SCOMM

78:14

Response Contractor Liability Work Meeting

February 20, 1992

I. Alaska Department of Environmental Conservation - Comments of CCC report and department recommendations

II. Prince William Sound Regional Citizen's Advisory Council - Tim Robertson, chair of the council's Spill Prevention and Response Committee, Report on the status of the Coast Guard OPA 90 rulemaking related to response action contractor liability and certification

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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.

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2/13 -K

WORKGROUP 2 - CONTRACTOR CERTIFICATION

WALL CHARTS FROM FEBRUARY 11, 1992 MEETING

Proposed definition of "certification":

Certification is the process by which the President's designee will verify a contractor's inventory of available spill response equipment, personnel, management, structure, and associated support; and will assign a quantification value of those resources within a standardized classification of designated response services for a specific geographic area, for purposes of preparation spill response plans.

Self-assessment:

- Submittal of Information (Application)

    A) Equipment

    B) People

    C) Management

    D) Mobilization

- Inspection/Validation

    A) Conducted by USCG or their designated representative

- Related Issues:

    Certify in terms of--

    A) Types of services offered

    B) Capacity/quantity of service

    C) Geographic location

    Notification of down status

    A) Significant impact on major capability level

B) Qualified party

C) To area authority

Equipment:

A) Inventory

-Status -- owned

leased

contracted

-what equipment

-from whom

-location

-terms of contract

B) Maintenance Statement

-Inspection/verification

People:

A) Listing by -- (a) job category

(b) match equipment list and scope of services per 24 hour day

(c) training where applicable

(d) status

-full time
-part time
-pool

(e) total personnel

B) Agreement to inspection/verification of above listings

Mobilization:

From notification to initial departure to the scene

Management:

A) To carry out services offered

B) Regulatory awareness and compliance

- includes violations

- use State of Washington model (sections 317-10-090 2(b) and 317-10-092 7 in regulations)

C) Supervision

D) Experience - included as a qualitative measure

Regulatory Drafting Committee:

Joe Lees, Tom Mullen, Mark Miller, Lee Rees, Mark Shaye, and Joe Smith

Issues to Consider:

A) Role of Agency in dealing with applications

- How verified?

- How often verified or resubmitted?

- How to establish or test capability to aggregate resources?

B) How to fund major drills required to validate capability?

- Access to Federal fund?

- Inspection funding?

ACTION ITEM: ADM Costello and CAPT Willis will draft letter to RADM Henn to pose these questions.

C) Contracts with contractors

- What constitutes a valid contract?

For Next Meeting:

A) Regulatory drafting committee to provide draft regulation for review and discussion.

B) Group to consider capacities for on-water recovery treatment and shoreline remediation. Tie this to four environments: offshore, inland, river, great lakes. Based on input from workgroup 4.

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) The plan holder has been directed to perform such actions by the department or the United States Coast Guard.

NEW SECTION

WAC 317-10-080 PLAN UPDATE TIMELINE. (1) The office shall be notified in writing as soon as possible and within twenty-four hours of any significant change which could affect implementation of the plan, including a substantial decrease in available spill response equipment or personnel. The plan holder shall also provide a schedule for the prompt return of the plan to full operational status. A facsimile will be considered written notice for the purposes of this subsection. Changes which are not considered significant include minor variations in equipment or personnel characteristics, call out lists, or operating procedures. Failure to notify the office of significant changes shall be considered noncompliance with this chapter and subject to provisions of WAC 317-10-065 (7)(e).

(2) If the office finds that, as a result of the change, the plan no longer meets approval criteria pursuant to WAC 317-10-065, the office may, in its discretion, place conditions on approval or revoke approval in accordance to WAC 317-10-065 (7)(e). Plan holders are encouraged to maintain back-up resources in order to ensure that their plans can always be fully implemented.

(3) Within thirty calendar days of an approved change, the covered vessel owner or operator or their designee shall distribute the amended page(s) of the plan to the office and other plan holders.

(4) Plans shall be reviewed by the office every five years pursuant to WAC 317-10-065. Plans shall be submitted for reapproval unless the plan holder submits a letter requesting that the office review the plan already in the office's possession. The plan holder shall submit the plan or such a letter at least sixty-five calendar days in advance of the plan expiration date.

(5) The office may review a plan following any spill for which the plan holder is responsible.

NEW SECTION

WAC 317-10-085 NONCOMPLIANCE WITH PLAN REQUIREMENTS. (1) Any violation of this chapter may be subject to the enforcement and penalty sanctions of chapter 200, Laws of 1991.

(2) The office may deny entry onto the waters of the state to any covered vessel that does not have an approved plan and is so required.

(3) The office may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a person or covered vessel is in violation of this section shall be considered a separate violation.

NEW SECTION

WAC 317-10-090 CONTRACTOR STANDARDS. (1) Primary response contractors listed in a covered vessel contingency plan must be approved by the office. Response contractors which are listed in a contingency plan only as subcontractors to a primary response contractor do not have to be approved by the office.

(2) Primary response contractors shall be approved by the office subject to the following conditions:

(a) 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. Approval of personnel readiness shall require capability of a one hour call out time in which personnel must be able to begin mobilization of response efforts. Equipment readiness shall include being available and able to be deployed to a spill site without delay, not counting normal maintenance and repairs;

(b) Response personnel shall comply with all appropriate safety and training requirements listed in WAC 296-62-300. Training records may be audited for verification; and

(c) 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.

(3) The office shall work with the department to ensure that no duplication of regulatory responsibilities occurs in the review of primary response contractors.

NEW SECTION

WAC 317-10-092 CONTRACTOR APPROVAL INFORMATION REQUIRED. To apply for approval, contractors shall submit the following items to the office:

(1) Contractor's name, UBI number, address, and phone number;

(2) Response capability, including geographic area of response coverage, with any exclusions;

(3) The types of oil and media (e.g., marine, fresh water, or land) to which the contractor is willing and able to respond;

(4) An organizational diagram depicting chain of command;

(5) A call out list as described in WAC 317-10-050 (11)(a)(i);

(6) A list of all response equipment and personnel pursuant to WAC 317-10-050 (12)(a), (b), and (d) and (13)(a) and (c); and

(7) A list of all OSHA/WISHA citations and reports, lost-time accidents, and accident claims related to oil spill response operations for the last five years. Any applicant with less than five years under their current business name or organization shall provide a listing of any oil spill response contract businesses owned or operated by the principals in the new company within the last five years, including a brief description of the companies and their safety history information as listed above.

NEW SECTION

WAC 317-10-094 SUBMITTAL OF CONTRACTOR APPROVAL APPLICATIONS. (1) Three copies of the contractor's approval application shall be delivered to:

Response Contractor Approval
Washington Office of Marine Safety
P.O. Box 42407
Olympia, WA 98504-2407

(2) Applications may be submitted at any time after adoption of this chapter. If submitted with a contingency plan, the information required pursuant to WAC 317-10-092 shall be presented separately.

NEW SECTION

WAC 317-10-096 CONTRACTOR APPLICATION REVIEW. (1) The office shall endeavor to review each application for primary response contractor approval in forty-five calendar days. Upon receipt of an application, the office shall evaluate promptly whether the application is incomplete. If the office determines that an application is incomplete, the submitter shall be notified of deficiencies. The forty-five-day review period shall begin when the application is complete.

(2) An application shall be approved if it meets the conditions specified in WAC 317-10-090.

(3) The office shall endeavor to notify the applicant that the application has been approved/not approved within five working days after the review is completed.

(a) If the application is approved, the contractor shall receive a certificate of approval describing the terms of approval, including expiration dates.

(b) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval. The contractor may not act as a primary response contractor for a covered vessel contingency plan until approved by the office.

(c) If the application is not approved, the contractor shall have thirty calendar days from the date of the notice of nonapproval to appeal the office's decision. The appeal shall be perfected by serving an application for an adjudicative proceeding upon the office within the time specified herein.

(d) Approval of a response contractor by the office does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

(4) Response contractor approvals shall be reviewed by the office every two years pursuant to WAC 317-10-094. Reapproval applications shall be submitted sixty calendar days in advance of the approval expiration date.

(5) An approved contractor shall notify the office in writing as soon as possible and within twenty-four hours of any significant change in the information reported in the approval application, such as a substantial change in equipment ownership. A facsimile received by the office will be considered written notice for the purposes of this subsection. Failure to notify the office may result in loss of approval status. Upon notification, the office may review and modify the approval of the primary response contractor pursuant to this section. If the department determines that approval conditions are no longer met, approval may be withdrawn.

NEW SECTION

WAC 317-10-098 SEVERABILITY. If any provision of this chapter is held invalid, the remainder of the rule is not affected.

PRESENT REGULATIONS

18 AAC 75.305 APPLICATION FOR APPROVAL

(d) Applicants may employ oil discharge response organizations, cooperative agreements, cleanup contracts or other arrangements to satisfy the requirements of this chapter and are responsible to ensure that those services are in full compliance with the provisions of this chapter.

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.

APPLICABILITY: The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility subject to the requirements of AS 46.04.030 is responsible for meeting the applicable requirements for preparing contingency plans and for preventing the discharge of oil into waters or onto land of the state. All vessels which carry oil as bulk cargo, regardless of storage capacity, are required to apply.

TYPES OF APPROVALS

A. New Facilities/Vessel

The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility must apply for each facility before beginning any operation. Owners or operators of existing facilities without approved plans shall provide a compliance schedule for applying and meeting the requirements of an approved plan.

B. Amendment

Plan holders must apply for an amendment before any change to an oil discharge prevention and contingency plan is proposed. This includes significant amendments which may diminish the planholder's ability to respond to an oil discharge. Addition of vessels operating under an approved plan would require an amendment. Also, a routine plan update requires application for approval as an amendment.

C. Renewal

Plan holders must apply for renewal of their approved plan before it expires. Change of ownership requires a renewal of the approved plan. The planholder shall apply for renewal following each three years of operation by the planholder.

APPLICATION FOR APPROVAL

NEW FACILITIES/VESSELS

60 days prior -At least 60 days before filing an application for approval of a new oil discharge prevention and contingency plan, the applicant shall notify the Department of Environmental Conservation regional office regional office in the primary region of operation of the intent to file a plan.

10 days prior -Upon receipt, the Department has 10 days to determine completeness of the plan and application form.

Upon receipt of the complete application, the department will determine the need for additional copies of the plan for review purposes.

Day 1 - The Department will notify the applicant of completeness or request additional information to make the application complete. Review will be held in abeyance until additional information is received and the application is determined complete.
The review process begins.

Day 10 - The Department will initiate a thirty (30) day public comment period. Comments will be received by the department during the review period.

Day 40 - Public comment periods ends.

Day 45 - Department will notify applicant if additional information is needed. Review will be held in abeyance until additional information is received.

Day 65 - Final Department decision.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
APPLICATION FOR APPROVAL FOR AN
OIL DISCHARGE AND PREVENTION CONTINGENCY PLAN

This application for an oil discharge and prevention contingency plan is submitted to the Department of Environmental Conservation for approval as required by Alaska Statute 46.04.030. The following information as applicable, must be provided for each contingency plan submitted.

Basic Information:

1. Facility Name & Location: ______________________________

   Mailing Address: ______________________________
   City/State/Zip Code: ______________________________
   Phone:(___)________ Fax:(___)________
   If vessel: Name & Home Port: ______________________________

   Official Number:_______________Country of Registry: _______________

2. Applicant's Name and Official Title:______________________________
   (Check one below)

   Oil Terminal:
   ____Owner
   ____Operator
   Tank Vessel or Barge:
   ____Charterer
   ____Operator
   ____Owner
   ____Person with Primary Control
   Exploration or Production Facility:
   ____Lease Holder
   ____Operator
   Pipeline:
   ____Lease holder
   ____Operator

3. Application is for: ( ) New facility/vessel
   ( ) Amendment
   ( ) Renewal (If no changes have been made a copy of the plan need not accompany this application form)
   ( ) Exemption (18AAC 75.400 b-c)

4. Expected start date of operations: ______________________________
   If existing facility, date operations started: ______________________________

5. Applicant has completed a coastal project questionnaire for operations as required by the Alaska Coastal Zone Management Program, 6 AAC 50:

YES( ) NO( )

6. Applicant is aware of: YES NO

	YES	NO
a. Alaska Oil Pollution Statutes, Title 46	( )	( )
b. Alaska Oil Pollution Prevention & Control Regulations 18 AAC 75	( )	( )
c. Alaska Financial Responsibility Regulations 18 AAC 75 Article 2	( )	( )

Facility Information

1. ( ) Oil Terminal ( ) Exploration Well:
   ( ) Onshore ( )Offshore
   ( ) Production Facility
   ( ) Tank Vessel ( ) Pipeline Facility
   ( ) Barge ( ) Other(specify)____________________

2. Type of petroleum product handled:
   ( ) Crude Oil ( ) Noncrude Oil

3. If terminal, storage capacity is:
   ( ) Less than 5,000 barrels( ) 5,000 - 10,000 barrels
   ( ) Greater than 10,000 barrels

4. If vessel, cargo volume is:
   ( ) Less than 500,000 barrels( ) Greater than 500,000 barrels

5. Area of operations for vessels operating in Alaska waters:__________
   ____
   ____

C. CERTIFICATION

I, ____________________, certify under penalty of perjury that the above information and accompanying exhibits are true, correct, and complete.

______________________________ ____________________

Applicant's Signature(Official Title) Date

During this review process the Department determines if the plan submitted contains the information necessary for a successful response and cleanup of a discharge. The amount of equipment and material required for this response is dependent on the response planning standard required for the individual vessel or facility. If the contingency plan holder has a contract with a response organization for a part or all of the response capabilities necessary for this plan, the contract is reviewed by the Department to ensure that they in fact have the necessary response capabilities. The Department has the authority to conduct inspections and spill drills during the year to ensure that the organization designated in the contingency plan for response does in fact have the capability for response that is contained in the plan. The legalities of the contract between the contingency plan holder and the contractor are not reviewed.

February 4, 1992 Revision

(G:\SPPM\C[illegible]\HB567\cplanrvw.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. <u>Notice of Changed Relationship with Response Contractor [DELETE THIS PARAGRAPH IF NO RESPONSE CONTRACTOR INVOLVED IN THE PLAN]</u>. 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 be the regions. Standard distribution should include one copy to Central Office SPPM c\o Larry Dietrick

From the desk of:

Senator Drue Pearce

P.O. Box V
Juneau, AK 99811
Capitol, Room 101
(907) 465-4993

Sam

solution might be resolution material ???

The whole issue deserves attention and concern.

Drue

Oil Pollution Act Fouls the Regulatory Waters

By CHARLES ANDERSON

While there are many examples of how over-regulation harms U.S. interests, few are as representative of the power of legislation to inflict unintended harm on the public as the Oil Pollution Act of 1990.

Today, protection and indemnity (P&I) clubs—mutual insurance organizations providing oil pollution coverage for shipowners—are meeting in London to decide whether to continue to insure vessels transporting oil to the U.S. This is more than an academic exercise—more than half of U.S. oil is imported, 74% of that by the independent tanker owners insured by P&I clubs.

It's likely that the P&I clubs will refuse to provide coverage if the implementing regulations covering financial responsibility are adopted. Should that happen, the oil could stop flowing.

Hardly anyone expects the spigot to be shut immediately. It is more likely that an interim compromise will be reached. Yet this current impasse shows how Congress, acting in a vacuum, passes legislation that ignores economic realities and frequently ends up harming the public good the policy makers were elected to advance.

In this instance, the U.S. is attempting to regulate an industry that exists almost entirely beyond its borders. The P&I clubs are almost exclusively based outside the U.S., and nearly all the independent tankers fly foreign flags. Thus, Congress may enact laws, but the shipping industry still maintains some measure of control over where vessels will trade.

The provisions of the Oil Pollution Act that set off the loudest alarms are those that deal with liability and financial responsibility. The act requires tank vessels of more than 3,000 gross tons (the vast majority) to provide proof of financial responsibility of $1,200 per gross ton or $10 million, whichever is greater. On top of that, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires tankers that carry hazardous substances in addition to oil to provide added proof of financial responsibility of the greater of $5 million or $300 per gross ton.

While these requirements are onerous, it could be reasonably argued that tough measures are required to guarantee the safety of America's waters. In fact, neither shipowners nor the P&I clubs have balked at these requirements, though insurance premiums have nearly doubled—even for fleets that are fully in compliance with the act's safety provisions, such as the regulations calling for double hulls. The Oil Pollution Act, however, goes one step further, allowing claimants to sue the underwriter directly in the U.S. for pollution clean-up costs and damages.

Claimants could include not only the federal government, but also the state government in any one of the numerous coastal states that currently have oil pollution statutes (many of which provide for unlimited liability), or a third party that claims it has been harmed by a spill.

This last highlights the true problem: It's not regulation per se that is harmful to business, but multiple layers of regulation, each administered by its own regulatory body, all regulating the same behavior.

In effect, the P&I clubs are being asked to submit to potentially unlimited liability—from a cascade of civil and federal claimants—every time a ship calls on a U.S. port. They are understandably reluctant to do so.

On the other side of the coin, many foreign-flag tankers primarily serve the U.S. market, and their owners would almost certainly lose substantial revenues were they forced to stop calling here. Recognizing the value of this trade, most are responding positively to the Oil Pollution Act and are attempting to comply with its provisions, even though implementing regulations are still being drafted by the Coast Guard. They are constructing new double-hulled tankers and developing detailed oil-spill contingency plans and training programs for ship's personnel.

Nonetheless, the mere threat of higher liability has already resulted in an increase in freight rates of as much as 10%, according to some published estimates. These increases will ultimately mean higher consumer prices for petroleum products. Further, some ship masters and officers are reluctant to operate vessels in U.S. waters, fearful that they may be held personally or even criminally liable in the event of an accident.

Oddly enough, there is nothing in the Oil Pollution Act to encourage charterers to charter vessels from responsible operators. Cargo owners are not considered responsible parties in the event of a spill. This is counter-productive in at least two ways. First, it undermines the efforts of responsible ship owners to modernize their vessels to meet or exceed current safety standards; second, it provides no incentive for the cargo owners to do business only with responsible shipping companies. If cargo owners can escape liability in the event of a spill, there is no incentive to charter safer, but perhaps more expensive, tankers.

A reasonable solution exists to resolve the current impasse. For example, in California a certificate of financial responsibility may be obtained by providing "other evidence of financial responsibility." This includes proof of entry in one of the associations making up the international P&I clubs, with oil pollution coverage of not less than $500 million. California does *not* require the P&I club to submit to state jurisdiction. The Coast Guard has so far refused to incorporate this option into its proposed rule-making.

A multitude of overlapping laws now governs the transportation of oil to the U.S.: international conventions, most of which the U.S. has refused to ratify; the Oil Pollution Act of 1990; and state laws. Tanker owners must be prepared to respond to the sometimes contradictory demands of all three. This is an inefficient and expensive proposition that serves neither the public interest nor the needs of a nation that still needs imported oil to compete in the world marketplace.

Mr. Anderson is a partner in a New York law firm whose practice focuses on oil pollution and environmental law.

* ORIGINAL *
* SENT: 02/20/92 TIME: 17:27   *
* FROM: LIOCMIL   *
* SUBJECT: HAND OUT   *
* PRINT DATE: 02/20/92 TIME: 17:41   *
*   *
****

~~DEB~~ Sen. Cotten's Support Person

CAN YOU FAX US THE HANDOUT THEY ARE REFERING TO, PLEASE?

THANKS

JUDY

note: in Anchorage observing:
Leo Hannan Citizen's Oversight
Scott Sterling

****
*   *
* REPLY   *
* SENT: 02/20/92 TIME: 17:34   *
* FROM: LIOCDEB   *
*   *
****

JUDY

I'LL PASS YOUR NOTE TO THE SENATOR'S STAFF PERSON AND LET YOU KNOW WHAT THEY SAY, OK?

DEB

* SENT: 02/20/92 TIME: 17:22   *
* FROM: LTCCHOM   *
* SUBJECT: 92-02-082;PL#2;(S)O&G;2-20-92 *
* PRINT DATE: 02/20/92 TIME: 17:22   *
*   *
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SUBJECT LINE TO READ: TC NO.;PL NO. OR FS;SHORT SUBJECT;DATE

JNU MOD: DEB

T/C NO: 92-02-082
DATE: FEBRUARY 20, 1992
SPONSOR: (S) OIL AND GAS
SUBJECT: HB 196 LIABILITY RESPONSE ACTION
MODERATOR: ELLEN
SITE: HOMER LTC

PARTICIPANT LIST #2

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TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. KEN CASTNER	BOX 558, HOMER 99603	235-8252	HB196
2.			
3.			
4.			
5.			

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OBSERVER

NAME/RERESENTING	ADDRESS	PHONE	BILL NO.
1. LARRY SMITH	1520 LAKESHORE DR., HOMER 99603	235-7090	
2.			
3.			
4.			