constitute a maritime lien on the vessel that may be recovered in an action in rem in the district court of the

United States for any district within which a vessel may be found."

SEC. 2103. EXXON VALDEZ SETTLEMENT FUND HABITAT ACQUISITION.

(a) **LIMITATION OF EFFECT.**—Nothing in this Act shall affect—

(1) the expenditure or use 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 development and implementation 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, as approved by the United States District Court for the District of Alaska on October 8, 1991.

(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.

SEC. 2104. 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. 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 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."

BACKGROUND, NEED, AND PURPOSE OF AMENDMENTS

As reported by the Committee on Energy and Commerce, the purpose of H.R. 776 is to enact a comprehensive national energy policy that gradually and steadily increases U.S. energy security in cost-effective and environmentally beneficial ways.

The Committee on Merchant Marine and Fisheries received a sequential referral of H.R. 776 for consideration of those provisions within titles II, XVI, and XVII that fall within the jurisdiction of the Committee pursuant to rule X of the House rules. The amendments to H.R. 776 reported by the Committee on Merchant Marine and Fisheries cover a broad range of issues consistent with the purpose of the Committee on Energy and Commerce bill and within the jurisdiction of the Committee on Merchant Marine and Fisheries.

Section 2711 of the amendment to H.R. 776 reported by the Interior Committee amends the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) to require Alyeska Pipeline Service Company, the holder of the right-of-way for the Trans-Alaska pipeline, to file an oil spill contingency plan with the Secretary of the Interior for oil spills into Prince William Sound, Alaska. Section 2104 of the amendment reported by the Merchant Marine and Fisheries Committee requires the Alyeska Pipeline Service Company to file an oil spill response plan with the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

The Oil Pollution Act of 1990 applies to all oil spills from vessels or facilities into the navigable waters or adjoining shorelines or the exclusive economic zone of the United States. Section 4202 of the Oil Pollution Act established a national oil spill planning and response system. Under that section, owners or operators of tank vessels or facilities are required to submit oil spill contingency plans for approval by the U.S. Coast Guard. The Coast Guard is required to promptly review the plans, require amendments to any plan that does not meet approval, approve plans that are acceptable, and periodically review plans to ensure that they continue to provide the oil spill cleanup capability necessary under the circumstances. Section 2104 of the Committee amendment requires the Alyeska oil spill response plan to be submitted and approved under this established plan review system. The Coast Guard, not the Interior Department, has the expertise to ensure that the appropriate level of oil spill preparedness is maintained in Prince William Sound, Alaska.

COMMITTEE ACTION

H.R. 776 was introduced by Congressmen Sharp and Dingell (and others) on February 4, 1991, and reported, with an amendment, by the Committee on Energy and Commerce on March 30, 1992. Titles II, XVI, and XVII were sequentially referred to the Committee on Merchant Marine and Fisheries for a period ending not later than May 1, 1992. On April 30, 1992, the Committee met to consider and mark up H.R. 4722 and H.R. 776.

During the Committee's consideration of H.R. 776, Mr. Studds offered (for himself and Chairman Jones) an amendment to title II clarifying the applicability of NEPA to the natural gas pipeline permitting process under the Natural Gas Act and the Natural Gas Policy Act of 1978. The amendment was approved by voice vote.

The Committee considered no amendments to section 1701, but Mrs. Unsoeld and Mr. Studds engaged in a colloquy regarding recent efforts by FERC to promulgate a very restrictive definition of the term "fishways" under the Federal Power Act. The Committee supported the provision as reported by the Energy and Commerce Committee with the understanding that it overturns the FERC action and reasserts the exclusive authority of the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to prescribe needed fishways.

Mr. Jones offered an amendment adding the text of H.R. 4122, the "Marine and Coastal Environment and Global Climate Protection Act of 1992," as amended and ordered reported earlier in the markup, as title XX. The amendment was approved by a 28-16 roll call vote.

Other amendments were offered and included in an additional title, Miscellaneous Merchant Marine and Fisheries Provisions (Title XXI). Chairman Jones, on behalf of the Committee leadership, offered an amendment adding section 2101 addressing the shipment of plutonium on vessels and testing requirements for the containers that hold the radioactive material. The Chairman offered the amendment to protect the Committee's jurisdiction over the subject of international maritime law and the maritime shipment of hazardous cargoes. The Committee agreed to the amendment by voice vote. A similar amendment to H.R. 776 was adopted in the Committee on Interior and Insular Affairs.

Mr. Jones offered an amendment adding section 2102, which restores authority to Customs, at the request of the Coast Guard and the Environmental Protection Agency, to detain a vessel when the vessel owner has failed to pay administrative and civil penalties under the Clean Water Act. The provision also amends the Oil Pollution Act of 1990 to establish *in rem* jurisdiction over a vessel for removal costs and damages for which the vessel's owner, operator, or person in charge is liable under the Act. The amendment was adopted by voice vote.

Mr. Young offered an amendment adding section 2103 to authorize and encourage expenditures of Exxon Valdez settlement funds received by the United States for acquisition of land or interests in land determined by the Federal Trustees to be important fish and wildlife habitat. The amendment was adopted by voice vote.

Mr. Young also offered an amendment adding section 2104 to require the Alyeska Pipeline Service Company, as agent for the right-of-way holders for the Trans-Alaska Pipeline, to submit an oil spill response plan to the Secretary of Transportation for approval under the Oil Pollution Act of 1990. The amendment was adopted by voice vote.

Mr. Studds offered an amendment (added to Title XVII) that authorizes the U.S. Army Corps of Engineers to construct, operate and maintain a small vertical axis hydro-turbine on Cape Cod Canal in southeastern Massachusetts. The Committee adopted the amendment by voice vote.

Mr. Anderson of California moved that the Committee order H.R. 776, the Comprehensive National Energy Policy Act, as amended, reported to the House. The motion was approved by voice vote.

SECTION-BY-SECTION ANALYSIS

Title II—Natural Gas Pipeline

Sec. 205. Compliance with the National Environmental Policy Act and other environmental laws

The Committee amended the title of section 205 of H.R. 776 and added a subsection (c) at the end of the section. The new subsection

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulk Tank Corp.	Intercontinental Bulk Tank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp.	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE CONTRACT	SECONDARY RESPONSE
N/A	ARCO Alaska	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Anchorage	Arco Marine Inc.	Northern Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO California	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Fairbanks	Arco Marine Inc.	Bank of America National Trust Savings Assn.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Independence	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Juneau	Arco Marine Inc.	Bankers Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
Arco Marine Inc.	M/V Overseas Philadelphia	Maritime Overseas Corp.	Philadelphia Tanker Corp.	Philadelphia Tanker Corp.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Sag River	Arco Marine Inc.	Oil Tankers Leasing Corp.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Spirit	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Texas	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulk Tank Corp.	Intercontinental Bulk Tank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp.	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Brooks Range	Interocean Mgt. Corp.	Shipco 2297, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Aspen	Trinidad Corp.	653 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Atigun Pass	Keystone Shipping Co.	Shipco. 6695, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Glacier Bay	Trinidad Corp.	GNP Barge & Tanker Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Kenai	Keystone Shipping Co.	Connecticut National Bank	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Overseas Arctic	Maritime Overseas Corp.	Overseas Bulktank Corp.	Overseas Bulktank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Admiralty Bay	Trinidad Corp.	652 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	American Trader	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Chesapeake Trader (no longer calling in Alaska)	Penn-Attransco Corporation	Attransco, Inc.	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA

* Keystone Shipping provided COC with this information; however, BP said they alone, would provide secondary response.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE CONTRACT	SECONDARY RESPONSE
N/A	ARCO Alaska	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Anchorage	Arco Marine Inc.	Northern Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO California	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Fairbanks	Arco Marine Inc.	Bank of America National Trust Savings Assn.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Independence	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Juneau	Arco Marine Inc.	Bankers Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
Arco Marine Inc.	M/V Overseas Philadelphia	Maritime Overseas Corp.	Philadelphia Tanker Corp.	Philadelphia Tanker Corp.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Sag River	Arco Marine Inc.	Oil Tankers Leasing Corp.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Spirit	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Texas	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
N/A	EXXON San Francisco	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baton Rouge	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON North Slope	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON New Orleans	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Long Beach	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Benicia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baytown	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Philadelphia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Amerada Hess Corporation	Southern Lion	Maritime Overseas Corp.	Interocean Tanker Corp.	Interocean Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Northern Lion	Maritime Overseas Corp.	Second United Shipping Corp.	Second United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Western Lion	Maritime Overseas Corp.	First United Shipping Corp.	First United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Eastern Lion	Maritime Overseas Corp.	Third United Shipping Corp.	Third United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Mt. Cabrite	Atlantis Agency Corporation	Serpentsea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Saint Lucia	Atlantis Agency Corporation	Swansea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Seal Island	Atlantis Agency Corporation	Seal Island Shipping Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Chevron USA	Chevron Washington	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Oregon	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Mississippi	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Louisiana	Chevron USA	Connecticut National Bank	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron California	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Tesoro Alaska Petroleum Company	Overseas Washington	Maritime Overseas Corp.	Fourth Shipmor Assoc.	Fourth Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	Tesoro Alaska Petroleum Company

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 25517
Juneau, AK
99802-5517
Staff Symbol: dcs
(907)463-2025

16450
March 20, 1992

Mr. M.F.G. Williams
Vice-President
Environment and Contingencies
Alyeska Pipeline
1335 South Bragaw Street
Anchorage, AK 99512

Dear Mr. Williams:

This is in response to your letter of 2 March 1992 to Admiral Ciancaglini which proposed formalizing relationships with the Coast Guard under various spill response scenarios. As Admiral Ciancaglini is out of the state, I am responding on his behalf.

We are generally amenable to your proposed relationships with the Coast Guard and your intentions to respond to spills in Prince William Sound from other than TAPS sources. While we are receptive to meeting with you on these subjects, we think these matters are more appropriately addressed with the Federal On Scene Coordinator and Captain of the Port for Prince William Sound, Commander Ed Thompson.

We see no need to formalize Coast Guard/Alyeska relationships or the transition of response roles for federalized spills through a Memorandum of Understanding. Present federal law clearly outlines the Coast Guard's duties in taking over spill responses. Furthermore, our interpretation of the Trans Alaska Pipeline Act (TAPA) indicates Alyeska is responsible for all TAPS related spills in Prince William Sound. Therefore the transition scenario you mentioned should never develop.

In the remote event a transition of spill response operations from Alyeska to the Coast Guard should be necessary, the joint exercises and close liaison which presently exist should serve us well. However, we urge Alyeska to enter into a Basic Ordering Agreement (BOA) with the Coast Guard to outline the cost and terms of your services. I've attached a BOA submission package for your review and completion. By establishing a BOA, your concerns with reimbursement will be addressed in advance, thus avoiding financial complications during an Alyeska/Coast Guard spill response transition.

We are also pleased to see your willingness to provide spill response assistance to non-TAPS related spills in Prince William

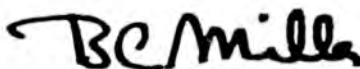
16450
March 20, 1992

Sound and appreciate the need for you to limit your involvement so as not to interfere with your TAPS response obligations. Should we request your services in a federal response a pre-existing BOA would, again, serve this end well. As you suggest, in some cases binding contracts with response action contractors will be required of other potential spillers who transport petroleum products. This will be mandated by regulations that develop from the Oil Pollution Act of 1990 (OPA-90). In addition, we are in the process of increasing the number of BOA's we have with response action contractors to provide other commercial response alternatives.

We feel the integrated approach towards pollution response efforts developed in Alyeska/USCG/State/RCAC drills and exercises have provided good communications with all parties at the local level. I prefer to take advantage of these relationships and have the aforementioned issues worked out with our representatives in Valdez who have a first hand knowledge of the problems, gaps and solutions.

In closing, I applaud your efforts to "fine tune" our pollution response options and am confident that this will come to fruition through expanded liaison with the local Captain of the Port's staff. This approach towards addressing these issues, however, does not preclude our discussing these matters further should you desire.

Sincerely,



B. C. MILLER

Captain, U. S. Coast Guard
Commander, Seventeenth Coast Guard District
Acting

Encl: (1) Basic Ordering Agreement Submission Package

Copy: CDR Ed Thompson, CO, MSO Valdez

March 2, 1992

Letter No. 92-9411-G

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

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

Dear Admiral Ciancaglini:

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

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

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

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

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

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

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

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

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

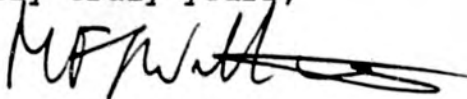
Name
March 2, 1992
Page 3

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

I will contact you soon to discuss these issues.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'M.F.G. Williams', with a long horizontal flourish extending to the right.

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

cc: Representative Bill Hudson
Senator Sam Cotten

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

JAMES H. ENGLISH, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

February 3, 1992

The Honorable Bill Hudson
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Bill:

Thanks for the copy of your letter to Commandant Kime and your suggestion that the Coast Guard Auxiliary be expanded to include marine oil spill response. Certainly the work done by the commercial fishermen during the *Exxon Valdez* oil spill proved to be invaluable in preventing that disaster from reaching even greater heights.

I have contacted the Coast Guard to inquire as to their response to you on this concept. You may also be interested to know that I helped draft provisions that were included in the Oil Pollution Act of 1990 (OPA) to help address the concern that you are raising.

Under section 4202 of the OPA (33 U.S.C. 1321(j)) tank vessels will not be able to operate off the coast of the United States or call on U.S. ports after August 18, 1993, without having onboard a vessel response plan approved by the Coast Guard. In order to approve a vessel response plan, the Coast Guard must determine that the vessel operator has, or has enforceable contracts for, sufficient personnel and equipment to respond to the maximum extent practicable to the loss of the vessel's entire cargo in adverse weather conditions. In addition, the Coast Guard must ensure that the region has available to it sufficient personnel and equipment to effectively supplement the vessel owner's resources to in fact handle the loss of the vessel's entire cargo.

If you have any questions concerning the provisions of the OPA, please contact Earl Comstock of my staff at (202) 224-3004.

With best wishes,

Cordially,


TED STEVENS

**BAKER
&
HOSTETLER
McCUTCHEN BLACK**
COUNSELLORS AT LAW

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April 27, 1992

VIA FACSIMILE TRANSMITTAL

Mr. Paul M. Richards
Government Relations Manager
Alyeska Pipeline Service Co.
240 Main Street, Suite 600
Juneau, Alaska 99512

Re: Oil Spill Response in Prince William Sound

Dear Mr. Richards:

This is in response to your request for a legal analysis of the of the requirements of the Trans-Alaska Pipeline Authorization Act ("TAPS Act") and the Oil Pollution Act of 1990 ("OPA 90") as they apply to Alyeska Pipeline Service Company ("Alyeska") to clarify Alyeska's responsibility for oil spill response in the waters of Prince William Sound. We understand that you plan to discuss this analysis with representatives of the Alaska legislature.

FACTS

Our analysis is based on the following factual background:

Alyeska, as the operator of the Valdez Marine Terminal ("Terminal") for the Trans-Alaska Pipeline System ("TAPS"), is responsible for loading tank vessels that lift Alaska North Slope ("ANS") crude oil and transit Prince William Sound. Alyeska acts as the agent of the TAPS owners. The TAPS Owners are the holders of the permit for the pipeline right-of-way. Alyeska and the TAPS owners do not own, operate or charter the tank vessels that transit Prince William Sound. Some of the vessels are owned by affiliates of the TAPS owners. Others, for example, are operated by Chevron U.S.A., Inc. or chartered by Tesoro Alaska Petroleum Company who have access to the common carrier pipeline but have no interest in the system.

Under federal and Alaska laws, the tank vessel owners and operators must have access to sufficient resources to contain, clean up, and mitigate a potential oil spill from

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a tank vessel that may affect Prince William Sound. Alyeska, at present, is the only private entity in Prince William Sound that has sufficient resources to provide initial oil spill response on a 24 hour-a-day basis. Accordingly, Alyeska, as operator of the Terminal, has agreed to provide initial oil spill response services and vessel escort services through Prince William Sound to tank vessels lifting crude oil from its Terminal.

To provide this service, Alyeska has entered into Agreements for Oil Spill Response Services ("Spill Response Agreement(s)") with five companies that either own, charter or operate tank vessels that lift crude oil at its Terminal. Those companies, which are referred to as Contracting Vessels, are ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Chevron U.S.A., Inc., Exxon Shipping Company, and Tesoro Alaska Petroleum Company. Exhibit A of each Spill Response Agreement lists the vessels covered by that agreement.

In the Spill Response Agreements, Alyeska agrees to manage the initial response to an oil spill for as long as 72 hours following a spill, in accordance with the Alaska Department of Environmental Conservation ("ADEC"), approved Prince William Sound Tanker Spill Prevention and Response Plan ("Alyeska Plan"). Each tank vessel that utilizes Alyeska as an initial response contractor incorporates the Alyeska Plan into the vessel's contingency plan. The Alyeska Plan describes the equipment and personnel (including organization and training) that will be available to Alyeska and its procedures for spill prevention and for initial response on behalf of vessels contracting for its services in case of a spill.

In the Spill Response Agreements, the Contracting Vessels, reaffirm their covered vessel's responsibility for oil spill clean up, and agree to assume management of the spill response within 72 hours after notification by Alyeska. Under this arrangement, an orderly process is provided for the transition from Alyeska's response personnel and equipment to the Contracting Vessel's response organization and equipment. For small spills, under 1,000 barrels, Alyeska may elect to complete the entire response on behalf of the Contracting Vessel. ADEC, recognizing the tank vessels' responsibility for oil spill clean up, has approved the contingency plans for each tank vessel covered by the Spill Response Agreements. These vessel contingency plans describe how Alyeska's initial response will be followed by a Contracting Vessel's response. To verify the efficiency of the arrangement, Alyeska has held

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major response drills with ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Exxon Shipping Company and Chevron U.S.A., Inc. Alyeska plans a similar exercise with Tesoro Alaska Petroleum Company.

CONCLUSION

The clear meaning of the TAPS Act, OPA 90, the legislative history of those Acts, related statutes addressing oil spill clean up responsibility, the right-of-way agreements and the course of conduct of the interested parties over the years since the enactment of the TAPS Act, including the Coast Guard, ADEC, and the tanker interests lifting oil at Alyeska's Terminal, document without contradiction that Alyeska's responsibility for oil spill clean up under the TAPS Act and OPA 90 is limited to its land based activities. Alyeska would be required to clean up a spill from the pipeline or the Terminal that affected the waters of Prince William Sound. However, Alyeska is not responsible for spills from a tank vessel except for its contractual obligations under its Spill Response Agreement with Contracting Vessels. We conclude the owners and operators of tank vessels lifting oil at the terminal are solely responsible for the clean up of spills from tank vessels affecting Prince William Sound.

LEGAL ANALYSIS

UNDER THE PROVISIONS OF THE TAPS ACT AND OPA 90, ALYESKA IS NOT RESPONSIBLE FOR SPILLS WHICH OCCUR AFTER ANS CRUDE OIL IS LOADED ABOARD A VESSEL.

The TAPS Act was enacted in 1973 to permit the construction of the Alaskan Pipeline System by amending existing law concerning federal rights-of-way and provide a mechanism for clean up and damage liability resulting from spills of oil transported through the Pipeline System and then in tank vessels to the lower 48 states. The purpose of the Act was to ensure "the early development and delivery of oil and gas from Alaska's North Slope to domestic markets."
43 U.S.C. § 1651(a).

Section 204 of the Act (43 U.S.C. § 1653) contained the clean up and damage liability provisions. Subsection 204(a) imposed strict liability for damages on the holders of the right-of-way for spills along the route of the pipeline and from the terminal facilities. Subsection 204(b) required the holder of the right-of-way to clean up spills in any area

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that was polluted by operations of the holder. Subsection 204(c) created the Trans-Alaska Pipeline Liability Fund (the "Fund") which, along with the owners and operators of vessels that loaded oil from the terminal facilities, would be solely responsible for clean up costs and damage liability for spills of ANS crude oil from the tank vessel.

OPA 90 transferred the rules contained in the TAPS Act (Section 204(c)) to Section 311 of the Clean Water Act (46 U.S.C. § 1321). The rules provide the exclusive liability of the tank vessel owner/operator for damage liability and removal costs for spills from tank vessels in Prince William Sound. Tank vessel owner/operator clean up costs and damage liability is also now covered under the new Chapter 40 - Oil Pollution - of Title 33 United States Code (33 U.S.C. §2701, et. seq.) Significantly the allocation of responsibility between the vessel owner/operator and the facility owner/operator remains unchanged.

In taking provisions concerning tank vessel owner/operator responsibility for clean up and damage liability out of the TAPS Act, Congress left in place Subsection 204(c), to cover discharges from vessels with respect to "claims arising from incidents occurring before August 18, 1990. The Oil Pollution Act of 1990 [33 U.S.C.A. §2701, et seq.] shall apply to any incident, or any claims arising from an incident, occurring on or after August 18, 1990." (43 U.S.C. §1653(c)(14)).

The Conference Committee which drafted the final version of OPA 90, specifically addressed the breadth of the responsibility of the holder of the right-of-way for the clean up of ANS crude oil and stated its intent to "clarify that section 204(b) (43 U.S.C. § 1653(b)) of the TAPS Act applies to responsibility for clean up caused by activities which are related to TAPS including operation of the terminal." (1990 U.S. Code Cong. & Admin. News 850). Section 204(b), as amended, provides:

(b) Control and removal of pollutants at expense of right-of-way holder

If any area in the State of Alaska within or without the right-of-way or permit area granted under this chapter is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or

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on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(43 U.S.C. § 1653 (b)) (emphasis added).

The underlined words were added by the 1990 amendment. The Conference Committee emphasized that the amendment was to clarify that Alyeska's responsibility for oil spills ends with the loading of the tank vessel:

Liability standards under sections 204(a) and (b) of the TAPS Act, as amended, will apply until TAPS oil is loaded aboard a vessel. TAPS Act liability shall apply if oil is spilled during the loading process at the terminal. Any subsequent discharge from the vessel shall be governed by the liability regime established by the Oil Pollution Act of 1990.

(1990 U.S. Code Cong. & Admin. News 850).

There is no provision in OPA 90 which extends the responsibility of Alyeska for oil spill clean up and damage liability beyond its Terminal. In fact Subchapter I of OPA 90 - Oil Pollution Liability and Compensation (33 U.S.C. §§ 2701-2719) does not even apply to Alyeska. OPA 90 Section 1002 (33 U.S.C. § 2702) specifies the parties who are responsible for oil spill clean up:

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(a) IN GENERAL.-Notwithstanding any other provision or rule of law, and subject to the provisions of this Chapter, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident.

(Emphasis added).

"Responsible party" with respect to a vessel is defined in OPA 90 Subsection 1001(32) (33 U.S.C. § 2701) as "any person owning, operating, or demise chartering the vessel." Liabilities for discharges from facilities and responsibility for oil spill clean up costs are covered under this subchapter. However, because Alyeska's facility is subject to the requirements of Section 204 of the TAPS Act, it is specifically excluded by Section 1002 of OPA 90 (33 U.S.C. § 2702) from the OPA 90 clean up and damage liability provisions. Section 1002 provides in relevant part:

(C) EXCLUDED DISCHARGES.-This subchapter does not apply to any discharge-

* * *

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. § 1651, et seq.).

The Conference Committee, commenting on this exclusion, notes that liability (which includes responsibility for clean up) for discharges from facilities subject to the TAPS Act (including the Alyeska Terminal) are covered under that Act while liability for vessel discharges (which includes responsibility for clean up) are covered under Subchapter I of OPA 90:

Subsection (c) excludes from coverage under this substitute any discharge of oil that (1) is authorized by law, (2) emanates from a public vessel, or

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(3) is discharged from onshore facilities subject to the Trans-Alaska Pipeline Authorization Act which are covered by the liability regime under section 204 of that Act. Liability for discharges from vessels once the oil is loaded is covered under the Conference Substitute.

(1990 U.S. Code Cong. & Admin. News 781) (emphasis added).

Subchapter II of OPA 90 - Prince William Sound Provisions (33 U.S.C. §§ 2731-2753), which does not concern clean up and damage liability for oil spills but rather specific response requirements involving Prince William Sound, sets forth in Section 5005 (33 U.S.C. § 2735) equipment and personnel requirements under tank vessel and facility response plans to handle "a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater." "Worst case" is defined in Section 5005 as:

(2) the term "worst case discharge" means-

(A) in the case of a vessel a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of a facility, the largest foreseeable discharge in adverse weather conditions.

The Coast Guard recently published its advanced notice of proposed rule making relating to facility response plans and required response equipment. (57 Fed. Reg. 8708 (March 11, 1992)). The Coast Guard makes it clear, in commenting on the requirements of OPA 90 Section 5005, that oil spill response can be met in a variety of ways in Prince William Sound:

2. Facilities Permitted Under the Trans-Alaska Pipeline Authorization Act

Section 5005 of OPA 90 is a free standing provision establishing additional oil spill removal requirements for a tank vessel transiting Prince William Sound or a facility permitted under the Trans-

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Alaska Pipeline Authorization Act. The statute does not impose any direct requirements on a vessel or facility or specify which is responsible for the additional equipment, personnel, and training. It does specify that the response plan for each facility or tank vessel shall "provide for" the additional requirements. The Coast Guard does not interpret this section as requiring each individual vessel to independently provide prepositioned equipment and personnel. The Coast Guard's position is that these requirements can be met by a consortium of vessel owners, by a facility, or by independent organizations. This section also requires two practice exercises per year for the additional equipment and personnel in the Prince William Sound area, not to each vessel transiting Prince William Sound. The Coast Guard does intend, however, that the practice exercises involve the participation of facilities and one or more vessels to ensure a realistic exercise.

(57 Fed. Reg. 8711 (March 11, 1992))
(Emphasis added).

Only one conclusion can be reached from the plain wording of the TAPS Act and OPA 90, documented by the interpretations placed on those statutes by the legislative histories and by the Coast Guard - Alyeska, while agreeing by contract to provide tank vessel initial oil spill response, has no other obligation to provide oil spill clean up in Prince William Sound.

We understand Alyeska has exceeded the above drills suggested by the Coast Guard and maintains equipment and personnel on ready alert 24 hours a day to provide rapid initial response to oil spills from tank vessels in Prince William Sound. We conclude Alyeska's obligations for tank vessel spill response are defined by Alyeska's Spill Response Agreement with the tank vessel interests and its Prince William Sound Tanker Spill Prevention & Response Plan approved by ADEC.

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A REVIEW OF THE LEGISLATIVE HISTORY OF THE
TAPS ACT CONFIRMS THAT THE HOLDER OF THE
PIPELINE RIGHT-OF-WAY WAS NEVER INTENDED
TO BE RESPONSIBLE FOR TANK VESSEL SPILL
CLEAN UP.

The legislative history of the TAPS Act confirms that even before the enactment of OPA 90, Congress intended to distinguish between clean up responsibility and damage liability for spills which occurred during transportation through the pipeline and the terminal facilities and clean up responsibility and damage liability for spills from vessels engaged in transporting the oil through the marine leg of its journey to the lower 48 states.

During the debates on the TAPS Act, Congress contemplated including within the Act provisions which would have made the holder of the right-of-way liable for spills from vessels transporting Alaskan oil to ports in the lower 48 states. The House passed a version of the TAPS Act, then known as H.R. 9130, which contained the precursor of what became the liability provisions of Section 204 of the TAPS Act (43 U.S.C. § 1653). Under Section 207(a) of H.R. 9130, the holder of the right-of-way was to be strictly responsible for "damages caused by the holder's activities conducted at any point along the route of the proposed trans-Alaska pipeline." 119 Cong. Rec. 27681 (August 2, 1973). Under Section 207(b) of H.R. 9130, the holder of the right-of-way was also to be liable for spills from certain vessels carrying Alaskan oil. Id. The Senate version had no such provision.

Due to these and other conflicts between the House and Senate versions, the bill was sent to a Conference Committee that wrote the final version of the Act. The Committee adopted modified liability provisions, accepting some aspects of the House and Senate proposals and rejecting others. Specifically, it accepted the idea of the holder of the right-of-way being responsible for clean up responsibility and damage liability occurring due to its activities along the route of or in the area of the pipeline. However, the Committee rejected the idea of continuing to impose clean up responsibility and damage liability on the right-of-way holders after the oil was loaded onto a vessel. Instead, only the owner or operator of the vessel, and the TAPS Fund created by the Act, would be responsible for such spills. This resulted in the three part liability scheme eventually codified in Section 204 of the TAPS Act:

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Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault . . . for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. . . .

Subsection (b) imposes on the holder of a right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

Subsection (c) imposes on the owner or operator of a vessel that is loaded with any oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel.

Conference Report No. 93-924,
93rd Cong. 1st Sess., reprinted in
1973 U.S. Code Cong. & Admin. News
2525-26.

It is apparent that the Congressional purpose was to create separate responsibility for clean up and damages that applied to transportation of ANS crude oil through TAPS and then through Prince William Sound. The Act created strict liability for the right-of-way holders for the oil in the pipeline facilities for clean up and damage liability resulting from its "operations" and from activities "along or in the vicinity of the pipeline right-of-way." Once the oil was loaded in the tank vessel responsibility for clean up and damage liability was passed to the vessel owners and the Fund. Thus the owners and operators of the tank vessels were responsible for the transportation of ANS crude oil through Prince William Sound and beyond.

In reporting the Conference Committee's TAPS Act amendments to the House, Congressman Udall, one of the Committee members, explained how its language accomplished this allocation:

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I am, however, encouraged by several improvements in the legislation that came out of the conference. First, we wrote a strong liability provision for the Alaskan pipeline and the marine leg from Valdez to other U.S. ports. Section 204 of the report provides that the Alaskan pipeline permit holder shall be strictly liable without regard to fault for all damages that result from a pipeline related incident along the right-of-way. This includes damages to Alaskan Natives for any losses they might sustain by disruptions in their subsistence economy that are caused by the pipeline. It will apply, for example, if the pipeline disturbs a caribou migration or if an oil spill in a river ruins a salmon run. The conferees set a limit of \$50 million for liability of the pipeline permit holder to any third party for any one incident.

For the marine leg, from Valdez to ports in the lower 48 States, the conferees agreed that there should be strict liability for any spills. The first \$14 million for clean up and damages is to be assessed against the ship owner and the rest -- up to \$100 million per incident -- is to be paid out of a fund which will be created by a 5 cents-per-barrel levy on all oil transported through the pipeline.

Comments of Rep. Udall, 119 Cong.Rec.
36606 (November 12, 1973) (emphasis added).

In the Senate, the Chairman of the Conference Committee, Senator Jackson, reiterated these remarks:

Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault, . . . for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. . . .

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Subsection (b) imposes on the holder of a right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

Subsection (c) imposes on the owner or operator of a vessel that is loaded with any oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel.

Comments of Sen. Jackson,
119 Cong. Rec. 36809 (November 13,
1973).

Nowhere in the legislative history describing the final outcome of the legislation enacted by Congress is there any suggestion or intimation that responsibility for clean up or damage liability under these sections would overlap. The holder of the right-of-way is to be responsible until the oil is loaded onto a vessel, the vessel owner and the Fund are to be strictly liable thereafter for clean up and damage liability. If Congress had intended the holder of the pipeline right-of-way to be responsible for discharges from vessels, then Section 204(c) which, prior to OPA 90, specifically dealt with oil spilled from vessels would have said so.

IN CHARGING THE VESSEL OWNER WITH
LIABILITY FOR CLEAN UP OF ITS OWN SPILLS,
THE TAPS ACT AND OPA 90 ARE FOLLOWING THE
POLICY AND PRACTICE SET FORTH IN OTHER
ENVIRONMENTAL STATUTES.

In allocating responsibility for clean up and damage liability between the tank vessel owners and onshore facility owners in this fashion, the TAPS Act is simply following the policy manifested in virtually every other federal environmental protection statute. Under these statutes, the party who has control of the source of the discharge of the offending substance is responsible for clean up and damage liability. Section 1321 of the Clean Water Act, for example, provides that only the person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility "from which oil or a hazardous substance is

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discharged" is liable for civil penalties and clean up costs (33 U.S.C. §§ 1321(b)(7)(A), (c)(5)(A)). The owner of the onshore facility is not liable for discharges from a vessel just because it was loaded at the facility.

Under CERCLA, the owners and operators of vessels and facilities are likewise liable only to the extent theirs is the vessel or facility "from which there is a release, or a threatened release which causes the occurrence of response costs, of a hazardous substance." 42 U.S.C. § 9607(a).

Similarly, under the Refuse Act (33 U.S.C. § 407) which makes it unlawful to "throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind" any refuse into the navigable waters of the United States, it has been held that only the party that is the actual source of the discharge can be at fault. See, United States v. Outboard Marine Corporation, 549 F.Supp. 1032, 1035 (N.D. Ill. 1982) ("[T]he Government has been unable to produce any case in the 80-year history of the Refuse Act in which one other than the actual discharger was held liable for causing or suffering the discharge.")

Alaska statutes have followed this same pattern of directing strict liability toward the party that owned the discharged material or had it in its control. Section 46.03.822 provides:

[T]he following persons are strictly liable, jointly and severally for damages . . . resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

- (1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release . . .
- (2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release

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Significantly there is no suggestion in this statute that the owners and operator of the Trans-Alaska Pipeline System will be liable for spills from a tank vessel transporting ANS crude oil.

THERE IS NO PROVISION IN THE STATE OR
FEDERAL RIGHT-OF-WAY AGREEMENTS THAT
REQUIRES ALYESKA TO CONTAIN AND CLEAN UP
TANK VESSEL CRUDE OIL SPILLS WITHIN STATE
WATERS IN PRINCE WILLIAM SOUND.

We understand that the State of Alaska, in the Exxon Valdez litigation, has taken the position that under the provisions of the Right-Of-Way Lease for TAPS between the State of Alaska and the TAPS owners ("Lease"), Alyeska is required to contain and clean up ANS crude oil spills in Prince William Sound. The State's position requires the conclusion that the Lease runs contrary to the TAPS Act that allocates oil spill responsibility to the right-of-way holder for on shore spills and to the tank vessel owner/operator for vessel spills. That argument is also inconsistent with Alaska statutes that placed liability for response costs on "a person owning or having control over a hazardous substance which enters in or upon the waters . . . of the state" (Alaska Stat. § 46.03.822 (1974)).

Placing responsibility on Alyeska for tank vessel spills under the Lease would require Alyeska to undertake oil spill response for spills from tank vessels over which Alyeska has no operational or other control. If the signatories to the Lease had intended such a substantial departure from the federal and state statutory requirements, the Lease should have allocated such responsibility to Alyeska in concise terms.

We find no provision in the Lease that requires Alyeska to respond to tank vessel spills in Prince William Sound. Both the Lease and the Federal Agreement and Grant of Right-of-Way For TAPS ("Federal ROW") impose obligations on the holders only with respect to spills from the Trans-Alaska Pipeline System and the Terminal facilities. Section 22(a) of the Lease, for example, provides that the "Lessees shall. . . abate . . . as completely as practicable, using the best practicable technology available, any . . . event or condition . . . that arises out of, or could affect adversely, the . . . operation . . . of all or any part of the Pipeline" Guided by the standard legal test for interpreting an agreement, we believe an oil spill in Prince

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William Sound does not "arise out of" the operation of the Trans-Alaska Pipeline, nor does it "affect adversely" the operation of the Pipeline within the meaning of this provision.

The Federal ROW, consistent with the TAPS Act, allocates liability to the right-of-way holder's operations. Section 13A of the Federal ROW requires the permittees to rehabilitate any natural resource "if the immediate cause of the damage or destruction arises out of, is connected with, or results from, the . . . operation . . . of all or any part of the Pipeline System" We expect the court will conclude that a vessel spill in Prince William Sound does not arise out of, is not connected with, and does not result from the operation of the Pipeline System within the intended meaning of this provision.

The best evidence of the interpretation to be given to the state and federal agreements is provided by the course of conduct of ADEC, the Coast Guard, Alyeska, and the tank vessel interests in working under these agreements for the past fifteen years.

THE INTERESTED PARTIES, BY THEIR COURSE OF
CONDUCT HAVE DEMONSTRATED THEIR UNDER-
STANDING OF THE LIMITS OF ALYESKA'S
RESPONSIBILITY.

The course of conduct of ADEC, the Coast Guard and the tank vessel interests extending back into the early 1970's document that Alyeska has no responsibility imposed by statute to clean up discharges from tank vessels. The following are by way of examples of the many instances that document that Alyeska has no obligation under federal or state laws to respond to spills from tank vessels in Prince William Sound:

(1) The federal and state governments wanted an acceptable contingency plan for the response to oil spills from tank vessels transiting Prince William Sound to be in place prior to pipeline start-up. However, since at that time no decision had been made as to what marine transporters would participate in lifting oil at the Terminal it was not practical for each tank vessel interest to prepare its own plan. Alyeska therefore agreed to and did prepare and implement a contingency plan for the response to tank vessel spills. Both the state and federal governments accepted the Alyeska contingency plan for Prince William Sound and

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authorized start-up of the pipeline. (Alyeska Environmental Library).

(2) Notwithstanding Alyeska's contingency plan, the tank vessel owners and operators recognized that they, not Alyeska, were required by federal and state laws to clean up tank vessel oil spills. Accordingly, Alyeska and the tank vessel interests understood that, in the event of a major oil spill from a tank vessel in Prince William Sound, Alyeska would provide the initial response and the owner or operator of the tank vessel would take over the response effort after the tank vessel personnel arrived on scene. (Dec. 21, 1987 ltr. from Standard Oil to Alyeska).

(3) In 1982, for example, Exxon Company U.S.A. submitted to ADEC for approval an Oil Discharge Contingency Plan for vessels owned and operated by Exxon Company U.S.A. within Alaska waters. The Exxon Contingency Plan recognized Exxon's responsibility to take over spill management stating that "in the event of a major spill by an Exxon owned and operated vessel, it is anticipated that the Exxon Company, U.S.A. Oil Spill Response Team, as described [therein], would be activated to manage the spill response." (Mar. 5, 1982 ltr. from Exxon to ADEC enclosing Oil Discharge Plan - Alaska Vessels).

(4) Following the response to a 1984 oil spill into Port Valdez from a tank vessel, the issue of responsibility for oil spill response was discussed during an initial spill critique response session attended by ADEC, the Coast Guard, the tank vessel owner/operator, and Alyeska. Alyeska advised that it would provide the initial response to any spill from a tank vessel in Port Valdez or Prince William Sound and agreed to continue until relieved by either the tank vessel owner, operator, or the government. (Aug. 26, 1984 Alyeska Memorandum).

(5) In 1986, during the review process prior to approval of the 1987 Alyeska contingency plan for Prince William Sound, Alyeska stated in writing to ADEC that Alyeska would function as a spill clean up contractor to an owner that preferred to assume responsibility after Alyeska's initial response. Alyeska noted that this would permit the majority of Alyeska's personnel to return to pipeline operation. (July 16, 1986 ltr. from Alyeska to ADEC).

(6) In 1987, after receipt of an inquiry from ADEC, about Exxon Shipping Company's oil spill response capabilities

Mr. Paul M. Richards
April 27, 1992
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for Prince William Sound, Exxon sent an overview of its oil spill response program to ADEC. This overview described the response teams within Exxon Shipping Company and Exxon Company U.S.A. that -- depending on the spill size -- would manage the response to spills from Exxon's owned or chartered tank vessels in trade with the Alyeska Terminal. The overview also described Exxon's ability to mobilize additional response equipment, as needed, from other stockpiles in Alaska, the United States, and the world. (Oct. 7, 1987 ltr. from Exxon to ADEC).

(7) In 1988, Alyeska and ARCO Marine, Inc. held an oil spill drill for the express purpose of practicing the transfer of spill response management from Alyeska to the tank vessel owner/operator. Both ADEC and the Coast Guard attended the drill during which the transfer occurred with the permission of the Coast Guard officer acting as federal On-Scene Coordinator. (May 1988 ARCO/Alyeska Report).

(8) In 1989, after Alyeska provided initial oil spill response for the EXXON VALDEZ oil spill, Exxon Shipping Company, with the approval of the federal and state governments, took over the response effort in accordance with the understanding between Exxon and Alyeska. (Alyeska Environmental Library).

(9) November 1, 1990, ADEC approved the form of Spill Response Agreement entered into between Alyeska and Contracting Vessels. That Agreement sets forth in detail Alyeska's agreement to provide initial oil spill response services up to 72 hours of giving notice to the Contracting Vessel to take over the spill response. The Agreement specifically provides the mechanism for the orderly transition of the clean up activities. The Coast Guard in Valdez accepted this arrangement. ADEC and the Coast Guard have participated in plan development through the state/federal/Alyeska/tank vessel coordinated Prince William Sound Steering Committee. (Alaska Environmental Library).

(10) Between November 1990 and March 1992, there have been four major oil spill exercises in Prince William Sound. In each of these drills, Alyeska, after performing the initial oil spill response, turned the responsibility over to the Contracting Vessel in accordance with Alyeska's Oil Spill Agreement. For example, on September 10 and 11, 1991, at Valdez, approximately 235 persons participated in a drill involving ARCO Marine, Inc. Transition of control for the oil spill response activities took place beginning mid-morning

Mr. Paul M. Richards
April 27, 1992
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September 11, 1990, as authorized by the Alyeska and ARCO Incident Commanders. On March 3 and 4, 1992, again at Valdez, approximately 400 people participated in an oil spill drill involving Chevron U.S.A., Inc. Alyeska provided initial response under its Oil Spill Agreement with Chevron. Transition to Chevron control of the oil response occurred on the second day of the drill as authorized by Alyeska and Chevron Incident Commanders (Alyeska Environmental Library).

(11) In March 1992, the Coast Guard went on record that, with respect to facility response plans and required response equipment for Prince William Sound, the federal requirements can be met not by Alyeska, but by a consortium of vessel owners, by a facility, or by independent organizations (57 Fed. Reg. 8708 (March 11, 1992)). The present procedures worked between Alyeska and the Contracting Vessels are consistent with what the Coast Guard envisions will be required.

The documentary evidence stretching back to the enactment of the TAPS Act has one constant principle -- the tank vessel owner and operator -- not Alyeska -- is responsible for the clean up of tank vessel spills in Prince William Sound. To conclude that Alyeska is required to clean up oil spills from tank vessels in which it has no interest would raise obvious federal constitutional issues. Placing such a burden on Alyeska would be confiscatory since a Contracting Vessel may not have the financial ability to indemnify Alyeska for the clean up of a major spill. In the words of Senator Stevens of Alaska, when commenting on a similar proposed expansion of liability for the pipeline interests during the debates leading to the enactment of the TAPS Act:

By the very terms of amendment 348 this liability is imposed on only one pipeline, the trans-Alaska pipeline. Not only is this unique to the pipeline industry but no other common carrier, whether pipeline, airline, or railway, has ever been required to insure the Federal Government for damages suffered by reason of an act of God or intervening act of a third party merely because the damage is somehow connected with the carrier's operations. The basis for this discrimination is unclear. To impose such liability, in addition to a commensurate liability to

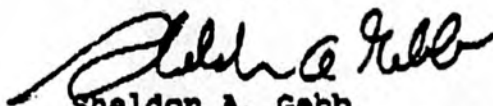
Mr. Paul M. Richards
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Page 19

third parties, upon the trans-Alaska
pipeline is unwarranted and in derogation
of the public good.

Comments of Sen. Stevens, 119 Cong.
Rec. 24297 (July 17, 1973).

If you have any questions about our legal analysis
we are, of course, available to discuss any matters in such
detail as you desire, at your convenience.

Very truly yours,



Sheldon A. Gabb
of BAKER & HOSTETLER, McCUTCHEN BLACK

cc: Robert I. Shoaf
L.D. Wood

*Delivered to Al Hastings
@ approximately 4 pm.*

Alyeska pipeline

SERVICE COMPANY

240 MAIN STREET, SUITE 600, JUNEAU, ALASKA 99801 (907) 463-4664 FAX 463-4660

May 12, 1992

O.E. Burden, Vice President
Marketing and Government Relations
Tesoro Petroleum
P.O. Box 190272
Anchorage, Alaska 99501

Dear Mr. Burden:

CSSSHB 540 Judiciary, which was passed by the House of Representatives last Friday, meets the expectations of Alyeska Pipeline Service Company and its owners for a satisfactory bill providing for limited responder immunity in Alaska, except for those provisions in Sec. 10, which seek to add AS 46.04.020 (h), (i) and (j). These provisions deal with the financial responsibility requirement which applies to vessel owners/operators contracting with Alyeska for initial response to vessel spills. Alyeska believes that these provisions, as written, are inherently discriminatory, unduly restrictive and unconstitutional.

Alyeska fully intends to establish its financial responsibility requirement at a level which is reasonable, given its expected level of risk under any new statute. If CSSSHB 540 becomes Alaska law with the financial responsibility provisions modified, such that they are reasonable to Alyeska, Alyeska and its owners would be willing to significantly lower its financial responsibility requirement for contracting vessels.

Any new financial responsibility requirement would be applied on a nondiscriminatory basis to all contracting vessels. In Tesoro's case, our expectation is that the new requirement would be on the order of one-half of the current CGL insurance level required, provided satisfactory P & L insurance coverage is maintained and so long as vessels chartered by Tesoro and covered by the Oil Spill Response Services Agreement demonstrate a safe operating record.

Sincerely,

ALYESKA PIPELINE SERVICE COMPANY


By: Paul M. Richards, Manager
Government Relations

CORPORATE OFFICES

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512 (907) 278-1611

May 3, 1992

The Honorable Sam Cotten, Chairman
Senate Oil and Gas Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: Tank Vessel Oil Spill Response

Dear Chairman Cotten:

You asked me recently to provide more of the historical and legal background to further explain provisions which have been made by Congress and Alaska for oil spill response from discharges by tank vessels operating in Prince William Sound. I am pleased to do so. Attached is an April 27, 1992, legal memorandum which discusses this matter at some length.

In short, under the provisions of the Trans Alaska Pipeline Authorization Act, the Oil Pollution Act of 1990, and the TAPS right of way agreements, and in light of the course of conduct of the interested parties over the years, Alyeska is not responsible for spills from tank vessels carrying Alaska North Slope crude oil in Prince William Sound except for its binding contractual obligations under Spill Response Agreements with owners, operators, and charterers of tank vessels that lift oil at the marine terminal.

As you know, Alyeska, at present, is the only private entity in Prince William Sound that has sufficient resources to provide initial oil spill response on a 24 hour-a-day basis. Accordingly, Alyeska has agreed to provide initial oil spill response services and vessel escort services through Prince William Sound to tank vessels lifting crude oil from its terminal. In the spill response agreements, the owners, operators, or charterers of these vessels reaffirm their responsibility for oil spill clean up, and agree to assume management of the spill response within 72 hours after notification by Alyeska.

Current legislation based upon the premise that Alyeska shares a concurrent obligation under the law with tank vessel owners and operators to provide for oil spill response to discharges from these vessels is fundamentally flawed. If enacted into law, it will invite controversy and confusion, and may ultimately shift costs and liabilities related to oil

spill response from owners and operators of tank vessels to owners of ANS crude oil. Instead, every effort should be made to reinforce OPA '90 and HB 567 provisions which place these costs and liabilities directly upon tank vessel owner/operators.

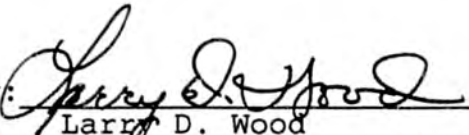
Although you have made it very clear to me that you continue to rely upon the strength of the state's case, and that opposing views carry little weight, my hope is that you will agree that this additional memorandum raises important and legitimate questions. In the final analysis, the issue will be resolved in federal court, and we believe that there is no need to renew it in this legislation. In the meantime, in accord with mandates by Congress, Alaska, and regulatory agencies, vessel owners and operators have already made provision for oil spill response in Prince William Sound.

Please call me at 265-8356 if you have related questions or comments.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY

By:



Larry D. Wood

Senior Attorney - External Affairs

cc: The Honorable Bill Hudson, Chairman
House Special Committee on Oil & Gas

The Honorable Charlie Cole, Attorney General

L010



Oil Reform Alliance



5/9/92

TESTIMONY OF RIKI OTT

ON CSSSHB 540

BEFORE SENATE SPECIAL COMMITTEE ON OIL & GAS

The version of HB 540 which passed the House by a vote of 26 to 14 is Alyeska's Cadillac. Should Alyeska be allowed to drive their Cadillac through this committee and the rest of the Senate with the same ease which they drove it through the House, the list of hit-and-run victims will include tens of thousands of fishermen, Tesoro and other small independent oil companies, state and federal lawsuits over the Exxon Valdez spill, and our natural resources after the next major oil spill.

The politics involved with gutting the Judiciary CS for HB 540 on the House floor were disgusting. It was obvious to even the most naive public observers that the process was completely rigged by dozens of Alyeska lobbyists and lawyers before the vote.

The ORA wishes to return three provisions to the bill that 26 members of the House, lead by Representative Hudson, gutted. In addition, we wish to include a fourth provision which was discussed in House committees. Without all four of these provisions, we cannot support this legislation.

1. PROFESSIONAL RESPONSE CONTRACTORS AND RESPONDERS WITH A STATUTORY DUTY TO RESPOND MUST BE HELD TO A STANDARD OF SIMPLE NEGLIGENCE.

In 1987, the parties responsible for the Glacier Bay oil spill in Cook Inlet refused to initiate cleanup for several days, believing they would get the oil when it hit the beaches. Leaving the oil in the water resulted in over \$40 million in damages to Cook Inlet fishermen and very probable long-term damages to the fisheries resources.

In 1989, Alyeska, the party responsible for responding to TAPS oil spills, failed to respond immediately because their cleanup barge with all its equipment lay buried under four feet of snow.

In both 1987 and 1989 during these spills, the state had a strict liability standard, yet spill response failed even under this standard of care. In 1989 after the Exxon Valdez spill, the liability standard for response contractors was lowered to simple negligence. How can we seriously consider further reducing the standard?

It is true that the majority of other coastal states have reduced their standard from simple to gross negligence. But these other states have not had our history of failed or completely inadequate response to major spills. Alaska should know better.

Simple negligence is already a compromise between the public and the oil interests: it is the middle ground between strict liability (responsibility without fault which was the state standard until 1989) and gross negligence (which stops just short of intentional misconduct).

Liability exposure cannot be reduced without trade-offs. The liability goes somewhere, it does not just disappear. Proponents of HB 540 have consistently argued that the liability for increased damages would go to the spiller, but it is obvious that this is simply not true. If it was, Alyeska would not have relieved Tesoro of the \$1 billion direct action bond. Alyeska's owner companies are exposed to liability through their common operating agent Alyeska.

A standard of gross negligence effectively immunizes Alyeska and the owner companies because, as BP, Arco, Exxon and the others know, gross negligence is next to impossible to prove in court. This is why Alyeska reduced the direct action bonding requirement; because gross negligence reduced their exposure to lawsuits.

And who would be bringing the lawsuits? The fishermen, the Natives, the property owners -- the spill victims, the injured public. Allowing a standard of gross negligence for ANY amount of time, shifts the liability for additional damages from professional spill responders CLEARLY, SQUARELY, AND DEFINITELY to the natural resources and the public.

THE ORA CANNOT SUPPORT THIS BILL IF IT CONTAINS A STANDARD ANY LOWER THAN SIMPLE NEGLIGENCE.

2. HB 540 MUST CONTAIN STRONG ANTI-TRUST LANGUAGE THAT PROTECTS THE SMALL INDEPENDENT OIL COMPANIES FROM THE HUGE TRANSNATIONALS.

Last year, and again this year, Tesoro has come to the legislature and pleaded that unless they get liability relief in the form of gross negligence, they will be put out of business by Alyeska's direct action bonding requirement.

Tesoro is not telling the whole story. Tesoro has 100 problems and "solving" one in the manner Tesoro has proposed leaves the other 99. We are supportive of Tesoro's bonding predicament, but we cannot support gross negligence as the bailout option.

Instead we support requiring that a charge or contractual provision imposed by Alyeska must be fair, reasonable, and nondiscriminatory and must be subject to review by the Alaska Public Utilities Commission and/or the superior court.

From both Tesoro's and Alyeska's actions in the Capitol hallways, it is clear that the continuous war between Big and Little Oil is being used as blackmail at the expense of the natural resources. This is intolerable.

It is completely unacceptable to settle this issue by bailing out Tesoro at the expense of the public and the natural resources when there is a perfectly viable alternative. The ORA supports anti-trust language in this bill as a condition of its passage.

3. REGISTERED CONTRACTORS LISTED IN CONTINGENCY PLANS MUST HAVE A STATUTORY DUTY TO RESPOND TO SPILLS IN WHICH THE SPILLER IS INSOLVENT OR UNKNOWN.

The State of Alaska should have authority which parallels the Coast Guard's authority to command contractors to response to mystery spills and spills in which the spiller declares bankruptcy. Under existing law, if these types of spills are not federalized, the state is unable to insure response and the public is exposed to damages.

For example, the Coast Guard federalized the barge spill at the Shumagin Islands by ordering Cook Inlet contractors (the closest) to respond. Had this spill not been federalized, there most likely would have been no response as in the small spill in Cook Inlet this last week.

The House Judiciary Committee included language in its CS (pg. 10, lines 23-31, pg. 11, line 1) that a response contractor, as a condition of registration, agrees to respond to oil spills "in which the responsible party is unknown or insolvent".

Without this language returned, the ORA cannot support this bill.

4. ALYESKA MUST HAVE A STATUTORY DUTY TO RESPOND TO TAPS SPILLS IN THE STATE OF ALASKA INCLUDING OUR WATERS.

This provision, while important, should be viewed as completely separate and independent of the other issues.

We have watched the debate over Alyeska's duty to respond to TAPS spills in utter disbelief. On one hand, Congress is drafting language in the energy bill to require that Alyeska submits an oil spill contingency plan for Prince William Sound to carry out their federally-mandated duty to respond to TAPS oil spills in any area in the State of Alaska as stated in the Oil Pollution Act of 1990. On the other hand, Representative Hudson and twenty some other representatives, are working to undermine our federal protections by requiring that Alyeska only have a contractual obligation with shippers instead of a duty to respond.

A contractual duty is not an acceptable guarantee of response for the people of Prince William Sound, Cook Inlet, Kodiak, and the Kenai Peninsula.

Alyeska's history of defiance for federal and state laws and regulators has led to countless oversight hearings and investigations: faulty pipeline construction, intimidation of workers and inspectors, worker safety, ballast water, invasion of privacy, manipulation of science and the regulatory process, response to the Exxon Valdez oil spill. The list goes on and on and on from as early as 1976 to the present.

Alyeska is notorious for breaking and bending laws to suit their needs. They would no qualms about cancelling contracts for insolvent spillers and leaving the public stranded with damages.

Limiting Alyeska's obligations to private contractual arrangements makes absolutely no sense for other reasons as well. Alyeska never owns the TAPS oil. They don't own it when its in the pipeline and they don't own it when its on board the tankers. Yet Alyeska has only agreed to respond to TAPS spills from the pipeline. Why?

Because when it's in the pipeline, it's clear that its everybody's oil. But when it's in the tankers, it is split out into the separate TAPS owner companies and other buyers. This only splits out who PAYS for the response. The DUTY TO RESPOND still remains with all the owners through Alyeska as their common agent as a condition of Congress and commitment by the owners to authorize the trans-Alaska pipeline right-of-way nearly 20 years ago.

The issue of who pays for the response should not be confused with who is required to respond. The issue of who pays for the response should be left up to the owner companies to settle amongst themselves. The issue of who is required to respond was settled nearly 20 years ago. State law should clearly state the language in existing federal laws that Alyeska shall immediately contain and cleanup TAPS oil spills in any area in the State of Alaska.

To require any less undermines the state and federal lawsuits over exactly this issue; it undermines the state's ability to regulate its most powerful industry; and it undermines the state's ability to protect its own people and natural resources.

Our faith in this legislature and the Administration's intent to protect the public interest as mandated in Section 203(e) of the Trans-Alaska Pipeline Authorization Act has already been greatly eroded simply by the debate to diminish Alyeska's duty to respond to TAPS spills.

Having a lesser standard than the federal government is completely unacceptable to us and, should such legislation pass this body, it should be vetoed by the Governor.

In summary, we are asking that four critical provisions be included in HB 540 as a condition of its passage. Each provision can be used to let the air out of one tire of Alyeska's Cadillac. Unless, all four tires are flat, this legislation should die in this committee.



Oil Reform Alliance

May 6, 1992

Congressman George Miller, Chairman
Committee on Interior & Insular Affairs
1324 Longworth Bldg.
Washington, D.C. 20515

Dear Congressman Miller:

The Oil Reform Alliance is a coalition of Alaska commercial fishing and environmental groups that formed after the Exxon Valdez oil spill to organize and educate the public on oil industry activities which could negatively impact communities and natural resources.

We are very concerned with Alyeska's recent allegations that it is a "volunteer" with no legal duty to clean up TAPS (Trans-Alaska Pipeline System) tanker spills. Having only a "volunteer" response organization in Prince William Sound exposes the public and the natural resources to tremendous and completely unacceptable risk from exposure to oil spills.

This is certainly not what Congress intended when they authorized construction of the trans-Alaska pipeline; nor is it what the oil industry promised while lobbying Congress in 1973. Alyeska promised it would accept full responsibility on behalf of its parent companies to control and cleanup TAPS oil spills.

Congress' intent to hold Alyeska to these promises was embodied in Section 204(b) of the 1973 Trans-Alaska Pipeline Authorization Act which places in statute Alyeska's duty to respond to TAPS spills in "any area." In the Oil Pollution Act of 1990, Congress restated and clarified its intent by amending Section 204(b) with statutory duty that Alyeska clean up TAPS spills in the State of Alaska. The State of Alaska includes state waters. Your committee and the Merchant Marine & Fisheries Committee have both proposed language in the Energy Bill which additionally requires Alyeska hold an approved oil spill response plan for Prince William Sound.

Congress, at least, seems clear on their intent to hold Alyeska to its original promises and statutory duty to clean up TAPS spills in the State of Alaska.

Congress granted Alyeska and its parent companies the privilege to use public land and take public resources as long as the oil companies operated in good faith and the public interest was protected as stated in Section 203(e) of the Trans-Alaska Pipeline Authorization Act:

"The Secretary of the Interior and the other federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify and right-of-way, permit, lease, or other authorization issued under this title."

By not acknowledging their statutory duty to respond to TAPS spills in the State of Alaska, including all its waters, the TAPS oil companies have violated federal law and failed to protect the public interest.

We ask that your committee immediately take steps to inform Alyeska of their statutory duties to clean up TAPS oil spills in the State of Alaska, including all state waters, and to notify the TAPS owner companies that Alyeska, as their common operating agent, has placed the owners in violation of the TAPS Act.

In order to protect the public interest, Alyeska must be held responsible for cleaning up TAPS oil spills in the State of Alaska.

We appreciate your consideration of our concerns.

Sincerely,

D. Riki Ott

Riki Ott, Ph.D.
President

May 6, 1992 - 3:05 p.m.

Mike Conway from DEC returned your call.

Spill in Cook Inlet.

Report from Steelhead Platform via the Coast Guard there was a black oil spill out in the inlet. It was in the middle ground shoal area about mid-inlet. DEC had an overflight with the Coast Guard and saw a small amount of black oil, estimated to be one to two barrels. It was in a 3-mile long slick which was breaking up rapidly. It was mostly a rainbow slick with a little bit of black oil. Aren't sure by looking at it what oil was -- could have been crude oil or bilge oil. Breaking up so fast no chance to get samples. Been working with Coast Guard on it. Overflight at 5:00 p.m. tonight to make sure nothing more out there and take another look.

It's a small insignificant spill. District office in Kenai working with Coast Guard.

Orphan spill or mystery spill -- no known responsible party.

Janet

HORST & FRISCH

INCORPORATED

1133 CONNECTICUT AVENUE NW, SUITE 900

WASHINGTON, DC 20036

TELEPHONE 202/296-4005 FAX 202/296-4008

May 5, 1992

Senator Sam Cotton
Chairman
Senate Committee on Oil and Gas
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Senator Cotton:

This letter responds to your letter of April 24, 1992 about the profit earned by Alyeska and/or the TAPS owners as the result of the oil spill related capital and operating expenditures made by Alyeska. This response, which the Department of Law authorized me to prepare, elaborates on the information previously furnished to you in my letter dated November 5, 1991, which became part of a report prepared by the Citizens' Oversight Council on Oil and Other Hazardous Substances.

To begin, Alyeska incurs capital and operating expenditures on behalf of the seven TAPS owners. The TAPS owners reimburse Alyeska for their pro rata shares of the expenses Alyeska incurs on their behalf. Alyeska does not mark up those expenses to include a profit.

As for the TAPS owners, a distinction must be made between capital expenses and current operating expenses. Current operating expenses, including those relating to oil spills or oil spill prevention, are passed on dollar-for-dollar, without any profit markup, in TAPS tariffs and thus reduce the wellhead value of ANS oil and the State royalties and taxes based on that wellhead value.

Capital expenses, including those relating to oil spills or oil spill prevention, are added to the TAPS owners' rate base. Capital costs are then recovered through TAPS tariffs over the remaining life of the TAPS by the depreciation charge. In addition, to the extent the capital cost has yet to be recovered and so remains in the TAPS rate base, the TAPS owners are entitled to earn a rate of return on their invested capital.

The calculation of the TAPS owners' rate of return is governed by the TAPS Settlement Agreement between the State and the TAPS owners, which was approved by the Federal Energy Regulatory Commission and the Alaska Public Utilities Commission. The total rate of return consists of three elements: (1) a "real" (i.e., net of inflation) rate of return of 6.4 percent per annum, plus (2) the current inflation rate in the Consumer Price Index, plus (3) an allowance to provide for State and Federal income tax on the first

two elements. Moreover, the second, current inflation element and the associated State and Federal income tax, is itself capitalized and amortized over the remaining life of the investment. This treatment of the inflation element of the rate of return is often referred to as a "trended original cost" or "TOC" method.

To show you the practical consequences of these calculations, I have attached a bar chart showing how the composition of the total TAPS revenues over the remaining life of the TAPS would be affected if the TAPS owners make the operating and capital expenses for 1989-1997 projected in my November 5, 1991 letter. Note that while we have not sought to project any oil spill related expenses beyond 1997, the capital expenses incurred before that date will continue to have an effect after that date.

Making no adjustment for the time value of money, the cumulative effect from 1989-2011 of the 1989-1997 outlays would be as follows:

	Cumulative Amount <u>1989-2011</u> (Million \$)
<u>Expenditures</u>	
Operating Expense	\$161.1
Initial Investment	<u>447.2</u>
Total Expenditures	\$608.3
<u>TAPS Revenue Effect:</u>	
Operating Expense	\$161.1
Depreciation	447.2
After-Tax Margin @ 6.4%	140.3
Inflation Write-Up	84.5
Income Tax Allowance	<u>151.2</u>
Total Revenue Effect	\$984.3

From an accounting perspective, the After-Tax Margin, Inflation Write-Up and Income Tax Allowance, which together total \$376.0 million, represent the cumulative before-tax operating profit to the TAPS owners resulting from the \$447.2 cumulative capital outlays. From a regulatory perspective, these three elements represent the "cost of capital" invested by the TAPS owners.

I hope this letter is responsive to your inquiry. If not, or if you have any further questions, please let me know.

Sincerely,

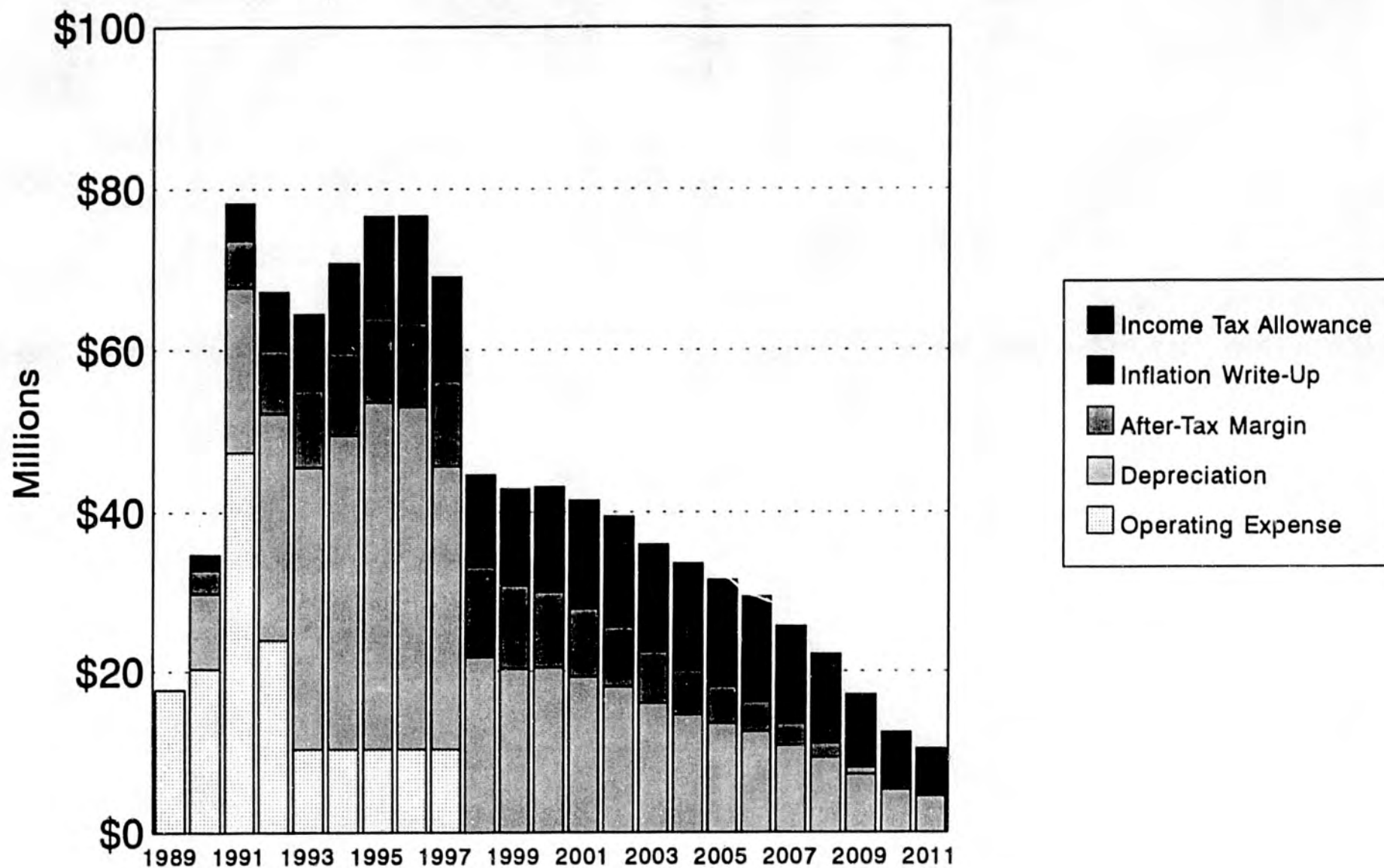
Thomas Horst

Thomas Horst

Attachment

EFFECT OF OIL SPILL EXPENDITURES ON TAPS REVENUES

Oil Spill Expenditures Estimated from 1989 through 1997



COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL, INC.

11355 Frontage Rd, Suite 223, Kanai, Alaska 99611

(907)283-7222

Fax (907) 283-6102

FAX COVER SHEET

DATE: April 2, 1992

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Senator Sam Costner

FIRM: _____

CITY: _____

TELEPHONE NUMBER: _____ FAX NUMBER: 465-4979

FROM: Cook Inlet RCAC

DESCRIPTION OF MATERIAL: Letter of March 31, 1992

from Sen Costner to Representative Hudson

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 4

COMMENTS: _____

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 283-7222 AS SOON AS POSSIBLE.



"The mission of the Council is to ensure the safe operation of the oil terminals, tankers, and facilities in Cook Inlet so that environmental impacts associated with the oil industry are minimized."

March 31, 1992

The Honorable Bill Hudson
Alaska State Legislature
P.O. Pouch V
Juneau, AK 99811

Dear Representative Hudson:

The entire board of directors of the Cook Inlet Regional Citizens Advisory Council (Cook Inlet RCAC) has received your letter of March 25, 1992. I have been asked by the Council to be the person to present our position to the legislature concerning contingency planning and the liabilities of contractual responders.

Cook Inlet RCAC believes the centerpiece of both state and federal laws relies on the contingency plan holders ability to mount a rapid and effective response to an oil spill.

To be approved, a contingency plan must cover all foreseeable events that may cause an oil discharge. If a contingency plan is based on contracted response that provides for exceptions to respond, then Cook Inlet RCAC feels the plan is incomplete and should not be approved.

Contractors entering into agreements with contingency plan holders are indemnified from liability contractually. In most cases, response action contractors (RACs) are indemnified by the contingency plan holder from acts that are strictly liable and for acts of simple negligence. In no case, are RACs indemnified from acts of gross negligence or criminal activity. The report prepared for Cook Inlet RCAC by Douglas Mertz and Thomas Koester dated December 6, 1991, contains information concerning the existing indemnification language found in contracts between RACs and the major carriers and transporters of oil in Alaska.

Cook Inlet Regional Citizens Advisory Council

11355 Frontage Rd. • Suite 228 • Kenai, Alaska 99611 • (907) 283-7222 • FAX (907) 283-6102

Page Two

The Honorable Bill Hudson

March 31, 1992

The Citizen's Oversight Council report omitted any inspection of contractual indemnification as a method of limiting RAC liability. Federal law protects RACs from liability and encourages indemnification agreements (Section 1010, OPA 90).

Cook Inlet RCAC agrees RACs should not, under state law, be held strictly liable for their actions. A simple negligence standard would best assure a rapid and thorough response to an oil spill. A standard of operating just below gross negligence is unacceptable and, in our view, a large step back from the laws that existed in March 1989. The liability standard will establish the degree of care the contracted RAC will exercise over the maintenance and care of its equipment and its preparations to launch a response at short notice.

In summation of this point, Cook Inlet RCAC would say a contractual responder should face a standard of liability that compels the response described in the contingency plan.

The next issue concerns the so-called "vessels of opportunity". These vessels are ones which are engaged in other maritime activities such as commercial fishing or fish tendering, passenger or cargo transportation, and offshore supply. These vessels may, by happenstance, be the best situated to mount the initial response or response support measures.

The owners and operators of such vessels may be willing to assist, but reluctant to assist because of the absence of an indemnification agreement that would limit their liability. Cook Inlet RCAC supports statutory language that supplements the existing "Good Samaritan Statute". Such language would allow the operators of non-contracted vessels to voluntarily respond or assist a contingency plan holder or one of their contracted RACs, without incurring the liability for actions taken as a volunteer.

Page Three

The Honorable Bill Hudson

March 31, 1992

Cook Inlet RCAC was organized as a demonstration project under provisions of OPA '90. While our obligations for environmental monitoring and industry oversight may be region specific, other obligations transcend those regional boundaries. Our involvement in helping craft Tank Vessel Response Plan regulations, pursuant to Section 4202 of OPA '90, with the U.S. Coast Guard were not centered around Cook Inlet or the state of Alaska. The regulations pertained to all waters of the United States, and in some cases, waters of the world. I think we have demonstrated an ability to look beyond our region and make recommendations that are free of a provincial slant.

Notwithstanding all of the above comments, let me assure you that Cook Inlet RCAC is more than willing to take part in reaching a solution that strengthens the contingency plans and meets the needs of the response action contractors employed to carry out these plans. We are currently working with members of the industry to resolve this issue and will take part, if invited, in any future legislative work sessions.

If you or your staff have any questions, or if you need a copy of the report referenced above, please feel free to call me at 235-8252 or Lisa Parker at 283-7222.

Sincerely yours,



Ken Castner
Cook Inlet RCAC
Board of Directors

cc: Senator Sam Cotton, Special Committee on Oil & Gas
Representative Cliff Davidson, Resources Committee
Cook Inlet RCAC Board of Directors



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

FAX COVER SHEET

DELIVER TO: Representative Bill Hudson

FROM: Tim Robertson

REGARDING: _____

.....

DESCRIPTION

DATE: 3/5/92 TIME: 11:00 # OF PAGES: 16
(including this cover sheet)

THESE ITEMS ARE BEING SENT:

- ☐ FOR YOUR IMMEDIATE ACTION, KEEP US ADVISED OF ACTION.
- ☐ FOR YOU TO PROCESS.
- ☐ FOR YOUR REVIEW AND APPROVAL
- ☐ FOR YOUR GENERAL INFORMATION
- ☐ FOR YOUR APPROVAL AND CORRECTION.
- ☐ FOR YOUR SIGNATURE.

REMARKS:

[The work group agreed to leave off management, pending a proposal on how it would be handled. Below is a proposal of information that would be requested if response management is certified:]

- (ix) *Spill response management services for large spills:*
 - (A) Names, experience, and background of management team
 - (B) Description of the training and experience of management team, including a description of familiarity with:
 - (1) clients' response plan(s)
 - (2) area contingency plans in area of service
 - (3) national contingency plan
 - (4) state requirements in area of service
 - (C) Description of communications system for command and control, including:
 - (1) number and type of equipment
 - (2) frequencies available
 - (3) mobility of equipment
 - (4) description of communications redundancy
 - (D) Description of logistic management system, including:
 - (1) transportation coordination
 - (2) material maintenance and support
 - (3) security
 - (4) inventory control
 - (5) resource management
 - (E) Description of operational management system, including:
 - (1) spill trajectory interpretation
 - (2) boom and skimmer tactical direction
 - (3) temporary containment direction
 - (4) natural and economic resource sensitivity
 - (5) nonmechanical removal direction
 - (6) manpower supervisory capacity
 - (F) Administrative management system, including:
 - (1) procurement system
 - (2) accounting system
 - (3) claims processing system
 - (G) Description of public information and dissemination system.]

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

(g) *Agreement for Inspection and Participation in Drills.* The contractor shall state that the contractor agrees to submit to inspection and verification

15-25

DRAFT February 27, 1992

[Preamble Language]

Contractor Certification Program

a. Purpose and Scope

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

First, many spill responders are expected to be named in multiple vessel and facility response plans, and the preparers of those plans need a common basis by which the responders will be measured and credited. Spill contractors' response services must be matched to the plan holder's requirements. Certification allows plan preparers to know in advance the value the plan reviewer will give for a particular contractor's capabilities. Plan preparers must assemble a sufficient number and mix of contractors to satisfy their response planning responsibilities. In addition, certification will allow contractors to know what credit their capabilities will be given, so they can better present or market their services. Contractor certification also will allow the contractor's capabilities to be evaluated and credited on a fair, consistent and efficient basis.

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

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

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

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

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

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

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

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

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

b. Application for Certification

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

In addition to this quantifiable factual information, the response contractor also must provide descriptive information on certain important factors that bear on whether the contractor should be allowed to be cited in a spill response plan. For example, the application must list all notices of violation issued by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and the Coast Guard related to oil spill response operations for the last five years, and a description of the disposition of those notices. In addition, the contractor may, as supplemental information, submit information that describes the contractor's experience.

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

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

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

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one Coast Guard District, then the reviewer will be the District Commander. In the case of a contractor seeking certification in more than one District, the review shall be the Chief, Office of Marine Safety, Security and Environmental Protection.

c. Certification Process

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

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

d. Certification Criteria

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

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

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

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

c. Denial of Approval and Appeals

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

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

f. Notification of Significant Changes in Response Capability

Once a contractor has been certified, certification is valid for a period of [5] years. However, contractors are required to notify the COTP of a significant reduction of capability, as specifically identified in the certification. The proposed regulation requires this notification to be in advance, if the significant reduction is

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planned, or no later than 24 hours after the contractor becomes aware of the significant change, if unplanned. The COTP can then determine whether to require plan holders to secure additional capability, or make other practicable arrangements to compensate for the reduced capability.

g. Effect on State Certification

The contractor certification established in this rule is designed to implement the requirements of OPA. Some states may have similar contractor certification requirements under individual state laws. Nothing in this rule is intended to preclude reliance on these certification rules or the federal certification process by states where it is appropriate to do so. In fact, States are encouraged to rely on the federal certification process, to the maximum extent practicable, taking into account any differences in the purposes and value of the federal certification process and the specific requirements of state law.

[REGULATORY LANGUAGE]

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

Sec. XXX.00 Contractor Approval

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

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

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

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

(iii) "*Interim status letter*" means the letter sent by the reviewer to the contractor describing the initial Response Value assigned to the contractor pending verification of the factual information contained in the application and an in-depth review of the contractor's application for purposes of certification.

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

(v) "*Response contractor*" is any person who provides designated response equipment or services under contract or other means approved by the President directly to an owner or operator of a tank vessel or facility required to have a response plan under 33 U.S.C. 1321(j)(5), which designated equipment or services are required to be available and identified in such plan.

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

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

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

Sec. XXX.01 Contractor Certification Application Content

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

- (i) Contractor's name, mailing address and phone number;
- (ii) The specific response services being offered for certification;
- (iii) The specific location of all spill response resources, and the areas in which spill response services using each resource is being offered;
- (v) A list of all Occupation Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) notices of violation related to oil spill response operations and disposition of those notices for the last five years. Any applicant with less than five years under their current business name or organization shall provide the same information for any oil spill activities or businesses participated in by the principals in the new company within the last five years;
- (vi) an organizational diagram depicting the chain of command;
- (vii) a call-out list for the contractor's resources, and a description of the call-out procedure;
- (viii) For each type of service, the types of oil to which the contractor is willing and able to respond;
- (ix) For each type of service, the planned mobilization time for that resource.

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

- (i) type, quantity, age, and location;

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

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

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

- (1) list by job category;
- (2) match to the equipment list and scope of service, including the plan for how the equipment and people necessary to provide the service will be brought to bear in an incident from what source; and
- (3) list training and qualifications, including OSHA Hazardous Operations training and how additional personnel are planned to be trained within what timeframe if they will be required to meet the service listed.

The application shall also list the total personnel available.

(d) *Management Structure.* The application shall identify the management structure associated with the service(s) offered.

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

- (i) *Boom control/containment/protective booming services*
 - (A) Describe the platforms for deployment (number/type); and,
 - (B) Amount and condition (e.g., 2000' of offshore boom/vessel).
- (ii) *On-water recovery services*
 - (A) recovery platform (for owned vessel and vessel of opportunity recovery systems):
 - (1) name of vessel;
 - (2) size/class;
 - (3) location; and,
 - (4) contract terms of availability.
 - (B) skimming system:
 - (1) make;
 - (2) model;
 - (3) manufacturer's nameplate capacity; and
 - (4) applicable design limits (e.g., suitability for different types of oil and different operating environments, as related to adverse weather).
 - (C) personnel trained to operate the equipment:
 - (1) name;
 - (2) position description; and,
 - (3) training or experience.
- (iii) *Shoreline remediation services*
 - (A) number of persons available for beach cleanup
 - (B) description of supplies/support for beach cleanup
- (iv) *Transfer/storage services*
 - (A) type and capacity of storage/transfer facilities

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

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See proposal for
Spill Response
management

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

(g) *Agreement for Inspection and Participation in Drills.* The contractor shall state that the contractor agrees to submit to inspection and verification

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of the designated capability cited in the application. The contractor also agrees to make itself available to participate in drills as reasonably necessary to verify the contractor's application.

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

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

Section XXX.02 Contractor Certification Application Procedure.

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

[provide filing addresses]

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

Section XXX.03 Contractor Application Review

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

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

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

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

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

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

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

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

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

Section XXX.04 Appeals and Notices

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

[some appeal to centralized authority recommended]

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

DRAFT February 27, 1992

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

Section XXX.05 Renewal and Revocation

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

(b) *Revocation.* [note: Coast Guard will establish some process for revocation or adjustment of certification for cause.]

(1

5/11/92

6:15 P.M.

TO: SAM COTTEN
CHAIRMAN, SENATE OIL & GAS

FROM: WALT PARKER 333-5189

RE: CS FOR HB 540

IT WAS GOOD TO HEAR A STRONG
ADMINISTRATION POSITION FROM THE A/G.

RE LARRY WOODS. HE SAID, "WHAT HAPPENS
IF ALYESKA AND THE SHIPPER DISAGRE
ON THE RESPONSE?" THEY DO WHATEVER
THE FEDERAL OR STATE OSC TELLS THEM
TO DO. THEY ARE SIMPLY TOOLS OF
EXECUTION IN AN OVERALL PLAN. THEY
ARE NOT ANYTHING MORE. THAT
IS WHAT WE DID IN 1990, FED AND
STATE, AND HAVEN'T CHANGED YET.
THIS WHOLE THING IS JUST AN
EFFORT TO OVERTURN EVERYTHING
WE DID THEN.

SCRAP THE BILL. YOU HAVE
AS MUCH FOR TESORO AS POSSIBLE.

seapro

Southeast Alaska Petroleum Resource Organization

540 Water Street Suite 202
(907) 225-7002

Ketchikan, Alaska 99901
Fax (907) 247-1117

February 27, 1992

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

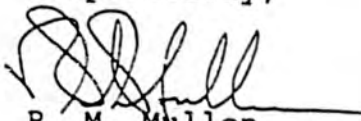
Dear Representative Hudson,

In support of your bill HB 540, which limits response action contractor liability, I am enclosing our recently approved position paper on this subject. Also, since our organization is still rather new and little known, I have included a map which shows the major locations of our network, and a map which shows the eligible facilities which have chosen not to join our network.

As you will note in our position paper, we do not believe that all of the recommendations of the Citizen's Oversight Council on this subject are in the best interest of our region. We do believe, however, that HB 540 provides exactly the conditions we think will provide the best climate for further developing environmental protection capabilities in our region.

I will, of course, provide you with any information or other assistance you may need relative to environmental protection in Southeast, the remainder of the state, and the North Pacific region.

Respectfully,



R. M. Mullen
Manager

POSITION PAPER

OIL SPILL RESPONSE ACTION CONTRACTOR LIABILITY

February 25, 1992

SEAPRO and its nineteen member companies wish to record our observations and concerns about response action contractor liability, and its likely impacts on the current and future state of environmental response capability in Southeast Alaska. We are particularly concerned by the failure of the Citizen's Oversight Council to adequately investigate the state of environmental response in rural Alaska generally, and Southeast Alaska specifically, in reaching the conclusions and recommendations contained in their report to the legislature on this subject.

Overview of Response Action Contractors in Southeast Alaska

There is only one business in the Southeast Alaska region which holds itself out as a response action contractor. That firm has very minimal capabilities which are almost totally restricted to the immediate areas around Juneau. Our region has always had to rely on existing business organizations within the region to provide response to pollution incidents and other emergencies. In addition to oil transporters and terminals, these businesses have included logging companies, construction companies, float plane and helicopter operators, tug and barge companies, fishing vessels, and many others. All of these are therefore "Response Action Contractors" as defined by state law when they enter into agreements to help respond to spills.

The services of companies like VRCA, VECO, Burlington Environmental, Foss Environmental, etc., have rarely if ever been used to respond to environmental emergencies in our region. The reason for this is the typical small size of spill, the nature of the products involved, and the logistic difficulties of deploying to the region in time to be effective. One of the primary motivations our members felt for formation of SEAPRO was the lack of response action contractors within the region.

SEAPRO is not currently a response action contractor. We are a cooperative sharing organization of predominantly local small businesses who make up the fuel and lubricating oil transportation and distribution network for all of Southeast Alaska. We also include several local companies who consume or handle large quantities of oil in support of their business activities, but who are not in the "oil business". Our organization was originally formed to act as a sharing network only in Ketchikan, but rapidly expanded to cover the entire region. We have now reached the point in our evolution where we must consider purchasing pollution response equipment in the near future and becoming some form of response entity.

All of our collective experience, along with our judgment of operating conditions within the region, forces us to conclude that there will likely never be a response action contractor of any significant ability in Southeast. We have no expectation that this situation will change any time soon because there is insufficient financial justification for bona-fide environmental or emergency contractors to capitalize a response capability which would only be profitably employed on our historical average of once a decade.

Potential Impact of Liability to Southeast Alaska Spill Response Capability

With the exception of SEAPRO member companies, almost none of the companies who have previously participated in environmental response activities in this region are aware of their potential liabilities when current state law sunsets in a few months. Additionally, since none of these companies consider themselves to be "response action contractors", it is unlikely that they will make themselves aware of their liability exposures in advance of being asked to respond to an environmental emergency. It is equally unlikely that they would submit to a "certification" process recommended by the Citizen's Oversight Council, or to the verification/inspection process which would be necessitated by such certification.

If these companies were to discover the potential extent of their liability exposure for participating in a clean up action after the current limitations sunset, it is unlikely that they will respond in a timely manner, if at all, when they are needed. The worse possible situation will be for one or more of these companies to become the target of an opportunistic law suit allowed by a lack of liability limitation. Such a situation would guarantee that it would be difficult, if not impossible, to convince local companies to respond to future emergencies, even if action were subsequently taken to limit liabilities. Given the ever increasing propensity for opportunistic law suits in our nation, and the sensitivity of regional businesses to this phenomenon, we believe that merely the possibility of such a situation will have a chilling effect on the regions environmental response capability.

Any reasonable person responding to an oil spill assumes that all liability for damages and costs resulting from the clean up will flow to the responsible party. This is as it should be. It makes no sense to imperil a contractor acting in good faith, and within the boundaries of state or federally approved contingency plans, to bear any responsibility for damages which could result from someone else's spill. Except for gross negligence, willful misconduct, or violation of law by a contractor, all damages from a hazardous substance release are the rightful responsibility of the spiller, not the third party people cleaning it up. This principle has been codified in federal law and the laws of at least 18 other coastal states. Acceptance of this principle is a condition of membership in SEAPRO and most other cooperatives.

As stated earlier, SEAPRO has evolved to the point that it must consider becoming a response entity in some form. Currently, Southeast is the only region of the state, outside the crude oil producing regions, which has taken any tangible steps to improve its environmental response capability. The steps that have been taken to date, have been entirely on the initiative of the regions businesses. In spite of some initial skepticism on the part of state and federal agencies, we have forged ahead with investment in our organization, greatly enhancing the effectiveness of the response equipment, material, and personnel in the region. We have proposed to both the state and federal agencies, cooperative steps which can be taken to provide our region and the rest of the state with marked improvement in our mutual ability to combat environmental emergencies. We want to begin taking these steps this year with or without agency participation.

However, the prospect of facing clean up costs and other damages for actions the co-op may take to mitigate environmental damage will surely weigh heavily on our decision making when considering how we may use SEAPRO to further improve the regions total response capability.

Response Action Contractor Certification in Southeast Alaska

The Citizen's Oversight Council has recommended that response action contractor liability limitation be linked to an, as yet undeveloped, certification program. While SEAPRO does not object to compliance standards for environmental response organizations, whether private companies, cooperatives or some other form, we fail to see the practicality or necessity of "certifying" entities in Southeast Alaska which meet the definition of response action under current law.

The current legal definition of response action contractor is:

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

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

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

Looking at the history of spill response in Southeast, and the probable future response actions in the region, certifying the response action contractors defined above would mean establishing the standards and processes for certifying virtually every business, and many individuals in our region. This is a monumental task by any standards, and in our view, a nonsensical one.

The Citizen's Oversight Council made some very narrow assumptions of what constitutes a response action contractor, and even what constitutes a cooperative. It is our opinion that the Council did not consider the broad range of response actions that have taken place throughout this state, nor did they evaluate the complex mix of organizations and individuals who have participated, and are likely to be asked to participate in environmental response actions.

There could be some benefit to establishing certification criteria for certain categories of response action contractors, were those categories to be properly defined in the broader context of the entire state. But in any context, some agency will have to develop professional standards to measure contractor capability; will have to apply these standards through some sort of an inspection or verification process; will have to verify the continuity of certification levels, will have to measure actual contractor performance against certification standards; and will have to administer this entire process. In our view, the cost of the simplest of such a bureaucracy would be excessive for the benefit gained, especially in Southeast and other areas outside the crude oil producing regions. The time necessary to create such a system would be extreme, with no possibility that such a system could be in place before the current liability limitations sunset. And finally, it makes no sense to us to waste scarce state resources on creating such a system and supporting bureaucracy when the federal government is already in the process of doing exactly the same thing.

Summary

At no time prior to publishing its report did the Citizen's Oversight Council seek information about conditions in Southeast Alaska from either SEAPRO, its member companies, nonmember companies, or other organizations with whom we network. During their teleconferenced meetings on this subject, our representatives noted that Southeast Alaska was never discussed or even mentioned by the Council members. Additionally, it was our observation that the Council focused almost all of their attention on operations in the crude oil producing regions of the state, on one or two companies who are in the business of environmental response, on Alyeska Pipeline Company, on the Cook Inlet cooperative CISPRI, and infrequently on the Alaska Clean Seas cooperative.

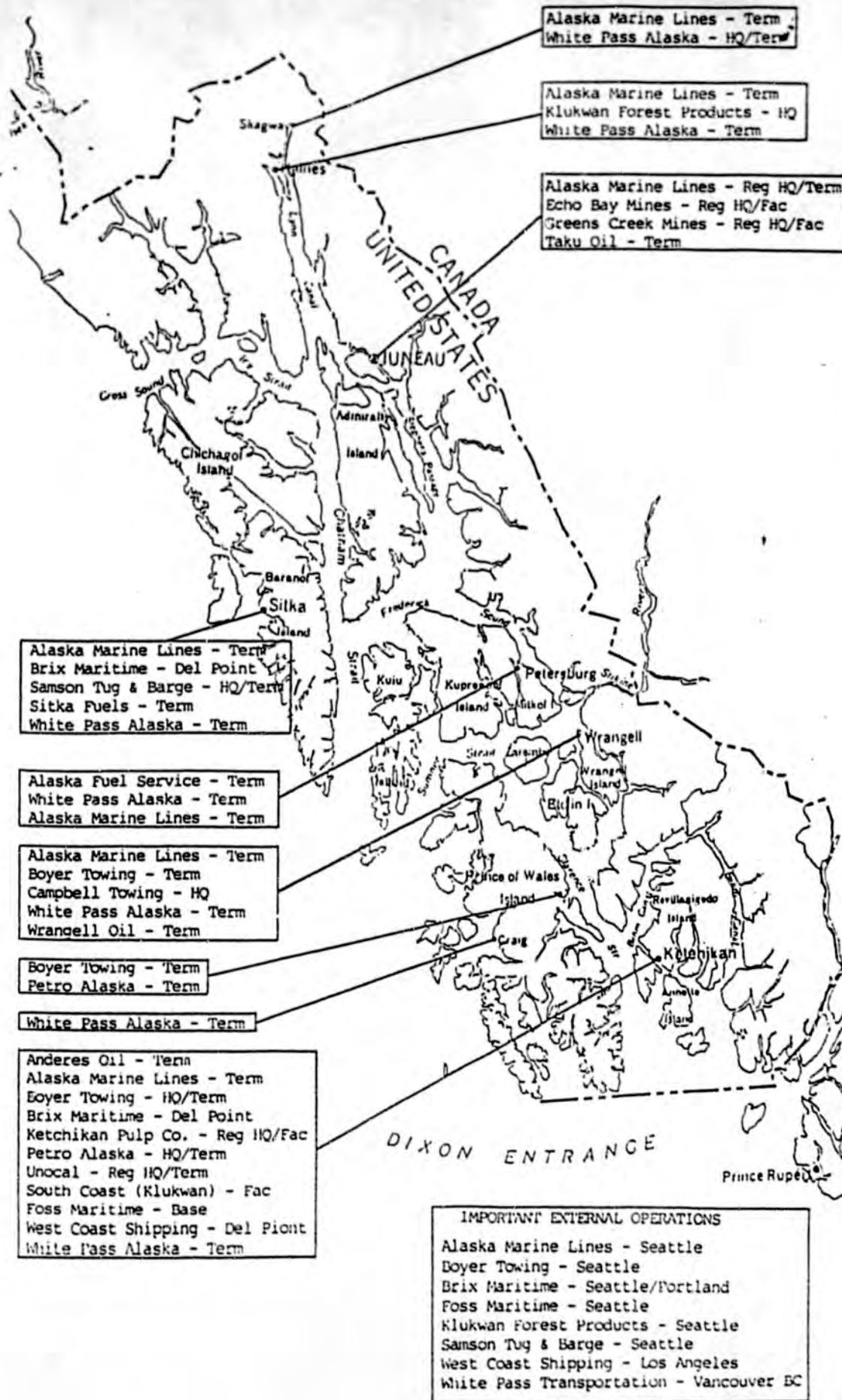
We find that their report seems to be strictly and narrowly aimed at perceived conditions in Prince William Sound, and to a lesser degree, Cook Inlet. It certainly does not accurately reflect environmental response conditions in our region, and we suspect that it does not accurately reflect conditions in other regions of the state. Consequently, this basic flaw places us in the position of not concurring with much of their rationale or their proposed solutions.

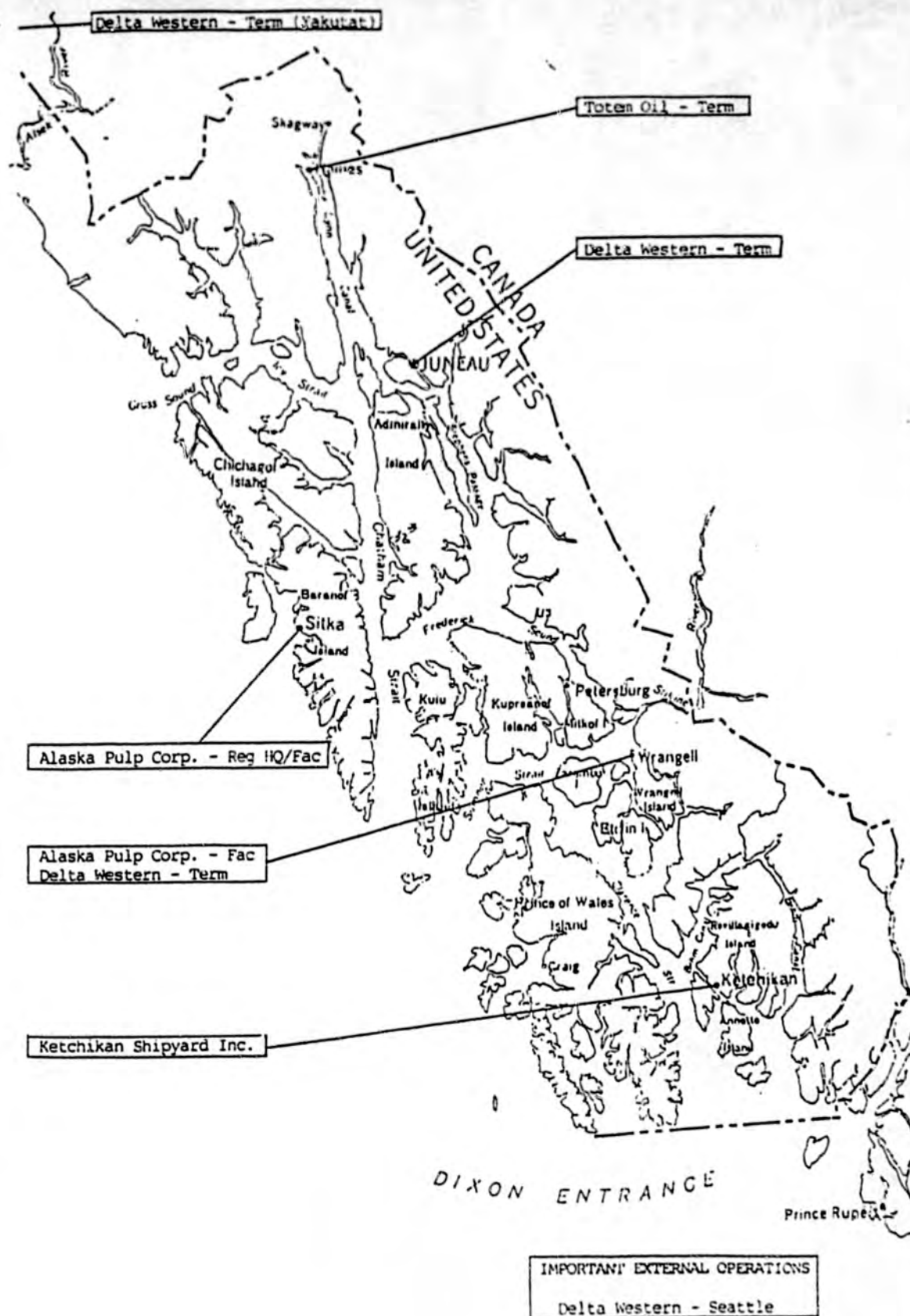
We believe that the state, like the federal government, should fix all obligations for clean up costs and damages resulting from a hazardous substance release on the responsible party, where it rightfully belongs.

We are concerned that failure to adopt liability limitations for environmental emergency responders, other than the responsible party, would negatively impact our regions ability to seek rapid and effective response actions from service providers outside the SEAPRO response network. Additionally, failure to provide this type of liability limitation would seriously threaten SEAPRO's ability to continue making further improvements in the total response capability of the region.

We cannot see substantial value to be gained within our region by creating a response action contractor certification process independent of that which will be created by the federal government. We also see no value in either waiting until a certification process is developed before granting liability limitation, or in tying liability limitations to any condition other than performance in accordance with federal and state contingency plans.

We believe that limiting the potential liability of responders, whether environmental contractors, cooperatives, other commercial entities, or volunteers is essential to improving the response capabilities of our region. This limitation should be similar, if not identical to that contained in the federal Oil Pollution Act of 1990.





Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not.

Right now, oil spill teams can be sued just for showing up to fight the damage. for events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions...

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

Should qualified immunity not be granted to responder as outlined in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

...Ventura County Commercial Fishermen's Association, May 4, 1990

IF SHE'S NOT A GOOD SAMARITAN, JUST WHO IS?

The men and women who respond to an oil spill crisis are willing to accept many dangers. Good Samaritans in every sense of the word, they risk uncertain seas, fire and exposure.

But there's one risk that's truly unacceptable. A crippling lawsuit against the recovery team itself. Yet, because of an odd quirk in the law, that's a real possibility.

Right now, oil spill teams can be sued just for showing up to fight the damage. For events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions.

Is this reasonable? The Congress of the United States doesn't think so. The California State Senate doesn't think so. In fact, only one group wants to be able to make the people fighting the oil spill pay for the spill itself. The California Trial Lawyers Association.

This powerful special interest group has managed to block the final steps in enacting Good Samaritan protection for oil recovery teams. Why? For the oldest reason of all—they want the fees.

Senator Barry Keene and Assemblyman Ted Lempert are working overtime to protect California's coastline. And we have a major interest in their efforts. We are the people who fight oil spills. Some of us do so to protect our fishing grounds. Some to save innocent wildlife. Others, as part of a responsible petroleum industry. We believe that whoever spills the oil should be liable for the cost—not the people who clean it up.



We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. In short, we stop everything to help an injured Earth when she needs it.

Please send in the coupons below and tell the California State Assembly to pass SB 2040 authored by Senator Barry Keene. It's the only way to keep some very Good Samaritans on the job.

Join Us In Saying NO To The Trial Lawyers, Yes on SB 2040.

CALL US

We will send a FREE postcard in your name to your State Assembly member.

CALL TOLL FREE

1-800-325-6000

Ask for Operator 9732.

This is not the Voters Union survey.

WRITE US

Fill out this coupon and send it to us:

YES! I support Senate Bill 2040 (Keene) and pressure my California oil spill recovery bills. Please add my name to the list of people who write to my state's legislators.

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Return the coupon to Bird Rescue Research Center, 123 Elm Street, Suite 200, San Francisco, CA 94104.

OR, TELL 'EM YOURSELF

Please let me know: Don't let the trial lawyers block all recovery money off the beach. Please join the U.S. Congress and the California State Senate in enacting Senate Bill 2040 (Keene).

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Return the coupon to Bird Rescue Research Center, 123 Elm Street, Suite 200, San Francisco, CA 94104.

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Ventura County Commercial Fishermen's Association
SERVING COMMERCIAL FISHERMEN SINCE 1987

V.C.C.F.A. • 1567 SPINNAXER DRIVE • STE. 203-199 • VENTURA, CALIF. 93001
(805) 985-9705

Honorable George Deukmejian
Governor of California
State Capital First Floor
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hours of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to responders as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALDEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Janison



COOK INLET SPILL PREVENTION & RESPONSE INC.

CISPRI POSITION PAPER

OIL SPILL RESPONSE ACTION CONTRACTOR LIABILITY

MARCH 6, 1992

CISPRI supports the liability relief language in OPA'90. We believe the Response Action Contractor should be relieved of liability except for gross negligence.

Currently, CISPRI By-Laws allow CISPRI to respond to any spill in Cook Inlet, whether or not the responsible party is a member of the cooperative or not. Without contractor liability relief, CISPRI members are reluctant to respond if there is not a clearly identified responsible party. Delays will occur while a contract is negotiated.

OPA '90 grants the Response Action Contractor relief but transfers that relief to the responsible party. If there were an orphan spill, no Response Action Contractor would ever respond for fear of being made liable for simply trying to correct someone else's responsibility.

The Kenai Peninsula Borough sits on CISPRI's Board of Directors. If there is not liability relief for CISPRI as a Response Action Contractor, they (Kenai Peninsula Borough) have been legally advised to withdraw from CISPRI.

CISPRI uses the Incident Command System and CISPRI responds to all decisions made as a result of the Unified Command meetings. If liability relief is not granted, are all members of the Unified Command responsible for CISPRI actions?

If the Response Action Contractor is made liable for damages, what happens to the lower level response contractors? Are the fishing vessels, vessels of opportunity and other response contractors liable?

The argument has been made that no Response Action Contractor has been sued. That is completely untrue. Cook Inlet Resource Organization (CIRO), is still involved in legal proceedings of the Glacier Bay Spill.

The 15 day liability relief granted in HB196 bill is not enough. During the small East Forelands Spill CISPRI had used nine days before all equipment was demobilized.

CISPRI supports HB 540 and requests that the legislature enact this legislation so CISPRI can continue rapid response to any spill in Cook Inlet.

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)
Alaska Delegates: Sen. Eliason
Sen. Zharoff
Rep. Davidson
Rep. Navarra

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990



Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035

Phone 907/276-0700 Fax 276-3887

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Resource Development Council

Position Paper - HB 540

2/21/92

The Resource Development Council for Alaska, Inc., strongly supports HB 540 and urges the Alaska Legislature to carefully review and approve this legislation. RDC is a non-profit, pro-economic and resource development organization with a statewide board and membership.

RDC's primary concern with HB 540 is that it corrects prior legislation which wrongly placed the emphasis on preserving an avenue for future litigation that could result from an oil spill, as opposed to placing the emphasis on a good faith response. RDC believes the response action contractor (RAC) provisions contained in the Oil Pollution Act of 1990, which provide for simple negligence, are the appropriate approach in Alaska.

To increase the negligence standard to levels higher than those required by the federal government is not only unnecessary, but has threatened to shut down at least one major employer on the Kenai Peninsula, involving hundreds of jobs in that region. HB 540 addresses several concerns expressed by response action contractors, as well as those involved in the business of shipping oil.

RDC notes that 19 other coastal states have enacted legislation as protective as OPA-90 over the last 18 months, pointing to the integrity of the federal policy.

RDC firmly believes that response action contractors involved in controlling the release or threatened release of a substance should be held to the federal standard of simple negligence as outlined under OPA 90 and urges passage of HB 540.



MEMORANDUM

TO: Ray Gillespie

DATE: April 13, 1992

FROM: Charlie Nalen *CN*

SUBJECT: HB-540/Limited Liability Response Action Contractors

In reading the April 6th edition of Oil Spill and Environmental Issues/Alaska Legislative Report, I noticed that Rep. Hudson offered a second amendment to HB-540 that sets up a contractor registration program. We have some concerns with this proposal which are outlined below:

1. Only a RAC listed in a C-plan as a responder would be registered with DEC. In a major spill emergency, as many responders as possible in the immediate location will be utilized. In the case of Crowley Maritime, we have tugs, barges, and personnel throughout the state that can provide response contractor services. The Exxon Valdez spill response is an example. We would recommend that a RAC could be registered with DEC and not be listed in any C-plan.
2. Another concern is in salvage operations. During a salvage operation there is the risk of an oil spill from the distressed vessel. Our company is an experienced salvor and recognizes that many times the extent of damage to the distressed vessel and risk of an oil release are unknown. A critical issue in our salvage response is indemnification for oil-spill liability. This unfortunately can result in delays in the actual salvage operation. We again recommend that DEC have a registration program for RAC's that provide salvage and/or oil spill emergency response services. Any registered RAC should be granted limited liability.
3. Limited liability should not be only granted to a RAC that is listed as the primary RAC in an approved C-plan. Again, in a major spill situation in Alaska, our company could charter tugs and barges to the spiller/responsible party or a RAC. This legislation would force us to only work for the registered primary RAC as opposed to the spiller/responsible party in order to have the benefit of limited liability. We believe that the state is best served by having a RAC registration program to verify equipment, personnel and response capability. As a registered RAC you would then be granted limited liability.

Let me know if you have any questions.

Regards.

cc: G. Brooks
L. Eglund
T. Martin
B. Stenecker

Ray Gillespie
Gillespie & Associates
Lobbying & Governmental Affairs



10390 Mendenhall Loop Road
Juneau, Alaska 99801
Telephone: (907) 463-3375
Fax: (907) 463-5522

MEMORANDUM

TO: Senate and House Oil and Gas Committees

DATE: February 10, 1992

FROM:  Ray Gillespie, for Crowley Maritime, Delta Western and Petro Marine

RE: Marine Pollution Insurance Problems

This will outline three problems non-crude carriers and operators are experiencing in obtaining marine pollution insurance to satisfy the financial responsibility and "direct action" provisions of Alaska law.

Briefly, these problems are:

1. Confusion created by apparent inconsistencies between statute and regulations concerning insurer liability/exposure when issuing a policy meeting the specific requirements of financial responsibilities statutes.
2. P&I club and insurance coverage with "direct action" endorsement is virtually unavailable to most Alaska operators in the present commercial insurance or P&I club market.
3. Whether D.E.C. has statutory authority to grant conditional operating permits to operators who have met the financial responsibility requirement dollar amounts, but can not satisfy the "direct action" endorsement due to its unavailability.

I.

LIABILITY LIMIT/EXPOSURE OF INSURERS OR GUARANTORS.

Environmental Conservation Regulation, 18 AAC 75.230 (b), requires a policy of insurance certificate or binder to carry an endorsement which reads in part as follows:

"Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040 (i), or any provision cited in it as a result of an unlawful discharge of oil within or affecting Alaska lands or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section _____ of this policy...." (emphasis added)

Alaska Statute 46.04.040 (i) reads as follows:

"Financial responsibility under this section extends to loss compensable under AS 46.03.760 (e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760 (a) or 46.04.030 (g)."

This statute in combination with 18 AAC 75.230 (b) has led P&I clubs and insurance underwriters to conclude that their exposure under a policy may not be limited to the face amount of the policy even though it meets the other monetary requirements for financial responsibility (AS 46.04.030 (k)). In other words, because statutes generally supersede any inconsistent regulation, insurers have advised operators that the potential for unlimited liability and the uncertainty of a judicial interpretation of these statutes and regulations prevents insurance underwriters and P&I clubs from writing the insurance with the required endorsement.

II.

"DIRECT ACTION" PROBLEM

AS 46.04.040 (e) reads in part as follows:

"An action brought under AS 46.03.758, 46.03.759, 46.03.760 (a) or (e), 46.03.822, or AS 46.04.030 (g) may be brought in a state court directly against the insurer, the group, or any person providing evidence of financial responsibility. The applicant, and insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent or service of process in the state...."
(emphasis added)

This provision requires that any insurer or P&I club submit directly to the Alaska jurisdiction and be subject directly to legal action against it in Alaska courts without first proceeding against the spilling operator. The State of Alaska or private party can, under this provision, proceed directly in Alaska courts against the insurer. Typically, P&I club coverage is an indemnity policy, which first requires a provable loss against the operator before the P&I club pays that loss. This is the so-called "direct action" provision which prevents many operators from securing coverage meeting the requirements of Alaska Statutes.

In the States of Washington and California recently enacted financial responsibility statutes do not require the "direct action" endorsement. In essence, California and Washington simply allow for P&I club and insurance coverage which meets the monetary financial responsibility requirements and requires no other showing of a "direct action" endorsement.

III.

UNCERTAINTY OF D.E.C. AUTHORITY TO ISSUE CONDITIONAL OPERATING
PERMITS WHERE DIRECT ACTION ENDORSEMENTS ARE NOT
AVAILABLE.

AS 46.04.040 (1) provides that under certain circumstances DEC may issue permits to an operator who has proof of financial

responsibility without the "direct action" endorsement. This provision has been interpreted as authority to issue conditional permits only upon proof of at least \$50 million in insurance or other financial responsibility which has the direct action endorsement. Since the maximum financial responsibility coverage for a non-crude operator (tank vessel and barges) is \$35 million under AS 46.04.040 (c) (2), the waiver or conditional permit provisions of subsection (1) is not available to them.

The D.E.C. has, however, been issuing conditional permits to non-crude operators which have complied with the monetary financial responsibility requirements, but are unable to get such coverage with the "direct action" endorsement. The "direct action" endorsement is unavailable in the market place to some, if not most, non-crude operators. Due to the commercial unavailability of financial responsibility with the required endorsement, the DEC is in the unpleasant predicament of denying operating permits to established responsible carriers who have been doing business in Alaska for years. Denial of such operating permits because of commercial unavailability of "direct action" endorsement is potentially devastating and would likely eliminate most non-crude refined product delivery to many Alaskan communities.

This provision should be revisited by the Legislature to reflect the realities of the insurance market and availability of coverage. As of last week, D.E.C. has suspended any Conditional Permits.

IV.

SUGGESTED SOLUTIONS

Legislation which:

1. Places explicit language in statute which limits the exposure of an insurer or P&I club to the face amount of the policy;
2. Eliminates the "direct action" requirement;
3. Provides a substitute mechanism to "direct action" which satisfies the State of Alaska and yet recognizes the realities of the available insurance or P&I club coverage;

4. Clarifies D.E.C. authority to grant conditional operating permits to non-crude operators who have otherwise complied with the monetary requirements for financial responsibility; or

5. Combination of the above.



W. Gene Burden
Vice President
Environmental Affairs & Government Relations

February 6, 1992

Representative Bill Hudson
Alaska State Capital
Room 114
P.O. Box V
Juneau, Alaska 99801

Subject: Response Action Contractor Liability

Dear Representative Hudson:

The legislature passed HB 196 last year (Ch. 92, SLA 1991) which provided limited immunity to oil spill response action contractors (RACs) while maintaining liability in cases involving gross negligence, intentional misconduct, and where the RAC was involved in the spill itself. This bill has a one-year sunset and will expire on June 30, 1992 unless action is taken during this session. As you are aware, Tesoro Alaska put a lot of effort in the bill's passage as we viewed it as necessary to encourage RACs to provide immediate needed cleanup services following an oil spill.

The legislation was particularly critical to Tesoro as our continued operation was actually dependent on the bill's passage. The legislation was necessary to assure our continued access to spill response services provided by Alyeska in Prince William Sound. As a result of the bill's enactment, Tesoro was able to reach an interim agreement for obtaining these services following last year's legislature with the agreement's expiration coinciding with the present expiration of H^R 196 on June 30, 1992. Unfortunately, unless the legislation is made permanent, Tesoro will again face the prospects of a loss of Alaska North Slope crude oil which threatens our ability to continue operations. This is of obvious concern to each of the 575 Tesoro employees in Alaska as well as their families. It also represents a potential significant negative to the economy of Southcentral Alaska, and particularly to the Kenai Peninsula.

During last year's debates on HB 196, we sought to communicate that while Tesoro's situation may have been the catalyst for the legislation, the bill also represents good public policy. The possibility of becoming embroiled in negligence litigation is a strong deterrent to agreeing to assist in any emergency situation - including the chaotic and time consuming circumstances of an oil spill response. The fact is that the threat of becoming involved in very costly litigation is, in and of itself, a powerful disincentive whether or not the lawsuit might be won. These facts have now been recognized in 19 coastal states where RAC immunity

legislation has been enacted that coincides closely with the legislation passed in the federal Oil Pollution Act of 1990. In each case the immunity granted by these states is broader than the limited immunity provided by Alaska's HB 196. Those states and the dates of passage of their immunity laws are as follows:

Alabama.....7/29/91	Louisiana.....4/23/91	Texas.....3/28/91
California..9/22/90	Maine.....6/20/91	Virginia....4/18/90
Connecticut.6/24/91	Mississippi....4/12/91	Virgin Is...12/9/90
Delaware....1/31/91	New Hampshire..5/13/91	Washington...5/15/91
Florida.....6/11/90	New Jersey.....8/13/91	
Georgia.....4/17/91	North Carolina.6/27/91	
Hawaii.....6/90	Oregon.....7/17/91	

*Source:Oil Spill U.S.Law Report, Vol.2, No. 1, 1/92, p.15

The recognition of the need for responder immunity in Alaska is reflected in the recently released draft proposal by the Prince William Sound Regional Citizen's Advisory Council's entitled "A Coastal Communities Oil Spill Cooperative for Alaska", January 1992 prepared by International Spill Technology Corporation, College Station, Texas. The proposal introduces an organizational structure and concept that is intended to improve the response against a major oil spill in the areas of shoreline protection, nearshore response, training, coordination of fishing vessels, and protection against non-crude spills. On page 19 of their proposal a number of conditions are described as required if the co-op is to be successful. Item No. 4 is for

"[T]he Legislature is able to craft an acceptable, long-term solution to the issue of responder immunity from tort liability during the 1992 session."

This position is further clarified on page 24 of the same report under the heading "LEGAL FEASIBILITY" as

"[R]esponder immunity is necessary for the ACCC to avoid tremendous liability exposure (emphasis added). It is anticipated that the state legislature will take up the issue of immunity for spill responders again during the upcoming session."

This is also identified as a "Major Legal Issue for the ACCC" in Table 4 on page 25 of the proposal.

Alaska has shared other states' recognition of the value of responder immunity for many years, as evidenced by AS 9.65.091 which shields people who respond to declared disaster emergencies from negligence liability. Unfortunately, that statute may not

Representative Bill Hudson
February 6, 1992
Page 3

apply to RACs, since before the enactment of HB 196 the legislature had passed a statute extending liability to RACs for simple negligence (See AS 46.03.823). Moreover, AS 9.65.091 applies only to declared disasters, and only those persons whose services are requested by the state which would exclude most oil spill situations as well as many volunteer responders.

We all spent a lot of time on HB 196 last year due in part because the issue was new to Alaska. Now, it is clear that the issue is not particularly controversial in the United States and is certainly not a revolutionary concept. As illustrated above it has become settled national and state policy that:

1. A negligence standard threatens to unfairly embroil RACs in costly post-spill litigation. The crisis atmosphere and potential consequences of oil spills combined with the unacceptably high risk and cost of litigation is not offset at all by the promise of limiting jury instructions;

2. The threat of litigation deters RACs from freely entering a jurisdiction without limited liability which interferes with the formation of effective spill co-ops;

3. The enactment of the new federal liability fund as well as the State clean-up fund; unlimited strict liability on the discharger (including strict liability for any damages caused by the RAC); and federal and state requirements for proof of financial responsibility combine to make the possibility of leaving victims uncompensated for damages caused by the simple negligence of a RAC very, very remote.

Tesoro suggests that in view of the above that the legislature's debate on this issue can be considerably shorter than last year and that the legislature should act to implement a continuation of HB 196 which will address the needs of spill responders in this state, improve our capabilities to respond, and solve a critical issue for our company. Thank you for your interest in this issue. If we may be of any assistance please contact me.

Sincerely,


Gene Burden

BEFORE THE JOINT HOUSE RESOURCES COMMITTEE
AND HOUSE SPECIAL SUBCOMMITTEE
ON OIL AND GAS

Comments on Summary of Research Project Reports
Prepared by the Citizens' Oversight Council
As Part of the Council's Report to the Legislature Under
Section 11 of HB 196 (Ch. 92 SLA 1991)

Presented by:
Jim Meitner
Spill Prevention & Response Coordinator
Tesoro Alaska Petroleum Company

February 12, 1992

On behalf of Tesoro Alaska, I want to thank the staff and Board members of the Citizens' Oversight Commission ("COC") for the effort and consideration that went into their recently released report and recommendations. Tesoro and its 575 plus Alaska employees were pleased to see that the Citizen's Oversight Commission's first recommendation favorably recognizes the concept of limited immunity for response action contractors that Tesoro sought during the last legislative session.

Tesoro's interest in this matter was discussed in detail last year; and in summary relates to 1) our interest in the Cook Inlet Spill Prevention and Response, Inc. ("CISPRI"); and 2) our reliance on continued access to Alyeska's spill response services in order to pick up our crude oil which is essential to our ability to stay in business. Tesoro is presently responsible for over 50% of the funding of CISPRI and has great reservations about CISPRI's deployment to a spill from a non-CISPRI members in the absence of

a state spill responder immunity law. The exposure to risk of costly litigation over alleged damages arising from simple negligence is viewed as a significant detractor from making CISPRI available beyond its own members needs. This need is reflected in the COC study and in recommendation number 1.

Tesoro also has an interest in having a final resolution of this matter due to our need to access the Port of Valdez in order to stay in business and continue employment of over 575 Alaskans. Alyeska has the only available initial spill response service in Prince William Sound and has placed a very high level of demonstrated financial responsibility on parties wanting access to that service. Last year's passage of HB 196 prevented a possible interruption to our ability to transport feedstock crude oil since we were unable to meet the Alyeska financial responsibility requirements in effect before the passage of HB 196.

Tesoro is willing to work with the Citizen's Oversight Council, other interested groups, and the legislature to address the other recommendations contained in the Council's report. We believe the report provides the legislature with sufficient information to meet the COC responsibilities under HB 196, and in so doing, should facilitate the legislature's prompt resolution of this matter by passing legislation that includes limited immunity for response action contractors in Alaska. Thank you for the opportunity to comment.

ALASKA RAINFOREST TOURS

WILDERNESS, ADVENTURE, AND CULTURAL TOURS
FOR THE INDEPENDENT TRAVELLER SEEKING QUALITY,
KNOWLEDGE, AND THE UNUSUAL IN ALASKA'S
RAINFOREST.

369 S. FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 463-3466
FAX (907) 463-4453

May 11, 1992

The Honorable Sam Cotten
Alaska State Senate
FAX: 465-4979

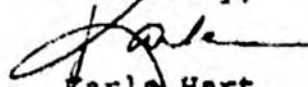
Dear Senator Cotten:

My tourism colleagues in the Exxon Valdez spill-impacted area have asked me to ask you to kill HB 540 unless the four points mentioned in Nancy Lethcoe's May 9 memo to you are included in the bill. Tourism businesses, especially those that are small and locally-owned, are still suffering from the impacts of the 1989 spill. I feel fortunate that the Inside Passage, where my tours are conducted, has not yet suffered such environmental tragedy.

Tourism is a resource-based industry with incredible potential to provide Alaskans with jobs now and in the future--if we don't destroy the beauty, wilderness and wildlife tourists pay to experience. Please support the tourism industry by not passing HB 540.

Thank you.

Sincerely,


Karla Hart
Partner

*P.S. Please support only if
Simple negligence is standard.*

465-4779



Alaskan Wilderness Sailing Safaris

The Quiet of Wilderness Deserves the Silence of Sail

Since 1974

TO: Senator S. Cotten
From: R. James Lethcoe
Date: May 9, 1992

RE:HB 540

Alaska Wilderness Sailing Safaris thanks you for your efforts on HB 540. PLEASE HOLD SPILLER/RESPONDER RESPONSIBLE FOR A STANDARD OF SIMPLE NEGLIGENCE.

The standard of simple negligence will be a greater incentive to spiller/responders to be prepared and willing to respond to a spill than gross negligence. Prevention and spill response are the only protection against economic losses resulting from an oil spill available to businesses such as ours.

PLEASE DO NOT PASS THIS BILL OUT OF COMMITTEE ~~IF~~ A STANDARD OF SIMPLE NEGLIGENCE IS NOT MET.

James Lethcoe

Robinson, Beiswenger & Ehrhardt
Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669

David E. Gabert . Associate

Telephone: (907) 262-9164

Telecopier: (907) 262-7034

1(800)770-9164

May 5, 1992

Sent via FAX: 465-2299

Representative Dave Donley
Alaska House of Representatives
State Capital Building
Juneau, Alaska 99801-1182

Re: House Bill 540 - Liability of Spill Response Contractors

Dear Rep. Donley:

Our small Soldotna law firm was lead Alaska counsel for the Plaintiffs in the Glacier Bay litigation. In that case we represented approximately 800 fishermen who were damaged as a result of the Glacier Bay oil spill and improper cleanup in 1987. We currently represent approximately 1,000 fishermen in the Exxon litigation. We have several comments on pending House Bill 540.

1. The shippers of oil are frequently undercapitalized Corporations. If spill response contractors are held to a gross liability standard and only the spiller assumes liability for negligent acts, we will be removing an entity from liability who may be able to contribute towards damages. We will be placing a great deal of reliance on the shippers, who may or may not have the ability to pay for damages. For example, in the Glacier Bay litigation APEX Oil, the owner of the Glacier Bay, was bankrupt.

2. Any trade off in liability must be viewed in light of all other applicable statutes and acts. For example, the Transalaska Pipeline Liability Fund Act arguably makes the shipper strictly liable already for the spill. Therefore, the oil spill contractor is released from the negligence standard for nothing.

3. While we do not want to discourage oil spill contractors, on the other hand, we do not want to encourage them to engage in experimentation or slipshod methods. In the Exxon Valdez case, a great deal of damage can be done by the clean-up itself. In the Glacier Bay case, the responsible parties refused to initiate cleanup for several days, believing they could get the oil when it "hit the beaches". It did not, and the result was over 40 million dollars in damages. There is no good reason to release a party responsible for clean up in such a situation.

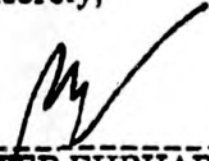
Arthur S. Robinson • Allan Beiswenger • Peter Ehrhardt

Representative Dave Donley
May 5, 1992
Page 2

4. Lastly, as a general rule in most legislation when liability exposure is reduced other trade-offs are made. For example, in the Workmen's Compensation arena the employer's liability is limited but in turn he is strictly liable. As I understand House Bill 540 an oil spill contractor's liability would be substantially reduced without any similar trade-off giving protection of our fisheries and coastline to individuals and companies.

Under House Bill 540 the Glacier Bay "clean up" which was a furu, would probably not give rise to any liability at all. The statute as proposed, is a bad idea.

Sincerely,



PETER EHRHARDT
Attorney at Law

PE/rm



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

May 5, 1992

Please fax testimony against the "gross liability" standard for response action contractors found in Both SB 270 and HB 540.

Sen. Dick Eliason, Senate President (907) 465-4928
Sen. Sam Cotten, Senate Special Oil & Gas Comm. (907) 465-4979
Rep. Dave Donley, Chair, House Judiciary Comm. (907) 465-2299
Rep. Max Gruenberg, Vice Chair, House Judiciary Comm. (907) 465-4565
Rep. Johnny Ellis, Chair, House Rules Comm. (907) 465-3445
Rep. Cliff Davidson, Chair, House Resources Comm. (907) 465-3444
Rep. Ben Grussendorf, House Speaker (907) 465-4565
Sen. Rick Halford, Chair, Senate Judiciary Comm. (907) 465-3805
Sen. Patrick Rodey, Vice Chair, Senate Judiciary Comm. (907) 463-3144

Thanks,

Theo Matthews
Administrative Assistant

Kristin L. Stahl-Johnson
Regional Citizens' Advisory Council
City of Kodiak Representative
P.O. Box 2661
Kodiak, AK 99615

Phone: (907) 486-4684
Fax: (907) 486-7651

May 8, 1992

Senator Sam Cotten
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Cotten,

As the City of Kodiak's representative on the Regional Citizens' Advisory Council for Prince William Sound I am compelled to write to you to request your support of the coastal communities of Alaska, particularly those outside the sound. The RCAC has consistently maintained the position that Alyeska has a duty to respond to all TAPS oil spills in Alaskan waters by virtue of the pipeline right-of-way agreement and the legislation authorizing the pipeline development in the early 70's. The original crafters of the TransAlaska Pipeline Authorization Act recognized that it is not possible for the state to control the private contractual agreements among oil companies common to the pipeline. Therefore, their common operating agent, Alyeska, would be held responsible to protect the Alaskan environment from potential oil pollution.

Alyeska's assertion that they are a volunteer responder is illogical not only because of the original authorization mandate, but also because they are using \$150 million of state funds to build their response capability.

The communities of the Kodiak Archipelago are in double jeopardy from the oil industry in both Cook Inlet and Valdez. Please support these communities and all of coastal Alaska by holding Alyeska responsible to the original pipeline agreement.

Please pass a strong legislation that requires Alyeska to have a duty to respond to all oil spills caused by TAPS trade tankers in state waters. Alyeska should be the Contingency Plan holder in Prince William Sound. Their spill response should continue until the state and federal On-Scene-Coordinator approves any transition.

Thank you for your support for coastal Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kristin L. Stahl-Johnson', with a long horizontal flourish extending to the right.

KODIAK ENVIRONMENTAL NETWORK

Information, Direction, Education, Action

P.O. Box 2661, Kodiak, Alaska 99615
Phone: (907)486-4684 Fax: (907)486-7651

May 8, 1992

Senator Sam Cotten
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Cotten,

The Kodiak Environmental Network supports SB270. We feel that it is necessary to firmly restate the statutory requirement that the common agent of the TransAlaska Pipeline companies, i.e. Alyeska, has a duty to respond to TAPS oil spills in state waters. The original authorization by the state and federal governments stipulated that duty when creating the pipeline. Allowing Alyeska to back out of the agreement they made 20 years ago, and the law passed to solidify that agreement, would be an abomination. The oil industry makes billions of dollars a year from our resources, but they are unwilling to face the responsibility to protect our environment and our communities from the "side effects" of their wealth.

The conduct of the State House of Representatives over the last three days is an OUTRAGE! It is clearly transparent that the House Minority and the others with vested oil interests are willing to let the oil industry write the laws of our state. This kind of activity deeply undermines the people's confidence in the will of our elected officials' to protect state interests.

Alyeska should, by law, be the Contingency Plan holder for Prince William Sound and any transition of their control and management of a TAPS oil spill to the spiller should only occur at the direction of the State and Federal On-Scene-Coordinator.

Limited liability for RAC's must be linked to responsiveness to the local industry contingency plan and a RAC's ability to respond must be verified and approved by ADEC. Immunity to simple negligence should not, however, continue indefinitely, but be limited to the initial stages of oil spill clean-up.

We applaud your continued efforts to insure the integrity of past legislation and to make the oil interest in the state responsible for their actions. Please do not let the vested interests in the House prevail.

Thank you for your effort.

Sincerely,



Kristin L. Stahl-Johnson
Regional Citizens' Advisory Council
City of Kodiak Representative
P.O. Box 2661
Kodiak, AK 99615

Phone: (907) 486-4684
Fax: (907) 486-7651

May 11, 1992

Senator Fred Zharoff
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

FyI


Dear Senator Zharoff,

The following organizations would like to urge you to support Senator Sam Cotten in his review of HB540. HB540, as it left the House floor, leaves the coastal communities of Alaska, especially those outside Prince William Sound, orphaned in the case of a major oil spill more than 72 miles from the Valdez terminal or if a spiller declares bankruptcy. Alyeska is trying to hold Tesoro hostage and the State liable, when in actuality they don't want to be held accountable for their past agreements or their present actions.

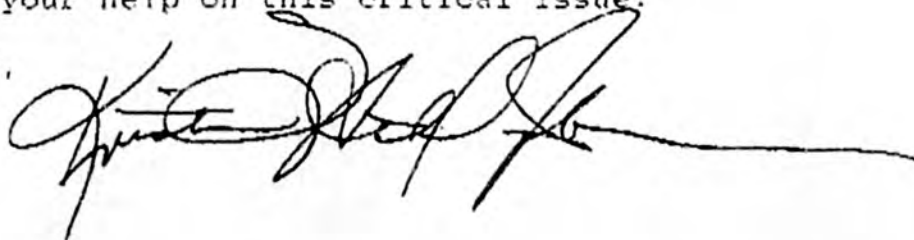
Please demand that Alyeska is held to a duty to respond to all TAPS tanker trade oil spills in state waters.

This position is endorsed by the following groups:

Regional Citizens' Advisory Council of Prince William Sound;
Alaska Draggers Association
Area K Seiners Association
Kodiak Longline Vessel Owners Association
Alaska Responsible Resource Management
Kodiak Environmental Network
Kodiak Audubon Society
United Fishermen's Marketing Association

Thank you for your help on this critical issue.

Sincerely,



REVENUE EFFECTS OF OIL SPILL EXPENDITURES
(\$ IN MILLIONS)

Year	TAPS Revenue Effect	State Revenue Loss	Cumulative State Revenue Loss
1989	\$17.7	\$4.3	\$4.3
1990	34.7	8.8	13.1
1991	78.2	19.5	32.6
1992	67.2	16.8	49.4
1993	64.4	16.1	65.5
1994	70.7	17.7	83.2
1995	76.6	19.1	102.3
1996	76.6	19.2	121.5
1997	69.0	17.3	138.7
1998	44.7	11.2	149.9
1999	42.9	10.7	160.6
2000	43.1	10.8	171.4
2001	41.5	10.4	181.8
2002	39.5	9.9	191.6
2003	36.0	9.0	200.6
2004	33.6	8.4	209.0
2005	31.5	7.9	216.9
2006	29.4	7.4	224.2
2007	25.6	6.4	230.7
2008	22.1	5.5	236.2
2009	17.1	4.3	240.5
2010	12.4	3.1	243.6
2011	9.9	2.5	246.1

Horst & Frisch Incorporated
05/11/92

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

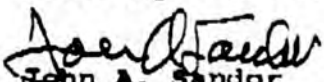
OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5000
Fax: (907) 465-5070

May 10, 1992

MEMORANDUM

TO: Charles E. Cole
Attorney General

FROM: 
John A. Sandor
Commissioner

SUBJECT: Alyeska Pipeline Service Company's Duty to Respond
to Oil Spills from TAPS tankers in Prince William Sound

This is in follow-up to our Departments' continuing, joint efforts to ensure that Alyeska, the only entity with pre-positioned spill response equipment in Prince William Sound, responds to spills. Apparently, Alyeska only acknowledges a private contractual obligation to respond to tanker spills. Because the State of Alaska is not a party to these contractual agreements, we cannot adequately ensure that these agreements provide iron-clad response guarantees to the public.

It is absolutely essential that a full, prompt response be made to a spill. With questions raised about Alyeska's statutory obligation to respond, Alyeska's contractual agreements must be scrutinized to make certain the necessary response guarantees are in place. I would, therefore, propose an immediate legal review of contracts between Alyeska Pipeline Service Company and tanker owners operating in Prince William Sound.

The Department of Environmental Conservation's approval of Alyeska's contingency plans are based on the assurance that Alyeska will respond without fail. If in the course of the legal review of Alyeska's contracts with tanker owners, it is revealed that the contracts can be breached by either party without the consent of the State of Alaska, this and any other deficiencies noted in the course of this review must be corrected. When such deficiencies are noted, I would suggest a process that would give Alyeska and tanker owners ten (10) days to revise contracts to make certain the necessary response capability is assured. In the absence of such assurance DEC would be prepared to suspend approval of the required contingency plans.

Your consideration of this request will be appreciated.



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

May 4, 1992

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area 'M' Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association
Area K Seiners Association

The Honorable Sam Cotten
Chair, Senate Special Committee on Oil & Gas
Post Office Box V
Juneau, Alaska 99811

RE: Senate Bill 270

Dear Senator Cotten:

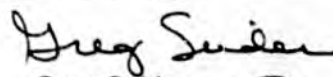
As you are aware, the United Fishermen of Alaska (UFA) represents commercial fishing groups from throughout the state of Alaska.

UFA asks that the Senate Special Committee on Oil & Gas incorporate the following four points into SB 270.

1. A liability standard of simple negligence for response action contractors.
2. Requirement that response action contractors listed in the State Contingency Plans must register with the Department of Environmental Conservation and agree in writing to be subject to the direction of the federal or state on-scene coordinator during implementation of the Contingency Plan under which the contractor is listed.
3. Registered response action contractors must also agree in writing to respond under the direction of and reimbursement by the federal or state on-scene coordinator to spills in which the responsible party is unknown or insolvent.
4. Alyeska must have a statutory duty to respond to TAPS tanker spills within the state of Alaska including state waters as clarified by Congress in the Oil Pollution Act of 1990.

Thank you for the opportunity to comment on this legislation.

Sincerely,


Greg Seider
Executive Director

907-486-3910
Box 991



Kodiak, Alaska
99615

May 8, 1992

Senate Oil and Gas Committee
Alaska State Legislature
Box V
Juneau, Alaska 99801

Please pass a bill that requires Alyeska to have a duty to respond to ALL oil spills caused by TAPS trade tankers in Alaska State waters as embodied in the original promises made on the pipeline right-of-way agreement and the TransAlaska Pipeline Authorization Act. The response should continue until the state and federal on-scene-coordinator approves any transitions. The legislation should not rely on Alyeska's contracts with the spillers to assure reponse because the state has no authority over private contracts.

We also support Senator Cotten's bill SB270 which covers the same issues but protects the state's interests.

Sincerely,

Alvin R. Burch
Executive Director

Harvesting Alaskan Shrimp and Whitefish



Stanley F. Stephens
Owner

*Cruises and Charters
in Prince William
Sound, Alaska.*

P.O. Box 1297
Valdez, Alaska 99686

(907) 835-4731
FAX: (907) 835-3765

For reservations:
1-800-178-1297
(in Alaska)
1-800-992-1297
(USA only)

Senator Sam Cotten
Alaska Senate
Juneau, AK

Dear Senator Cotten,

Thank you for your work on HB 540AM. I would like to see this bill killed if it does not contain the following four amendments.

1. Professional contractors must be held to a standard of simple negligence. For my business, this is the most important provision to include in the bill. The courts and TAPFL do not support tourism claims for economic damages resulting from an oil spill. We must have the best available prevention and spill response.
2. Alyeska must have a statutory duty to respond to TAPS spills anywhere in the state including all state waters.
3. Registered contractors listed in the contingency plan must have a statutory duty to respond to mystery and orphan spills.
4. Strong provisions must be included to protect smaller, independent oil shippers from unfair billing by Alyeska.

Respectfully yours,


Stan Stephens



Alaska State Legislature

Please enter into the record my testimony to the Senate oil & gas
committee name
committee on HB 540 AM, dated May 11, 1992
bill/subject

The tourism & recreation industry cannot claim economic losses in federal courts or TAPPL. We are the victims of the 1989 oil spill.

We need strong prevention & spill clean up. Liability relief will decrease the incentive to be prepared and to respond responsibly. The Alaska Wilderness Recreation & Tourism Association asks that spill responders be held to a standard of strict liability.

Bill should cover all Alaskan waters, NOT JUST ^{state} Prince William Sound. A spill washing ashore at Glacier Bay & Sitka would adversely affect tourism. Who's in charge needs to be clarified. We heard 3 different interpretations during the teleconference (2 from wood, 1 from Tesoro). Alaska should have statutory responsibility to respond for as long as necessary.

Signed:

Nancy R. Tetter
Testifier

Alaska Wilderness Recreation & Tourism Association
Representing (Optional)

P.O. Box 1353, Valdez, AK 99686

Address

835-5175

Phone No.

Alaska Wilderness Recreation and Tourism Association

Board of Directors

Nancy Lethcoe
President
Alaskan Wilderness
Sailing Safaris

Carol Kasza
Vice President
Arctic Treks

Todd Miner
Secretary
Alaska Wilderness Studies
U of A Anchorage

Don Ford
Treasurer
National Outdoor
Leadership School

Bob Districk
Wilderness Birding

Eruk Williamson
Eruk's Wilderness
Float Trips

Tom Garrett
Alaska Discovery

Dennis Fagan
Recreation

Kirk Hoessle
Alaska Wildlands
Adventures

Bob Jacobs
St. Elias Alpine Guides

Karla Hart
Rainforest Treks & Tours

Marcie Baker
Alaska Mountaineering &
Hiking

Gayle Ranney
Fishing & Flying

TO: Senator S. Cotten
From: Nancy R. Lethcoe, President
Date: May 9, 1992

RE: HB 540am

PLEASE HOLD SPILLER/RESPONDER RESPONSIBLE FOR A STANDARD OF SIMPLE NEGLIGENCE.

The standard of simple negligence will be a greater incentive to spiller/responders to be prepared and willing to respond to a spill than gross negligence. Prevention and spill response are the only protection against economic losses resulting from an oil spill available to recreation and tourism industry.

PLEASE DO NOT PASS THIS BILL OUT OF COMMITTEE IF A STANDARD OF SIMPLE NEGLIGENCE IS NOT MET.



May 9, 1992

Testimony of Ken Castner
SB 270 / HB 540

My name is Ken Castner. I am a commercial fisherman residing in Homer.

I have three points that I would like to briefly make today concerning the legislation you have before you.

1) This legislation should not codify behavior that most Alaskans found to be unacceptable. In 1989, Alyeska removed their spill response equipment from the barge and allowed it to become buried under several feet of snow. The response to the spill caused by the wreck of the *Exxon Valdez* was delayed significantly because of this. Alyeska was, at that time, strictly liable for those actions. This bill, as it is currently written, allows Alyeska and other response action contractors to escape that liability. We need provisions that assure the proper care, maintenance, deployment and operation of oil spill containment and recovery equipment.

2) Some have suggested that the registration provisions will achieve the higher level of care. DEC, the agency responsible for administering the registration regime, is the same agency that administers the state's 470 fund. DEC failed to respond to 3 separate orphan spills in upper Cook Inlet in just the last two weeks. DEC has yet to provide coastal storage of spill equipment or spill response training that were required by laws that were passed in 1989. DEC has placed a zero fiscal note for the implementation of the registration program.

Fishermen are not confident that registration will drive the level of care to anywhere other than just below provable gross negligence.

3) Alyeska can not have it both ways. If they want to just operate the pipeline and not be responsible for spill response, they should abandon the response fee collected as part of the transportation tariff and turn SERVs into a cooperative funded by the contingency plan holders... as CISPRI is in Cook Inlet. But if Alyeska insists on collecting the response fee through the tariff, Alyeska must assume responsibility for the cleanup of all TAPs oil in state water.

Thank you for taking my testimony.



Prince William Sound Conservation Alliance

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Assistant

Nancy Phelps

To: Senator Sam Cotten
From: Vince Kelly

RE: CSSHB540

It is the position of the Prince William Sound Conservation Alliance that HB540 as amended and passed by the House on May 7 is not legislation that adequately protects the natural resource interests of Alaskans. We respectfully request that you work toward the defeat of this legislation unless it can be amended to provide the following provisions:

A. Alyeska should have a statutory obligation to respond to TAPS spill within the state of Alaska.

B. In order to best protect the environment and resources of Alaska, professional response contractors should be held to a standard of simple negligence for damages resulting from their actions during a spill response.

We have been appalled in the last week by the amount of influence exercised by the oil companies over the actions of the legislature. We ask that you act in the best interests of all Alaskans and the Alaskan environment in seeing that this bill is either amended to reflect, at a minimum, the two provisions stated above, or not passed out of the Senate.

Sincerely,

Vince Kelly
Vince Kelly/President

Sen. Sam Cotten

FAX 465-4979

Dear Sam.

You Asked For it. You said you would read it.

I fear despite all of your good intentions Halford will gut it.

The Senate Floor Will get the rest. Thus you will have a bill that is worst than no bill. As a matter of fact I can't see how you can get a bill out of your committee that is better than no bill .

What we have now is common law plus what they told congress. Sam, there is no way in the world you can get a bill as strong as that .

There are other ways to take care of Tesoro . Just go thru the motions , keep it from the next committee and let it die.

Good luck



Testimony before the Senate Oil & Gas Committee re:
CSSSHB 540(JUD)am / SB270 (Response Action Contractor Liability)

Richard A. Fineberg

May 11, 1992

Synopsis: The major North Slope oil producers and Alyeska Pipeline Service Co. have structured for themselves a win-win situation that can seriously undermine Alaska's ability to respond to another major oil spill. Unless this bill will strengthen safeguards to guarantee spill response for coastal community people, it should be rejected.

My name is Richard Fineberg. I am representing the nineteen environmental groups of the Alaska Environmental Lobby. As a long-time observer of oil and gas affairs and oil spill responses, I am angry that the major North Slope producers and their wholly-owned subsidiary, the Alyeska Pipeline Service Co. have engineered, through a strategy that looks like blackmail, a win-win situation for themselves. In one outcome, the owners of Alyeska get reduced liability for spill response — in violation of their pledge to Congress 20 years ago that Alyeska would not serve as a corporate shield for the owners. If the producers don't get reduced liability for their wholly-owned subsidiary, they claim they will drive an independent oil company out of business. There are always winners and losers, and in this case the losers are the public and / or independent oil companies who have the misfortune of having to deal with companies who give full meaning to the term "Big Oil." Unless this bill places in statute Alyeska's duty to guarantee immediate response to all TAPS spills in state waters, HB 196 (Ch. 12, SLA 91) should be allowed to sunset.

Coastal people who have thought about these matters seem clear: Following the miserable responses to the T/V Glacier Bay in 1987 and the T/V Exxon Valdez in 1989, they want the duty of a shipper of oil and its response action contractor to respond codified in state law. But in the clamor of debate over this issue, the House has passed a bill that trades statutory duty to respond for a Rube Goldberg contractual scheme that Attorney General Cole and attorneys on the House Judiciary Committee have said is liable to create a whole new playing field for lawyers with as many loopholes as a sieve. Yesterday a Homer fisherman described the situation you are facing this way: a salesman comes to your door and says, "Buy this or I'll shoot your dog."

The Alaska Environmental Lobby also objects to the apparent muzzling of watchdog groups. The Citizens' Oversight Council (COC) prepared a lengthy report, packed with research reports that covered the waterfront on this issue. If one reads the report from cover to cover, it seems clear that the liability standard for a response action contractor cannot be reduced without great risk. But the reader has to draw this conclusion. Why didn't the COS make its findings clear? The answer is simple: Because the COC, by the nature of its job, steps on toes, its executive director tries to tread lightly. In fact, with its very life hanging on the six votes of the Conference Committee on the operating budget this very day, the COC is publicly silent on this important issue.

What about the Prince William Sound Regional Citizens' Advisory Council (RCAC)? During the two years that this issue has been before the Legislature, RCAC has been all over the map. Then, in February, Alyeska enjoined RCAC from lobbying. How can Alyeska make this demand? Simple: Alyeska funds RCAC. The second of three public oversight groups has been silent.

The Cook Inlet Regional Citizens' Advisory Council spoke out clearly against reducing the standards of liability for a response action contractor. The industry cut its budget.

One measure of chilled information is that until public testimony was received last Sunday and Monday, legislators in Juneau were unaware that Congressional committees were working on Alyeska duty to respond during the past week. It appears that HB 540, as passed by the House, by not setting out a statutory duty to respond, might have the unintended effect of inducing a weakening of Federal legislation in this regard.

Fortunately, the combined lobbying and clamping by the industry has not obscured the fundamental issues altogether. On review of those issues, the fundamental question is whether you, as public representatives, will accede to blatant blackmail and broken promises.¹

In sum, to give in to the blatant pressure of Big Oil on this issue by adopting the House version of HB 540 would be an unconscionable dereliction of public trust. Thank you for your efforts on this bill, Mr. Chairman, and for the opportunity to testify.

¹ Referring to the chair of this committee, Tom Williams of BP told the Anchorage Daily News Friday, "He can put Tesoro out of business if he doesn't want to move the bill." If there is a threat to Tesoro, Mr. Chairman, the threat issues from the owners of Alyeska, not from the Legislature. This bill derives from Alyeska's demand that Tesoro indemnify the North Slope producers' wholly-owned agent from response liability. I submit that North Slope producers have directly broken their promises to Congress (1) that Alyeska would not function as a corporate shield and (2) that the producers would be unstinting in their efforts to prevent and mitigate oil spills.

**EVALUATION, PREQUALIFICATION AND CERTIFICATION
OF OIL SPILL RESPONSE CONTRACTORS**

NEGOTIATED RULEMAKING ISSUES: The following issues are submitted for discussion and/or resolution by the Negotiated Rulemaking Committee:

- * why oil spill response contractor certification is being considered;
- * the provisions of OPA 90 which provide for certification of prequalified response contractors;
- * the criteria and factors to be used in evaluating a response contractor's overall capability to respond;
- * the standard(s) to which contractors can be prequalified and the mechanisms for certification, inspection, validation and enforcement; and,
- * the benefits and costs expected from prequalification and certification of oil spill response contractors.

BACKGROUND DISCUSSION:

A requirement of the Oil Pollution Act of 1990 (OPA 90) amendments to the Federal Water Pollution Control Act (§311(j)(5)), is that the owner or operator of a tank vessel prepare and submit a comprehensive, spill response plan for U.S. Coast Guard approval. Paragraph (C)(iii) of that section, requires that owners/operators "identify, and ensure by contract or other means approved by the President the availability of private personnel and equipment necessary to remove...a worst case discharge" from the environment. For a tank vessel, "worst case discharge" is defined as a total loss of cargo in adverse weather. For the purposes of this rulemaking, and in accordance with the provisions of Section 311(C)(2), the USCG will address all spills in U.S. waters, not just those of "worst case" volume.

The intent of these requirements is to compel forward planning and to ensure that necessary existing resources - trained personnel, vital equipment, communications, finances, etc. - are available, operable and adequate for a future incident.

Developing response plans to meet regulatory requirements and to facilitate the rapid and effective cleanup of a major oil spill requires that there be some established standards of performance for equipment and contractor selection. Without such standards, and some means of certifying those contractors who meet them, there is no way for a tank vessel owner or operator to identify appropriate resources, or to select those contractual resources with whom he is required, by OPA 90, to establish a contractual relationship.

From a regulatory point of view, Coast Guard authority to approve or disapprove response plans carries a great responsibility to make that determination objectively. Establishing response requirements and defining standards of adequacy must be consistent throughout the United States. It cannot be determined locally. In the current regulatory and contractual environment, neither the USCG, nor the vessel owners can meet the intent of the law.

The provisions of Section 311(j)(5)(C)(iii), when implemented, can have important benefits to oil transportation interests and to the contracting industry. First, requiring owners/operators to have contractual relationships with oil spill response resources creates a demand for qualified contractors and provides an incentive to vessel owners to contract with the best value. It may involve both the vessel owners and the response industry in a symbiotic pursuit of better response capabilities. Second, by requiring contractual relationships with prequalified resources only for response plan approval the regulations can effectively limit the supply of acceptable contractors. While it is not necessary for there to be financial consideration in a contractual relationship, altering the supply-demand relationship makes it likely and may provide a means of funding contractor capitalization of response resources in exchange for guaranteed response to an oil spill.

Congress statutorily required that adequate resources reside in the private sector, not the public sector. Existing private resources in the United States include contractors ranging from small, established, waste-oil contractors and waterfront services to major hazardous waste contractors, marine spill contractors and OPA 90-inspired ventures such as NRC and a major industry cooperative, MSRC. Funding for private resources comes from subsidies by member organizations, as is the case with oil spill cooperatives, or from for-profit business activity. Ultimately, all funding comes from revenues and profits.

The existing state of the response industry (generally pre-OPA-90) is one that has developed to take advantage of profitable, routine-spill opportunities without risking the financial future of the enterprise by capitalizing for the unpredictable anomaly of a large spill. Without the requirements for (1) contractual relationships between owners and response contractors or cooperatives, (2) identifying means (i.e. certification) for selecting adequate resources and (3) a mechanism for profiting from response capability improvement there is no incentive for the private sector to improve beyond its existing status. If there were it would have already have done so.

The two most important resources in a contractor/cooperative's inventory are response equipment and trained people. Standardization of response equipment has been undertaken by Committee F20 of the American Society of Testing and Materials (ASTM). ASTM's charter includes the standardization of services, as well as products, and may include contractor performance standards. Because ASTM is a voluntary, consensus organization, however, it works slowly and will require 1-3 years to publish final standards for reference by the regulations. Any standards which develop in response to OPA 90 initiatives have scant chance of adoption in time to assist owners/operators or the USCG in meeting the response plan deadlines.

ISSUES FOR DISCUSSION/RESOLUTION:

Issue 3 - Contractor Prequalification and Certification

* **Standards.** The most useful standards for contractor/cooperative selection and reliability are performance related - i.e. how much oil recovery/dispersal/disposal/etc. capacity does the organization have.

Which contractor/cooperative capabilities can be measured and standardized?

On what should those standards be based?

How can they be developed in time to meet the statutory deadline, particularly given the time required by ASTM, or any other consensus organization, to issue standards?

* **Certification or licensing.** Licensing of marine spill response contractors requires a bureaucratic organization to set standards, monitor compliance and enforce regulations. It requires direct government action to prequalify and approve contractors. Of necessity, it establishes a new bureaucratic process to accept applications and fees, amend rules, and process and enforce the conditions of the license. A disadvantage of licensing is that once bureaucracy establishes licensing standards they may become inflexible and fail to keep pace with the development of technology. Eventually, inflexible licensing standards could serve to inhibit the industry whose very development we wish to stimulate.

Certification to consensus standards, on the other hand, is encouraged by the Federal Government (OMB Circular 119 and USCG instructions) and provides flexibility by involving already existing, private sector organizations with charters which call for mandatory, periodic review of standards to maintain currency.

Issue questions include:

Who should certify contractual resources?

Should there be several levels of certification to address different spill volumes and requirements and to consider the variety of contractors and cooperatives already in existence? If so, how many certification levels should there be and on what capabilities/requirements should they be based?

How should the following be weighted in certifying contractors: spill and exercise performance, inventory ownership, financial capacity, managerial skills, previous history of operational performance, (others?)?

Must a contractor/cooperative own necessary equipment in order to be certified or may an enforceable, contractual guarantee of resource availability suffice for certification?

Given that certification is not instantaneous, what can be done to facilitate prequalification and identification of appropriate and acceptable response resources until there is a workable certification system?

If certification of contractors is partially based on standardized equipment how can existing, non-standardized resources be "grandfathered" to consider its existing and continued value and usefulness but also promote the adoption of better, more capable equipment?

* Certification validation and enforcement: OFFICE OF MERCHANT MARINE SAFETY INSTRUCTION 16703.1 provides guidance on self-certification/attestation and other innovative regulatory techniques. Underwriters Laboratories and American Bureau of Shipping are both pursuing registration as "agents" of the International Standards Organization and provide quality and reliability services for a fee.

Either of the two bodies above, Federal and state agencies or a combination could be used for inspection, verification of inspection and/or validation of continued certification. The least expensive and most effective means is probably one which requires government oversight but not routine inspection by the Coast Guard at the contractor level.

Should the response industry be permitted or encouraged to measure itself with regular oversight and enforcement?

If not, how should the inspection, verification and validation process be managed?

Who should be responsible for what portions?

Given the requirement for a national standard, what role should State governments play?

What should the contractor/cooperative community's role be?

If we allow self inspection/attestation how should the Federal government manage quality assurance?

How should the process be funded?

Issue 2G - Overall capabilities of response resources identified in response plan

- o OPA 90 amendments require the vessel owner to identify, and ensure by contract or other means approved by the Coast Guard, the availability of private personnel and equipment sufficient to respond to a worst case discharge to the maximum extent practicable.
- o Meeting this will require either:
 - a written contractual agreement with a response contractor guaranteeing personnel and equipment availability and stipulating response times within specified geographic areas;
 - certification that the required personnel and equipment resources are owned and/or operated by the vessel owner/operator and are available within stipulated response times within specified geographic areas; or
 - active membership in a local or regional oil spill removal organization that has identified personnel and equipment available within stipulated response times over specified geographic areas.
- o The contractor's overall capability to respond, both existing and projected, must be considered when setting the "maximum extent practicable" planning standard.
- o Equipment and personnel availability varies between for-profit contractors, not-for-profit cooperatives, or other organizations such as Marine Spill Response Corporation or the National Response Corporation. No one organization has the capability to respond on their own to a worst case discharge.
- o Response resource capability assessment needs to account for relationships between commercial resources. These relationships need to be contractual to be acceptable for inclusion in a response plan.
- o Contractor/co-op response overall capability is based on a number of factors. These include the availability of containment and recovery equipment, both in inventory and through cooperative or contracting arrangements; required support services such as aircraft, temporary oil storage devices, vehicles, boats, etc; and the availability of personnel trained to OSHA HAZWOPER standards in 29 CFR 1910.120.

WORKGROUP # 2

Each factor has to taken into account when evaluating resource capability.

- o Issue 3 related to contractor certification discusses this in more detail.

January 31, 1992

**ALYESKA PIPELINE SERVICE COMPANY'S
RESPONSE TO MEMORANDUM
REGARDING THE LEGAL RELATIONSHIP BETWEEN
OIL SPILL RESPONSE ACTION CONTRACTORS
AND OTHER PARTIES TO AN OIL SPILL**

Summary

The Citizens' Oversight Council should make its recommendations to the legislature regarding whether and to what extent it should reduce the limitation on liability for RACs after considering that: (1) limiting the liability of response action contractors does not reduce the liability of the spiller; (2) financial responsibility requirements reduce the likelihood that the spiller will be insolvent; (3) federal and state oil spill funds provide a safety net; and (4) potential damages can be reduced most effectively if RACs respond boldly, quickly, and efficiently under the emergency conditions that arise in an oil spill.

Carriage of crude oil is not an "ultrahazardous" activity.

Limitation on liability for RACs will not prevent recovery of damages by injured parties.

The Alaska Legislature and Congress have created funds to reimburse parties damaged by oil spills.

The spiller is strictly liable for damages caused by oil spills. Under Alaska law, the spiller's strict liability extends to any damage caused by an act or omission of an RAC responding to a spill. AS 46.03.822(k). Exemption cannot "lessen" its overall liability. The spiller will already have demonstrated financial responsibility to pay for response costs and damages.

Indemnity agreements do not allow parties who are strictly liable to "escape" liability. Indemnification agreements are "not effective to transfer liability" from a person who might be strictly liable. AS 46.03.822(g).

The 15-day time limit on limited responder immunity is arbitrary and should be eliminated.

Competence of RACs can best be evaluated in advance of a spill by agency review of contingency plans and through DEC's authority to require training programs and spill drills.

Tanker owners/operators and response action contractors must define relative rights and responsibilities through contract. There is a distinction between industry co-ops and private contractors. Industry co-ops are voluntary, non-profit, and little attempt is made to recover even the indirect costs of response activities, such as overhead and staff time.

Regarding Alyeska's \$1 billion dollar in financial responsibility, Alyeska must ensure that a shipper with whom it contracts can indemnify for liability to which Alyeska could be exposed in responding to a spill. In light of present liabilities, particularly in light of revisions to state and federal laws, this figure is reasonable.

Following passage of HB 196 last year and in light of a perceived reduction in the risks associated with spill response, Alyeska and Tesoro reached a practical solution to a difficult financial responsibility problem. Alyeska agreed to accept a substantial reduction in the overall quality of Tesoro's evidence of financial responsibility.

The State should not attempt to directly oversee RACs, unless the State becomes party to the contracts assumes spill management responsibilities, and agrees to pay the response costs.

Private RACs are entitled to the same limited responder immunity as presently enjoyed by the State and municipalities.

It is good public policy to encourage those who have the capacity and the skills to help in an emergency to do so. Private parties at risk from oil spill damage are better protected from insolvent spillers by financial responsibility requirements and by federal and state spill response funds than by imposing spiller liability on RACs. Reducing incentives to form RACs or spill cooperatives will only reduce the number of entities willing and able to respond to spills.

U.S. Department
of Transportation

United States
Coast Guard



Commandant
U.S. Coast Guard

From: Commandant
To: All Flag Officers

Subj: CONTRACTOR IMMUNITY PROVISION; STATE OIL SPILL

1. Within the past few months a number of State legislatures have considered measures designed to provide limited immunity from certain types of liability for certain persons engaged in oil spill removal actions. In some instances local offices have been requested to provide agency views in written or oral form to State legislatures or individual legislators.

2. In order to assure consistency in the position response to such requests, the points outlined below are used in providing Coast Guard views on legislative proposals pertaining to limited immunity for oil spill removal actions.

- The availability of a viable private sector response to oil spills and their threats is an essential element of a national oil pollution response system.

- During the course of Congressional deliberations associated with the enactment of the Oil Pollution Act of 1990, the oil spill response industry stressed the importance of limited immunity to its viability.

- As a result of the industry's presentation to Congress, Congress provided a limited immunity respecting removal costs and damages which result from actions taken or omitted to be taken in the course of response care, assistance, or advice consistent with the Contingency Plan or as otherwise directed by the Coast Guard.

- The Coast Guard supports the principle of limited immunity under State law respecting liability for removal costs and damages to the extent that such immunity is necessary to assure a broad-based private sector capability. The Coast Guard urges that State immunity provisions be as consistent as possible with the federal immunity provision.

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Thank you for the opportunity to be part of the process that will determine Alaska's law concerning a limited immunity for oil spill responders. I'd like to commend the Citizen's Oversight Council and the state for taking the initiative to thoroughly study such a complex matter.

The written specific comments that have been provided separately are linked to the material available to us: The Summary of Research Projects. While several of the summaries present conclusions that MSRC does not agree with, two of the summaries are of principal concern because we feel they may be indicative of a general condition, and that is that the full effect of OPA-90's many inter-linked provisions may not be clearly stated in the Research Summaries. This is important because we believe that the question of a limited responder immunity for Alaska should be addressed in a framework of full understanding of OPA-90.

The two research projects I will comment on are: (1) Response Action Contractor Provisions in the Oil Pollution Act of 1990 and (2) other state's response action contractor provisions. The first summary is incomplete in that there is no mention of an absolutely critical element: the assumption of any responder liability (given that certain conditions are met) by the responsible party. The second summary is also incomplete as it lists eight states that have enacted such a statute. The fact is 19 coastal states have enacted

legislation as protective as OPA-90 over the last 18 months. The majority of the six remaining jurisdictions have old "Good Samaritan" legislation that is not in conformance with OPA-90. Furthermore, three national state legislative associations (NCSL, CSG and ALEC) support the federal standard. The point here is that MSRC believes those facts are a powerful testimony of the soundness of OPA-90's provisions as public policy -- yet the full story of how other coastal legislatures have acted is not fully exposed in the research report.

Several statements/conclusions reached in the Research Report Summaries are inaccurate principally because they do not fully recognize the new responsibilities and relationships established for removal (§4201) and planning (§4202) of OPA-90. Understood in context of all of the provisions of OPA-90, it is clear that the purpose of the immunity is to promote the public welfare by insuring that responders -- no matter who they are or how they are paid, etc.-- will not be inhibited from acting boldly and decisively when confronted with the emergency conditions and potential liability surrounding marine oil spills. I say respectfully, that these provisions do not unreasonably protect responders from negligence. Rather as a matter of sound public policy, OPA-90 distributes risk between responders and the spiller, making the spiller assume liability for good faith errors made by a responder so long as the responder's acts are consistent with the National Contingency Plan, or the acts are at the direction of the federal (or in the case of state law, the Alaska) on-scene coordinator and the acts do not rise to the level of gross negligence or willful misconduct. There is no responder immunity provided in cases of personal injury or wrongful death.

We believe that these provisions go to the heart of the matter of responder performance. They insure that responders act with due care because they are not protected if their acts rise

to gross negligence or willful misconduct. Additional protection is provided to insure that responders will not negligently perform, since only acts consistent with the National Contingency Plan or directed by government officials receive immunity. Since the responsible party is liable for any removal costs and damages that another person is relieved of; and since the provisions of OPA-90 raise limits of liability and make available a \$1 billion per incident trust fund as a source of monies for injured parties; there is now a strong incentive for spillers to act immediately with a bold response and not attempt to deflect liability to those whose purpose is to remove oil from Alaskan waters.

In the specific comments provided you will see that we feel that other research projects do not fully explain the important new relationships and responsibilities established in other sections of OPA-90. In the time I have left I would like to mention just two of these because they demonstrate the importance of considering all aspects of OPA-90 before making your recommendations on Alaskan law.

Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages a bolder response rather than a potential delay, while lawyers of responders attempt to determine who may be liable for a spill. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is a part of the plan approval process, while state and federal

coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to \$25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A \$1 billion per incident trust fund has been established when a spiller's liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure

that what is submitted can be executed.

MSRC believes the Citizen's Oversight Council needs to fully consider the federal liability regime that exists three miles off its coast today as it makes recommendations that might adopt differing standards. MSRC further believes that Alaska should enact the same limited responder immunity provision as OPA-90. We look forward to receiving your final full report and to seeing many of you at the legislative hearings in Juneau on February 11 and 12.

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Research Project: Response Action Contractor Activity in Alaska

Pg. 2 Statement: "The report concludes that the independent operators are the class of responders most suitable for liability limits."

Rebuttal: It is not clear why independent operators are "most suitable"? For that purpose, OPA-90 does not differentiate between responders -- all responders are covered.

Pg. 2 Statement: "The report asks whether it is appropriate for a response organization created by those with a duty to respond, (i.e., oil terminal and tanker owners) to be afforded that same degree of immunity."

Rebuttal: We believe that different degrees of immunity for different categories of responders would be counter productive. Such action misses the fundamental reason for providing the limited immunity for responders: To promote the most bold and aggressive response for the protection of the environment. OPA-90 requires that a responsible party cite private spill response resources in their contingency plans to respond to a worst case discharge in adverse weather conditions. Industry and other business interests have responded by upgrading existing spill response organizations. All responders (co-ops, for-profit and not-for profit contractors, fisherman, volunteers) work for the spiller during a spill. One type of responder should not be afforded certain privileges that others are denied. The spiller is still responsible for all removal costs and damages regardless of the actions of a fisherman, their own response organization, etc. unless of course the conditions for immunity are not present.

Pg. 2 Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages bolder response rather than a potential delay while lawyers of responders attempt to determine who may be liable for a spill and the risks to be assessed by responders under the current conditions and for every action

during a response and cleanup. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is part of the approval process, state and federal coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to \$25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Research Project: Risk of litigation and liability exposure for response action contractors:

Pg. 2 Statement: "Research indicated that there were no cases in the U.S. where response action contractors were sued or held liable for damages from an oil spill by virtue of their response activities."

Rebuttal: While true, the statement refers to pre-Valdez conditions. Valdez created an entirely new arena for litigation due to the adoption of OPA-90. Liability on removal costs and damages now associated with a spill the size of the Valdez can be in the billions of dollars. It should be noted that the Report Summary stated that the Alaska Department of Environmental Conservation was aware that responders are concerned about this potential liability. New categories of damages are created; i.e., natural resource damage, loss of subsistence use of natural resources, real or personal property damage, net loss of tax and other revenues, loss of profits or earning capability and costs of additional public services provided during or after removal actions. It is the chilling affect of potential liability of this magnitude that responders seek protection from.

Research Project: Contractual relationships among response action contractors, contingency plan holders, and the state:

Pg. 3 Statement: "The result is that private parties may be unable to recover damages for harms caused by response action contractors if there is no other financially solvent responsible party."

Rebuttal: This statement is not factually correct. Private and public parties are fully protected because there is always a source of funds! If a response action contractor responds to a spill or threat of a spill, all damages and removal costs

associated with that spill are the responsibility of the spiller under OPA-90. A responsible party also is liable for any removal costs and damages that another person (a responder) is relieved of. Responders are fully liable in cases of personal injury or wrongful death. To insure a source of funds, the spiller must provide the U.S. Coast Guard with a Certificate of Financial Responsibility before transporting petroleum/petroleum products in U.S. waters and in the case of a spill where the responsible party cannot be determined or his liability ceiling is reached, the U.S. Coast Guard has a \$1 billion per incident fund available from a tax on the transporters oil that pays removal costs and damages associated with the spill. There is universal agreement that OPA-90 reasonably protects injured parties by insuring the availability of funds first from the responsible party, then from the Oil Spill Liability Trust Fund.

Pg. 3 Statement: "Response action contractors and contingency plan holders also allocate liability for damages between each other through private contractual relationships."

Rebuttal: The research project well documents the complexity of these relationships. It is a lawyer's playground and because it is difficult for responders to understand the risks associated with sole and joint actions, and disagreements can only be resolved by litigation responders will not act with the boldness and decisiveness needed to quickly and effectively remove the oil out of the marine environment. On the other hand OPA-90's provisions encourage response by having all acts for which a responder is liable transferred back to the responsible party. This provides a twofold benefit: (1) There is no incentive for a responsible party to attempt to lay liability on responders because such liability will be assumed by him and (2) responders freed from the chilling affect of a simple negligence standard, can act boldly to promote the most effective response.

Pg. 3 Statement: "This means that the state has no way to force a response action contractor to comply with its contractual obligations. The report concludes that the state should take some action to ensure state control over response action contractors to avoid the risk that the response action contractor designated in a contingency plan could fail to perform."

Rebuttal: The state (and the federal government) have a variety of controls over response action contractors. OPA-90 requires that a response action contractor "... act in accordance with the National Contingency Plan or at the direction of the Federal On-Scene Coordinator ..." to be immune from removal costs or damages associated with rendering care, assistance or advice, etc. This is a strong incentive for responders to act with due care. The state is a party to drafting the requirements for response plans in the Local Area Planning Process and thus a party to the process of defining the response capabilities responsible parties must cite in response plans. OPA-90 requires

the Coast Guard to conduct periodic inspections of response equipment. OPA-90 requires proof of responder capability by holding unannounced drills. Also see penalty provisions previously mentioned for failure of a responsible party to comply with a removal order.

Pg. 3 Statement: "The report also concludes that because the legal standard for negligence includes full consideration of the emergency atmosphere in which response action contractors operate, response action contractors are protected from the consequences of crisis decision making and do not face an undue burden by being held to a standard of reasonable care under the circumstances."

Rebuttal: This issue of an emergency atmosphere will be determined as a matter of fact in court. Responders explicitly fear this potential litigation in that it provides an opportunity for the spiller to attempt to shift liability to the responder. This fear would have a chilling affect on response. The risks associated with good faith errors of the responder should fall on the spiller and not the responder reacting in an emergency situation. OPA-90 shifts the risk (for simple negligent acts) to the spiller, where it belongs.

Pg. 4 Statement: "On the other hand, the only way to ensure that injured parties will be compensated is to require that response action contractors exercise due care or face liability."

Rebuttal: The statement is factually incorrect. A punitive atmosphere for those responding under un-controlled circumstances; i.e., rain, wind, uncertain information defeats the purpose of initiating and sustaining a bold response. OPA-90 makes the responsible party liable for all removal costs and damages unless the responder acts with gross negligence, willful misconduct or in cases of personal injury or wrongful death. Moreover, only "approved" performance; i.e., within the National Contingency Plan or Federal On-Scene Coordinator/state officials receive immunity. If a responder acts outside these parameters then he is liable for damages. A state provision using fear of liability for responders will be directly counter to the main purpose of the federal standard. It will provide an opportunity for the responsible party to shift liability to responders. Moreover, OPA-90 provides the means to insure that injured parties will be promptly compensated. In a worst case scenario where the spiller is not identified, or the responsible party reaches his liability limit the Oil Spill Liability Trust Fund will pay removal costs and damages up to \$1 billion per incident.

Research Project: The relationship between a response action contractor and a contingency plan holder under the Oil Pollution Act of 1990:

Pg. 7 Statement: "The federal government will require a contingency plan holder to demonstrate that it has a contract with a response action contractor, but it is as yet unclear

what the precise requirements will be."

Rebuttal: This is correct, but the new OPA-90 planning standard for response plans is a very high one (See Section 4202 National Response System). Response plans must demonstrate, in detail, how a vessel owner/operator using private resources alone, would cleanup a worst case discharge (loss of all cargo) in adverse weather conditions to the maximum extent practicable. Initial indications are that federal rules will require a substantial response capability to meet Congressional intent.

Pg. 7 Statement: "Currently, the Oil Pollution Act does not grant the federal government any direct authority over response action contractor activities; the government's only leverage is to give directives to the contingency plan holder who, in turn, presumably would direct the response action contractor to implement the federal order."

Rebuttal: This is factually incorrect and misleading. The Coast Guard approves (with state input into the process) response plans that are consistent with the National Contingency Plan and Area Contingency Plans for all vessels/facilities and those response plans describe the actions to be followed for a worst case spill. The capabilities of responders must be consistent with the response plan and the area plan. OPA-90 requires the U.S. Coast Guard to conduct unannounced drills, and an inventory inspection of response assets (OPA-90 §4202) as part of the means to insure that the performance of responders will be as stated in response plans. In addition, if a response is not taking place to the satisfaction of the U.S. Coast Guard, the federal government can take over full control at any time.

Pg. 8 Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A \$1 billion per incident Oil Spill Liability Trust Fund has been established for occasions when a spillers liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure that what is submitted can be executed.

Research Project: Insurance coverage availability:

Pg. 8 Statement: "Costs are based upon the following factors: (1) revenues and/or payroll size; (2) historical loss experience; (3) contractual indemnities and their value; (4) statutory immunities; and (5) the general state of the insurance market."

Rebuttal: Item (2) will reflect all pre-Valdez experience. OPA-90 substantially increased liability limits and importantly, the categories of items for which damages can be paid. This item represents a new and very large potential exposure for responders. Therefore, insurance costs considering this formula are likely to be understated.

Research Project: Response action contractor provision in the Oil Pollution Act of 1990:

Pg. 9 Statement: "The conference committee explained that it wanted to avoid possible deterrence of prompt spill response because of liability fears."

Rebuttal: A major purpose of the liability standard of OPA-90 is to provide the fastest and most complete cleanup of the environment. One way it accomplishes this is by returning liability where it belongs . . . to the spiller. Moreover, there was considerable debate and further discussion on the issue inside the executive branch. For the provision to remain in the bill and for the bill to be unanimously passed by both houses of Congress, it had to receive the concurrence of the U.S. Coast Guard, Environmental Protection Agency, Department of Justice and Office of Management and Budget.



John D. Costello
President

July 26, 1991

Mr. John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811-1800

Dear Commissioner Sandor:

Thank you for your letter of July 2, 1991. As you know and reference in your correspondence, I wrote to your predecessor in March of 1990 requesting a meeting with appropriate state officials to discuss what role, if any, our organization might have in Alaska. We welcome the opportunity to begin this direct dialog and I have asked our Vice President for Readiness and External Affairs, Mr. G. Stephen Duca, to make the necessary arrangements.

Your letter indicated that the impediment for MSRC establishing a presence in Alaska was the nature of the state's responder liability statutes. This is really only one of our concerns. Several events have occurred in the intervening time since our letter to you that directly bear on answering the question of what role is an appropriate one for MSRC in Alaska. Since our last correspondence we have been incorporated as MSRC with a charter and by-laws that specifies our response and cleanup activities. It states in part, that we are to establish programs to render a best effort response to contain and cleanup catastrophic oil spills in coastal zone or tidal waters of the U. S., in particular open sea spills estimated to be in excess of 25,000 barrels and protected water spills estimated to be in excess of 40,000 barrels. We are specifically precluded from responding to spills of less than 1200 barrels unless certain conditions are met. This limitation was inserted into our by-laws for several reasons, one of which was to insure that we do not compete with the existing oil spill response and cleanup infrastructure. The existing infrastructure is generally recognized as having the capability to respond to the vast majority of the nations spills; i.e., small spills under 1200 barrels. In addition, you may recall that PIRO (now MSRC) was created to specifically fill a national response/cleanup capability void at the high end of the spill spectrum; i.e., the catastrophic spill.

In the aftermath of the Valdez spill and due in large part to the leadership of the Legislature and other state officials, Alyeska spill response capabilities have significantly increased in size and scope. My understanding is that current Alyeska capability is probably

Mr. John A. Sandor
July 26, 1991
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equal or greater to the size of a planned MSRC regional response center. A similar response and cleanup improvement process is underway in Cook Inlet and, presumably, will result in a capability there to meet the requirements of OPA-90; i.e., the capability to respond to a "worst case discharge". It is our understanding that between the resources of Prince William Sound and Cook Inlet well over 95% of the persistent oil transported in Alaska's marine environment will be covered. In the light of this considerable capability the question must be asked "Is there really any role or indeed need for MSRC in Alaska?"

As a responder, we have carefully followed the development of Alaska's comprehensive oil spill legislation. We fully support state legislation that enhances oil spill response and clean up capability, however you should know that there are certain portions of your existing statutes that we feel could be improved. For example, requiring a capability to remove 300,000 barrels of oil in 72 hours is an unrealistic planning standard given today's technology and the average weather conditions responders must face in your state. Although the statute attempts to provide for technical relief from this standard, we believe that a very false expectation of capability has been created. Moreover, such a standard invites litigation -- a chief element in discouraging prompt responder action.

We are of course, vitally concerned with state responder immunity legislation. We were happy to see that HB 196 recognized this as a critical element in promoting an effective oil spill response system. We note however, that it falls significantly short of the national standard of immunity provided for responders in OPA-90. Some of the major concerns we have with this law include:

- o **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place. Moreover, there is less likelihood for prompt responder action in cases where there is only the threat of a spill.

- o **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

- o **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a quandary if conflicting orders are received from the state and federal governments.

- o **Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans.** Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are

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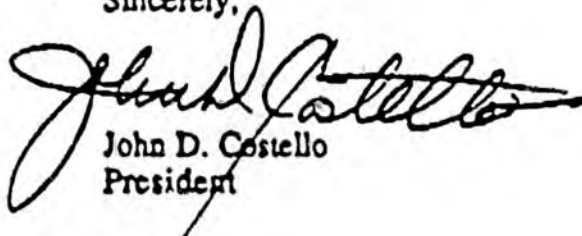
sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

o **Damages to Property not Caused by Oil.** Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling affect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

These are some of the issues we feel need improvement in the current statute. We believe, and parenthetically so do the legislatures of 17 other states that have enacted the federal standard over the past 18 months, that the provisions of Section 4202 of OPA-90 are sound public policy. It balances the issues of how to provide incentives for bold and decisive action with assuring that appropriate damages are allocated to the appropriate parties. The gross negligence willful misconduct standard of responder conduct is appropriate for emergency operations. Responder actions that cause personal injury and wrong death are not specially protected. Only acts that are consistent with the NCP or the directions of appropriate federal and state officials are protected. Enacting a statute that provides an immunity at least as protective as the federal standard would eliminate a major disincentive for responders in Alaska. Since the responder immunity law is subject to review including a report to the Legislature, MSRC would welcome the opportunity to work closely with you. Our role in Alaska notwithstanding, we want to ensure that your responder immunity legislation provides reasonable protection for responders. By doing so it will simultaneously facilitate a swift and effective response to help mitigate harm to your environment.

The foregoing provides you the major issues we see in Alaska in advance of our meeting so that you can have some insight into our perspective. We look forward to working up an agenda and meeting with you in the very near future,

Sincerely,



John D. Costello
President

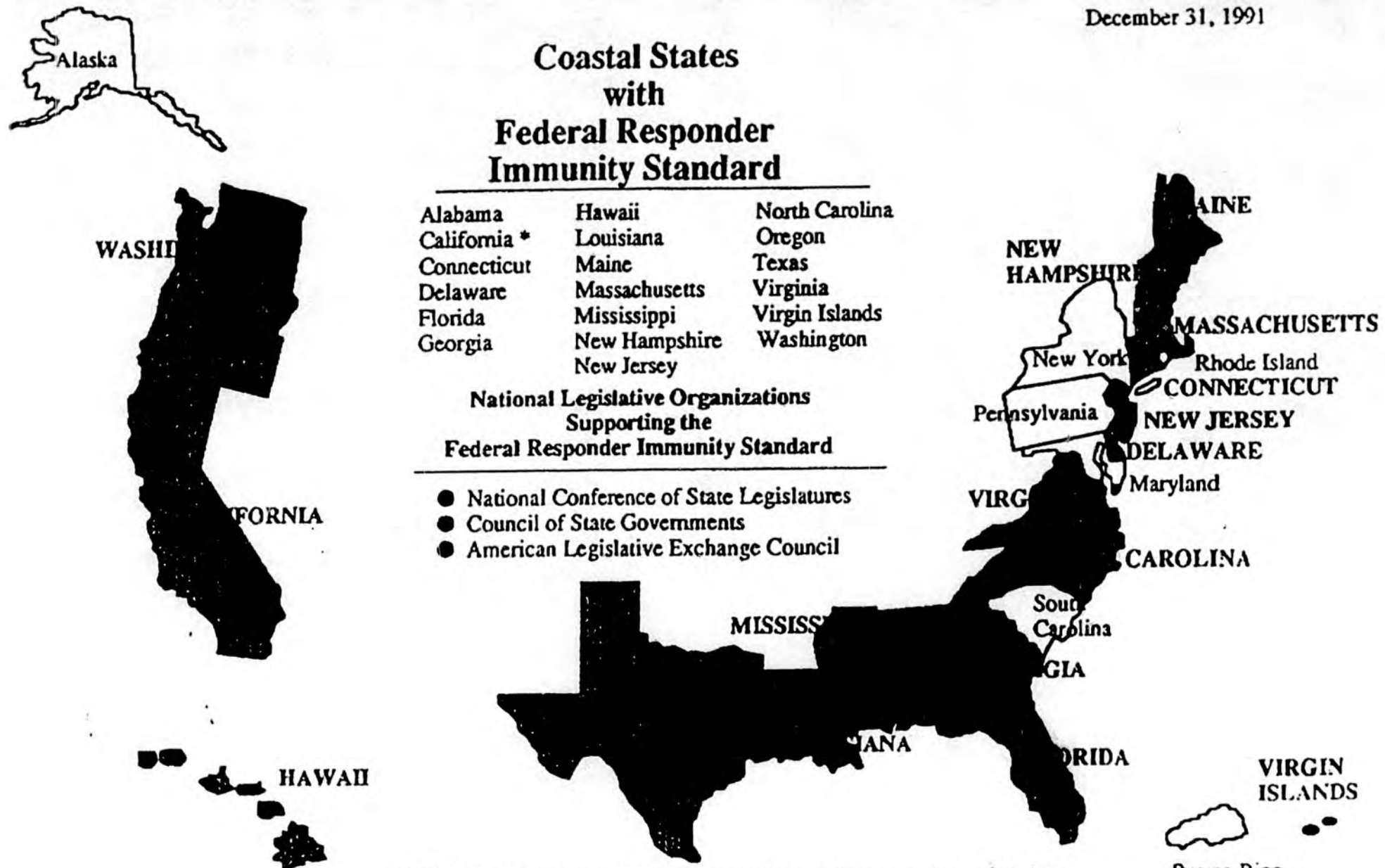
December 31, 1991

Coastal States with Federal Responder Immunity Standard

Alabama	Hawaii	North Carolina
California *	Louisiana	Oregon
Connecticut	Maine	Texas
Delaware	Massachusetts	Virginia
Florida	Mississippi	Virgin Islands
Georgia	New Hampshire	Washington
	New Jersey	

National Legislative Organizations Supporting the Federal Responder Immunity Standard

- National Conference of State Legislatures
- Council of State Governments
- American Legislative Exchange Council



■ Indicates states which have passed responder immunity legislation.

* Federal standard was adopted but only for a maximum of 90 days.

Statement
of
Mr. G. Stephen Duca
Vice President
Readiness and External Affairs
Marine Spill Response Corporation
before the
State of Alaska
Joint Hearing of the
House Special Committee on Oil and Gas
and
House Committee on Resources
February 12, 1992

Good morning Mr. Chairmen and members of the Committee. My name is G. Stephen Duca, I am the Vice President for Readiness and External Affairs at the Marine Spill Response Corporation. I welcome the opportunity to comment on the Citizens' Oversight Council recommendations and responder immunity.

Mr. Chairmen. MSRC is pleased to have been asked to participate in the public debate on Section 11 of H.B. 196 (Ch.92 SLA 1991). We have been part of this dialogue for some time, beginning with an appearance before Alaska's distinguished Oil Spill Commission in 1989 chaired by Mr. Parker and ending just last week with a statement via teleconference

presented to the Citizens' Oversight Council on Oil and Other Hazardous Substances. Our position on the issue of Responder Immunity in Alaska is therefore a matter of long public record. Attached is pertinent correspondence which specifically addresses our concerns with H.B. 196 -- a statute which places liability on a responder rather than the responsible party where it belongs. Such a condition violates a fundamental principle of the Oil Pollution Act of 1990 (OPA-90) -- "the polluter pays". I will not comment further on the particulars of H.B. 196 since our previous remarks and letters are available for your review.

However, I would like to underscore a couple of key points for the Committees' consideration. At the end of all the discussion related to H.B. 196, Alaska needs to enact a responder immunity provision at least as protective for a responder as Section 4201 of OPA-90. This is sound public policy -- which nineteen other coastal states have enacted as law. It is plain common sense that Alaskan law should be consistent with the federal liability regime that exists three miles off its coast. Oil moves swiftly from jurisdiction to jurisdiction and a responder should not be slowed in his cleanup by having to take valuable time to consider the legalities and risks associated with each action taken in Alaska's jurisdiction.

Please remember that the overarching purpose of this limited immunity is to insure a bold and vigorous response during uncertain and/or emergency operating conditions. Some would have you believe that this standard was trying to get someone "off-the-hook." This is not the case, rather it places the liability on the spiller, again in accordance with the maxim of: "the polluter pays". Working in concert with the other provisions of the Oil Pollution Act of 1990, this limited responder immunity if enacted in Alaska would:

1) Promote a bold and vigorous response by persons whose sole purpose is to remove as much oil from the environment as is possible, since responders (all categories of responders) are protected from liability for good faith errors (simple negligence) under very limited circumstances.

2) By riveting liability to the responsible party it doubly insures a bold response by encouraging his prompt action. Since any liability another person (responder) is relieved of is passed on to the responsible party, there is little incentive for the responsible party to attempt to deflect liability to a responder in the first place. His best course of action is to get as much response and cleanup capability to the scene and begin operations as soon as possible.

Mr. Chairmen, one cannot be part of this debate without soon confronting the central argument made against providing this limited immunity. The issue has, unfortunately taken on the mantle of a canard. The story goes like this -- 'the only way to insure that responders will act responsibly is to make sure they are punished (incur liability) if they don't act in a prescribed way (by a contract)'. This approach to providing emergency response services of any kind, not just oil spills, is absolutely wrongheaded. It defeats the main purpose of the immunity -- the encouragement of a bold and vigorous response -- in several ways. First, the contract would have to cover all of the circumstances likely to be faced in a spill. The larger the spill the larger the number of circumstances and the larger the contract. Can you imagine a bold and vigorous response to an oil spill occurring under a contract the dimension of an encyclopedia? Can Alaska's fishermen (who proved to be so vital a force during the Valdez spill) reasonably be expected to perform in every circumstance in a way prescribed by a

contract? What about tug and barge owners, operators and lessors? Every action they took could be subject to a lawsuit to determine if their actions were in accordance with the contract and therefore, was in fact covered or not covered by the immunity. Fishermen, tug and barge owners and other responders would need to rush to their lawyers to determine risk/exposure before rushing to the scene of a spill to begin the cleanup. It would be a lawyer's playground and have a chilling if not killing affect on a response effort.

Furthermore, such a condition defeats the cardinal rule of OPA-90 that "the polluter pays". Any liability that can be transferred from the spiller to other parties will be seen as an opportunity to defeat the responsibility for performance that a spiller should be held liable for. Having immunity flow to responders by way of a contract would shift the responsibility for response and cleanup performance during a spill to responders, not the spiller. OPA-90 lays the requirement for the execution of response plans on the spiller. The spiller must use private resources to cleanup, to the maximum extent practicable, a worst case spill. To enact a provision laying the responsibility for cleanup on responders would be a serious mistake, especially since there are already many protective provisions of OPA-90 that insure satisfactory performance of responders.

In your letter to MSRC President, Admiral Jack Costello you requested that I address two specific issues today: 1) MSRC's decision not to locate any of our corporation's national centers in Alaska and 2) Any disagreements that we may have with the report of the Citizen's Oversight Council.

As to the first Mr. Chairmen, I must take you back to the days just after the Valdez

spill. The industry recommended the creation of what it determined the nation did not have -- the capability to make a best effort response to catastrophic spills of persistent oils in the offshore environment. Most agree that the capability of the existing oil spill response infrastructure is sufficient to deal with the thousands of small releases that occur in the nation each year. What Valdez demonstrated was a lack of capability to deal with the catastrophic spill. MSRC closely analyzed the oil transportation patterns of persistent oils and made decisions on its operating sites based upon the threat posed by these patterns. Our analysis indicated that Alaska had two areas of likely threat - Cook Inlet and the TAPS terminus. When we reviewed the capability at these locations we found that Valdez had (and at the time was programmed to increase) a large capability to a considerable degree.

In fact, due in large measure to the work of the Alaska Legislature and Executive and Regional Citizens' Advisory Councils, Alyeska has a capability that would exceed one of MSRC's Regions and the capability of the Cook Inlet Cooperative is being upgraded. This led MSRC to conclude that there was not a need for MSRC capability in Alaska.

Although we had not received the full Citizens' Oversight Council Report by the time we had to depart for Juneau, the recommendations appear to be an outstanding example of good government at work. MSRC is pleased that the Council, in recommendation # 1, has acknowledged the essential need for the "gross negligence and willful misconduct" standard.

Because with it comes the real foundation for assuring a bold and vigorous response to oil spills in Alaska, since responders will not unreasonably fear responding in the face of the risks and uncertainties surrounding oil spill response and cleanup. Adoption of this standard will create comity between the state and federal government. This is one of the things MSRC

has advocated for some time. MSRC wishes to commend the Council for its insight into recognizing the heart of a very complex problem. MSRC strongly urges this committee to enact this standard into any revision of H.B. 196.

The Council's recommendations then focused on conditions to assure response action contractor performance. We will speak to this below, but I want to underscore some key points with respect to the implementation of this limited immunity standard to ensure consistency with the federal standard.

1. It should apply to all responders, regardless of the category; i.e. volunteer, not-for-profit organization or for-profit organization,
2. It should only apply to acts or omissions taken in the course of rendering care, assistance or advice that are consistent with the NCP, or as otherwise directed by the President (USCG) or appropriate state officials,
3. It should not apply to the responsible party, or for acts under CERCLA,
4. It should not apply to acts that cause personal injury or wrongful death
5. And of *critical importance*, a responsible party should be held liable for any removal costs or damages that another person is relieved of.

We noted that the Council was silent about a time limit to accompany any immunity.

We take this lack of a positive statement on this critical issue as a recommendation to eliminate this feature from future Alaskan law. We concur with this position.

Council recommendations two (2) through six (6) focus on the need for, and how, the state should assure that response action contractors satisfactorily perform. MSRC has no disagreement with the basic goal or the need for response action contractors to do a good job. We also do not object to a reasonable certification program and have supported certification in the Coast Guard's process to establish vessel response plan rules under OPA-90. We do however, believe that some of the recommendations may go too far. If certification establishes standards and requirements that are too burdensome, certification could severely limit the number of persons willing or able to be responders. These types of requirements also can serve to shift responsibility away from the spiller and on to the responder or even the state. Certification should not serve to advertently or inadvertently undermine or even negate the responder's immunity. The imposition of performance standards is problematical and any certification program must be implemented so that federal/state and local requirements are integrated into an effective and efficient whole consistent with OPA-90.

Recommendation two (2) asserts that the state "...currently has no (underlining supplied) means to verify the capability and the capacity of these contractors to perform...." While we do not believe this statement is technically accurate, the ability to verify the capability and capacity of responders certainly exists under OPA-90. Section 4202 of OPA-90 requires that the President, "...shall require- (A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges and ... periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency

Plans are required...The drills may include participation by Federal, State and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drill, including assessments of the effectiveness of the plans and a list of amendments made to improve plans...."(Underlining supplied.) We believe that OPA-90 provides an excellent starting point to implement this recommendation and we urge the legislature to carefully consider if additional state requirements are really needed. We do not believe that tying responder immunity to responder certification is good public policy. MSRC believes that all responders require the limited immunity of OPA-90, and so long as they act consistent with the NCP or as directed by federal and state officials that their limited immunity should be left intact. We urge the legislature not to adopt this portion of the recommendation.

Recommendation three (3) would provide for the design of "minimum professional standards" for responders. In theory this is laudable, but MSRC believes there are major hurdles to be overcome, not the least which is the creation of a bureaucratic nightmare. The Council's recommendation itself recognizes that such standards do not presently exist. Unless the program was very basic in its construct, identifying operational and logistics support performance standards and then attempting to come to some agreement on how to measure performance to these standards, while a worthy goal, will be an exceedingly arduous task for the state. One needs to ask the question, "and to what real benefit?", since there are existing provisions for the state (as well as federal and local agencies) to be a party to drills and exercises where shortfalls in performance will be identified and action plans generated to eliminate discrepancies. Returning back to our original statement - a certification program should only be implemented if federal/state and local requirements are integrated into a single

• and effective whole.

We have no disagreement with the purpose of Recommendation four (4). We believe however, that this purpose can be achieved through the federally mandated Local Area Planning process found in Section 4202 of OPA-90. ADEC will be a full and active participant, among other interests in the state, in this process and therefore we urge that the need for any legislation in this area be the result of a complete review of the protection provided by the federal planning process.

Recommendation five (5) is problematical. It is assumed that the financial implication of giving direct orders to a responder, such as in the case of a mystery spill, can be worked out, but that notwithstanding, given the overarching structure of OPA-90 it is difficult to identify a real problem that needs to be solved. MSRC believes that implementation of this recommendation will create serious problems.

Section 4201 of OPA-90 states that the President "... shall ...ensure (underlining supplied) effective and immediate removal of a discharge...." It further states that in those cases where there is a substantial threat to public health or welfare that he "...shall direct all (underlining supplied) federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge...." All now agree that decision-making during a spill response cannot be diffused but must attach to a single professional. The citations above demonstrate that the President will be in charge. We believe that this responsibility is being taken very seriously by the federal government. The state is a partner in the direction of these response efforts as a member of the federal Regional Response Team and Area

Committees that will be developed. The way that OPA-90 insures response and cleanup performance is by placing the burden where it belongs - on the spiller. The spiller must demonstrate to government that his plan is a reasonable one to remove, to the maximum extent practicable, a worst case spill. We see no clear and present danger that equipment and personnel will not, in the words of Recommendation five (5), "... indeed be deployed...." Please also consider that under OPA-90:

- A. The state is intimately involved with the planning for the resources needed for a worst case spill; the federal government assures that response resources are inspected and
- B. That unannounced drills are conducted to assure that what has been written in the plans, (1) actually exists and (2) will perform as agreed upon in the plans and
- C. That Title V provides for the establishment of Regional Citizens Advisory Councils for special areas that have among their many advisory roles ones to:
 - 1. provide advice and recommendations...on the policies...and regulations relating to operation of...terminal facilities and tankers which may affect the environment
 - 2. monitor...the environmental impacts of the operation of the terminal facilities and crude oil tankers
 - 3. review...the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers...

There are considerably more of these types of advisory duties, but the sum of (A) (B) and (C) above is a very high level of inspection and verification of response capability by a variety of organizations. This appears to be adequate to insure that if Alaska wants to get

something done during a response that it has a more than reasonable assurance that the resources will be there to execute the orders.

There is one more important point to consider. The recommendation speaks to a responders duty to perform. We believe that this inadvertently may deflect duty to cleanup the spill from polluters to responders. As stated above, we believe that responder performance will be demonstrated in a variety of ways; through drills and exercises - some to be unannounced, because acts must be consistent with the NCP, etc.. Likewise, inspections and inventories of equipment are part of federal law, enacted precisely for the purpose of insuring that what has been warranted in a plan can actually be delivered by the responsible party.

We believe that practically speaking, a problem does not exist in terms of the state gaining assurance that what is in a plan will be delivered and a limited responder immunity must not be held hostage to the orders of state on-scene coordinators.

Recommendation six (6) provides that certified response action contractors respond when directed by the state. Private responders have a tradition of responding if needed, however, they are not governmental resources. If the state wants to hire a contractor to perform response services it should do so as a matter of negotiated contract irrespective of responder immunity or certification.

In closing Mr. Chairmen, I want to again thank this committee for the opportunity to comment on the Citizens' Oversight Council recommendations and responder immunity in

Alaska. You know our reasons for asking you to enact legislation at least as protective as Section 4202 of OPA-90. We are encouraged by our discussions with many members of the legislature and the administration. We are encouraged by the report of your Citizens' Oversight Council. We urge you to join with the 19 other states and adopt Section 4201 of OPA-90. It is sound public policy. I would be happy to answer any questions which you may have.

February 20, 1992

ALYESKA PIPELINE SERVICE COMPANY Prevention and Initial Response Services

- *Why are oil discharge prevention and contingency plans necessary?*

Under federal and state law, a vessel owner is responsible for the discharge of oil from its vessel. Crude oil tankers transiting Prince William Sound must have oil spill contingency plans, contract for various spill response resources, and post evidence of financial responsibility. Contingency plans allow the state to determine whether plan holders have access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil spills from tankers. The state also requires plan holders to demonstrate their ability to carry out contingency plans, including periodic training, exercises, and verification of ready access to equipment, supplies, and personnel. A tank vessel may not be operated within state waters without an approved contingency plan.

- *Who are the plan holders for crude oil tankers operating in Prince William Sound?*

As required by state law, tank vessel oil discharge prevention and contingency plans are held by tanker owners or operators. Alyeska operates the Trans Alaska Pipeline System on behalf of seven pipeline companies which own it. None of these own, operate, or charter tankers.

- *What are Alyeska's prevention and initial response services?*

Alyeska has developed an initial response plan (the Prince William Sound Tanker Spill Prevention and Response Plan or "Plan") which describes the services it offers to tanker vessels as an initial response contractor. The state has approved the Plan's incorporation into individual tanker contingency plans. Under the terms of the Plan and Oil Spill Response Services Agreements signed with tanker owners, operators, and charterers ("Contracting Vessels"), Alyeska provides response vessels, equipment, personnel, and training described in the Plan for as long as 72 hours following an oil spill. The initial response plan and the tanker contingency plans anticipate that, during the first 72 hours after a spill, the management of the response will transfer from Alyeska either to the appropriate Contracting Vessel or to the federal on-scene coordinator.

- *What resources has Alyeska developed to support these services?*

Alyeska has chartered escort response vessels, tugs, barges, and an oil spill recovery vessel. It has also purchased ocean and rapid deployment boom, seaskimmers, and related response equipment. In addition, Alyeska has developed area response centers, placed fishing vessels on contract to supplement response efforts, and prestaged equipment to protect hatcheries and other sensitive areas. Escort/response vessels are used for day-to-day escort of loaded tankers in Prince

William Sound as a prevention measure. Vessel crews are drilled in responding to large spills and in employing multi-vessel and multi-boom configurations. Storage capacity for recovered oil and water is unprecedented: five large barges, each ranging in true volume from 70,000 to 120,000 barrels, are part of the plan to receive collected oil and water. This capacity is also augmented by smaller barges. The selection of equipment has been balanced between using high-volume recovery equipment in the early stages of a spill, and to adjust response strategies and equipment as the oil becomes viscous and aged.

- *During the first 72 hours of an oil spill response, how will management of the response be transitioned from Alyeska to a Contracting Vessel?*

When Alyeska discovers or is advised that an oil spill from a covered vessel has occurred, it will provide the initial response, employing its response equipment and personnel. Alyeska will also notify the Contracting Vessel. Unless otherwise directed by the Contracting Vessel, or the U.S. Coast Guard, Alyeska may elect to manage and control the response to an oil spill of 1,000 barrels or less which can be contained and cleaned up by local Alyeska resources in accordance with the Plan. For larger spills, the company which has contracted for Alyeska's initial response services will assume management and control of the oil spill response either itself or through a third party approved by ADEC. The transfer of command and management of spill response operations from Alyeska must occur in a smooth and efficient manner satisfactory to the U.S. Coast Guard and ADEC. In addition, transition of spill response management could be from Alyeska to the U.S. Coast Guard in the event a spill response is federalized.

- *Following transition of the management of an oil spill response, will Alyeska resources exit the response?*

One of the requirements for transfer of command and management of spill response operations is agreement on present and future resources of people and equipment, including Alyeska resources. It is expected that Alyeska resources will remain fully engaged in a response following transition of management of spill response operations. As soon as reasonably practical, Alyeska's core equipment and personnel should be replaced in an orderly fashion with the Contracting Vessel's response organization and equipment so that Alyeska can resume normal operations at the Terminal, when tanker operations can be restored.

- *What will happen if a Contracting Vessel fails to assume management and control of an oil spill response within 72 hours?*

Under the terms of the response services agreement, Alyeska may tender management of the oil spill response directly to the U.S. Coast Guard, and acquire additional equipment and personnel, all at the Contracting Vessel's expense. When the spill management is federalized, Alyeska resources will be placed as directed by the U.S. Coast Guard.

ALYESKA PIPELINE SERVICE COMPANY
COMMENTS

ON

IMPROVING LIMITED RESPONDER
IMMUNITY

**ALYESKA PIPELINE SERVICE COMPANY
COMMENTS
IMPROVING LIMITED RESPONDER IMMUNITY**

DATE	DESCRIPTION OF COMMENTS	TAB
02/10/92	<u>Citizens' Oversight Council Report</u> (Responder Immunity; State Orders; Tanker Spill Responsibility)	A
02/05/92	<u>Changes to Alyeska/Tesoro Agreement After HB 196</u>	B
02/05/92	<u>Alyeska Financial Responsibility Requirement</u>	C
02/04/92	<u>Responses to COC Issues</u> (Time Periods for Response Immunity; ADEC Orders; Tanker Spill Responsibility; Financial Responsibility)	D
01/30/92	<u>Improving Good Samaritan Immunity for Oil Spill Response in Alaska</u> (OPA '90 v. HB 196)	E
01/31/92	<u>Oral Presentation to Citizens' Oversight Council</u>	F
01/31/92	<u>PWS Contingency Plan Arrangements Prior to 03/89</u>	G
01/31/92	<u>Vogt Report</u> (Costs of Alyeska's Prevention & Initial Response Services)	H
01/31/92	<u>Straube Report</u> (Imposing Spill Liabilities on RAC's)	I
01/31/92	<u>ADEC Report</u> (Alyeska as a Response Action Contractor)	J
01/31/92	<u>Mertz Report</u> (Responder Immunity Does Not Reduce Spiller Liability; Purpose of Oil Response Funds; Financial Responsibility Requirements; Changes to Tesoro/Alyeska Agreement After HB 196)	K
01/30/92	<u>Frank Report</u> (TAPAA Does Not Require Alyeska to Respond to Vessel Spills)	L

LDW56/cas

February 10, 1992

Comments Regarding "Oil Spill Response Action Contractors"

A Report by the Citizens' Oversight Council on Oil and Other Hazardous Substances

Alyeska Pipeline Service Company ("Alyeska") is pleased to provide these comments regarding a report recently submitted to the Alaska State Legislature by the Citizens' Oversight Council on Oil and Other Hazardous Substances ("COC"). The report is entitled "Oil Spill Response Action Contractors."

COC has developed seven recommendations. Alyeska's comments follow each one.

RECOMMENDATION #1: *The liability standard for oil spill response action contractors may be limited to gross negligence or intentional misconduct, with certain conditions that ensure a reliable response.*

Comments:

- We strongly agree. Even though responders are not liable for spills, without limited immunity, the financial risks and liability exposures associated with oil spill response would deter cleanup contractors, cooperatives, and others from joining into prompt, aggressive action.
- To date, the Virgin Islands and 18 of the 24 coastal states (75%) have adopted responder immunity laws which are substantially similar to the federal model provided in the Oil Pollution Act of 1990.
- The immunity is limited and subject to several conditions. The response action must be consistent with the National Contingency Plan, or federal or state orders. Responders are liable for personal injuries and wrongful deaths, or if they are grossly negligent or engage in willful misconduct. Importantly, the responsible vessel owner, operator, or charterer is liable for any removal costs or damages that responders are relieved of.

- We also strongly agree that this limited immunity ought to be available throughout the response action, and that it not be confined by an arbitrary time limit.

RECOMMENDATION #2: *Professional response action contractors should be certified by the state.*

RECOMMENDATION #3: *A certification program should contain minimum professional standards for response action contractors and direct DEC to establish the criteria by which it can readily assess a response action contractor's capability to perform as stated in a contingency plan.*

RECOMMENDATION #4: *A certification program should authorize DEC to maximize coastal protection and to enhance regional response capabilities through response action contractor certification.*

Comments:

- For the sake of national uniformity, and to avoid inconsistencies (and possible preemption), the state may wish to examine this proposal in greater detail after ongoing U.S. Coast Guard rulemaking on the same subject is completed. If supplemental state standards appear necessary, they may be considered at that time.
- Additionally, pre-certification of response action contractors should not be an additional condition for one group of responders to qualify for limited liability. We must encourage effective, prompt response efforts no matter who provides any type of care, assistance, or advice during an oil spill response, so long as it is consistent with the nation's comprehensive scheme for oil spill response or government orders.
- In addition to the legal and constitutional issues raised by this proposed disparity, an incongruity is immediately apparent. Volunteers who may need the most supervision during a response for their own safety would meet no prequalification requirement. Likewise, state, municipal, and village responders currently enjoy limited immunity for response action without any certification under a separate statute.
- The state's comprehensive contingency planning process already empowers ADEC to insure that response action contractors demonstrate their obligation and availability to respond to a discharge and discharge exercises,

and the readiness and compatibility of their equipment and other spill response resources. These oil spill response personnel must be trained, and demonstrate through drills and inspections their competency to provide immediate, effective response.

- A certification program may even be less effective as an oversight mechanism than spill exercises. ADEC can assure that a RAC is adequately prepared by comparing its response to the role described for it in a response plan. This can be done best through drills.

RECOMMENDATION #5: *Certified response action contractors must be subject to all orders of the state on-scene coordinator during an actual or threatened spill response.*

RECOMMENDATION #6: *Certified response action contractors should respond, when directed by the state on-scene coordinator, to mystery or orphan spills, except that regional cooperatives will not be required to respond outside their region of operation.*

Comments:

- Under the state and federal comprehensive oil spill prevention and response programs, sufficient controls already exist to assure effective response action without direct government control of a planholder's contractors. Moreover, ADEC is authorized to enter into contracts with private organizations to provide the personnel, equipment, or other services or supplies that may be required to respond to mystery or orphan spills. When private contracting is not feasible, it may establish and maintain the cleanup personnel and equipment which are needed at locations in the state.
- State law requires that tank vessel owners, operators, or charterers hold approved oil discharge prevention and contingency plans in order to do business in Alaska. The planholder must demonstrate the ready availability of sufficient personnel, training, equipment, and other resources to prevent, contain, cleanup, and dispose of spilled oil within the parameters of the state's planning standards.
- To augment its own prevention and response resources, a planholder will necessarily sign agreements with response action contractors. The contractors must be identified and their capabilities described. ADEC may test their proficiency and training during drills and inspections. ADEC will

insure that contractors are contractually obligated to respond as part of its plan approval process.

- A planholder must also demonstrate financial responsibility to assure the adequacy of his response and to pay damages. Possible criminal and civil penalties may also be assessed for an inadequate response.
- A planholder is liable for his negligent acts and omissions in directing a spill response. Likewise, by prematurely demanding that it also control a planholder's contractors, the state will share that liability. It must also be prepared to indemnify or immunize planholders and contractors from liabilities they may face by following state orders. Moreover, during the time that the state issues orders, it should suspend imposition of penalties upon the planholder for failure to implement its plan.
- The United States and the State of Alaska have already been granted the authority to take over and arrange for the removal of spilled oil when circumstances call for it. This is one of the purposes to be served by industry-financed oil spill response funds.
- Under the Oil Pollution Act of 1990, the U.S. Coast Guard by delegation is authorized to direct all federal, state, and private actions to remove an oil discharge. State control of response action contractors promises uncertainty and conflict during spill responses.
- Being generally required to respond to mystery and orphan spills would greatly increase the liabilities and risks to which RACs would be exposed. What responder will be in a position, in advance, as an additional price to be paid for limited immunity, to agree to provide services to state government without also having a specific contract which establishes the type and nature of response, types of hazardous substances, location, equipment, personnel needs, performance expectations, costs and billing arrangements, and indemnification? If a need for them currently exists, nothing prevents the state or federal government from negotiating "stand by" contracts now.
- Indeed, the State Oil and Hazardous Substance Discharge Prevention and Contingency Plan discusses mystery and orphan spills. It provides that whenever a spiller is unknown or a response is inadequate, the state or federal agency having jurisdiction has the authority to "take over the response and recover expenses from the spiller." Para. 411 at 400-14 (May 1991). This is consistent with federal and state law.

- No state requires that response action contractors individually agree, in advance, to accept direct state control and to handle mystery or orphan spills as additional conditions to limited immunity. These conditions will eliminate any hope of general uniformity of liability regimes amongst the various states to better encourage RACs to cross state lines, especially to join in efforts to contain and cleanup major spills.

RECOMMENDATION #7: *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.*

Comments:

- This COC recommendation relies upon an erroneous legal opinion. Under federal law, Alyeska and the holders of the grant of right-of-way across Alaska for pipeline construction and operation are not liable for spills from tank vessels. In any event, limited responder immunity is not available for those who are responsible parties.
- Under the comprehensive liability framework created by Congress, vessel owners and operators carrying oil transported through the pipeline are strictly liable, along with the Trans Alaska Liability Fund, for damages, including cleanup costs, resulting from discharges of oil from their vessel.
- None of the seven pipeline companies that own TAPS, or Alyeska which operates it on their behalf, own, operate, or charter tankers; nor do they manage or control them. In addition to the numerous legal and constitutional challenges this recommendation invites, it makes no practical sense: Congress has already imposed liability and financial responsibility for tanker discharges upon owners/operators/charterers; so has the State of Alaska.
- In COC's public meeting on January 31, ADEC testified that there is no confusion regarding who bears this responsibility in Prince William Sound: "we know who the plan holders are, we know who the responsible parties are, we know who the response action contractor is." Moreover, "we have evaluated the capabilities of the response action contractors to respond and evaluated the transition management plan."

- Alyeska has, in fact, accepted a contractual duty to provide prevention and initial response services to planholders. ADEC would not have accepted and approved contingency plans without insuring that Alyeska had accepted that obligation.
- Although it owns royalty oil, the state is not an equity owner of Alyeska's prevention and initial response equipment to appropriate for its use as a regulator. Like any other transportation-related expense, the cost of oil spill preparedness is equitably distributed amongst TAPS shippers.

VIA U.S. MAIL AND FACSIMILE

February 5, 1992

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

Re: **HB 196 Impact on Financial Responsibility Requirements for the
Alyeska/Tesoro Oil Spill Response Services Agreement**

Dear Chairman Hudson:

You requested further explanation of the important change made to Alyeska's Oil Spill Response Services Agreement for Prince William Sound ("Agreement") after the legislature enacted HB 196, and adopted limited responder immunity, last year. The amendment created an alternative to the Agreement's \$1 billion financial responsibility requirement that Tesoro was not able to meet. The new alternative to financial responsibility allows companies to enter into an Agreement with Alyeska if there is \$700 million Protection and Indemnity Club ("P&I Club") coverage for a tanker and \$500 million comprehensive general liability ("CGL") insurance coverage for the company itself. Tesoro has been able to utilize this alternative to enter into an Agreement that will expire on June 30, 1992, which is the date the provisions of HB 196 will sunset, unless further action is taken by the legislature.

As you know, Alyeska operates the Trans Alaska Pipeline System on behalf of seven owner companies. Although none of these pipeline companies own, operate, or charter tankers, Alyeska has contracted to provide prevention and initial response services to tank vessel owners/operators/charterers ("shippers") in Prince William Sound. Shippers are required by state and federal laws to provide for personnel and equipment to escort vessels and to respond to tanker spills in Prince William Sound. Alyeska's prevention and initial response services are ancillary services provided to shippers so that they may continue to handle Alaska North Slope crude oil. Up to this point in time, only Alyeska has offered to provide these services. Nothing prevents others from doing so.

ADEC has approved the shippers' vessel contingency plans which incorporate Alyeska's Prince William Sound Tanker Spill Prevention and Response Plan ("Plan"). The Plan describes Alyeska's prevention and initial response services. As noted above, shippers have also signed an Agreement for provision of these services by Alyeska. As a contractual matter, shippers must demonstrate financial responsibility to support their contractual commitments, including indemnifying Alyeska against liabilities it faces as a response action contractor. Alyeska must ensure that any shipper with whom it contracts to provide initial response services can provide indemnity for any liability to which Alyeska could be exposed in responding to a spill. Without financial responsibility (self-worth), such promises would, of course, be hollow.

We are aware that there is some concern because the insurance alternative to this financial responsibility requirement totals \$1.2 billion, which is a number that is obviously greater than the original \$1 billion. We believe this concern is based on a misunderstanding of the nature of the insurance alternative. To clarify this matter, we offer two important points. First, Tesoro was not able to meet the original requirement and is able to meet the new alternative. Obviously, the bill served an immediate purpose -- as a result of its enactment, Alyeska and Tesoro avoided the disruptive consequences of a disqualification of Tesoro to receive oil spill response services from Alyeska.

Second, the new alternative does not provide Alyeska the same amount or quality of protection that the original financial responsibility requirement provided. Alyeska decided that this reduction to accommodate Tesoro and others similarly situated was an appropriate risk to take in light of the partial limitation of response action contractor liability achieved through HB 196. Under the original financial responsibility requirement, four companies entered into agreements with Alyeska by demonstrating that they had available net assets in excess of \$1 billion. In order to gain the benefit of these companies' contractual promises to Alyeska, Alyeska only has to establish that the obligation exists. The funds are then available to satisfy the obligation.

Under the new insurance alternative, there are two important differences that illustrate the decreased protection offered to Alyeska by insurance. P&I Club coverage applies to the tanker itself, for the benefit of the tanker owner. P&I Clubs have made efforts to prevent Alyeska from making claims against that coverage for third party liability claims against Alyeska arising out of an oil spill response. In the case of Tesoro, Alyeska has done what it could to create a legal basis to achieve coverage for such claims under the P&I Club policies. The ultimate resolution of

Letter to Representative Hudson
February 5, 1991

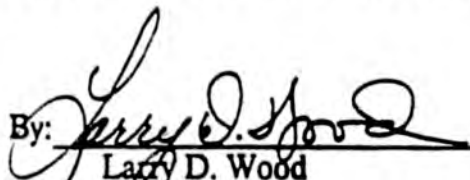
coverage would only occur after years of expensive litigation. It is possible the courts would determine that the P&I Club coverage provided no or only severely limited benefit to Alyeska. What remains then to provide coverage to Alyeska against third party liability claims is the \$500 million CGL insurance policy, which is one half the original amount of financial responsibility. Unlike financial responsibility, Alyeska's receipt of payment from the individual insurance underwriters that make up the \$500 million total is likely to face the additional hurdle of forcing these underwriters to pay, which involves overcoming defenses to coverage raised by the insurers.

Tesoro elected not to procure the full amount of \$500 million CGL insurance. Instead, Tesoro made up part of that total by a corporate guarantee. As a result, Alyeska's Agreement with Tesoro is even more complicated than what I have described.

Indeed, this is a complicated subject. If you would like more detailed information or the opportunity to discuss this, please contact Paul Richards or myself at your convenience.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY

By: 
Larry D. Wood
Senior Attorney - External Affairs

cc: Mr. Paul M. Richards

February 5, 1992

Alyeska Financial Responsibility Requirement

Alyeska operates the Trans Alaska Pipeline System on behalf of seven owner companies. Although none of these pipeline companies own, operate, or charter tankers, Alyeska has contracted to provide prevention and initial response services to tank vessel owners/operators/charterers ("shippers") in Prince William Sound. Shippers are required by state and federal laws to provide for personnel and equipment to escort vessels and to respond to tanker spills in Prince William Sound. Alyeska's prevention and initial response services are ancillary services provided to shippers so that they may continue to handle Alaska North Slope crude oil. Up to this point in time, only Alyeska has offered to provide these services. Nothing prevents others from doing so.

ADEC has approved the shippers' vessel contingency plans which incorporate Alyeska's Prince William Sound Tanker Spill Prevention and Response Plan ("Plan"). The Plan describes Alyeska's prevention and initial response services. Shippers have also signed an oil spill response services agreement for provision of these services by Alyeska. As a contractual matter, shippers must demonstrate financial responsibility to support their contractual commitments, including indemnifying Alyeska against liabilities it faces as a response action contractor. Alyeska must ensure that any shipper with whom it contracts to provide initial response services can provide indemnity for any liability to which Alyeska could be exposed in responding to a spill. Without financial responsibility such promises would, of course, be hollow. Financial responsibility (self worth) must be demonstrated in the amount of \$1 billion, but an insurance alternative in the amount of \$1.2 billion is also provided.

The financial responsibility and alternate insurance levels reflect a careful weighing of the risks which Alyeska faces as a responder, even after HB 196 and limited responder immunity passed last year. As you know, the limits of liability, and, importantly, the categories of types of damages which can be paid following an oil spill have increased substantially since 1989.

For example, in addition to removal costs, damages listed in the Oil Pollution Act of 1990 include damages to natural resources, real or personal property, subsistence use, lost government revenues, loss of profits and earning capacity, and the cost of additional public services. State law likewise imposes liability for removal and

containment costs, civil penalties, damages related to injury to persons, damage to public and private property, and natural resources, and loss of income and economic benefits.

In addition, recall that Exxon has expended roughly \$4 billion in the costs of containing and cleaning up oil, and resolving federal and state claims associated with the EXXON VALDEZ oil spill. Additional third party claims faced by it, and Alyeska exceed \$50 billion. Ironically, those who would suggest that Alyeska's financial responsibility requirement is "unreasonable," must also agree that it is remarkably low in comparison to Exxon's expenditures to date, and in light of the allegations still facing the defendants in federal and state courts.

Under the Oil Pollution Act, there are certain maximum monetary limits on a spiller for liability related to oil discharges. Financial responsibility must be demonstrated to meet this liability. For example, in the case of a tanker in excess of 3,000 gross tons, the liability limit is \$1,200 per gross ton, or \$10,000,000, whichever is greater. A tanker weighing 200,000 gross tons would have a limit of liability of \$240 million under this federal law. However, the liability limit will not apply in the case of violation of an applicable federal safety, construction, or operating regulation, gross negligence, willful misconduct, or failure or refusal to report an incident, provide reasonable cooperation and assistance, or to refuse to comply with a federal order without sufficient cause. An obvious concern is that, to avoid this limitation, plaintiffs will simply allege that "gross negligence" or the violation of a regulation has occurred as a result of every spill. If the limitation on liability is compromised every time even a minor safety regulation is remotely connected to a spill, the limitation will have little meaning.

Limited exemptions for responders liability for certain damages exist under both federal and state laws. But, there are no limitations for other responder liabilities under federal law. And, under state law, there are no limits on the amount of damages that may be assessed against either a spiller or a response action contractor. Financial responsibility requirements, therefore, are set at arbitrary amounts, in the case of a tank vessel, \$300, per incident, for each barrel of crude oil storage capacity, or \$100,000,000, whichever is greater. Importantly, the financial responsibility apparently extends only to claims asserted by public authorities attributable to cleanup and restoration costs, property damage, assessment of civil penalties, etc.

Thus, using either the federal liability limitation, or the federal and state financial responsibility requirements, as a guide for private parties to establish financial

responsibility requirements in response services agreements would be unhelpful and inappropriate. It would leave a responder unprotected. On the other hand, to promote more certainty when responders and shippers are negotiating the terms of financial responsibility provisions, the legislature may wish to adopt meaningful limitations of liability under state law.

VIA U.S. MAIL AND FACSIMILE

February 4, 1992

Harry R. Bader, Ph.D, Chairman
Citizens' Oversight Council on Oil and Other Hazardous Substances
3111 C Street, Suite 150
Anchorage, Alaska 99508

Re: Limited Responder Immunity in Alaska

Dear Chairman Bader:

We appreciate the opportunity to provide additional information to you and the Council prior to your final deliberations regarding the important issue of responder immunity.

1. Time Limit for Response Immunity

You asked for a recommendation on an appropriate time limit for responder immunity during a response to a spill or threat of a spill. The appropriate duration of the limited responder immunity should extend through the entire response as established by the U.S. government and 17 of 24 coastal states plus the Virgin Islands that have considered the issue. The notion of a time limit is unrealistic given the nature of oil spill response operations; so long as spilled oil remains on water or land, ongoing, expeditious action should be encouraged to remove it. No matter how remote, an "emergency" certainly exists for any community threatened by the impact of oil. In addition, the uncertainty when a time limit begins and ends following any particular "release," may deter prompt and continuous response action for a spill or a threat of spill.

For example, when will an arbitrary time limit begin and end for a mystery or orphan spill? What is the liability of a responder who responds to the report of a threatened spill only to discover a slow leak with no objective indication of when it started? As the arbitrary time limit draws to a close, won't responders be encouraged to withdraw? Will other responders be encouraged to enter the response at that time to insure continuity of personnel and equipment? What is the justification for an artificial barrier if the responder's immunity is only limited and

February 4, 1991

the original spiller is still financially responsible for any liability which a responder is relieved from?

Mr. Mertz also describes HB 196's time limit as "arbitrary." Indeed, crisis will certainly reign "far fewer days in some cases and far more in others." Page 34, Mertz report. Even California, which is the only other state to consider an arbitrary time limitation, recognizes that the initial 60 day period may have to be extended. In short, we urge the Council to avoid endorsing unnecessary and troublesome limitations upon federal and state efforts to ensure the availability of ample response resources when spills occur.

2. Classification of Responders

We understand that the Council may recommend that responders be classified according to how they are organized and funded: immunity would evidently be limited for some, more limited for others, and perhaps entirely unavailable in one case. As you know, discrimination amongst citizens, be they private or corporate, always calls for constitutional and other legal reviews to insure that principles of equal protection and fundamental fairness are not lost in government's efforts to regulate society.

Before legal analyses would even be undertaken, however, it seems clear that this responder classification proposal, if accepted by the legislature, would virtually insure that entire groups of responders may be unnecessarily driven out of the business. Again, the challenge we face is to support, not destroy or deter, the federal and state comprehensive oil spill response schemes by encouraging effective, prompt response efforts no matter who provides any type of care, assistance, or advice, so long as it is consistent with those schemes or government orders.

Dr. Bader, there is no rational basis for treating responders differently, particularly because response action should be encouraged from any source at any time throughout a release. Again, the spiller and his insurance will still be responsible for responder liabilities that are shielded by the proposed statute. Even under the exigencies of a spill response, a responder will only enjoy limited immunity; therefore, we can be assured that his actions will reflect that concern.

Finally, our materials also stress that Alaska should join with other states to adopt uniform laws in this area for the additional reason to promote uniformity of implementation and interpretation amongst the federal government and coastal states. This will, of course, encourage responders to cross state lines, and to loan

equipment and personnel, without suffering delays and uncertainties caused by an unwarranted, restrictive, and, possibly, oppressive limited responder immunity provision in Alaska.

3. Response to ADEC Orders

We understand that, as an apparent price to be paid for limited immunity, the Council may recommend that some response organizations be required, in advance, to agree to accept ADEC orders to respond to mystery or orphan spills in their area of operation.

As you may know, the United States and the State of Alaska have already been granted the authority to take over and arrange for the removal of spilled oil when circumstances call for it. This, of course, is one of the purposes to be served by industry-funded oil spill response funds. We are aware of no situation in Alaska where responders have purposefully failed or refused to provide services for the federal or state governments when requested to undertake or complete a spill response. Consequently, what justification is driving this proposal? Is it so important, and the prospects for the "worst case scenario" erroneously described in some reports to COC so imminent, as to require further limitation of responder immunity in our state? What responder will be in a position, in advance, to agree to provide services to the federal or state governments without also having a specific contract which establishes the type and nature of response, location, equipment and personnel needs, costs and billing arrangements, etc.? If a need for them exists, nothing prevents the state or federal government from negotiating those contracts now.

In short, requiring this and additional requirements as part of the price to be paid by responders for limited immunity promises instead to create confusion, uncertainty, and a reluctance to take action when oil spills occur.

4. The Pipeline Owner Companies Are Not Liable for Tanker Spills

We understand that COC may further recommend that the pipeline owner companies, as holders of the federal right of way permit, and Alyeska, as their operating agent, be directed under state law to respond to any tanker spill in Prince William Sound. We have already explained at some length that Mr. Frank's view that TAPAA already imposes such liability is flatly wrong, but we understand that special legislation may be recommended to "clarify" the matter and adopt Mr. Frank's view as a matter of state law.

Our materials explain that Alyeska operates the Trans Alaska Pipeline System on behalf of seven pipeline companies which own it. None of these own, operate, or charter tankers. Under federal and state law, tanker owners/operators/charterers are responsible for tanker operations, and Alyeska cannot and does not manage or control them. Provision has been made by tanker operators to provide contingency plans and to demonstrate financial responsibility for those operations. In addition to the constitutional and legal issues presented by this proposal, we urge that the Council also recognize that it entirely ignores the comprehensive liability, response, and financial responsibility regime established by Congress and the legislature for tanker operations in our state and elsewhere.

As we have also explained, Alyeska does provide initial response services to tanker owners/operators/charterers, and that this service is described in a plan and in response services agreements. As a contractual matter, tanker owners/operators/charterers must demonstrate financial responsibility to support their contractual commitments, including indemnifying Alyeska against liabilities it faces as a response action contractor. Alyeska must ensure that a shipper with whom it contracts to provide initial response services can provide indemnity for any liability to which Alyeska could be exposed in responding to a spill. Without financial responsibility such promises would, of course, be hollow. Financial responsibility (self worth) must be demonstrated in the amount of \$1 billion, and Tesoro has been permitted to support its contractual capabilities with a combination of insurance and a corporate guarantee in the total amount of \$1.2 billion.

We explained that, after enactment of HB 196 last year, Alyeska created this alternative to its \$1 billion financial responsibility requirement. The insurance may consist of \$700 million P&I marine insurance coverage for the vessel and \$500 million comprehensive general liability coverage that names Alyeska as an additional insured. There is no way that Tesoro could provide a corporate guarantee, bond, or letter of credit, as originally required by Alyeska's financial responsibility standards, for either \$1 billion or \$1.2 billion. Because of uncertainties associated with coverage of contractor claims against vessel marine insurance, and the added potential difficulty of enforcing insurance coverage generally, the quality of Alyeska's financial protection has diminished substantially. Yet, the parties reached this practical solution to a difficult problem after and because HB 196 passed last year. This insurance alternative will expire when HB 196 sunsets at the end of June, 1992.

February 4, 1991

Nonetheless, the Council has indicated that it may view this arrangement as "unreasonable," and is concerned that Alyeska may use limited responder immunity to drive this and other TAPS trade tanker operations "out of business." Nothing could be farther from the truth. Alyeska worked diligently with Tesoro to reach a solution to keep it in business, and we need legislative assistance to keep that solution in place.

Although certainly adjusted in Tesoro case because of a perceived reduction in the risks faced by Alyeska when HB 196 passed, the financial responsibility level reflects a careful weighing of the risks which remain. As you know, the limits of liability, and, importantly, the categories of types of damages which can be paid following an oil spill have increased substantially since 1989.

For example, in addition to removal costs, damages listed in the Oil Pollution Act of 1990 include damages to natural resources, real or personal property, subsistence use, lost government revenues, loss of profits and earning capacity, and additional public services. State law likewise includes removal and containment costs, civil penalties, and damages related to damage or injury to persons and to public and private property, natural resources, and loss of income and economic benefits. Limited exemptions for responders liability for certain damages exist under both federal and state laws.

In addition, recall that Exxon has expended roughly \$4 billion in the costs of containing and cleaning up oil, and resolving federal and state claims associated with the EXXON VALDEZ spill. Additional third party claims faced by it, and Alyeska exceed \$50 billion. Ironically, those who suggest that Alyeska's financial responsibility requirement is "unreasonable," must also agree that it is remarkably low in comparison to Exxon's expenditures to date, and in light of the allegations still facing the defendants in federal and state courts.

Under the Oil Pollution Act, there are certain maximum monetary limits on a spiller for liability related to oil discharges. Financial responsibility must be demonstrated to meet this liability. For example, in the case of a tanker in excess of 3,000 gross tons, the liability limit is \$1,200 per gross ton, or \$10,000,000, whichever is greater. A tanker weighing 200,000 gross tons would have a limit of liability of \$240 million under this federal law. However, the liability limit will not apply in the case of violation of an applicable federal safety, construction, or operating regulation, gross negligence, willful misconduct, or failure or refusal to report an incident, provide reasonable cooperation and assistance, or to refuse to comply with a federal order without sufficient cause. An obvious concern is that, to avoid this limitation,

plaintiffs will simply allege that "gross negligence" or the violation of a regulation has occurred as a result of every spill. If the limitation on liability is compromised every time even a minor safety regulation is remotely connected to a spill, the limitation will have little meaning.

And, under state law, there are no limits on the amount of damages that may be assessed against either a spiller or a response action contractor. Financial responsibility requirements, therefore, are set at arbitrary amounts, in the case of a tank vessel, \$300, per incident, for each barrel of crude oil storage capacity, or \$100,000,000, whichever is greater. Importantly, the financial responsibility apparently extends only to claims asserted by public authorities attributable to cleanup and restoration costs, property damage, assessment of civil penalties, etc.

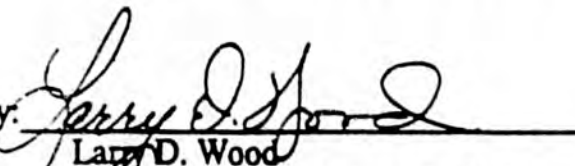
Thus, using either the federal liability limitation, or the federal and state financial responsibility requirements, as a guide to establish financial responsibility requirements contained in response services agreements is unhelpful and inappropriate. It would leave a responder unprotected.

On the other hand, to promote more certainty when responders and responsible parties are negotiating the terms of financial responsibility provisions, COC may wish to recommend that the legislature adopt meaningful limitations of liability under state law. If enacted, those limitations would be reflected in Alyeska's financial responsibility requirements.

We trust that this information will be useful as the Council considers what recommendations it will present to the legislature. Please let us know if there is additional information which we can provide to assist those efforts.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY

By: 
Larry D. Wood
Senior Attorney - External Affairs

cc: COC Members
Michele D. Brown, Esq.

January 30, 1992

Improving Good Samaritan Immunity for Oil Spill Response in Alaska

Good Samaritan laws encourage action to save lives and property during emergencies.

Alaska laws limit liability of individuals or organizations who provide emergency assistance. Examples include:

- Rendering care at accident scenes.
- Providing equipment or services requested by a police agency, fire department, or other governmental agency during a state of emergency.

Similarly, the federal Oil Pollution Act of 1990 ("OPA '90") and Alaska's HB 196 adopted responder immunity laws to encourage "immediate and effective" oil spill response action.

Without liability immunity, financial risks and liability exposures would deter cleanup contractors and cooperatives from prompt, aggressive action.

However, without legislative action this session, HB 196's provision for limited immunity against certain claims under state law will "sunset" in July 1992.

To help insure that effective and substantial resources are readily available to contain and cleanup oil spills, the state's responder immunity law should be improved and made permanent.

Although its scope is also limited, the federal response action immunity provision in OPA '90 (33 USC § 1321(b)(1)(c)(4)) is the best model.

To date, the Virgin Islands and 18 of the 24 coastal states (75%) have adopted virtually identical laws.

OPA '90 limits liability under federal law for response action in federal waters if it is consistent with the National Contingency Plan or federal directions. Responders are still liable for personal injuries and wrongful deaths, or if they are grossly negligent or engage in willful misconduct. Importantly, the responsible vessel owner, operator, or charterer is liable for any removal costs or damages that responders are relieved of.

In comparison, last session's HB 196 is the most restrictive responder immunity law in the country.

There is limited liability for response action contractors under state law if such action is not contrary to federal or state directions. *But, the action must not "substantially deviate" from an applicable contingency plan.* The liability limitation does not bar claims for personal injuries and death, *personal property damage not caused by oil*, or gross negligence or intentional misconduct. *The response immunity only applies to an act or omission that occurs within 15 days after a release.*

The OPA '90 Good Samaritan provision will encourage oil spill response organizations to quickly provide personnel and resources when spills are threatened or occur.

- A. There is no 15-day or other immunity time limit in the OPA '90 Good Samaritan provision.

HB 196's time limit is unrealistic given the nature of oil spill response operations; so long as spilled oil remains on water or land, ongoing, expeditious action should be encouraged to remove it. In addition, the uncertainty when a time limit begins and ends following a particular "release," may deter prompt and continuous response action for a spill or threat of a spill.

- B. All persons who render "care, assistance, or advice" have limited liability under OPA '90.

Although "response action contractors" in HB 196 includes "volunteers," nonvolunteers must be "carrying out [a response action] contract" or under the control of a response action contractor who is. But written contracts cannot describe all actions taken during a response. This unnecessary restriction will foster uncertainty regarding the scope of those persons and actions entitled to limited immunity under HB 196.

- C. Under OPA '90, the response action needs to be "consistent with" the National Contingency Plan ("NCP").

The NCP covers a broad array of actions "to minimize damage from oil . . . discharges." All actions within "the overall objectives of the NCP" fall within the immunity. In comparison, for response action contractors who have prepared or agreed to individual contingency plans, response action must not "substantially deviate" from such plans to claim limited immunity under HB 196.

Individual contingency plans cannot describe all necessary response actions, yet "substantial" deviations from those plans will not fall within the scope of limited immunity. Delays may result where plan amendments are required. Moreover, uncertainty about "substantial deviation" will foster controversy and litigation.

D. Damages to personal property need not be caused by oil to claim limited immunity under OPA '90.

Oil spills generate emergency actions other than those related to containing and cleaning up oil. HB 196's requirement that damage to tangible personal property be caused by oil to fall within the scope of the limited immunity is inappropriate and may have a chilling impact on responses.

E. OPA '90 responder immunity, or similar laws, have been adopted by the states which have considered the federal standard.

Unlike HB 196, the federal standard will be applied in many jurisdictions. Uniformity of interpretations is anticipated. This uniformity will encourage response organizations to cross state borders in the event or in anticipation of oil spills.

The best course is to replace HB 196 responder immunity with the federal Good Samaritan standard; however, Alaska's limited immunity law can be improved.

- "SUBSTANTIALLY DEVIATED" MUST BE DEFINED TO DESCRIBE ONLY MANAGEMENT, NOT OPERATIONAL, LEVEL DECISIONS.

No contingency plan can anticipate every development, including weather, location, time of day, and season. The response must adapt to the event. Thus, errors by operations personnel reacting to exigencies is expected; this is a key reason for limited responder immunity.

Responders should not incur liability for good faith, but negligent, decisions by response personnel in the field. Without a definition, this language offers no predictable liability exposure and will encourage litigation. In the letter of intent which accompanied HB 196, the legislature recognized this uncertainty and asked that the matter of a definition be studied.

- **ALASKA'S RESPONDER IMMUNITY LAW MUST NOT CHANGE RESPONSE PLANNING STANDARDS INTO CLEANUP STANDARDS.**

HB 567, Alaska's 1989 comprehensive oil spill prevention, contingency planning, and response legislation, states that its response planning standards do not constitute cleanup standards which must be met by a contingency plan holder. However, since response actions must not "substantially deviate" from a contingency plan to fall within the scope of HB 196 responder immunity, this analysis is inconsistent with HB 567. Clarifying language is needed.

- **THE HB 196 15-DAY IMMUNITY TIME LIMIT MUST BE ELIMINATED.**

This time limit is unrealistic given the nature of oil spill response operations; it is a major disincentive for responders to get involved and stay involved. Distant responders may be discouraged to send equipment, personnel, and other assistance because a short immunity period will largely expire during travel time. No time limit will encourage continuity of services and loaning of equipment in a massive spill response, and minimize turnover of experienced, skilled personnel.

- **THE LIMITED IMMUNITY SHOULD BE EXTENDED TO ACTIONS TAKEN TO PREVENT AN OIL SPILL.**

Prevention of an oil spill is, of course, the best course to protect our environment. Accordingly, the responder immunity laws in several states also offer limited protection to those who take actions to prevent such releases.

- **DAMAGES TO TANGIBLE PERSONAL PROPERTY SHOULD NOT NEED TO BE CAUSED BY OIL TO FALL WITHIN THE SCOPE OF LIMITED RESPONDER IMMUNITY.**

Oil spill responses will generate many other emergency actions other than those related to containing and cleaning up oil. Personal property may be damaged other than by oil. To avoid a chilling effect on response efforts, HB 196's requirement that only oil-damaged personal property falls within the scope of limited responder immunity should be deleted.

- **A TECHNICAL AMENDMENT SHOULD CLARIFY THAT THE STRICT LIABILITY STATUTE, AS 46.03.822(A), IS SUBJECT TO HB 196'S LIMITED RESPONDER IMMUNITY PROVISIONS.**

AS 46.03.822(a) imposes strict liability for damages and for response costs on certain persons should a release of a hazardous substance occur. For example, the owner

Page 2
January 30, 1992

of, and the person having control over, the hazardous substance are included. Also included are those persons who arrange for and transport a hazardous substance which is released. Last year, HB 196 provided for limited responder immunity from this and other laws, but, as a technical matter, this intention should be clarified by an amendment to AS 46.03.822(a).

Proposed Amendments to HB 196, Alaska's Responder Immunity Law

1. Add to AS 46.03.822(a), after "... (i) of this section," the following:
"
", and the provisions of AS 46.03.825,".

2. Add to AS 46.03.825(a) two new subsections as follows:

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

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

3. Delete AS 46.03.825(b)(2), and AS 46.03.825(b)(3).
4. Add to AS 46.03.825(d), after "but not limited to", the following:
"prevention,".

Oral Presentation to Citizens' Oversight Council, January 31, 1992
Prepared by Alyeska Pipeline Service Company

- Thank you for the opportunity to provide comment regarding the important issue of improving responder immunity in Alaska.
- We were also pleased to provide research materials regarding the laws of other states and trust that it was useful to the Council's work. We have also provided written comments relating to five reports submitted to as research and thank you for your consideration of them.
- Alyeska Pipeline Service Company ("Alyeska") operates and maintains the Trans Alaska Pipeline Service Company ("TAPS") on behalf of seven owner companies.
- The System stretches from Prudhoe Bay on Alaska's North Slope to Valdez where its 1,000 acre marine terminal loads southbound tankers with crude oil.
- Although neither Alyeska nor the pipeline owner companies own or operate tankers, it has contracted with tanker owners/operators/charterers to provide an initial response to an oil spill from their vessels in PWS.
- The State requires that crude oil tankers transiting PWS have oil spill contingency plans. Alyeska developed an initial response plan (the PWS Tanker Spill Prevention and Response Plan) which describes the services it offers to tank vessels as an initial response contractor.
- Other response action contractors could also provide these services.
- Under the terms of the initial response plan and the Oil Spill Response Service Agreements signed with tanker owners/operators/charterers, Alyeska provides the necessary response vessels, equipment, personnel and training to respond to an oil spill for as long as the first 72 hours following a release.
- During this time, management of the response will transfer from Alyeska to the contracting spiller or to the federal On Scene Coordinator.
- To provide these services, Alyeska has chartered escort response vessels, tugs, barges, and an oil spill recovery vessel. It has ocean and rapid deployment boom, seaskimmers, and related response equipment.
- Alyeska has also developed area response centers, placed fishing vessels on contract to supplement response efforts, and prestaged equipment to protect hatcheries and other sensitive areas.

- Escort/response vessels are used for day-to-day escort of loaded tankers as a prevention measure. Vessel crews are drilled in responding to large spills and in employing multi-vessel and multi-boom configurations.
- Several reports express opinions that response action contractor ("RAC") liabilities ought actually to be increased, not limited, when it comes to response action.
- For example, the Mertz and Straube reports suggest that RAC's ought to be subject to direct state control in the event that an insolvent or recalcitrant spiller refuses to finance.
- Imposing spiller liability on RACs to pay for the cost of oil spill response will deter or eliminate spill response, not promote it.
- This notion flies in the face of the comprehensive federal and state schemes to, on the one hand, encourage prompt, bold response action, and, on the other, require that spiller, his insurance, or, in some cases, industry-financed funds pay for it.
- In addition, this possibility described as a worst case scenario in the Mertz, Straube, and Frank reports is admittedly remote. It would depend for example on the simultaneous insolvency of a spiller, his financial responsibility, and federal and state oil spill response funds. Yet, it this possibility which in these individuals opinion ought to fuel a step toward closing out response action by imposing new liabilities.
- A fundamental reason spill funds exist is to provide a safety net for just the dark scenario which is described. But this point seems to have been lost.
- In an interesting paradox, the Mertz report indicates the justification for these new RAC duties and liabilities would be the possibility of all these insolvencies, yet, in the case where a mystery or orphan spill is most likely require a third party response, and the state moves in to do so, it will enjoy limited responder immunity under a separate statute. Why are there different rules for private RACs?
- The Frank report evidently recommends that Alyeska not be entitled to even limited responder immunity because, in this attorney's opinion, the holders of the federal pipeline right-of-way permit are liable for any tanker spills involved Alaska North Slope crude oil. For the reasons explained in Alyeska's written response, this is incorrect.

- Judge Holland in the *Exxon Valdez* litigation has already ruled that the people strictly liable under the Trans Alaska Pipeline Authorization Act are the vessel owner and operator, and the Trans Alaska Pipeline Liability Fund.
- In any event, the terms of most responder immunity laws state quite clearly that a RAC which is otherwise a responsible party for a spill is not entitled to assert limited immunity.
- In our response to the Vogt report, we point out that personnel and equipment to escort vessels and to respond to spills in PWS are required by state laws, and Alyeska has offered to provide those services in the absence of anyone else. The costs of Alyeska's initial response services for tanker owners/operators/charters are included by the TAPS carriers in the tariff charges for oil delivered to Valdez. This is an equitable distribution of the costs of those services amongst those who receive them.
- None of this detracts from Alyeska's status as an initial response action contractor in Prince William Sound, nor does it create some sort of state equity in the prevention and response equipment, so as to justify its uncompensated use for a mystery or orphan tanker spill. Interestingly, if the state owned and used that equipment, the Mertz report explains that it would enjoy limited responder immunity in the event of a response.
- Lastly, the Mertz report is incorrect. Following the passage of limited responder immunity law year, Alyeska agreed to make changes in how Tesoro demonstrates its capacity to pay for initial response services. Instead of requiring financial responsibility, that is a demonstration of self-worth, Tesoro now provides this evidence through insurance. Because of the perceived reduction in risk, Alyeska has accepted less in the overall quality of Tesoro's demonstration of that capacity as explained in our written remarks.
- For the balance of our remarks, we will refer to the attached position paper regarding improving responder immunity.

To: Mike Abbott

January 31, 1992

From: R.I. Shoaf *RI Shoaf*

Immediately prior to March 1989, Alyeska Pipeline had unilateral contracts with vessels calling at Valdez, through the Port Information Manual, whereby Alyeska would provide oil spill response for TAPS trade vessels. Under the terms of the Port Information manual, a contract was created between a vessel, and its operator, owner and charterer, and Alyeska each time a vessel lifted oil at Valdez. The contract required Alyeska to respond to a spill from the vessel according to Alyeska's oil spill contingency plan for Prince William Sound, which was approved by the state in 1987. The contract required a vessel to reimburse all of Alyeska's costs in responding to a spill and to indemnify Alyeska from third party claims. The contract did not require the vessels to demonstrate an ability to indemnify Alyeska. When the Oil Spill Response Services Agreements went into effect on November 1, 1990, bilateral contracts were formed that were similar to the unilateral contracts created under the Port Information Manual, but added the requirement that vessels demonstrate their ability to indemnify Alyeska. This requirement was added in direct response to the magnitude of claims asserted against Alyeska after the Exxon Valdez accident.

January 31, 1992

Michele D. Brown, Esq.
Executive Director
Citizens' Oversight Council on Oil and Other Hazardous Substances
3111 C Street, Suite 150
Anchorage, Alaska 99508

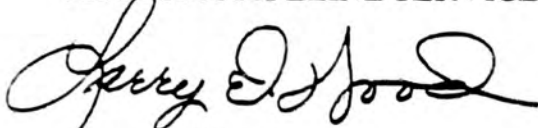
Re: Alyeska Comments Regarding Reports Submitted to the Citizens'
Oversight Council on Oil and Other Hazardous Substances

Dear Ms. Brown:

Enclosed please find comments respectfully submitted by Alyeska Pipeline Service Company ("Alyeska") to the Citizens' Oversight Council on Oil and Other Hazardous Substances. The comments relate to reports which have been submitted to the Council. Thank you for the opportunity to participate in the Council's consideration of the important matter of limited responder immunity.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY



Larry D. Wood
Senior Attorney - External Affairs

Attachments

January 31, 1992

Response to Memorandum Relating to the State of Alaska's Participation in Spill Response and Preparedness in the State Prepared by Deborah Vogt**Summary**

This report, as well as several pages of the TAPAA report prepared by Michael J. Frank (pages 34 - 36), is committed in large part to debating whether Alyeska's prevention and initial response services provided to contracting vessel owners/operators/charterers in Prince William Sound are best handled as tariff charges for oil delivered to Valdez or as direct charges to vessels which contract for those services. In addition, the Vogt report contains a considerable amount of mathematical analysis which has not been reviewed for accuracy in the short time available.

Alyeska's November 20, 1991, letter which is attached to the Vogt report, explains at some length how and why the TAPS carriers include the costs of Alyeska's Prince William Sound effort in tariff charges for oil delivered to Valdez. However, these services are not being provided pursuant to any common carrier obligations of the TAPS carriers or their agent, Alyeska. Personnel and equipment to escort vessels and to respond to spills in Prince William Sound are required by state and federal laws. In the spring of 1989, using a series of emergency orders and Consent Agreements, the State of Alaska compelled Alyeska to develop and provide a tanker escort system and to greatly increase response equipment and personnel beyond what had been approved in 1987. On November 1, 1990 Alyeska's Prince William Sound contingency plan and the 1989 emergency orders and Consent Agreements expired when the state approved vessel contingency plans, held by the owners or operators of those vessels, as required by AS 46.04.030(c). Those approved vessel contingency plans incorporated Alyeska's Prince William Sound Tanker Spill Prevention and Response Plan, whereby Alyeska, as a response action contractor, is committed to provide certain prevention and initial response services to tankers that have a Response Agreement with Alyeska. Up to this point in time, only Alyeska has offered to provide these services. Nothing prevents others from doing so.

These services are ancillary services provided to shippers so that they may continue to handle Alaska North Slope ("ANS") crude oil. As a result, the pipeline may continue to carry ANS crude oil, and provide revenues for state services. The practice of including the costs of those services in tariff charges for oil delivered to Valdez is, in fact, an equitable distribution of the costs of those services amongst those who receive them. Finally, the owners of the Trans Alaska Pipeline System are not vessel owners (i.e., shippers). The shipping companies are separate and distinct from the carriers.

Despite Ms. Vogt's suggestion, none of this detracts from Alyeska's status as an initial response action contractor in Prince William Sound, nor does it create some sort of state equity interest in the prevention and response equipment, so as to justify its uncompensated use for a mystery or orphan tanker spill. Alyeska's prevention and response resources are available only for vessels in the TAPS trade that have Oil Spill

Response Services Agreements with Alyeska. Under the terms of the vessels' approved contingency plans, those resources must be available in Prince William Sound, ready to respond. There are only a few exceptions to this requirement; for example a small percentage of the response resources may be sent to other areas for oil spill response with prior DEC approval. AS 46.04.030(o). Moreover, the premise that Alyeska, as agent for the holders of the federal pipeline right-of-way, is liable for tanker spills is flatly wrong as explained in Alyeska's comments to the Frank report.

The Federal Energy Regulatory Commission ("FERC") is authorized to determine whether costs that the carriers record should be included in their cost of service and whether those services are reasonable. However, it does not follow that FERC has the authority to decide whether financial responsibility and insurance requirements are appropriate. We are aware of no basis for Ms. Vogt's statement, at page 18, that FERC has such authority.

LDW:vogt/cas

January 31, 1992

**Response to Memorandum Relating to Contingency Plan Requirements Under
OPA '90 Prepared by Michele Straube****Summary**

The U.S. Coast Guard's disinclination to force a "... RAC [response action contractor] to respond if the Holder [of a contingency plan] did not concur" encourages prompt and aggressive response action, despite suggestions in this memorandum to the contrary. Page 10, footnote 29. If an RAC is aware that the state or federal governments will essentially impose spiller liability for response action if an RAC contracts to provide services to a spiller, the RAC will obviously refuse to offer those services. As noted by the Coast Guard, all of OPA '90's statutory requirements -- strict liability, treble damages, contingency planning, periodic drills -- illustrate the point that it is in the responsible party's best interest to respond to spills and to proceed expeditiously, without objection. *Id.* OPA '90 and state financial responsibility requirements and the safety net of industry-financed state and federal response funds make the "worst case scenario" (the apparent and simultaneous insolvency of a shipper, its insurance, and state and federal response funds darkly described on page 11) an extremely remote possibility.

Nonetheless, and fueled by this speculation, the memorandum implies that the state should move ahead, despite the recognized uncertainty of federal preemption and constitutional limitations, "by imposing liability on RACs [to bear the costs and liabilities of spill response should a spiller fail to]." Page 15. This step would most certainly defeat the comprehensive approach taken by federal and state governments to, on the one hand, insure prompt, effective response to oil spills, and, on the other, require that costs be borne by the spiller, his evidence of financial responsibility, and, in some cases, oil spill response funds. Unfortunately, the Coast Guards' answer to the "worst case scenario" question seems to have been largely ignored: "... the OSC could direct the RAC to implement the approved contingency plan and reimburse the RAC's costs from the Fund." Page 10. In addition, the memorandum fails to consider that the Coast Guard has urged the states to adopt the federal responder immunity standard to insure "the availability of a viable private sector capability to respond to oil spills and their threats ... [as] an absolutely essential element of a national oil pollution response system." Contractor Immunity Provision: State Oil Spill Laws, Commandant, U.S.C.G. (May 31, 1991).

LDW:strubi/cas

January 31, 1992

**Response to HB 196 Report on Response Action Contractors Prepared by the
Alaska Department of Environmental Conservation****Summary**

This memorandum incorrectly states that "[n]one of the RACs have had experience with claims for damages due to spills or to alleged negligence***." Page 5. Alyeska Pipeline Service Company ("Alyeska") reported that such claims had been asserted in the Exxon Valdez litigation. It is our understanding that Exxon Shipping Company's long term response action contractor, VECO, has also been named as a defendant in virtually all of the spill litigation. Potential liabilities associated with such claims are, therefore, not an imagined concern.

The memorandum also incorrectly asserts that "[o]ther industry response organizations not so structured [to function independently] may not have a relationship similar to RACs. In some cases the owner companies may own and operate an oil terminal, tankers and the response organization." Page 9. However, Alyeska is an initial response action contractor which has agreed to provide initial response services to tanker owners/operators/charterers. Although Alyeska is the common operating agent for the seven holders of the federal and state rights-of-way for TAPS who own the pipeline, terminal, and related properties, none of these companies own tank vessels or consequently hold vessel oil spill prevention and response plans. To answer the agency's rhetorical questions on page 10, Alyeska, as agent for the pipeline owner companies, is under the same contractual obligations to provide initial response services to these tanker owners/operators/charterers as would be any other RAC that signed a response services agreement. The terms of that agreement call for Alyeska to assume responsibility for spill response operations for as long as the first 72 hours following the spill during which time the contracting tanker owner/operator/charterer will assume spill management responsibilities. Hence, during this time, and to the extent it provides continuing response services, Alyeska faces the same risks as other RACs and is entitled to the same immunity from liability available to RACs generally.

LDW:ADEC/cas

January 31, 1992

**MEMORANDUM OF ALYESKA PIPELINE
SERVICES COMPANY REGARDING****THE LEGAL RELATIONSHIP
BETWEEN
OIL SPILL RESPONSE ACTION CONTRACTORS
AND
OTHER PARTIES TO AN OIL SPILL**

Alyeska Pipeline Service Company (Alyeska) agrees with Mr. Mertz and Mr. Koester that in imposing liability on oil spill response action contractors (RAC): "The bottom line must involve balancing the need for fair and full compensation for all spill injuries with the need for a liability scheme that does not discourage response action contractors from acting to prevent spill damage." Mertz and Koester report (Report) at page 34. Generally, any public interest in expanding the number of parties who might provide compensation for damages does not outweigh the stronger public interest in encouraging rapid, aggressive response to oil spills. The Citizens' Oversight Council should balance all public interests in making its recommendations to the Legislature regarding whether and to what extent Alyeska should reduce the present limitation on liability for RACs. It should consider that (1) limiting the liability of response action contractors does not reduce the liability of the spiller; (2) financial responsibility requirements reduce the likelihood that the spiller will be insolvent; (3) federal and state oil spill funds provide a safety net; and (4) damages can be reduced most effectively if RACs respond boldly, quickly, and efficiently under the emergency conditions that arise in an oil spill.

Mr. Mertz and Mr. Koester discuss a number of basic legal principles: common law negligence, with special rules for "abnormally dangerous" activities; indemnification and the public duty exception; nondelegable duty; respondeat superior. The Report incorrectly implies that crude oil is a hazardous substance and that the carriage and release of crude oil is an "ultrahazardous" activity. Report at pages 3-6. Only a few activities that involve a risk of serious harm that cannot be eliminated by the exercise of "utmost care" by the parties involved are considered

"ultrahazardous" under Alaska common law. Matomco Oil Company, Inc. v. Arctic Mechanical, Inc., 796 P.2d 1336 (Alaska 1990).

Furthermore, common law legal principles have been developed by federal and state courts through decisions allocating the rights and responsibilities of the parties before them. The obvious conclusion to be drawn from the Report is that it is very difficult to predict what a party's liability may be for any act or failure to act. Legislatures have recognized their duty and responsibility to express public policies by adjusting these principles for categories of potential liability. For example, in response to concerns about rising medical and insurance costs, the Alaska Legislature and other legislatures set limits on liability and reallocated responsibilities for tort damages by eliminating joint and several liability. Similarly and appropriately, the Alaska Legislature correctly limited the liability of RACs.

Alyeska responds to comments and recommendations made in the Report as follows:

1. The limitation on liability for RACs will not prevent the recovery of damages by injured parties. The Report erroneously states that contract provisions and statutory exemptions for RACs reduce the overall liability to such an extent that parties who have been damaged may not be compensated. Report at pages 17, 33 and 34. This simply is not true. First, both the Alaska Legislature and Congress have created funds to reimburse parties damaged by oil spills. Second, under both federal and state law, the spiller is strictly liable for damages caused by spills. In fact, the Report acknowledges this by stating that even the common law has placed "a heavy burden, including strict liability, on parties responsible for the safe storage and transportation of oil, and often makes them liable for the acts of employees and contractors." Report at page 9.

Under Alaska law, the spiller's strict liability extends to any damage caused by an act or omission of an RAC responding to a spill. AS 46.03.822(k). The Report states, correctly, that the legislature intended to lay the burden for paying for any damages caused by the RAC on the party responsible for the spill. Report at page 14. As a result of this provision, the responder exemption cannot "lessen" the overall liability burden as the Report asserts at page 18. The exemption is hardly "generous," as characterized by the Report.

The exemption encourages responders to act by assuring them that certain acts will not create liability. Conversely, potential liability would discourage effective response. The Report acknowledges this by stating, "Almost all [RACs] considered the potential for claims to be a concern." Report at page 21.

Similarly, indemnity agreements do not allow parties who are strictly liable to "escape" liability, as the Report asserts at page 18. Under Alaska law, indemnification agreements are "not effective to transfer liability" from a person who might be strictly liable. AS 46.03.822(g).

The Report states that "it is possible" that limitations on liability may prevent recovery of damages by parties injured where there is no other financially solvent responsible parties. Report at page 17. Importantly, such a possibility would depend upon state and federal errors in approving evidence of a spiller's financial responsibility to begin with and in administering state and federal funds which exist in part to clean up and to pay for "mystery" and "orphan" spills. Yet, this remote possibility fuels the reports' central premise that RACs should agree to adhere to the state's orders should a spiller and his insurers become simultaneously insolvent. Ironically, the report recognizes that the proposal would probably discourage response action and amount to an unlawful taking of private property. The Report acknowledges the taking issue in its statement at page 33 that requiring RACs to have a direct contractual relationship with the State "would probably be been as an illegal taking and could require compensation to the RAC itself."

Indeed, elevating RACs to the same level of liability as the spiller directly contradicts and defeats the comprehensive framework of state and federal oil spill response laws to, on the one hand, promote quick, effective action, and on the other, rely on spiller liability, financial responsibility, and federal and state industry-supported funds to pay for it. Instead of encouraging response action by imposing limited liability, the report proposal would largely deter or eliminate it by imposing spiller liability on responders in direct defiance of congressional and legislative intent. Remote possibilities should not likewise support the Council's recommendations; we urge that they be supported instead by a careful and realistic weighing of public interests and goals.

The Report also states that "obtaining compensation (from state and federal funds) may be too costly or complicated for the small injured party." Report at page 33. Taking away the limited immunity now provided to RACs will not provide direct compensation to an injured party seeking compensation. Liability would probably only be decided through costly and complicated litigation. A primary goal of the federal fund is to provide people faster, more efficient, compensation than can be gained through litigation.

2. Alaska agrees with the statement at page 34 of the Report that the 15-day limit on the immunity provided is arbitrary. HB 196's time limit is unrealistic given the nature of oil spill response operations; every spill will be different. So long as

spilled oil remains on water or land, ongoing, expeditious action should be encouraged to remove it.

3. As a matter of public policy, the liability of an RAC should be limited. An RAC is responding if, and only if, there already has been a spill. Thus, an emergency exists. Under exigent circumstances, all parties, including RACs and governments, should react and respond quickly and efficiently. Principles of negligence do not make sense, and it is difficult for anyone to determine, especially after the fact in a courtroom, what was "reasonable under the circumstances," as the Report implies at page 34.

On March 26, 1991, in addressing the House Resources Committee prior to adoption of House Bill 196, Representative Hudson noted that this bill would shift the liability for simple negligence from an innocent spill response action contractor to the party responsible for the spill. He correctly noted that under this exemption, in responding to a spill, an RAC assumes liability for any damage caused by its own recklessness or gross negligence. The committee also heard testimony from Jon Tillinghast on behalf of Tesoro and Conoco, that Pacific Fisheries Legislative Task Force, the U. S. Coast Guard, the California Sierra Club, the International Bird Rescue Research Center, and the Ventura County Commercial Fishermen's Association have supported RAC exemption provisions. To date, the Virgin Islands and 18 of 24 coastal states (75%) have adopted virtually identical laws, that provide greater RAC immunity from liability than HB 196.

Later, on April 23, 1991, Representative Hudson commented to the House Judiciary Committee that by being more consistent with the laws of other states and federal law, national and regional RACs would be more inclined to respond to spills in Alaska.

4. The level of competence of an RAC and how it and the plan holder will respond can best be evaluated in advance of a spill by review of the oil discharge prevention and response plan and through DEC's authority to require training programs and spill drills.

5. Parties must be allowed to define their relative rights and responsibilities through contract. The Legislature has authorized limited state review of response action contracts. Regulations drafted by the Alaska Department of Environmental Conservation to implement House Bill 567 will require a plan holder who proposes to use the services of any RACs to (1) identify those RACs, (2) summarize each agreement or contract, and (3) describe the equipment and services to be provided by the RAC. However, the scope of indemnity provisions and the degree of control retained by the spiller are basic provisions that must be negotiated by the contingency plan holder and the RAC, based on circumstances and needs unique to the contracting parties, such as oil spill response

needs; whether the RAC is a full time, private response organization, an oil spill cooperative or a fisherman; and, certainly, the potential liability to which the plan holder is exposed by its operations.

The Report expresses surprise at the diversity among such contracts. Report at page 19. Of course the terms will vary from contract to contract. The contracts must reflect the needs of each party. However, the parties allocate their responsibilities for damages, they cannot avoid their liabilities to third parties and to the State and federal government, as stated in law.

Furthermore, the discussion of contracts, at least insofar as it relates to the two industry co-ops, (Report at page 19) wholly ignores the distinction between industry co-ops and private contractors. Industry co-ops are voluntary organizations of companies that have banded together to amass oil spill response equipment and response capabilities for their mutual benefit and, in the case of one of them, for social welfare purposes.

These co-ops are operated on a non-profit basis, and little attempt is made to recover even the indirect costs of response activities, such as overhead and staff time. The co-ops are not intended to, and do not, operate in a way that would enable them to accumulate loss reserves or to purchase expensive insurance for their protection. The response action contracts they have adopted are established in their charters or bylaws and cannot be negotiated, at least with respect to indemnity. The terms of the indemnity agreements reflect not so much the business acumen or negotiation strengths of the co-ops as their status as voluntary, non-profit organizations.

In particular, the Report discusses the Alyeska response services agreements and implies that it is inappropriate for Alyeska to require one billion dollars in financial responsibility. Report at page 25. Alyeska must ensure that a shipper with whom it contracts to provide initial response services can provide indemnity for any liability to which Alyeska could be exposed in responding to a spill. Alyeska is not an insurer which could otherwise spread the financial burden of a loss amongst a number of insureds; each spiller must demonstrate the wherewithal to pay for all the costs associated with its spill. Particularly, in light of recent changes in the types of claims and variety of damages which can be associated with federal and state oil spill litigation, this financial responsibility requirement is reasonable. In light of the magnitude of claims filed after recent oil spill incidents, this figure is reasonable.

Additionally the Report states that Alyeska has "raised rather than lowered" the financial responsibility requirements for Tesoro. Report at page 25, n. 25. After the legislature limited the liability of RACs, thus reducing the perceived risks associated

with spill response, Alyeska carefully considered the matter and changed the manner in which Tesoro could demonstrate its capability to meet its contractual obligations to Alyeska. After enactment of HB 196, Alyeska created an alternative to its \$1 billion financial responsibility requirement. This alternative allows any company to utilize insurance rather than a corporate guarantee. The insurance may consist of \$700 million P&I coverage for the vessel and \$500 million comprehensive general liability coverage that names Alyeska as an additional insured. Alyeska agreed to allow Tesoro to use the insurance alternative through a combination of marine insurance, comprehensive general liability insurance, and corporate guaranties, as opposed to a pre-existing requirement that it provide a corporate guarantee purely by the availability of cash and other self-worth. There is no way that Tesoro could provide a corporate guarantee, bond or letter of credit, as originally required by Alyeska's financial responsibility standards, for either one or \$1 or \$1.2 billion. Because of uncertainties associated with coverage of contractor claims against vessel marine insurance, and added potential difficulty of enforcing insurance coverage generally, the quality of Alyeska's financial protection has diminished substantially. Yet, the parties reached this practical solution to a difficult problem after and because HB 196 passed last year -- despite the Report's implications to the contrary. This insurance alternative will expire when HB 196 sunsets at the end of June, 1992.

6. The same exemption for RACs should be available.

Alyeska's concerns regarding limited immunity for RACs are identical to those expressed in the Report regarding the potential liability of the State or of a municipality for managing a spill response. Report at page 28. The Report acknowledges that the State, municipalities, and villages enjoy limited responder immunity. AS 46.03.822(h). In its discussion of the State's interest in shifting to the another party any potential liability, the Report notes that the State may "attempt to fend off liability from below by requiring RACs it employs to indemnify it for their misdeeds, and it could require indemnification for its own misdeeds." Report at page 28. But private industry has the same concerns. An RAC responding on behalf of industry must be treated the same as a public RAC. The public policy is the same: to encourage responders to respond quickly, aggressively and most effectively under the circumstances.

7. The State should not attempt to exercise direct control over RACs. Through the contingency plan holder the State has sufficient ability to oversee RAC capabilities on behalf of the plan holder. The Report notes that the State's direct authority over plan holders does not extend to authority over RACs. Report at page 31. However, it encourages the State to expand its authority over RACs. Report at page 32. This will not provide more effective spill response. The Report correctly notes that

while the State may have an interest in directing an RAC response to a spill, increases in the regulatory burden will discourage RACs altogether and "State restrictions on RAC contracts could simply result in fewer RACs willing to engage in response action." Report at pages 5, 26.

The Report recommends that RACs be subjected to the same governmental oversight as plan holders. Report at page 35. Such a system would eliminate the incentive of a party to enter into a response action contract, unless the state became a party to the contract and agreed to pay the response costs. This would be a dramatic change in spill response practices.

In conclusion, it is good public policy to encourage those who have the capacity and the skills to help in an emergency to do so. Private parties at risk from oil spill damage are better protected from insolvent spillers by financial responsibility requirements and by federal and state liability funds than by imposing liability on RACs. Reducing incentives to enter into RACs or to form spill cooperatives will only reduce the number of entities willing and able to respond to spills.

January 30, 1992

Michele D. Brown, Esq.
Executive Director
Citizens' Oversight Council
on Oil and Other Hazardous Substances
3111 C Street, Suite 150
Anchorage, Alaska 99508

Re: Alyeska's Comments Related to Trans Alaska Pipeline Authorization Act
Memorandum

Dear Ms. Brown:

Enclosed please find comments respectfully submitted by Alyeska Pipeline Service Company ("Alyeska") to the Citizens' Oversight Council on Oil and Other Hazardous Substances. The comments relate to a memorandum by Mr. Michael J. Frank entitled "HB 196 Research Project: Trans Alaska Pipeline Authorization Act." A summary accompanies our remarks. Thank you for the opportunity to participate in the Council's consideration of the important matter of limited responder immunity.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY



Larry D. Wood
Senior Attorney-External Affairs

LDW42/cas

Attachments . . .

January 30, 1992

**Response to Memorandum
Regarding the Trans Alaska Pipeline Authorization Act
Prepared By Michael J. Frank**

Summary

The Trans Alaska Pipeline Authorization Act ("TAPAA"), 43 USC 1651 et. seq., makes the owner/operator of a vessel, not Alyeska or the holders of the right-of-way, strictly liable for any oil spill from that vessel in Prince William Sound. This statutory allocation of liability is consistent with other state and federal laws that make the owner/operator of a vessel responsible for responding to and cleaning up oil spills from the vessel.

TAPAA does not require Alyeska to respond to vessel spills, nor does it make Alyeska or the holders of the right-of-way strictly liable for damages caused by such spills. Indeed, the legislative history of TAPAA demonstrates that Congress rejected proposed statutory language that would have made the holders of the right-of-way strictly liable for vessel spills.

LDW43/cas

**Memorandum Of Alyeska Pipeline
Service Company Regarding Liability
Under Trans Alaska Pipeline Authorization
Act for Oil Spills From Vessels**

Introduction

Alyeska Pipeline Service Company ("Alyeska") has reviewed the January 13, 1992, research project memorandum Michael J. Frank regarding the Trans Alaska Pipeline Authorization Act ("TAPAA"). 43 U.S.C. § 1651 et seq. Alyeska believes that the memorandum incorrectly states Alyeska's position with respect to spills from vessels in Prince William Sound, and that it reaches erroneous legal conclusions regarding Alyeska's liability for vessel spills under TAPAA. Accordingly, Alyeska is submitting this memorandum to the Citizens Oversight Council on Oil and Other Hazardous Substances to correctly state Alyeska's position.

1. Alyeska's Legal Posture Since the T/V EXXON VALDEZ Oil Spill.

Mr. Frank's memorandum asserts, at page 28, that "Since the T/V EXXON VALDEZ oil spill, Alyeska has publicly denied that it has ever been required to respond to a tanker spill of TAPS oil." This is not a correct statement of Alyeska's position.

Alyeska has acknowledged and continues to acknowledge (1) that at the time of the T/V EXXON VALDEZ oil spill, Alyeska had in effect an Oil Spill Contingency Plan that provided that Alyeska would respond to spills of TAPS oil from vessels within Prince William Sound; (2) that Alyeska was obligated to respond in accordance with its Contingency Plan; and (3) that, in light of federal and Alaska law

imposing responsibility for oil spills from vessels on the owner-operator of the vessel, Alyeska was obligated to provide an initial response to a vessel spill until such time as the owner/operator of the vessel arrived on scene and was in a position to assume responsibility for the response. Alyeska's intention to provide an initial response and then hand-off the response effort to the owner/operator of the vessel was approved by the State of Alaska, both in spill drills held before the T/V EXXON VALDEZ incident, and during the response to the T/V EXXON VALDEZ oil spill itself. At the time of the T/V EXXON VALDEZ spill, the ultimate responsibility of the owner/operator of the vessel to respond to vessel spills, to pay for the cleanup of such spills, and to compensate those public and private entities damaged by such spills was well established under both federal and state law. See, e.g., AS 46.03.822 (owner/operator of vessel liable for all public and private damages from oil spills); Clean Water Act, 33 U.S.C. 1321 (owner/operator liable for cleanup of oil spills, including cleanup costs and natural resource damages); TAPAA, 43 U.S.C. § 1653(c) (owner/operator of vessel and Trans Alaska Liability Fund liable for damages caused by vessel spills).

2. Liability for Vessel Spills Under TAPAA

Mr. Frank's memorandum erroneously suggests that Alyeska and the holders of the right-of-way are strictly liable for vessel spills under TAPAA. As noted above, TAPAA makes the owner/operator of a vessel, rather than Alyeska or the holders of the right-of-way, strictly liable for vessel spills in Prince William Sound. 43 U.S.C. § 1653(c).

Under the comprehensive liability framework created by Congressional

authorization (TAPAA) of a federal grant of rights-of-way across federal land in Alaska for pipeline construction and operation:

1. The right-of-way holders are strictly liable for environmental damages occurring from their activities along or in the vicinity of the pipeline right-of-way.
2. The right-of-way holders must control and remove pollution along or adjacent to the pipeline right-of-way as a result of their activities.
3. Vessel owners and operators carrying oil transported through the pipeline are jointly and severally strictly liable, along with the Trans Alaska Liability Fund, for damages, including cleanup costs, resulting from discharges of oil from their vessel.
4. Under TAPAA, Alyeska and the right-of-way holders are not strictly liable for spills from vessels. The right-of-way holders and Alyeska are not required by TAPAA to cleanup oil spilled from vessels in Prince William Sound.

In oil spill litigation pending in Alaska federal court, Judge Holland has already ruled that, under TAPAA, only the owner or operator of the vessel and the Trans Alaska Pipeline Liability Fund are liable for vessel spills. "Those people strictly liable under TAPAA are the vessel owner and operator, and the Fund." In re Glacier Bay, No. A88-115 Civil (Order Filed July 26, 1991), at 20.

Mr. Frank nevertheless attempts to argue that Alyeska and the holders of the right-of-way are liable for vessel spills under subsections (a) or (b) of Section 1653. His analysis is seriously flawed. Both of these subsections are inapplicable to the discharge of oil from tankers in transit to and from the Valdez terminal.

Subsection (a) imposes strict liability on the holder of the pipeline right-of-way for "damages in connection with or resulting from activities along or in the vicinity of" the right-of-way. Of course, one could argue that, in a literal sense, every vessel spill from a tanker transporting Alaska North Slope crude oil is "in connection with" activities along the right-of-way. But for the activities along the pipeline right-of-way, the vessel could not have been loaded with ANS crude oil. But as the Ninth Circuit has made clear, common sense rather than a literal or mechanical approach must govern interpretation of 1653(a). See Heppner v. Alyeska Pipeline Service Co., 665 F.2d 868, 873 (9th Cir. 1981). The Court held that although 43 U.S.C. § 1653(a) refers to "damages" generally and appears to be "clear and unambiguous," Congress' clear intent was to cover only environmental damages.

In Heppner, the Court noted that, were the statute construed literally and mechanically, damages from slanders, fights and automobile accidents along the right-of-way would all be encompassed by subsection (a). The Court stated this "raises serious questions whether we should read the strict liability language literally and should give it its broadest possible sweep." 665 F.2d at 873. The Court concluded it should not interpret 43 U.S.C. § 1653 (a) to give it its broadest possible sweep.

The same principles of statutory interpretation apply to determine whether 43 U.S.C. § 1653(a) imposes strict liability on the permit holders for spills from vessels. If vessel spills are "in connection with" activities along the pipeline right-of-way simply because the vessel contained ANS crude that had been transported along the right-of-way, then every vessel spill of ANS crude would be covered by subsection (a) whether it occurred in Prince William Sound, along the coast of British Columbia, or in Puget Sound. Indeed, spills of gasoline from vehicles in Los Angeles might be covered if the gasoline was refined from ANS crude. This was not intended by Congress.

Finally, and perhaps most important, it is an accepted canon of statutory construction that a court should not read the words of one subsection in isolation, but must consider them in context with the rest of the statute. "One provision of a comprehensive statute must be read in the context of the other provisions of the statute and in light of the general legislative scheme." Yamaguchi v. State Farm Mutual Auto Ins. Co., 706 F.2d 940, 948 n.11 (9th Cir. 1983). "The words of a statute must be construed in context and the statutes must be harmonized, both internally and with each other, to the extent possible." Pacific Mutual Life Ins. Co. v. American Guaranty Life Ins. Co., 722 F.2d 1498, 1501 (9th Cir. 1984).

When subsection (a) is read in context with subsection (c), it is apparent that Congress intended subsection (c) to cover vessel spills while subsection (a) was intended to cover environmental damage in and along the right-of-way caused by construction and operation of the pipeline. See Mt. Graham Red Squirrel v. Madigan, F.2d (9th Cir. Jan. 21, 1992) (since Congress dealt with two phases of construction project in two separate sections of statute, Congress clearly intended the two phases to

be treated differently; each section cannot be read in isolation; rather interpretation of each depends on "a reading of the statute as a whole . . .").

Subsection (b) of Section 1653 provides that the holder of the right-of-way is liable to control and remove pollutants where "any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder. . . ." (emphasis added). This subsection is inapplicable to vessel spills absent evidence that the spill occurred as a result of activities conducted by or on behalf of the holder of the right-of-way. Of course, as previously indicated, in a literal sense every vessel spill of ANS crude is in some way connected to activities conducted by the holders of the right-of-way in that, but for the transportation of oil through the pipeline, the vessel never would have been loaded with ANS crude. When subsection (b) is read in context with subsection (c), however, it is apparent that Congress could not have intended this "but for" connection to be sufficient to invoke subsection (b). Mr. Frank's theory would produce the anomalous result that the owner and operator of the vessel would be strictly liable under subsection (c) only for \$14 million, while the holders of the right-of-way would be strictly liable without any limits. Given the monetary limits elsewhere in TAPAA, including both subsections (a) and (c), one should not impute to Congress such a bizarre result. See Mt. Graham Red Squirrel v. Madigan, supra (court should not interpret statute in a manner that "makes no sense either practically or as a matter of linguistics").

Mr. Frank's reliance on Alveska Pipeline Service Co. v. United States, 649 F.2d 831 (U.S.Ct.Cl.), cert. denied, 454 U.S. 964 (1981), is misplaced. That case

held that, under 1653(b), the owners and operator of the Trans-Alaska Pipeline are strictly liable for spills from the pipeline itself, since such spills constitute "pollution resulting from 'any activities conducted by or on behalf of them.'" 649 F.2d at 833-34. The holders' agent, Alyeska, operates the pipeline. All pipeline spills thus result from "activities conducted by or on behalf of" the holders, as those words are used in 1653(b). With respect to vessel spills, in contrast, neither the holders nor Alyeska operate the vessels. Spills from vessels thus do not result from activities conducted by or on behalf of the holders.

Finally, Mr. Frank erroneously interprets the legislative history of TAPAA. As he notes, Congress had before it a House Bill, H.R. 9130, Section 207(b)(1) of which would have expressly provided that the holder of the right-of-way is strictly liable for all damages resulting from spills from any vessel owned by the holder or by any "affiliate" of the holder. As Mr. Frank notes, see his memorandum at p. 14, the term "affiliate" was broadly defined. Thus, had Section 207(b)(1) been adopted, there is little doubt that the holders of the right-of-way would be liable for damages caused by the **EXXON VALDEZ** oil spill, as the **EXXON VALDEZ** was owned by an affiliate of one of the holders of the right-of-way. The flaw in Mr. Frank's analysis, however, is that Section 207 was rejected by the Conference Committee. The bill that came out of the Conference, which Congress ultimately enacted, contains nothing comparable to Section 207. Congress clearly made the vessel owner/operator, rather than the holders or any affiliates of the owner/operator, liable for vessel spills. 1653(c). Congress' rejection of a specific provisions before it that would have made the holders liable for vessel spills is relevant to interpretation of 1653 and shows that the statute as adopted was not intended to make the holders liable for vessel spills. See Fox

v. Standard Oil Co. of New Jersey, 294 U.S. 87, 96, 294 S.Ct. 333, 337 (1934); Fleming v. Hawkeye Pearl Button Co., 113 F.2d 52, 58 (8th Cir. 1940).

LDW44/cas

January 30, 1992

¹ As successors to the original holders of the federal right-of-way for TAPS, Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, are the present holders of the right-of-way grant. These common carrier pipeline companies own the pipeline and have chosen Alyeska to be their common operating agent.



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

**MEMORANDUM: Regional Citizens' Advisory Council
 Oil Spill Prevention and Response Committee**

92-1

TO: Representative Bill Hudson
 ATTN: Landa Holton
RE: Review of Draft ACCC Study
DATE: 1/14/92

The RCAC's OSPR Committee is requesting final comments on this draft Alaska Coastal Communities Cooperative Study (ACCC) by February 15, 1992.

Pursuant to a request from the Nearshore Working Group, RCAC undertook a feasibility study of the concept of a coastal communities oil spill cooperative. This co-op would provide the means for local involvement in spill response, with particular focus on shoreline protection and nearshore response, which are the major remaining gaps in the spill protection scheme for Prince William Sound and other coastal areas.

The OSPR Committee has already gone through one phase of soliciting comments on the concept; and these comments have been addressed in this draft of the study. We are forwarding a copy of this most recent draft of the feasibility study for your comments.

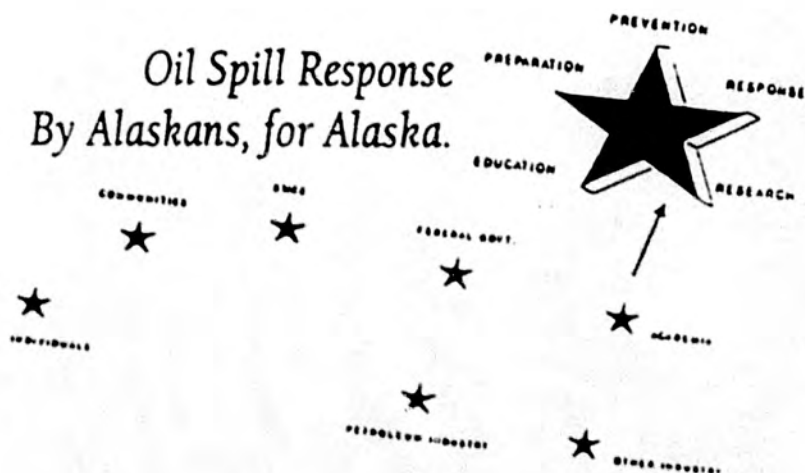
The RCAC endorsed the concept of a coastal communities cooperative at its December 1991 meeting. We will continue to refine the technical issues involved in creating such an organization. From those of you who cannot support this co-op concept, we invite suggestions for alternative methods to achieve our common goal.

DRAFT

A COASTAL COMMUNITIES OIL SPILL COOPERATIVE FOR ALASKA

A F E A S I B I L I T Y S T U D Y

*Oil Spill Response
By Alaskans, for Alaska.*



13. Environmental Organizations. Naturally enough, groups concerned about natural resources, wildlife and pollution have been and continue to be interested in assuring compliance with state and federal requirements for oil spill response. In addition to the enhancement of response capability that the ACCC would provide, these groups are likely to see the consolidation of response activities with ACCC as a plus from another standpoint: consolidation of local involvement in one organization will decrease the complexity of overseeing that local resources are being fully incorporated into contingency plans.
14. The Fishing Industry. Fishermen are concerned about protecting the fishing resources and the effective use of the fishing fleet's ability to protect those resources. The fishing industry is also the source of a significant number of small spills, and as such may find itself in need of the ACCC's services.
15. Local residents, businesses, charter vessel operators, and contractors. Many of these people depend on coastal resources for their livelihoods and recreation, and thus have a heightened interest in participating in the activities of the ACCC. Moreover, spill response is a growth industry in Alaska, and it is not unreasonable for those communities that suffer the most from oil spills to be able to offset their risk of loss somewhat by participating in a professional response organization.
16. Recreational Users and Providers. Tourism and recreation is an increasingly important part of the Alaskan economy. Indeed, many small businesses in coastal Alaska depend for their survival on income from recreational users. The interests and concerns of both the tourist industry and individual recreational users must be considered when making decisions about protection of coastal resources.
17. Academic and Research Institutions. These entities are potential participants in the planning, engineering and scientific support of the ACCC.

These groups fall into four basic categories: government, sponsoring and user entities, potential participants in the ACCC's planning and response activities, and interested parties. Some groups may belong in more than one category, for instance Native corporations may be participants and are obviously interested parties. The ACCC will be successful if:

1. The state is willing to assign the state agency depots and response corps role to the ACCC for coastal spills.
2. The coastal spill response needs of the entire state are met by the ACCC.
3. The state accepts the feasibility of creating a joint industry/government solution to the identified needs. The Corpus Christi Area Spill Control Association demonstrates that such a joint effort can succeed. It is a modest sized and simply organized cooperative compared to the large West Coast cooperatives. Nevertheless, it is highly successful in its geographic and environmental setting. Local government rather than industry provides its personnel reserve. Its local government orientation has led to very low response costs, even when contractors are used. Exorbitant rates are not tolerated by the cooperative's manager, who doubles as the City of Corpus Christi's Petroleum Director.

The Legislature is able to craft an acceptable, long-term solution to the issue of responder immunity from tort liability during the 1992 session.

SPACE RESOURCES

Space, particularly near the shoreline, will be of considerable importance to the ACCC. Shoreline operating space appears to be at a premium in Alaska. The ACCC will need one or more bases of operation with substantial indoor space (on the order of 50,000 to 80,000 square feet). This indoor space will be used for offices, response centers, classroom training, hands-on equipment training, communications, warehousing of materials and equipment, parts inventory and repair operations.

The ACCC will need substantial dock footage to service and equip barges, contract vessels, and first strike vessels. The large number of small barges and vessels will likely necessitate the availability of its own small dry-dock capability. Cranes, forklifts and other equipment will be needed for deployment and loading of vessels.

Tankage and flat storage areas will be necessary for interim storage of recovered oil. Open storage will be needed for bulky items and Conex storage units.

Similar but smaller scale space needs will exist at remote storage depots. Consideration is being given to deploying and docking self-contained, barge-based response depots at remote locations. These could periodically be rotated back to ACCC bases for maintenance and repair.

The availability of space is unknown at this time and would be the subject of a detailed search in subsequent studies or during early stages of the cooperative's implementation. Special leasing terms or donation of state, local, native corporation or industrial sites may well influence base location.

LEGAL FEASIBILITY

The first issue is the proper form of charter. MSRC has chosen to pursue the status of a not-for-profit corporation. Other cooperatives have chosen to remain partnerships of member companies.

The ultimate solution for the ACCC will likely hinge on issues such as state participation in a non-profit entity, the extent of tort liability, borrowing and purchasing policies, and whether a quasi-state entity has the flexibility to respond effectively under the pressure and timetables required by response scenarios.

The primary question appears to be whether to seek tax-exempt status. Doing so would severely restrict the cooperative from having a separate pricing structure for members and non-members. A not-for-profit corporation could be implemented as a quasi-government entity like the Alaska Housing Authority. This approach could make state participation easier.

Responder immunity is necessary for the ACCC to avoid tremendous liability exposure. It is anticipated that the state legislature will take up the issue of immunity for spill responders again during the upcoming session.

If the not-for-profit form is implemented, the most important contract will be to implement state funding. Discussion of a possible format will await agency decisions and specific legal advice. A contract covering professional service and placement of major equipment items could be negotiated with comparative fiscal and legal ease.

A host of other contracts would be needed with industrial members, other users of ACCC services, support vessel

and operators, as well as for facility acquisition and response contractors employed by the ACCC.

The issue of insurance will require much attention in this age of litigation. Six major areas are identified for later attention. The insurance topic has been subdivided into routine operations and spill response periods. Separate rates and perhaps even policies will apply. Indemnification clauses in contracts must also be considered.

In its contingency plan, Alyeska listed some 152 permits considered necessary to respond to an oil spill. The ACCC will need to proceed carefully to ensure that all regulatory obligations are met.

Discussions with the Clean Coastal Waters and Clean Sound Cooperatives indicate legal and insurance issues are significant, current problems; but these problems can be overcome for a reasonable cost.

Thus, although not without obstacles, the ACCC is legally feasible. (N.B. The overall concept of legal feasibility is being addressed by a professional maritime lawyer, and will be discussed in a separate document.)

TABLE 4: MAJOR LEGAL ISSUES FOR THE ACCC

1. Form of charter and management structure.
 - A. Not for profit
 - B. Not for profit - tax exempt
 - C. Quasi-government entity (similar to Alaska Housing Authority)
 - D. For profit corporation

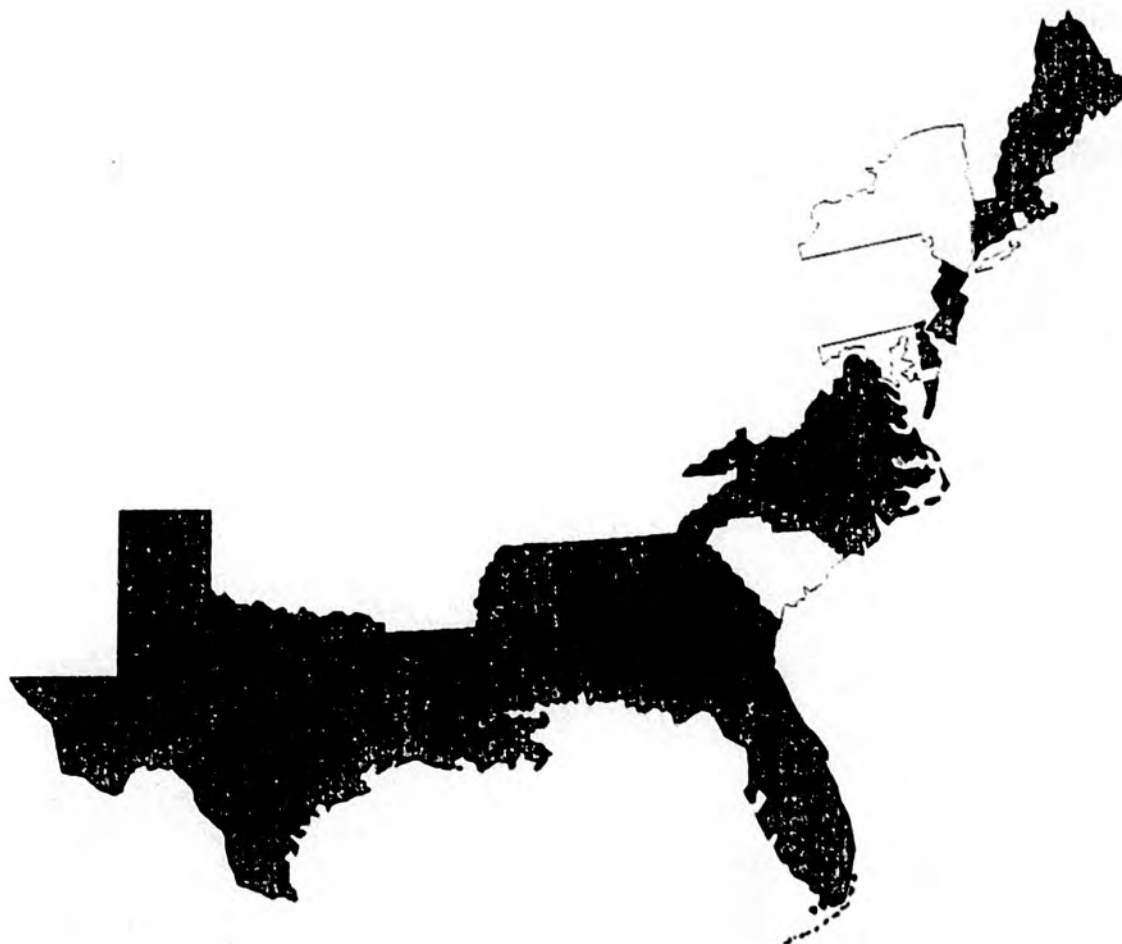
2. Responder immunity: Extension of HB-196

3. Contracts with:
 - A. State of Alaska
 - B. Organizations contracting with the ACCC for its services
 - C. Vessel operators
 - D. Facility acquisition
 - E. Contractors and suppliers
4. Insurance during non-spill periods:
 - A. Director liability
 - B. Business liability
 - C. Payroll, including Jones Act
 - D. Vessel
 - E. Equipment and facilities
 - F. Employee health, life and disability
5. Insurance during spill response
6. Indemnity agreements
7. Permits
8. Funding guarantees for expenses during spill response operations

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS



- Enacted



OIL SPILL CONTINGENCY PLAN

PRINCE WILLIAM SOUND

JANUARY 1987

*Low - Soil 800
new site - but it's OK
or maybe even better
this way*



Alyeska pipeline
SERVICE COMPANY

© Copyright Alyeska Pipeline Service Company 1976, 1978, 1980, 1987

PRINCE WILLIAM SOUND

100 INTRODUCTION

101 PURPOSE

The Oil Spill Contingency Plan for Prince William Sound has been prepared for Alyeska and contractor personnel located at Valdez Terminal. This Contingency Plan defines specific Immediate Response Actions to be taken as a result of a spill to:

- (1) Alert specific Alyeska and contractor personnel located at Valdez Terminal.
- (2) Initiate reconnaissance actions to determine the exact location, nature and extent of the spill.
- (3) Initiate control actions to minimize the spread of oil, prevent oil from reaching sensitive areas and to clean up the oil spill.

The Oil Spill Contingency Plan is designed to fully comply with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the State of Alaska Regulations (Title 18) and stipulations of both the Federal and State Right-of-Way agreements. Alyeska Pipeline Service Company will ensure the Plan is followed during any spill event. Therefore, this Contingency Plan includes provisions for oil spill control, prompt notification of government agencies and other requirements spelled out in detail in the General Provisions.

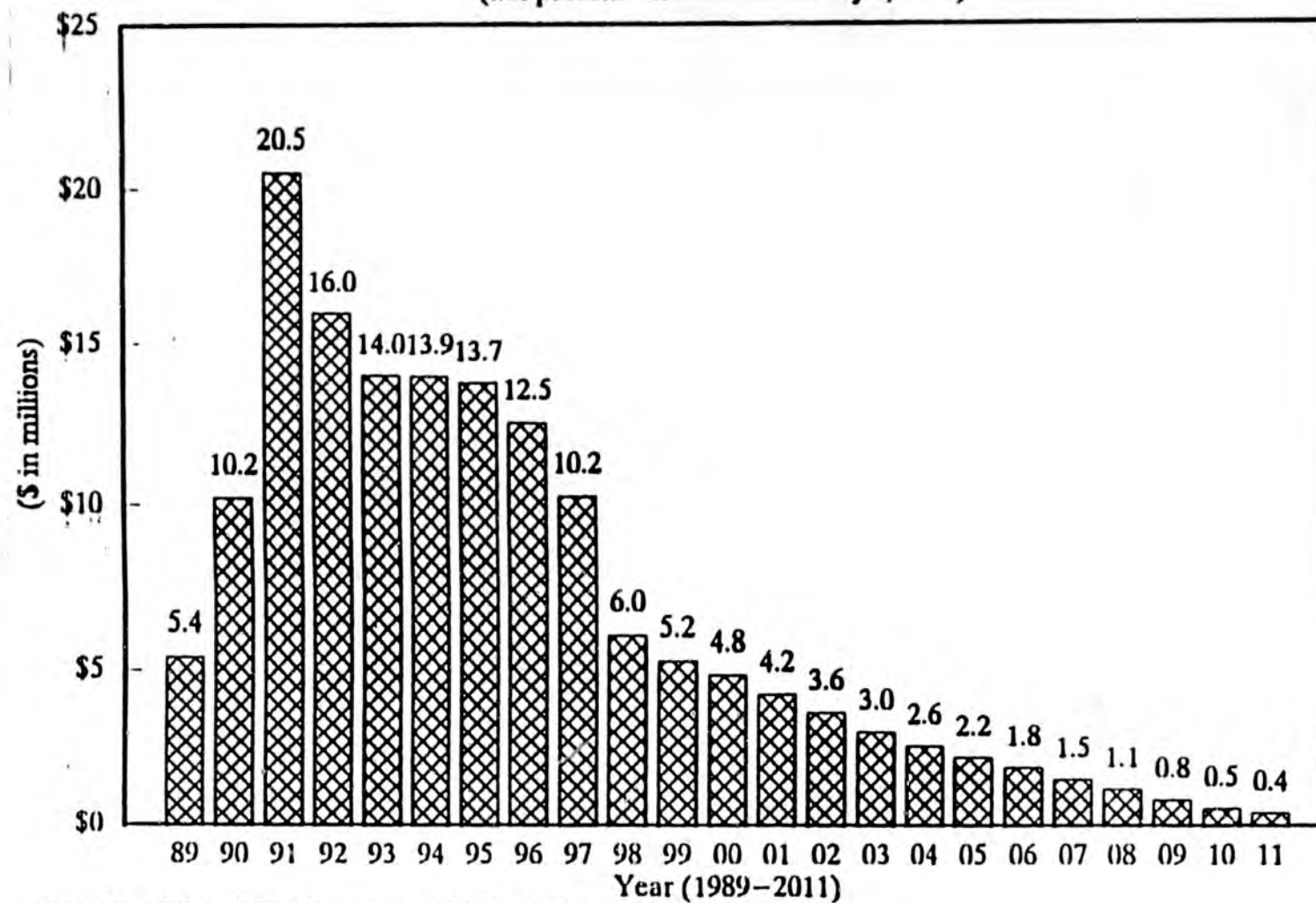
102 CONCEPT

This Contingency Plan covers the entire Prince William Sound from Middle Rock in Valdez Narrows to the southern limit of Hinchinbrook Entrance off Cape Hinchinbrook as shown on Figure 102-1. This Contingency Plan has been developed specifically for rapid and effective response to possible oil spills due to marine vessels in trade with Alyeska's Valdez Terminal.

Preplanned responses have been delineated to ensure that Immediate Response Actions are taken upon detection of an oil spill. Figure 103-2 in the General Provisions is a functional flow diagram of the actions taken for a spill incident. Upon detection of a spill, the Terminal Controller will notify the Shift Supervisor, the Terminal Superintendent, the U.S. Coast Guard and the State Department of Environmental Conservation. Following the above notification, the Terminal Controller will send an initial notification message on the message processor, which is preaddressed to the Alyeska Oil Spill Coordinator and other government agencies.

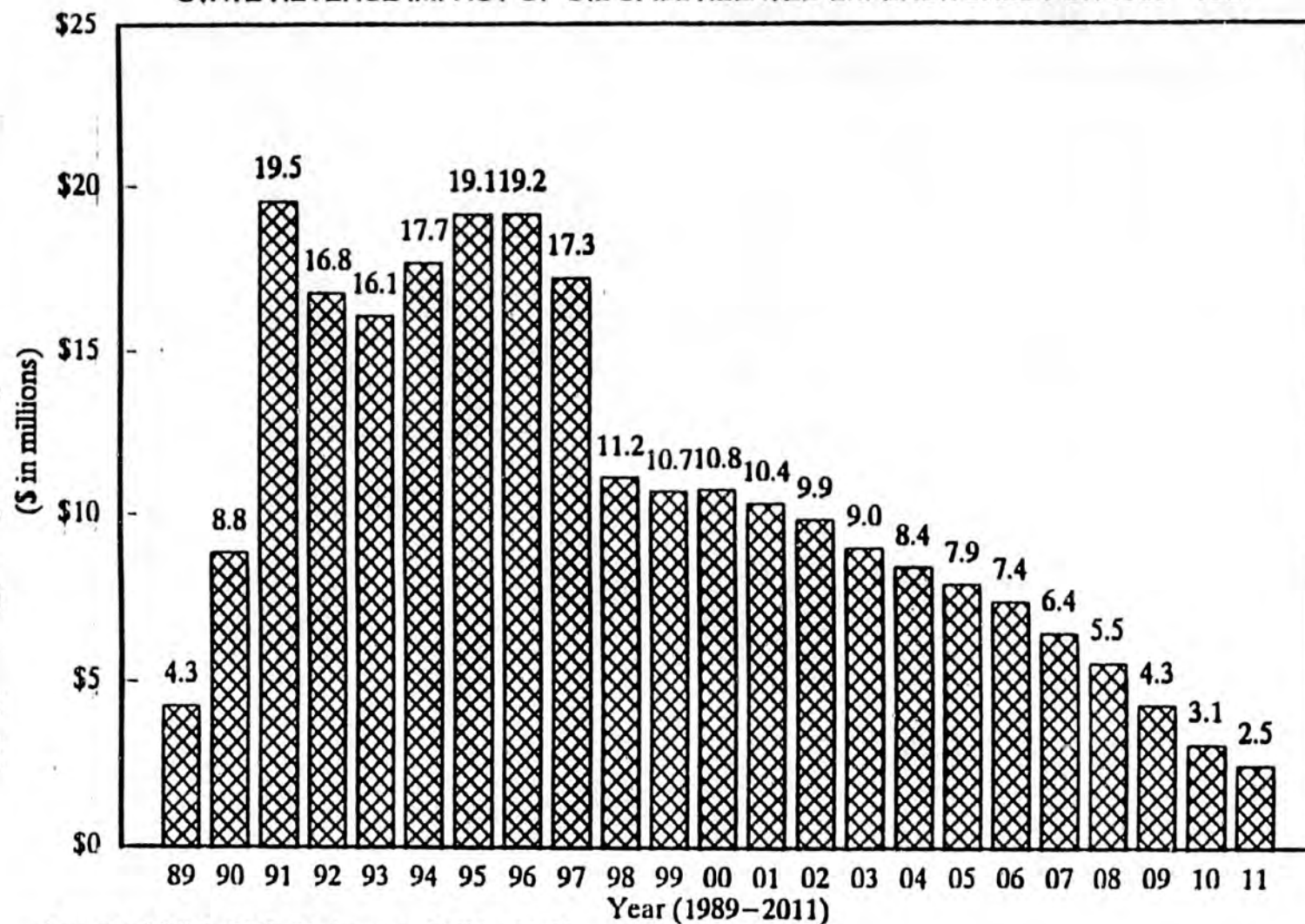
In subsequent paragraphs of this Contingency Plan, the Contingency Response Organization is outlined and details of the Response Actions are presented. The Contingency Plan also covers cleanup actions and presents support annexes covering Prince William Sound.

STATE REVENUE IMPACT OF OIL SPILL RELATED EXPENDITURES FOR 1989-1997
(net present value as of January 1, 1992)



Actuals: 10/89-9/91; Estimates: 10/91-12/97
Horst & Frisch, November 4, 1991

STATE REVENUE IMPACT OF OIL SPILL RELATED EXPENDITURES FOR 1989-1997



Actuals: 10/89-9/91; Estimates: 10/91-12/97
 Horst & Frisch, November 4, 1991

OIL POLLUTION ACT OF 1990

AUGUST 1, 1990.—Ordered to be printed

Mr. JONES of North Carolina, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1465]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1465) to establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

- Sec. 1001. Definitions.*
- Sec. 1002. Elements of liability.*
- Sec. 1003. Defenses to liability.*
- Sec. 1004. Limits on liability.*
- Sec. 1005. Interest.*
- Sec. 1006. Natural resources.*
- Sec. 1007. Recovery by foreign claimants.*
- Sec. 1008. Recovery by responsible party.*
- Sec. 1009. Contribution.*
- Sec. 1010. Indemnification agreements.*
- Sec. 1011. Consultation on removal actions.*
- Sec. 1012. Uses of the Fund.*
- Sec. 1013. Claims procedure.*

program unless the grant has first been recommended by the Interagency Committee.

In making grant recommendations, the Interagency Committee is required to balance the merits of the particular proposed project and the need to provide an appropriate balance within a region among the various aspects of regional oil pollution research needs. In addition, the Interagency Committee must consider the individual merits of the proposal, as well as the criteria set out in section 7001(c)(8)(D).

To encourage stable, long-term research funding, the Conference substitute encourages grants to be made for up to three years, subject to appropriate annual reviews by the granting Agency to determine that the project supported by the grant is being properly carried out. Grants may not provide more than 80 percent of the costs of the research activities carried out in connection with the grant. The Conference substitute also makes it clear that grants cannot be used for land acquisition or building construction.

The Conferees have added language to make it clear that section 7001 is not intended to alter the existing authorities of Agencies represented on the Interagency Committee to make research grants using funds other than those authorized in this section.

The Conference substitute authorizes \$6,000,000 for five fiscal years beginning in 1991 for the regional research program, to be allocated equally among the ten regions. Should the granting agencies determine that additional grant funding is required, the substitute permits the granting Agencies to use their authority under section 7001(c)(10) to make grants from funds authorized in section 7001(f).

Section 7001(d) of the Conference substitute accepts the provision in the House bill requiring the Interagency Committee to coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research activities.

Section 7001(e) of the Conference substitute incorporates the regular reporting requirements in the House bill, but requires the report to be filed every two years instead of annually.

The Conferees agreed to a total funding level of \$27,250,000 per fiscal year, of which \$6,000,000 is authorized for the regional research program, and not less than \$2,250,000 are authorized for the demonstration projects beginning in fiscal year 1992. Funding of \$5,000,000 is authorized for environmental effects research for fiscal year 1991, which is decreased to \$3,500,000 for fiscal years 1992 through 1995. Finally, this subsection states that all activities authorized under section 7001 are subject to appropriations.

It is the strong opinion of the Conferees that the Administration, in its budget request, should consider the oil pollution research and development program established in this Act as the basis for an agency budget cross-cut. Moreover, in conducting such a cross-cut, the Office of Management and Budget should seek the advice of the Interagency Committee established in this Act.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

SEC. 8001. SHORT TITLE

The Senate amendment has no comparable provision.

Section 8001 of the House bill provides that this title may be cited as the "Trans-Alaska Pipeline System Reform Act of 1990." The Conference substitute accepts the House provision.

SEC. 8002. REFERENCES TO TRANS-ALASKA PIPELINE AUTHORIZATION ACT

The Senate amendment has no comparable provision.

Section 8002 of the House bill states that, except as otherwise expressly provided, any references in this title to "the Act" shall be considered to be made to a section or other provision of the Trans-Alaska Pipeline Authorization (TAPS) Act (43 U.S.C. 1651-1655).

The Conference substitute accepts the Senate provision.

Subtitle A—Improvements to Trans-Alaska Pipeline System

SEC. 8101. LIABILITY WITHIN THE STATE OF ALASKA AND CLEANUP EFFORTS

Section 401 of the Senate amendment limits the application of section 204(b) of the TAPS Act to removal costs in the State of Alaska which would not otherwise be covered by the regime established by the Senate amendment.

Section 8101 of the House bill exempts the Trans-Alaska Pipeline System (TAPS) (pipeline, terminal and related onshore facilities) from the liability regime established by the Oil Pollution Act of 1990 for similar facilities. Pursuant to section 204(a) of the TAPS Act, the holder of the pipeline right-of-way is strictly liable for all removal costs and strictly liable for up to \$50 million for damages in connection with activities in the vicinity of the right-of-way. Section 8101 of the House bill amends the TAPS Act to remove the cap on strict liability for damages, to provide that damages must be caused solely by government negligence to provide a defense to strict liability, and to clarify that section 204(b) of the TAPS Act applies to damages caused by activities which are related to TAPS including operation of the terminal.

The Conference substitute accepts the House provision with the exception that section 204(a)(2) of the TAPS Act is amended to hold the right-of-way holder strictly liable for \$350 million in damages. Liability standards under sections 204 (a) and (b) of the TAPS Act, as amended, will apply until TAPS oil is loaded aboard a vessel. TAPS Act liability shall apply if oil is spilled during the loading process at the terminal. Any subsequent discharge from the vessel shall be governed by the liability regime established by the Oil Pollution Act of 1990.

SEC. 8102. TRANS-ALASKA PIPELINE LIABILITY FUND

Section 401(b)(1) of the Senate amendment repeals section 204(c) of the TAPS Act and transfers both claims against the Trans-Alaska Pipeline Liability Fund (TAPS Fund) and the balance of the TAPS Fund to the Oil Spill Compensation Fund upon date of enactment. Section 401(b)(2) provides that the owners of the oil who were assessed a five cent fee at the time it was loaded on vessels from the pipeline, pursuant to section 204(c)(5) of the TAPS Act, shall re-

(e) **BIENNIAL REPORTS.**—The Chairman of the Interagency Committee shall submit to Congress every 2 years on October 30 a report on the activities carried out under this section in the preceding 2 fiscal years, and on activities proposed to be carried out under this section in the current 2 fiscal year period.

(f) **FUNDING.**—Not to exceed \$21,250,000 of amounts in the Fund shall be available annually to carry out this section except for subsection (c)(8). Of such sums—

(1) funds authorized to be appropriated to carry out the activities under subsection (c)(4) shall not exceed \$5,000,000 for fiscal year 1991 or \$3,500,000 for any subsequent fiscal year; and

(2) not less than \$2,350,000 shall be available for carrying out the activities in subsection (c)(6) for fiscal years 1992, 1993, 1994, and 1995.

All activities authorized in this section, including subsection (c)(8), are subject to appropriations.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

SEC. 801. SHORT TITLE.

This title may be cited as the "Trans-Alaska Pipeline System Reform Act of 1990".

Subtitle A—Improvements to Trans-Alaska Pipeline System

SEC. 8101. LIABILITY WITHIN THE STATE OF ALASKA AND CLEANUP EFFORTS.

(a) **CAUSE OF ACCIDENT.**—Section 204(a)(1) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(a)(1)) is amended by striking out "caused by" in the first sentence and inserting in lieu thereof "caused solely by".

(b) **LIMITATION OF LIABILITY.**—Section 204(a)(2) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(a)(2)) is amended by striking "\$50,000,000" each place it occurs and inserting in lieu thereof "\$350,000,000".

(c) **CLEANUP EFFORTS.**—Section 204(b) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b)) is amended in the first sentence—

(1) by inserting after "any area" the following: "in the State of Alaska";

(2) by inserting after "any activities" the following: "related to the Trans-Alaska Pipeline System, including operation of the terminal,"; and

(3) by inserting after "other Federal" the first place it appears the following: "or State".

SEC. 8102. TRANS-ALASKA PIPELINE LIABILITY FUND.

(a) **TERMINATION OF CERTAIN PROVISIONS.**—

(1) **REPEAL.**—Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed, effective as provided in paragraph (5).

(2) **DISPOSITION OF FUND BALANCE.**—

(A) **RESERVATION OF AMOUNTS.**—The trustees of the Trans-Alaska Pipeline Liability Fund (hereafter in this subsection referred to as the "TAPS Fund") shall reserve the following amounts in the TAPS Fund—

(i) necessary to pay claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)); and

(ii) administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of that Act.

(B) **DISPOSITION OF THE BALANCE.**—After the Comptroller General of the United States certifies that the requirements of subparagraph (A) have been met, the trustees of the TAPS Fund shall dispose of the balance in the TAPS Fund after the reservation of amounts are made under subparagraph (A) by—

(i) rebating the pro rata share of the balance to the State of Alaska for its contributions as an owner of oil; and then

(ii) transferring and depositing the remainder of the balance into the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

(C) **DISPOSITION OF THE RESERVED AMOUNTS.**—After payment of all claims arising from an incident for which funds are reserved under subparagraph (A) and certification by the Comptroller General of the United States that the claims arising from that incident have been paid, the excess amounts, if any, for that incident shall be disposed of as set forth under subparagraphs (A) and (B).

(D) **AUTHORIZATION.**—The amounts transferred and deposited in the Fund shall be available for the purposes of section 1012 of the Oil Pollution Act of 1990 after funding sections 5001 and 8103 to the extent that funds have not otherwise been provided for the purposes of such sections.

(3) **SAVINGS CLAUSE.**—The repeal made by paragraph (1) shall have no effect on any right to recover or responsibility that arises from incidents subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) occurring prior to the date of enactment of this Act.

(4) **TAPS COLLECTION.**—Paragraph (5) of section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is amended by striking the period at the end of the second sentence and adding at the end the following: "; except that after the date of enactment of the Oil Pollution Act of 1990, the amount to be accumulated shall be \$100,000,000 or the amount determined by the trustees and certified to the Congress by the Comptroller General as necessary to pay claims arising from incidents occurring prior to the date of enactment of that Act and administrative costs, whichever is less.".

Section 711 Responsibility of the Right-of-Way Holder

This amendment requires that an Oil Spill Contingency Plan be filed with the Secretary of Interior in order to comply with existing law which requires that Alyeska Pipeline Service Company, as designated agent for the seven oil companies which possess the pipeline right-of-way, respond to and clean up TAPS related oil spills in Prince William Sound and elsewhere in Alaska. Three years after the Exxon Valdez disaster, Alyeska has adopted a revisionist position that it is merely a "voluntary" spill response contractor, thus providing no legal assurance that the entity with the most response equipment has a duty to or will in fact respond to oil spills. The amendment is consistent with the Justice Department and the State of Alaska's view of TAPS.

Section 204 (b) of the 1973 TAPS Act, as amended by section 8101 of the Oil Pollution Act of 1990 (P.L. 101-380):

"If any area in the State of Alaska within or without the right-of-way or permit area granted under the title is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder."

This statutory duty is mirrored in provisions of the U.S. Department of the Interior Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline with the holders.

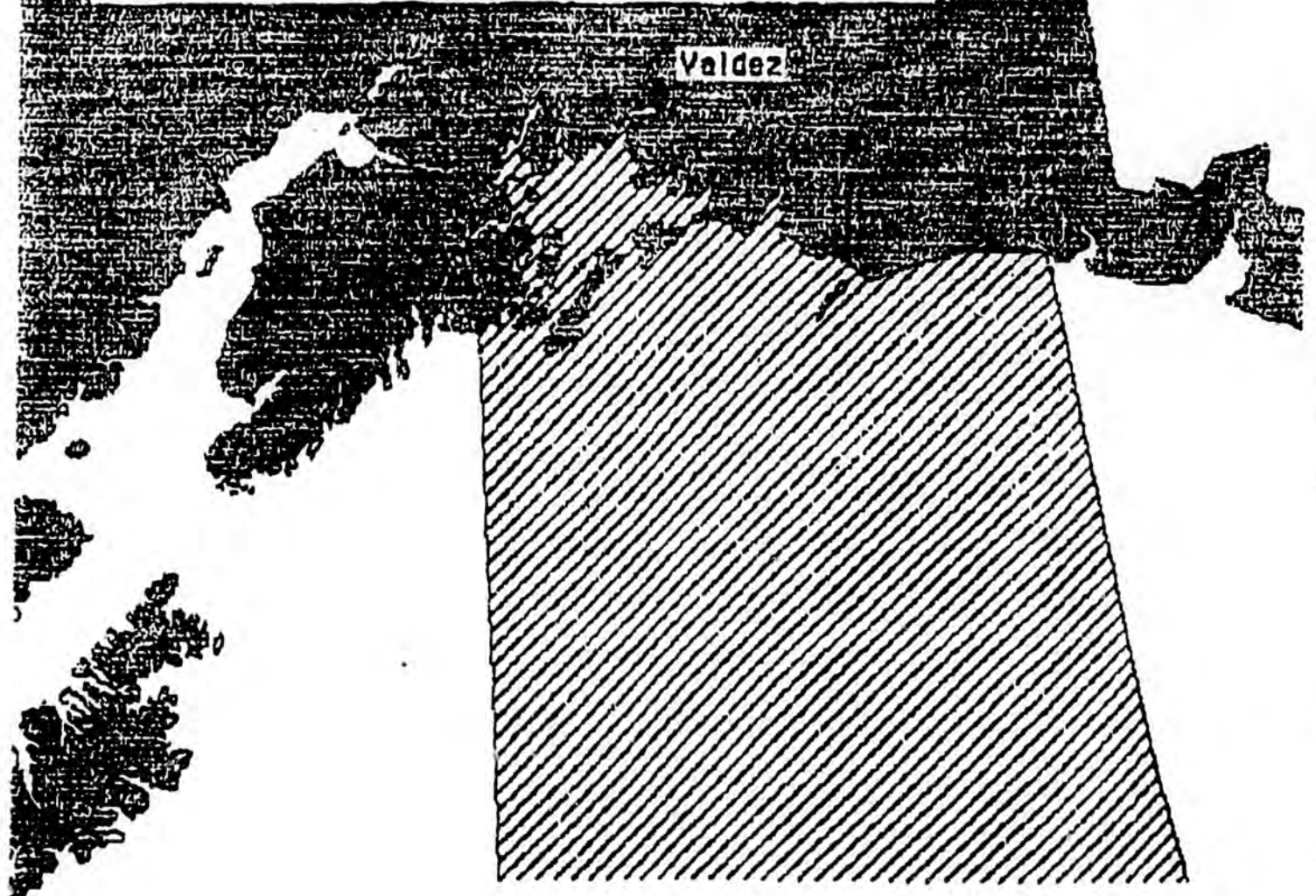
Alyeska's current position is that it is merely a "voluntary response contractor" with no statutory obligation to respond to spills once oil is loaded on tankers at Valdez. In addition, Alyeska has requested that the Coast Guard establish procedures to "reimburse" them if they do voluntarily choose to respond. Alyeska's position is inconsistent with the TAPS Act, with OPA 1990, with the federal and state of Alaska right-of-way agreements, and with previously approved Alyeska contingency plans. 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 spill, tanker owners or operators, rather than Alyeska, submit contingency plans relying upon Alyeska as the principal response action contractor to direct the field response for the first 72 hours.

COMMANDING OFFICER
MARINE SAFETY OFFICE, VALDEZ

CAPTAIN OF THE PORT, PRINCE WILLIAM SOUND
OFFICER IN CHARGE OF MARINE INSPECTION,
PRINCE WILLIAM SOUND

COMMANDING OFFICER,
VESSEL TRAFFIC SERVICE, PRINCE WILLIAM SOUND

Valdez

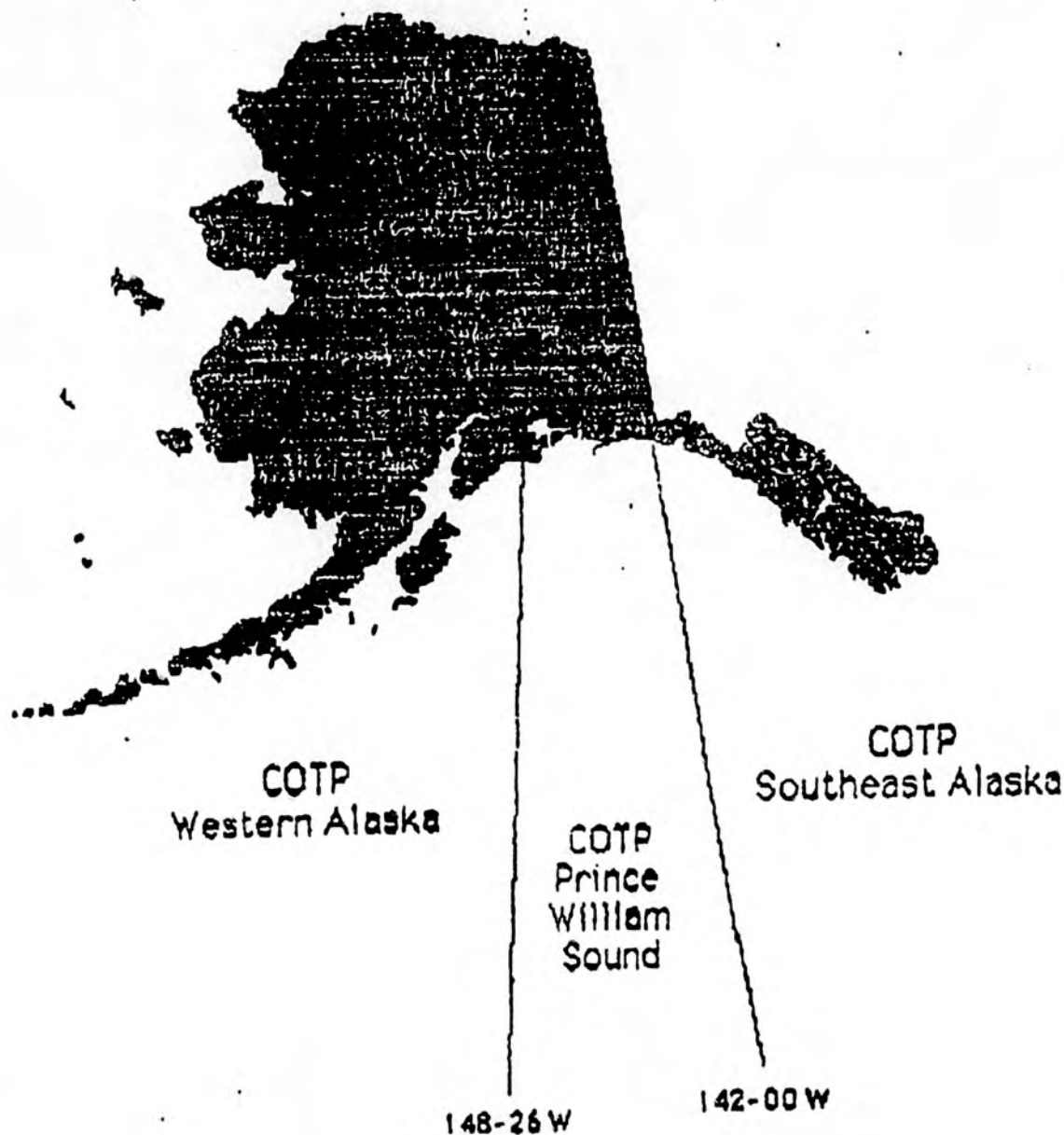


U.S. COAST GUARD

AREAS OF RESPONSIBILITY

COTP

(Captain of the Port)



Hawaii; and the Pacific Islands belonging to the United States south of latitude 40° N., and west of a line running from 40° N., 150° W. through latitude 5° S., 110° W.; the ocean area west and south of a line running from position 51° N., 156° E. to position 42° N., 165° E.; thence due south to latitude 40° N.; thence due east to longitude 150° W.; thence southeasterly through latitude 0° S., longitude 110° W.

ICODR 81-48, 26 FR 10362, Nov. 3, 1961, as amended by CGFR 70-154, 36 FR 813, Jan. 20, 1971

§ 370-10 Honolulu Marine Inspection Zone and Captain of the Port Zone.

(a) The Honolulu Marine Inspection Office and Captain of the Port Office are in Honolulu, Hawaii.

(b) The Honolulu Marine Inspection Zone and the Honolulu Captain of the Port Zone boundaries are the boundaries of the Fourteenth Coast Guard District, except for the Territory of Guam, the Commonwealth of the Northern Mariana Islands and Palau.

(c) Required notifications to the Officer in Charge, Marine Inspection and/or the Captain of the Port, Honolulu may be made in American Samoa, the United States Coast Guard Liaison Office, American Samoa, P.O. Box 240, Pago Pago, American Samoa 96799.

ICOD 81-019, 47 FR 13788, Apr. 1, 1982, as amended by CGD 82-037, 53 FR 21814, June 18, 1988; CGD 89-030, 54 FR 19154, May 4, 1989

§ 370-15 Guam Marine Inspection Zone and Captain of the Port Zone.

(a) The Guam Marine Inspection Office and Captain of the Port Office are in Agaña, Guam.

(b) The Guam Marine Inspection Zone and the Guam Captain of the Port Zone are comprised of the area of the Territory of Guam, the Commonwealth of the Northern Mariana Islands and Palau.

(CGD 88-037, 53 FR 21815, June 18, 1988, as amended at CGD 88-039, 54 FR 19148, May 4, 1989)

Subpart 3.85—Seventeenth Coast Guard District

§ 385-1 Seventeenth District.

(a) The District Office is in Juneau, Alaska.

(b) The Seventeenth Coast Guard District shall comprise the State of Alaska; the ocean area bounded by a line from the Canadian Coast at latitude 64°40' N. due west to longitude 140° W.; thence southeasterly to position 40° N., 150° W.; thence due west to position 40° N., 165° E.; thence due north to latitude 43° N.; thence northwesterly to 51° N., 158° E.; thence north and east along the coastline of the continent of Asia to East Cape; thence north to the Arctic Ocean.

ICODR 81-40, 26 FR 10362, Nov. 3, 1961, as amended by CGFR 70-150, 36 FR 812, Jan. 20, 1971

§ 385-20 Southeast Alaska Marine Inspection Zone and Captain of the Port Zone.

(a) The Southeast Alaska Marine Inspection Office and the Southeast Alaska Captain of the Port Office are located in Juneau, Alaska.

(b) The Southeast Alaska Marine Inspection Zone and the Southeast Alaska Captain of the Port Zone comprise the State of Alaska southeast of a straight boundary line which starts at 60°01.3' N. latitude, 142° W. longitude, thence proceeds northeasterly to its end at the international boundary between the United States and Canada at 60°10.7' N. latitude, 141° W. longitude.

ICOD 75-035, 40 FR 28451, July 7, 1975, as amended by CGD 77-241, 44 FR 10883, Feb. 28, 1979

§ 385-15 Western Alaska Marine Inspection Zone and Captain of the Port Zone.

(a) The Western Alaska Marine Inspection Office and the Western Alaska Captain of the Port Office are located in Anchorage, Alaska.

(b) The Western Alaska Marine Inspection Zone and the Western Alaska Captain of the Port Zone comprise the State of Alaska, except that section of Alaska covered in § 3.85-20(b), that is

west of the following description boundary line: A line which starts at 60°01.3' N. latitude, 142° W. longitude; thence northeasterly to the international boundary between the United States and Canada at 60°10.7' N. latitude; thence northerly along the international boundary to the sea at 60°38.5' N. latitude, 141° W. longitude.

ICOD 77-023, 42 FR 30252, July 14, 1977; 42 FR 30391, July 23, 1977, as amended by CGD 77-241, 44 FR 10883, Feb. 28, 1979

§ 385-25 Prince William Sound Marine Inspection Zone and Captain of the Port Zone.

(a) The Prince William Sound Marine Inspection Office and the Prince William Sound Captain of the Port Office are located in Valdez, Alaska.

(b) The Prince William Sound Marine Inspection Zone and the Prince William Sound Captain of the Port Zone comprise the State of Alaska that falls within the following boundary line: A line which starts at Cape Puget; thence northerly to latitude 61°30' N., longitude 148°26' W.; thence easterly to latitude 61°20' N., longitude 145°30' W.; thence southerly to the sea at longitude 145°30' W.; thence westerly along the coastline to Pt. Whittier; thence southwesterly to Point Barrow aerobeacon on Hinchinbrook Island; thence southwesterly along the coastline of Hinchinbrook Island to Cape Hinchinbrook Light; thence northwesterly to Schooner Rock Light; thence southwesterly along the coastline of Montague Island to latitude 58°50' N., longitude 147°54' W.; thence northwesterly to Point Edrington Light; thence westerly to Cape Puget.

ICOD 77-022, 42 FR 30257, July 14, 1977, as amended by CGD 77-241, 44 FR 10883, Feb. 28, 1979; CGD 78-122, 44 FR 10978, Dec. 12, 1979

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

Sec.
401 Purpose.
403 Display.

1.0401.

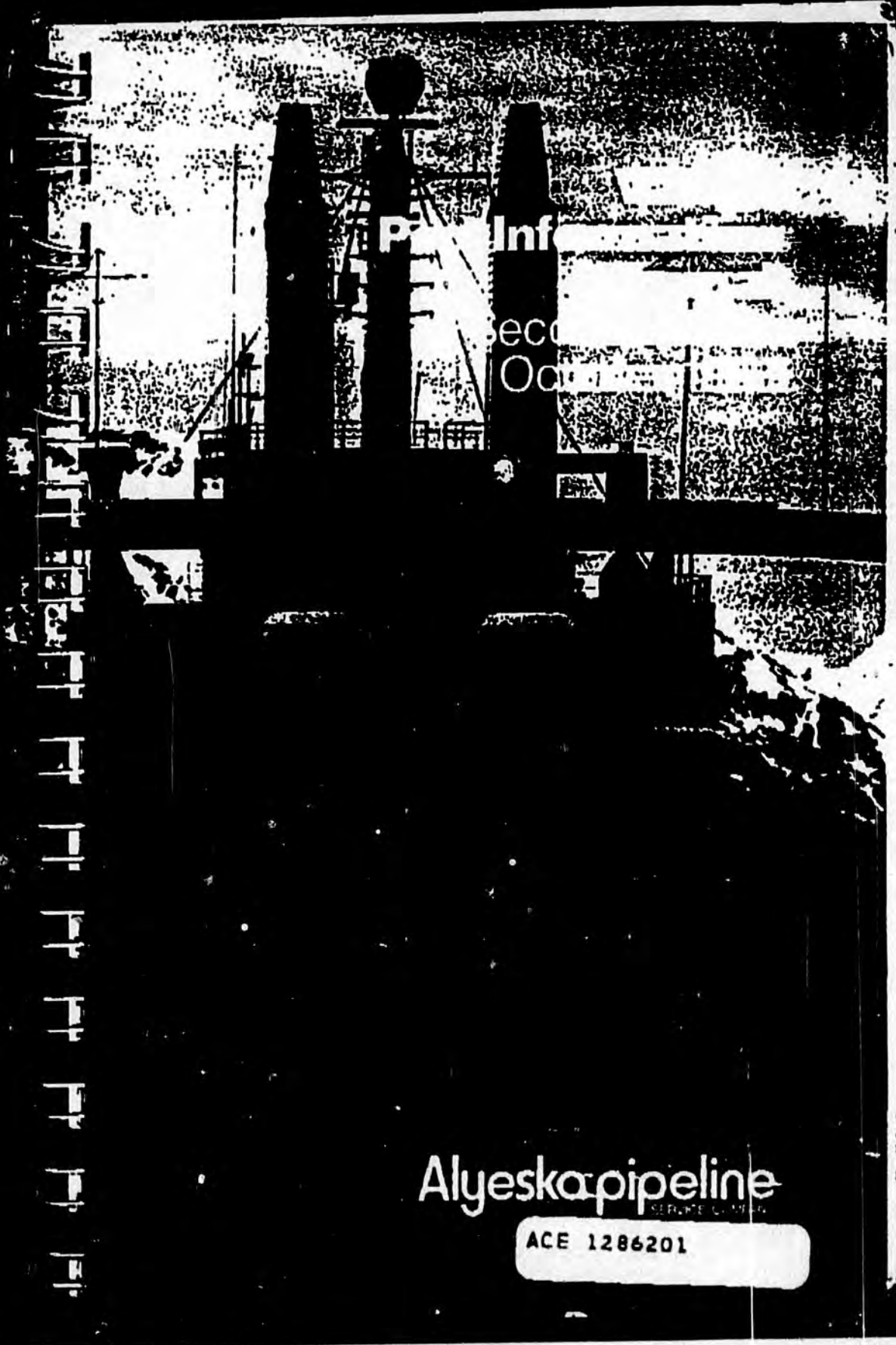
§ 401 Purpose.

This part collects and displays the control numbers assigned to information collection requirements of the Coast Guard by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, (Pub. L. 96-311, 44 U.S.C. 3501 et seq.). The Coast Guard intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

ICOD 84-050, 49 FR 28384, June 28, 1984

§ 403 Display.

33 CFR part or section where identified and described	Current OMB control No.
Part 45	2115-0058
Part 58	2115-0062
Part 65	2115-0082
Part 67	2115-0038
Part 89	2115-0074
Part 109	2115-0012
Part 115	2115-0050
Part 125	2115-0038
Section 126.85(c)	2115-0054
Section 126.150(h)(1)	2115-0100
Section 126.150(h)(1)(ii)	2115-0507
Section 126.17	2115-0013
Part 127	2115-0552
Section 135.215	2115-0041
Part 137	2115-0045
Section 140.15	2115-0553
Part 141	2115-0043
Part 148	2115-0003
Section 148.130	2115-0512
Part 161	2115-0025; 0536 and 0544
Section 151.43	2115-0582 and 0514
Section 153.3	2115-0069
Section 153.8	2115-0060
Section 153.10	2115-0089
Section 153.12	2115-0089
Section 153.203	2115-0137
Section 153.403	2115-0089
Section 153.450	2115-0080
Section 153.491	2115-0089
Section 153.500	2115-0089
Section 153.901	2115-0089



Port Information Manual

vessels must agree to or cannot dock at the terminal

Pollution Discharges

Reference in this section of the Valdez Port Information Manual to "pollution discharges" applies to all pollution discharges from any vessel in the TAPS trade in the waters of Port Valdez, the Valdez Arm and Prince William Sound, including, but not limited to oil and other hydrocarbon spills, from, or caused by, such vessel.

Alyeska's Oil Spill Contingency Plan describes how Alyeska will respond to pollution discharges. Copies of the plan are located in the Emergency Center of the Valdez Marine Terminal. A Tanker Handbook For Vessels In Trade With Alyeska Pipeline Service Company describing emergency procedures is provided in Appendix C on page 71.

This section of the Valdez Port Information Manual describes in general terms Alyeska's response to pollution discharges and a vessel's responsibility to cooperate with, and pay for, Alyeska's efforts.

Notification

Whenever there is a pollution discharge, the vessel shall take all steps necessary to stop the discharge and shall immediately notify Alyeska of the discharge. The vessel shall follow the notification procedure in the Tanker Handbook For Vessels In Trade With Alyeska Pipeline Service Company found in Appendix C.

If Alyeska detects a discharge before a vessel discovers it, Alyeska shall notify the vessel of the incident.

Cleanup of Discharge

In response to a discharge, Alyeska shall immediately act to:

- Stop the discharge.
- Contain the pollutants.
- Remove the pollutants from the environment.
- Dispose of the pollutants.

The vessel shall fully cooperate with Alyeska's efforts and shall comply with all reasonable requests by Alyeska for purposes of responding to the discharge. Vessels calling at the terminal will use all possible measures to prevent pollution discharges, and in the event a discharge does occur, shall make every effort to contain the discharge on or in the vessel and prevent its entry into the waters of Port Valdez, Valdez Arm and Prince William Sound.

Discharge of Pollutants: Liability

A vessel discharging pollutants, or causing the discharge of pollutants from another source, shall be strictly liable, without regard to fault, to Alyeska for all damages to Alyeska caused by the discharge, including, but not limited to, Alyeska's costs to clean up the discharge. If the vessel can show that a discharge of pollutants was caused by Alyeska's negligence or willful

misconduct, the vessel's liability to Alyeska shall be reduced to the extent of Alyeska's percentage of fault in causing the discharge.

Cleanup Costs: Indemnity

Subject to the preceding limitation on liability, to the extent a vessel discharges pollutants, or causes the discharge of pollutants from another source, the vessel shall:

- Indemnify and hold Alyeska harmless from all claims, damages and costs of defending or recovering claims, and
- Reimburse Alyeska for all costs incurred in response to the discharge, except those costs that result from Alyeska's wanton or willful misconduct during its cleanup response. Costs shall include pre and post award interest at an annual rate equal to the prime rate of interest announced by the First National Bank of Anchorage, which is based on New York prime interest rate, plus one percent, adjusted as changes are announced in that prime rate, unless modified by an arbitration award consistent with sections 6 or 10 of the Rules Of Arbitration For Vessels In Trade With Alyeska Pipeline Service Company, a copy of which is provided in Appendix D on Page 73.

Payment of Costs

After Alyeska has determined the costs resulting from a pollution discharge, Alyeska shall submit a Claim for Payment to the vessel causing the

discharge. At its option, Alyeska may make interim Claims for Payment. The vessel shall make payment within sixty (60) days of receipt of Alyeska's Claim for Payment.

Failure to Pay - Refusal to Dock

If the vessel fails to pay a Claim for Payment within sixty (60) days after its receipt, Alyeska shall notify the vessel that it may not call again at the Valdez Marine Terminal until:

- Full payment is made or
- Arbitration is initiated and the vessel has paid the undisputed amount of the claim and has posted either a bond or an acceptable letter of undertaking in twice the amount of the disputed claim.

Arbitration Procedure

Alyeska and each vessel calling at the Valdez Marine Terminal agree that their sole remedy to resolve their respective liabilities arising out of a pollution discharge shall be binding arbitration pursuant to the Federal Arbitration Act, 9 USC § 1 *et seq.* and as set forth herein.

Any controversy or claim between Alyeska and such vessel arising out of or relating to a pollution discharge shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified in the Rules Of Arbitration For Vessels In Trade with Alyeska Pipeline Service Company, published by Alyeska and provided to all vessels. See Appendix D, Page 73.

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News

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Oil calls tune on spill bill

Maneuvers shut down House, irk lawmakers

By RALPH THOMAS
Daily News reporter

JUNEAU — Lobbyists and lawyers for Alaska's oil industry all but paralyzed the House late Wednesday while they worked to kill — or at least rewrite — legislation they hate.

And when the oil officials couldn't get what they wanted during an afternoon of back-room bickering and negotiations with each other, lawmakers and the governor, the House adjourned for the day to give industry lawyers more time to work on the legislation.

A major sticking point is an amendment declaring Alyeska Pipeline Service Co. responsible for cleaning up all crude oil spills in Prince William Sound.

"It is incredible the influence that Alyeska has," Rep. David Finkelstein, D-Anchorage, said. "They've got people hopping all over the place. ... Why can't we



Finkelstein



Hudson

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SPILL BILL: Oil industry tries to rewrite legislation

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vote what we each believe? Why does it have to be what industry wants?"

The bill would make permanent a temporary law passed last year to give oil spill cleanup contractors, including Alyeska, some immunity from damage claims. Proponents of the bill say that, without the immunity, contractors might not show up at a spill scene because of liability risks.

The immunity issue is particularly important to Tesoro Alaska Petroleum Company, a small firm that takes about one tanker load of oil out of Prince William Sound each week to its refinery in Nikiski. Without the immunity, Alyeska has threatened to make Tesoro put up a \$1 billion bond, which Tesoro says it can't afford.

The immunity provision — seen primarily as a way to keep Tesoro in business in Alaska — hasn't been greatly controversial in the legislature. But Alyeska officials spent hours Wednesday urging lawmakers to dump or revise the cleanup responsibility provision, according to Rep. Mike Navarre, D-Kenai.

Ever since the Exxon Valdez oil spill in 1989, Alyeska officials have argued that

the company is a "volunteer" spill responder bound only by its contracts with oil shippers. Under current contracts, Alyeska is bound to respond only during the first three days of a spill.

But the state and federal governments contend Alyeska is bound by right-of-way agreements and the federal law that established the trans-Alaska pipeline to clean up any spill in Prince William Sound, with no time limit specified.

The bill was supposed to go to the floor early Wednesday, but House Speaker Ben Grussendorf, D-Sitka, had to call numerous recesses so lawmakers and industry officials could work on amendments.

Most of the huddles centered around the 13-member Republican House Minority, where there was strong opposition to the Alyeska responsibility provision. One meeting included the minority, a few members of the Democrat-led House Majority, lawyers for Alyeska and Tesoro, and Attorney General Charlie Cole — but no reporters or members of the public. At the same time, two other Alyeska officials were meeting with Gov. Wally Hickel and some of his top staff members, according to Sen. Sam Cotten, D-Eagle River.

The immunity question has been the major oil-industry issue in the legislature for two years and the major companies involved have poured thousands of dollars into legislators' campaign war chests.

Twenty-two House members signed on as co-sponsors to this year's bill and, during the past two years, 17 of the co-sponsors got money from one or more of the main players: Tesoro, Alyeska, BP Exploration, Arco and Exxon.

On average, the 17 co-sponsors collected \$2,877 apiece. The leaders were Rep. Bill Hudson, R-Juneau, who got \$4,900, and Rep. Loreq Leman, R-Anchorage, who collected \$4,325. Hudson and Leman both fought against the Alyeska responsibility provision during committee debates.

Alyeska's efforts in recent weeks to get the responsibility provision lifted have angered some lawmakers.

House Resources Chairman Cliff Davidson, D-Kodiak, and Judiciary Chairman Dave Donley, D-Anchorage, were pressured by industry officials and fellow lawmakers to rush the bill through their committees.

"It's time to stand up," Davidson said. "Are we going to be representatives of Alyeska or Alaska?"

Even Hudson, who had been frustrated by the bill's slow committee progress, said he was angered by the industry's last-minute maneuvering.

Part of Alyeska's objection to the cleanup responsibility requirement apparently stems from an internal rift among the pipeline consortium's parent companies.

BP, which owns about 50 percent of Alyeska, does not want to get stuck with the bill for cleaning up another company's spill, said spokesman Tom Williams.

Williams said another concern was that Alyeska would have to buy more cleanup equipment because the company is now only geared up for the first three days of a Prince William Sound spill.

Another snag Wednesday came when Alyeska and Tesoro disagreed over a section of the bill that would regulate how much Alyeska could charge shippers for its cleanup services, according to Navarre.

Alyeska and Tesoro were on the same side, however in fighting a provision that would end the cleanup contractors' immunity after 3 days.

The bill is scheduled to go back to the House floor today.

Bill would rid Alyeska of spill cleanup duty

By LIZ PULLIAM

TIMES WRITER

JUNEAU — A tanker could run aground in Prince William Sound, immediately declare bankruptcy and Alyeska Pipeline Service Co. would not be required to clean up the spilled oil under a bill the House considered Thursday night.

Bill supporters said they had enough votes to approve the measure, although no vote had been taken at press time.

Approval would be a victory for Alyeska, which maintains it has no legal duty to contain spills and which successfully fended off legislators' attempts to say it did.

And although Gov. Walter J. Hickel has said Alyeska should respond to all tanker accidents in the Sound, the Hickel administration would not fight the bill if a similar version passes the Senate, a top Hickel executive said.

"We'd allow it to become law or sign it," said Paul Fuhs, Hickel's legislative lobbyist. "The bill is too important for the whole state to veto."

The bill started as a measure to protect cleanup contractors from lawsuits, something supporters said was necessary to ensure firms would be willing to tackle a spill. It became a heavily lobbied, politically divisive fight that delayed House business for two days.

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Alyeska

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The central battle involved two oil powers — Alyeska, which is owned by seven oil giants and manages the pipeline, and Tesoro Alaska Petroleum Co., an independent.

Tesoro officials told legislators last year the company was in danger of going out of business in Alaska because it could not afford a \$1 billion bond Alyeska required.

Tesoro ships oil from Prince William Sound to its refinery at Nikiski. The bond was necessary, Alyeska said, because of the risk of oil spill lawsuits.

Valdez's other four shippers — Exxon, ARCO Alaska Inc., BP Exploration and Chevron — are all much larger than Tesoro and worth well over \$1 billion each. They also are owners of Alyeska.

Legislators passed a bill in

1991 making it harder to sue cleanup contractors. Alyeska eased up on its bond requirement, which Tesoro then was able to meet.

The liability limitation ends next month. Tesoro pressed the Legislature to renew it.

"There's no way we can meet that (bond) requirement," Tesoro lawyer Gene Burden said. "It could definitely interrupt, if not stop, our production."

Rep. Bill Hudson, R-Juneau, sponsored a new liability limitation bill, saying the problem extended beyond Tesoro. Hudson said cleanup contractors in Southeast Alaska also approached him, asking for relief from potential lawsuits.

But Democratic legislators, angry at Alyeska's claims in Exxon Valdez spill lawsuits that it was only a "volunteer" responder, added language to the liability bill that would force Alyeska to immediately contain spills.

The result was a political situ-

ation Alyeska could not lose.

Opponents of Alyeska soon discovered they did not have enough votes to keep the mandatory response requirement in the bill. And since the bill included language protecting Tesoro from predatory pricing by Alyeska, voting against the bill could strand both Tesoro and the independent contractors it was originally designed to help.

"Alyeska wins if they lose this bill," Hudson said. "Nothing would keep them from charging what they want."

Alyeska says it will respond to spills, but only because it is bound by privately negotiated contracts with shipping companies.

Those contracts relieve Alyeska of responsibility if a spill cannot be traced to a shipper or if a shipper goes bankrupt.

State Attorney General Charles Cole told legislators that was too big a loophole.

After the Exxon spill in March 1989, oil companies incorporated

each of their tankers as separate corporations to limit liability. Fuhs said a parent company could have its tanker declare bankruptcy to avoid cleanup costs.

Cole said the state needed a law forcing Alyeska to respond. The state also should be able to monitor the contracts Alyeska makes, he said.

"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," Cole wrote in a Thursday letter to House Speaker Ben Grussendorf, D-Sitka.

The House Judiciary Committee heeded Cole's advice when it added a statutory response requirement Monday.

But Hudson removed the requirement, and many of the committee's other changes, when he drafted a massive amendment the House considered late into Thursday night.

"I've gotten three different opinions from the attorney general," Hudson said. "As far as I'm concerned I don't give a damn what he says."

The amendment gave Alyeska and other contractors protection from lawsuits not based on "gross negligence or misconduct," but stripped a provision that would give the state immunity, too.

Hickel's lobbyist said Hudson's version was better than no liability at all. "It's a real improvement on the current situation," Fuhs said.

Rep. David Finkelstein, D-Anchorage, said Hudson ignored hours of public testimony and previous committee work.

"It's not a product of the Legislature. It's a product of the industry and a few legislators," Finkelstein said.

Several members broke from the majority caucus to side with the Republican minority and Hudson. That frustrated the remaining majority members.

"I can't believe what I've heard around this body that this amendment is greased," said Rep. Gene Kubina, D-Valdez.

Such a split can ruin a caucus, meant to create a voting bloc. But Finkelstein said his colleagues were not likely to try to reorganize so late in the session. The Legislature is scheduled to adjourn Tuesday.

The majority was not the only group having trouble hanging together.

Hudson tried to sell Republicans on another amendment that would have stripped Alyeska of its immunity if it failed to honor its contracts, an addition designed to reassure those who wanted a statutory requirement.

But Alyeska would not support the measure and Hudson's colleagues told him to back off.

"It's not your bill anymore. We don't have the votes to play with it," said Rep. Dave Choquette, R-Anchorage. "Sorry huddy."