

SCOMM

78:32

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 24, 1991

To: Members of the Senate Oil and Gas Committee

From: Sam Cotten, Chair

NOTICE OF MEETINGS

1. The Oil and Gas Committee will be meeting on Friday at 9:30 in the Beltz Room to consider S.B. 263 (five day notice waived). The legislation would defer for one year compliance with last session's H.B. 567 for non-crude operations.

2. The confirmation of Lonnie Smith, commissioner of the Alaska Oil and Gas Conservation Commission, was referred to both the Senate Oil and Gas Committee and the Senate Resources Committee. As a result, our committee will be meeting jointly with the Senate Resources Committee on Monday, April 29, 1991 at 1:30 to consider that confirmation. The meeting will be in the Butrovich Room.

3. The Oil and Gas Committee will meet Tuesday, April 30 at 11:00 in the Beltz Room to consider S.J.R. 28, relating to the Presidential Task Force on the TAPS.

cc: Senate Secretary
Senate Records
Commissioner Lonnie Smith
Senator Lyman Hoffman
Senator Jay Kerttula



Senator Lyman F. Hoffman

Alaska State Senate

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

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Akiachak
Akiak
Alaina
Allakaket
Andreasky
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Arctic Village
Atnautluak
Beaver
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Chalkyitsik
Chefnak
Chuathbaluk
Crooked Creek
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Evansville
Fort Yukon
Galena
Goodnews Bay
Grayling
Holy Cross
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Lime Village
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Manley Hot Springs
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Mountain Village
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Newtok
Nightmute
Nikolai
Nulato
Nunapituk
Oscarville
Pilot Station
Pitkas Point
Platinum
Quinhagak
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Stony River
Taketna
Tanana
Telida
Toksook Bay
Tuluksak
Tuntutuliak
Tununak
Tyonek
Venetie
Wiseman

MEMORANDUM

TO: Senator Jay Kerttula, Co-chair
Senator Pat Pourchot, Co-chair
Senate Finance Committee

FROM: Senator Lyman F. Hoffman *LFH*
Senator Al Adams *AA*

DATE: April 30, 1991

RE: Supplemental funding

Last year's HB 567 set new standards and requirements for oil spill cleanup and financial responsibility. As a compromise to the non-crude oil industry, two studies were mandated [Section 30 (a) and (b), ch. 191, SLA 1990 and Section 31, ch. 191, SLA 1990]. In the rush to pass this major piece of legislation, the legislature did not have the opportunity to discuss the economic impacts of these changes in oil spill contingency planning.

For that reason, we would like to request supplemental funding for the Department of Environmental Conservation for \$60.0 from the 470 fund to include an analysis of the probable economic costs and other economic effects that the recommended requirements would impose on all noncrude oil terminal facilities, tankers and barges and on the persons they serve. This report should also include the benefits to the State of Alaska through avoided clean-up costs expected through implementation of this law. The lapse date of this allocation should be July 1, 1992. DEC supports this request.

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P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 23, 1991

Senator Dick Eliason
Senate President
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason,

Senator Hoffman has introduced a bill -- SB 263 -- that would delay the requirements of last session's HB 567 for one year for non-crude operations.

I am requesting that the bill be referred to the Senate Special Committee on Oil and Gas. This committee has had several hearings this session on the requirements of HB 567, and I believe it would be appropriate for the committee to review Senator Hoffman's bill.

Thank you for your consideration.

Sincerely,

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

Sam Cotten
Chair

Senator Lyman F. Hoffman

Alaska State Senate

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

MEMORANDUM

TO: Senator Sam Cotten, Chair
Senate Oil and Gas Committee

FROM: Senator Lyman F. Hoffman

DATE: April 19, 1991

RE: HB 567

On Monday I am introducing a bill to extend the effective date of last year's HB 567 for one year (see attached) for noncrude carriers only. Since this issue has already received a hearing in your committee, I respectfully request that you waive the 5-day notice and formally hear this proposed legislation as soon as possible.

I had not originally intended to introduce an extension of this nature. However, after hearing from a number of electrical utilities, fuel co-ops, and others from rural Alaska, it has become obvious to me that many of the smaller, non-crude oil businesses will not be in a position to be in compliance with HB 567, especially in light of the fact that the regulations will not be in place until next December at the earliest.

This legislation does not address the ambiguity of whether unexpired contingency plans must be redrafted and reapproved by DEC by either effective date. I would consider an amendment to do so if it would be considered appropriate.

This legislation does add two new sections to the reports required by HB 567 to include an analysis of the probable economic costs and other economic effects of the new requirements on noncrude facilities and carriers.

SB 263

BACKGROUND PAPER

History: On March 24, 1989 the Exxon Valdez ran aground on Bligh Reef in Prince William Sound, causing the largest crude oil spill in United States history. As a result, the Alaska Legislature and the United States Congress significantly strengthened oil spill prevention and cleanup standards. One bill - HB 567 - passed late last session made three major changes in state oil spill protection: It established new response planning standards; imposed new financial responsibility requirements for contingency plan holders; and required prevention measures to be incorporated into contingency plans. The new law required that existing contingency plan holders comply with these major changes on and after June 1, 1991.

Problem: Although HB 567 was passed as a result of the Exxon Valdez Oil Spill and was aimed at the crude oil industry, non-crude carriers and facilities are also subject to the changes. The Department of Environmental Conservation was charged with implementing this law. DEC failed to complete the implementing regulations in a timely manner however, and now does not expect them to be in place until December 1991, at the earliest. The larger oil companies have been working to meet these new requirements for this last year, and will be prepared to do so by HB 567's June 1, 1991, effective date. Their contingency plans will also receive the highest priority by DEC for review.

The smaller fuel distributors, barge lines, and electric utilities serving rural Alaska are not as prepared. They are having a difficult time meeting the new financial responsibility requirements. Insurance companies have so far not been willing to provide insurance and for most companies, self-insurance is not a feasible option. Due to the absence of implementing regulations, these companies also are not clear on how to approach the response standards. For example, does "realistic maximum discharge" mean the entire capacity of the vessel and the oil terminal facility? If so, this would require having such a large amount of cleanup equipment standing by that it would become prohibitively expensive to deliver fuel by barge to bush communities. HB 567 permits some leniency on the response requirements if prevention efforts are

undertaken. The smaller companies however, are hesitant to invest heavily in new cleanup equipment without first knowing what prevention credits might be available to them when the new regulations are implemented. Another uncertainty is that the smaller companies' contingency plans will not have been reviewed and approved by June 1, 1991, leaving open a serious liability question in the event of a spill.

Solution: SB 263 would delay the effective date until June 1, 1992, of HB 567 for noncrude operators only. Additionally, it would require that the studies already required by HB 567 include an assessment of the economic costs of the new requirements on noncrude operators. This would give DEC time to put its regulations together, and would avoid forcing non-crude carriers and facilities to operate in the uncertain liability environment they would face under the present deadline for compliance.

SECTIONAL ANALYSIS

PRELIMINARY DRAFT 1/28/91

ARTICLE 4. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN

18 AAC 75.305 Application for Approval

C-plans must be submitted 65 days prior to operation. This precludes the spot charter of tank vessels to deliver fuel to Dutch Harbor. It may also delay continuous operations when facilities are sold.

Five copies of the draft plan are to be submitted - ADEC may require additional copies. Coastwise marine operators (Crowley/Foss) may be subject to submitting plans to each of the 35 entities within the Alaska Coastal Management Program. Further, the current interpretation is that the operator is to respond to each entity which presents questions or requests additional information.

18 AAC 75.310 Application for Amendment

C-plans must be site specific. Marine operators must address all transfer locations. To deliver fuel to a location or village not described in the approved plan, an update which requires 65 days review is required.

18 AAC 75.320 Contingency Plan Contents

C-plans must follow and be presented in the four section format. All plans must be entirely rewritten, regardless of current value or content.

(1) Section 1 -- Emergency Action Plan

Emergency plan booklets are to be issued to all personnel for field use. The regulations imply that personnel will carry these booklets at all times. Facility and marine operators have not, do not, and will not carry such booklets.

(1) Section 1 (A)

The requirement to identify the name, phone numbers, and address of each person in the operation and government agency who is "by law" involved in the primary response results in booklets that will continuously be outdated and which will require constant updating.

(2) Section 2 (C) (ii)

C-plans often contain service agreements from cleanup contractors which facilitate prompt emergency response. Contractors will not enter binding response agreements whereby they may incur liability from the operators, the public, and the state.

(2) Section 2 (C) (iv)

The requirement that operators must demonstrate sufficient financial resources to support the actions of a contractor is vague. What amount is sufficient?

(2) Section 2 (C) (v)

Equipment inventories of cleanup contractors are continually changing, therefore, to attempt to demonstrate that equipment is "compatible" with rural facility operations is futile and useless.

(2) Section 2 (D) (v)

The requirement to analyze operating risks associated with volcanoes, earthquakes, avalanches, flooding, physical hazards, human error, vandalism, sabotage, etc. is a consultant's dream. Unfortunately, when applied to each rural facility it will be very expensive, contribute little beyond common sense, and be subject to subjective approval.

(2) Section 2 (G)

The requirement to provide a rated capacity of recovery equipment, particularly for refined products, illustrates a basic lack of understanding of spill response in rural Alaska. Recovery rates of pumps and skimmers are dependent on site specific application and circumstances.

(2) Section 2 (H)(I)

The requirements for detailed environmental analysis and commentary about the effectiveness of mechanical response equipment contributes to the volume and cost of contingency plans, but is seldom read. The coastwise marine operator will be required to write an Alaska environmental atlas in its plan.

(3) Section 3 -- Response Procedures

By law, operators are required to cleanup spills to the satisfaction of the designated On-Scene-Coordinator, regardless of duration of the cleanup. Therefore, I question the need and intent of the repeated requirement for operators to estimate length of time to conclude a spill response.

18 AAC 75.340 Spill Volume Preparedness Standards

1990 SLA Ch. 191 establishes that contingency plans must address preparedness standards which are identified for various operations. The standards attempt to quantify response capability, and may be factored up or down by risk exposure and preventative measures. For facilities the basic standard is the capability to cleanup the contents of the largest single tank in 72 hours. If ADEC determines increased risk is present the standard may be increased to the capacity of all potentially affected tanks.

Prior to preparing a plan the operator must establish, and ADEC must approve, an acceptable standard, albeit the standard is very subjective and will be different for each facility. Then, predicated on the standard and proximity of environmental sensitive areas and areas of public concern, the operator writes the plan and purchases response equipment. The plan is then submitted for inter-agency review and Coastal Zone Management comment. To my knowledge, no contingency plan has ever been submitted, reviewed and approved without a lengthy series of comments and revisions.

To satisfy the standard, the operator must maintain in its "area of operation" the required response equipment/capability. There are ten designated "areas of operation" which correspond to the regional planning areas identified in 18 AAC 75.395. The most obvious concern is that whereas rural facilities can generally demonstrate the ability to contain and transfer the volume of the largest tank it is impossible to identify temporary storage, within the area of operation, equal to the largest tank.

Marine operators have the difficult task of identifying in each area of operation the capability to lighter total cargo capacity within 48 hours. Further, the lightering resources must be maintained separately from other spill response resources.

18 AAC 75.345 Containment, Control, and Cleanup Requirements

18 AAC 75.345(a)

This section best illustrates the difficulty of compliance. It states, "For use in water response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10 waves ... Such equipment, to my knowledge, has not been invented.

18 AAC 75.345(b)

Spill trajectory modeling has proved unreliable even in most studied waterways. To require rural facilities to develop spill trajectory and mapping capability is questionable, particularly when it is the government sector that has conducted most of the research in trajectory analysis.

18 AAC 75.345(c)

A facility with potential for discharge into the water must maintain enough boom to contain at least the contents of the single largest tank. It is not unreasonable to assume that at least 5,000 feet of boom could be required to contain the contents of a 10,000 barrel tank. Additional boom is required to be separately stored and maintained to protect sensitive areas and areas of public concern.

18 AAC 75.345(d)

The Alyeska Terminal may maintain a fleet of response vessels, however, in rural Alaska dedicated vessels are not available on a permanent basis.

18 AAC 75.345(e)

Very few plans will be approved if operators must demonstrate they can contain or exclude all potential discharges from reaching sensitive environmental areas or areas of public concern. Further, few facilities are capable of maintaining separate exclusionary resources and personnel (in the area of operation) in addition to the facility response equipment.

18 AAC 75.345(f)

Marine operators cannot comply with current lightering requirements of the single largest tank within 48 hours. It is unrealistic to consider all marine operators can maintain total cargo lightering capability in 48 hours within each of the ten designated areas of operation.

18 AAC 75.345(h)

The issue of realistic skimmer efficiency rates versus manufacturers' nameplate rating is a futile and endless debate. The fact is skimmers are seldom used in the recovery of refined products as direct suction is usually the best means of recovery. Recovery rates of pumps and skimmers are dependent on site specific application and circumstances.

18 AAC 75.345(j)

It is impossible for a facility to demonstrate in a C-plan the onsite ability to discharge recovered wastewater. The permit application required under 18 AAC 70 requires specific site, time, volume and product

data. Further, ADEC states a permit cannot be pre-approved.

18 AAC 75.355 Training

On December 27, 1990 the Alaska Dept. of Labor adopted new training requirements for hazardous waste operations and emergency response (including oil spills). The current interpretation is that standard requires training of 40 hours for facility operators and 64 hours for supervisors, and annual refresher courses. Such training must be conducted by certified instructors and does not include "hands-on" deployment training which is also required.

18 AAC 75.355 Training

An operator will be out of compliance unless he revises his C-plan and notifies ADEC every six months of all name, address, and phone number changes. This includes changes within government agencies which must be identified in the plan.

18 AAC 75.380 & 385 Inspection & Discharge Exercises

ADEC may conduct unannounced inspections and require unannounced discharge exercises.

REALISTIC MAXIMUM OIL DISCHARGE
(RMOD)

STATUTORY PROVISIONS; DRAFT REGULATIONS

HB 567 and the draft regulations contain the following planning standards for various operations:

STATUTE:

Definition:

"Realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines. AS 46.04.030((q)(3)).

oil terminal facility: (crude or non-crude)

STATUTE:

The capacity of the largest oil storage tank at the facility within 72 hours; if department determines high risk area, it may increase volume requirement.

REGULATION:

Same as statute; If department determines high risk, must plan for discharge of all tanks potentially affected by that risk.

Tank vessel or oil barge -- crude oil:

STATUTE:

- Cargo cap. less than 500,000 bbls: 50,000 bbl within 72 hours. After 72 hours: realistic max. oil discharge within shortest possible time.
- Cargo cap. 500,000 or more bbls: 300,000 bbl within 72 hours. After 72 hours: realistic max. oil discharge within shortest possible time.

REGULATION:

- Cargo cap. less than 500,000 bbls: 50,000 bbl within 72 hours; after 72 hours: 80% cargo cap. within shortest possible time.
- Cargo cap. 500,000 or more: 300,000 bbls within 72 hours; after 72 hours, 60% cargo cap. within shortest possible time.

Tank vessel or oil barge -- non-crude:

STATUTE:

15% of the maximum capacity of the vessel or realistic maximum discharge, whichever greater, within 48 hours & clean up discharge within shortest possible time.

REGULATION:

15% of the maximum capacity of the vessel within 48 hours, and clean up discharge within shortest possible time. (NOTE: THE PROPOSED REGULATIONS SET THE RMOD AT 15%, WITHOUT ANY "WHICHEVER GREATER")

Exploration facility:

STATUTE:

"Realistic maximum oil discharge" within 72 hours.

REGULATION:

16,500 bbls within 72 hours, continuing at rate of 5,500 bbls/day over time necessary to stop discharge.

Production facility:

STATUTE:

"Realistic maximum oil discharge" within 72 hours.

REGULATION:

16,500 bbls within 72 hours, continuing at rate of 5,500 bbls/day over time necessary to stop discharge, unless plan holder demonstrates insufficient pressure to cause blowout of 16,500 bbls. If so, volume based on tank storage or pipeline (gathering) flow.

Pipeline:

STATUTE:

"Realistic maximum oil discharge" within 72 hours.

REGULATION:

Amount of oil that passes a particular point in 12 hours, unless plan holder shows shut-off valves that limit potential; if so, amount can't fall below threshold sensitivity of leak detection device.

A M E N D M E N T

S B 2 6 3

Page 2, line 16, after "cargo",

INSERT: ", as well as the benefits to vessel and barge owners and operators, the persons they serve, and the State of Alaska through avoided clean-up costs expected through implementation of this law.

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1183
150K

A M E N D M E N T

S B 2 6 3

Section 30(a), ch. 191, SLA 1990 is amended to read:

(a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 [TO 10,000] barrels or more in order to determine for each facility [remainder of section not set out].

Page 1, lines 7 and 8, after "facilities":

DELETE remainder of sentence.

FACSIMILE TRANSMISSION COVER SHEET

STATE OF ALASKA, DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. Box K - State Capitol

Juneau, Alaska 99811

(907)465-3600 [Office] (907)463-5295 [Fax]

DATE: 5/4/91 TIME: 10 am REF NO: SB-263
TO: Mead Treadwell mead: 465-2617
Lynn Kent () Lynn: 789-5673
FROM: Beth Kerttula Fax Number
Number of Pages 5
Including this Sheet

MESSAGE: The first attachment is Deb Voigt's
suggestion (Cohen has NOT made a decision yet),
The second is a draft of findings for
the bill. See you at 3pm if not before -
Doug Blankenship will try to have a
final decision on ACMP before then.
Beth

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PLEASE INFORM US IMMEDIATELY
IF YOU DO NOT RECEIVE THIS TRANSMISSION IN FULL

(907) 465-3600 Ask for: Beth

=====

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FACSIMILE TRANSMISSION COVER SHEET

STATE OF ALASKA, DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. Box K - State Capitol

Juneau, Alaska 99811

(907)465-3600 [Office] (907)463-5295 [Fax]

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[AMENDMENT TO SB 263]

* Sec. 3. TEMPORARY ACT/INTERIM OPERATION. (a) Notwithstanding the time limit in AS 46.04.030(p) a person with an approved crude oil discharge prevention and contingency plan who has submitted amendments to the plan to the department by June 1, 1991 to show compliance with the requirements of ch. 191, SLA 1990, may continue to operate if the plan as amended substantially complies with the requirements of ch. 191, SLA 1990, until the earliest of the following dates:

(1) the date the department takes action on the plan under AS 46.04.030, by approving the plan as amended, disapproving the plan, approving the plan as amended with terms or conditions;

(2) the date the department revokes a plan under AS 46.04.030;

(3) the date the previously approved contingency plan expires; or

(4) January 1, 1992.

(b) In this section, "department" means the Department of Environmental Conservation.

* Section 1. FINDINGS. The legislature finds that

(1) unforeseen developments since the passage of HB 567 (1990 SLA Ch. 191) will have detrimental effects on those entities involved in the transportation and storage of non-crude petroleum products when mandatory compliance with the statute's new oil spill contingency planning and financial responsibility requirements takes effect on June 1, 1991;

(2) the unforeseen developments include the fact that for a variety of reasons, the Alaska Department of Environmental Conservation has failed, nearly one year after passage of 1990 SLA Ch. 191, to develop regulations implementing the new law, and the department estimates that finalizing said regulations will take at least another six months;

(3) without said regulations being in place, transporters and facilities operators find themselves in the situation of having to develop new oil spill contingency plans without knowing what standards will eventually be required of them, including such critical regulatory definitions as what constitutes a "realistic maximum oil discharge";

(4) a further unforeseen development includes the fact that the London insurance markets, historically the source of pollution liability insurance underwriting, are steadfastly refusing to offer policies that meet the new financial responsibility requirements imposed by 1990 SLA Ch. 191. Most notably, they refuse to issue a certificate of financial responsibility or to make themselves available for direct legal action in Alaska courts;

(5) while larger companies involved in the transportation and storage of crude petroleum have the financial standing to meet the new financial responsibility requirements through self-insurance, surety bonding or

letters of credit, most non-crude transporters and facilities operators do not have the financial resources to make such avenues available to them;

(6) additionally, a study mandated by 190 SLA Ch. 191 designed to identify appropriate spill response times, specify personnel levels and equipment requirements, and identify specific locations for oil discharge response equipment depots for non-crude oil tankers and barges, will not be completed until at least one month after the June 1, 1991, effective date. This study's findings could have a significant impact on emergency spill response planning by both transporters and the State of Alaska;

(7) taken together, the uncertainties posed by these developments create a strong possibility that many non-crude transporters and facilities operators will find it necessary to either operate illegally or cease operations in the State of Alaska after June 1, 1991, which would in turn pose serious problems for the residents of communities dependent on delivery and storage of non-crude petroleum products for fuel and electrical generation;

(8) a one-year delay, to June 1, 1992, in the effective date for compliance with the requirements of 1990 SLA Ch. 191 for non-crude transporters and facilities operators would provide adequate time for the Department of Environmental Conservation to develop its implementing regulations for contingency planning; would allow thorough consideration of the aforementioned study and implementation of its findings into emergency response planning; and would permit non-crude transporters and operators to explore other options to meet the statute's financial responsibility requirements, including the possibility of developing an insurance pool to replace the coverage no longer being offered by the traditional insurance markets.

The legislature further finds that:

1) crude oil operators and transporters have indicated their intention and ability to be in compliance with the June 1, 1991 effective date for 1990 SLA Ch. 191, including the new oil spill response standards and new financial responsibility requirements, and have spent significant resources during the past year to ensure that they will be in compliance, and a delay of the June 1 effective date for these entities is not necessary;

2) DEC however, will not have thoroughly reviewed and given final approval to new or amended contingency plans by the June 1, 1991 effective date and in fact, that review period may be further extended if contingency plans are required to go through the consistency review process under the Alaska Coastal Management Act ;

3) there exists some ambiguity concerning DEC's granting of interim approval under existing laws and regulations which could benefit from clarification in order to ???;

AMENDMENT #1

Amend Section 5 by adding to (d):

(d) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply to persons required to show proof of financial responsibility for noncrude oil operations until June 1, 1992. On and after June 1, 1992, proof of financial responsibility for a noncrude oil operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under 46.04.040(f), as amended by sec. 16 of this Act. After June 1, 1991, noncrude oil operations may show proof of financial responsibility through a letter of credit approved by the department, or other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group, in addition to the methods of proving financial responsibility allowed by AS 46.04.040(e). ~~prior to June 1, 1992.~~

* Section 1. FINDINGS. The legislature finds that

1) whereas crude oil operators and transporters have indicated their intention and ability to be in compliance with the June 1, 1991 effective date for 1990 SLA Ch. 191, including the new oil spill response standards and new financial responsibility requirements, those entities involved in the transportation and storage of non-crude petroleum products are finding it difficult, if not impossible, to meet those requirements by the June 1, 1991 effective date due to unforeseen developments;

(2) these developments include the fact that the London insurance markets, historically the source of pollution liability insurance underwriting, are steadfastly refusing to offer policies that meet the new financial responsibility requirements imposed by 1990 SLA Ch. 191. Most notably, they refuse to issue a certificate of financial responsibility or to make themselves available for direct legal action in Alaska courts;

(3) while larger companies involved in the transportation and storage of crude petroleum have the financial ability to meet the new financial responsibility requirements through self-insurance, surety bonding or letters of credit, most non-crude transporters and facilities operators do not have the financial resources to make such avenues available to them;

(4) additionally, a study mandated by 190 SLA Ch. 191 designed to identify appropriate spill response times, specify personnel levels and equipment requirements, and identify specific locations for oil discharge response equipment depots for non-crude oil tankers and barges, will not be completed until at least one month after the June 1, 1991, effective date. This

study's findings could have a significant impact on emergency spill response planning by both transporters and the State of Alaska;

(5) whereas noncrude oil spills tend to be more frequent, but lesser in size, resulting in less environmental damage, crude oil spills have the potential to be larger and result in significantly greater environmental damage;

(5) taken together, the uncertainties posed by these developments create a strong possibility that many non-crude transporters and facilities operators will find it necessary to either operate illegally or cease operations in the State of Alaska after June 1, 1991, which would in turn pose serious problems for the residents of communities dependent on delivery and storage of non-crude petroleum products for fuel and electrical generation;

(6) a one-year delay, to June 1, 1992, in the effective date for compliance with the requirements of 1990 SLA Ch. 191 for non-crude transporters and facilities operators ~~would~~ allow thorough consideration of the aforementioned study and implementation of its findings into emergency response planning; ~~would~~ permit non-crude transporters and operators to explore other options to meet the statute's financial responsibility requirements, including the possibility of developing an insurance pool to replace the coverage no longer being offered by the traditional insurance markets; and ~~would~~ provide adequate time for the Department of Environmental Conservation to develop its implementing regulations for contingency planning.

* Sec. ⁵~~3~~. INTERIM OPERATION. (a) Notwithstanding the time limit in AS 46.04.030(p) a person with an approved crude oil discharge prevention and contingency plan who has submitted amendments to the plan to the department by June 1, 1991 to show compliance with the requirements of ch. 191, SLA 1990, may continue to operate if the department determines and notifies the person in writing that the contingency plan as amended substantially complies with the requirements of ch. 191, SLA 1990. (b) The ability to continue to operate under this section is valid only until the earliest of the following dates:

(1) the date the department takes action on the amended plan under AS 46.04.030 by approving the amended plan, disapproving the plan, or approving the amended plan with terms or conditions;

(2) the date the department revokes a plan under AS 46.04.030;

(3) the date the previously approved contingency plan expires; or

(4) January 1, 1992.

(c) In this section, "department" means the Department of Environmental Conservation.

7-LS1243J
Lauterbach
5/6/91

CS FOR SENATE BILL NO. 263 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HOFFMAN, Adams, Zharoff

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to oil discharge prevention and contingency plans and financial
2 responsibility requirements for oil operations; and providing for an effective date."

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

4 * Section 1. FINDINGS. The legislature finds that

5 (1) whereas crude oil companies have indicated their intention and ability to be in
6 compliance with the June 1, 1991, applicability date of ch. 191, SLA 1990, including the new oil spill
7 response planning standards and new financial responsibility requirements, the entities involved in the
8 transportation and storage of noncrude oil are finding it difficult, if not impossible, to meet those
9 requirements by June 1, 1991, due to unforeseen developments;

10 (2) these developments include the fact that the London insurance markets, historically
11 the source of pollution liability insurance underwriting, are steadfastly refusing to offer policies that meet
12 the new financial responsibility requirements imposed by ch. 191, SLA 1990; most notably, they have
13 refused to issue certificates of financial responsibility or make themselves available for direct legal action
14 in Alaska courts;

1 (3) while larger companies involved in the transportation and storage of crude oil have
2 the financial ability to meet the new financial responsibility requirements through self-insurance, surety
3 bonding, or letters of credit, most noncrude transporters and facility operators do not have the financial
4 resources to make use of these avenues to satisfy the requirements;

5 (4) additionally, a study mandated by ch. 191, SLA 1990, designed to identify appropriate
6 spill response times, specify personnel levels and equipment requirements, and identify specific locations
7 for oil discharge response equipment depots for noncrude oil tankers and barges will not be completed
8 until at least one month after June 1, 1991; this study's findings could have a significant effect on
9 emergency spill response planning by both transporters and the state;

10 (5) taken together, the uncertainties posed by these developments create a strong
11 possibility that many noncrude transporters and facility operators will find it necessary to either operate
12 illegally or cease operations in the state after June 1, 1991, which would in turn pose serious problems
13 for the residents of communities dependent on delivery and storage of noncrude oil products for fuel and
14 electrical generation;

15 (6) a one-year delay to June 1, 1992, in the applicability date for compliance with the
16 requirements of ch. 191, SLA 1990, for noncrude transporters and facility operators will allow thorough
17 consideration of the study described in (4) of this section and implementation of its findings into
18 emergency response planning; will permit noncrude transporters and operators to explore other options
19 to meet the statute's financial responsibility requirements, including the possibility of developing an
20 insurance pool to replace the coverage no longer being offered by the traditional insurance markets; and
21 will provide adequate time for the Department of Environmental Conservation to develop its
22 implementing regulations for contingency planning.

23 * Sec. 2. Section 32, ch. 191, SLA 1990, is amended to read:

24 Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), enacted by sec.
25 10 of this Act, do not apply to oil discharge prevention and contingency plans for crude oil
26 operations until June 1, 1991. On and after June 1, 1991, a contingency plan for a crude oil
27 operation must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless
28 of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec.
29 9 of this Act.

30 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply
31 to persons required to show proof of financial responsibility for crude oil operations until

June 1, 1991. On and after June 1, 1991, proof of financial responsibility for a crude oil operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

* Sec. 3. Section 32, ch. 191, SLA 1990, is amended by adding new subsections to read:

(c) AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, do not apply to oil discharge prevention and contingency plans for noncrude oil operations until June 1, 1992. On and after June 1, 1992, a contingency plan for a noncrude oil operation must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec. 9 of this Act.

(d) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply to persons required to show proof of financial responsibility for noncrude oil operations until June 1, 1992. On and after June 1, 1992, proof of financial responsibility for a noncrude oil operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

* Sec. 4. INTERIM OPERATION. (a) A person with a crude oil discharge prevention and contingency plan that is approved under AS 46.04.030 who submits plan amendments to the department to show compliance with the requirements of ch. 191, SLA 1990, may continue to operate if the department determines and notifies the person in writing that the contingency plan, as amended, substantially complies with the requirements of ch. 191, SLA 1990.

(b) The authority to operate under this section is valid only until the earliest of the following dates:

(1) the date the department takes action on the amended plan under AS 46.04.030 by approving it, disapproving it, or approving it with terms or conditions attached; notwithstanding AS 46.04.030(p), the department's action on the amended plan need not occur within 65 days of submission of the amendments;

(2) the date the department revokes the plan under AS 46.04.030;

(3) the date the plan's previous approval lapses or expires for failure to be renewed; or

(4) February 1, 1992.

(c) In this section, "department" means the Department of Environmental Conservation.

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

AMENDMENT # 1 to SB 263 (CS marked "J")

p. 3, section 3 (d), line 11, change [11 - 18] to 11 - 13.

Instead of delaying all of the new provisions concerning financial responsibility for one year for noncrude, this amendment would delay only the increased amounts of financial responsibility and allow the other provisions such as the ability to use a letter of credit to go into effect immediately.

SENATE BILL NO. 263

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS HOFFMAN, Adams

Introduced: 4/22/91

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to oil discharge prevention and contingency plans and financial
2 responsibility requirements for noncrude oil operations; and providing for an effective date."

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

4 * ~~Section 1.~~ Section 30(b), ch. 191, SLA 1990, is amended to read:

5 (b) By January 31, 1992, the Department of Environmental Conservation shall report to
6 the legislature the results of the survey required under (a) of this section and its written
7 recommendations concerning discharge prevention and contingency requirements or design review
8 requirements that should be enacted for noncrude oil terminal facilities with storage capacities
9 of less than 10,000 barrels. The report must include an analysis of the probable economic
10 costs and other economic effects that the recommended requirements would impose on the
11 facilities and on persons served by the facilities.

12 * ~~Sec. 2.~~ Section 31, ch. 191, SLA 1990, is amended to read:

13 Sec. 31. STUDY RELATING TO NONCRUDE OIL TANKERS AND BARGES. By
14 January 31, 1992 [JULY 1, 1991], the Department of Environmental Conservation shall conduct

1 a study and report to the legislature its recommendations concerning the following issues related
2 to oil discharge prevention and contingency planning for tank vessels and oil barges carrying
3 noncrude oil in bulk as cargo:

4 (1) appropriate locations for regional response depots, based on an assessment of
5 historical evidence of where noncrude oil discharges are most likely to occur and the needs of
6 remote areas of the state such as western and northern Alaska and the Aleutians;

7 (2) appropriate discharge response times;

8 (3) requirements for personnel and equipment that should be imposed on
9 contingency plan holders;

10 (4) appropriate roles for industry and state and local governments in the purchase,
11 ownership, and positioning of discharge response efforts.

12 * ~~Sec. 3.~~ Section 31, ch. 191, SLA 1990, is amended by adding a new subsection to read:

13 (b) The report required under (a) of this section must also include an analysis of the probable
14 economic costs and other economic effects imposed on the vessel and barge owners and operators, and
15 the persons they serve, by this Act's new requirements for contingency planning and proof of financial
16 responsibility for tank vessels and oil barges that carry noncrude oil in bulk as cargo.

17 * ~~Sec. 4.~~ Section 32, ch. 191, SLA 1990, is amended to read:

18 Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), enacted by sec.
19 10 of this Act, do not apply to oil discharge prevention and contingency plans for crude oil
20 operations until June 1, 1991. On and after June 1, 1991, a contingency plan for a crude oil
21 operation must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless
22 of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec.
23 9 of this Act.

24 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply
25 to persons required to show proof of financial responsibility for crude oil operations until
26 June 1, 1991. On and after June 1, 1991, proof of financial responsibility for a crude oil
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8 AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of
9 financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

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

Enslin

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair 

Re: S.B. 263 -- Proposed Committee Substitute

The Senate Oil and Gas Committee will meet tomorrow at 9:30 (NOTE TIME CHANGE) in the Beltz Room. After discussing S.B. 102, we will take up S.B. 263. Attached for your consideration is language that will be before you tomorrow in a draft committee substitute. The proposed CS would:

1. Delete section 1, 2 and 3, which deal with studies under ch. 191 SLA 1990 (HB 567).
2. Insert a new "findings" section as section 1. Language attached.
3. Renumber section 4 and 5 to 2 and 3.
4. Add a new section 4, dealing with interim operation (language attached).
5. Renumber effective date section to 5.

Alaska State Legislature

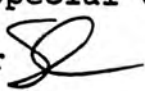
Senate Committee on Oil and Gas

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P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

May 3, 1991

To: Members, Senate Special Committee on Oil and Gas
From: Sam Cotten, Chair 
Re: Committee Meeting Tuesday, May 7, 10:00

As you know, this committee is meeting jointly with the Senate Transportation Committee next Tuesday to review S.B. 102. After the joint committee reviews that issue, the Oil and Gas committee will take up S.B. 263, and continue its review of response action contractor liability.

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
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Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 30, 1991

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair *SC*

We have reserved the Beltz Room tomorrow (Wednesday) at 9:00 to meet with BP, to hear their interest in deferring the effective date of HB 567 for crude oil operations. I have asked that BP bring individuals able to answer questions about contingency plans, as well as their legal counsel. The BP people will only be in town on Wednesday.

I recognize that some members of the committee have apparent conflicts at that time; however, there was no time that did not present some conflict. Please join us as your schedule permits.

7-LS1243A
Lauterbach
4/19/91

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR HOFFMAN

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8 AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of
9 financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

10 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

Telephone
(907) 465-2600

May 3, 1991

The Honorable Sam Cotten
P.O. Box V
Juneau, Alaska 99811

Dear Senator Cotten:

You have asked me what actions the Department and the Legislature might take regarding the Oil Discharge Prevention and Contingency Plan approvals for crude oil operations including expired plans for British Petroleum and Conoco operations on the North Slope. You have also asked for a list of other expired contingency plans, and a description of the tank facilities located throughout the state.

As of today, the Department has issued interim approvals (until September 1, 1991) for British Petroleum and Conoco's facilities to operate under the contingency plans they had previously submitted. These plans meet the current contingency planning requirements. A condition of this interim approval is that both companies will submit amended plans by June 1 and that these amended contingency plans undergo consistency review under the Alaska Coastal Zone Management (CZM) Plan (we currently have no AG's opinion to the contrary). The CZM reviews will be initiated upon receipt of the amended plans and should conclude in August. If the amended plans receive a favorable consistency determination and meet the new response planning standards, the conditions of the interim approvals of the contingency plans will be removed and the approval dates extended.

Second, the Department occasionally comes across the situation where a contingency plan substantially meets the requirements, but may be missing a small element. In order to allow these contingency plan holders to continue to operate, and be bound to respond to any spills under an approved plan, the Department suggests an amendment (enclosed) to the statutes, which we hope will be included in SB 263. We would be happy to explain the need for this revision further with you, your committee, and your staff.

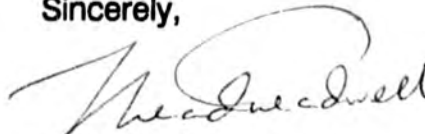
Third, a list of other currently expired plans is included. This list is continually subject to change. You should be aware that of the 44 expired plans currently identified, we are working with 25 facilities that have submitted new or revised contingency plans for approval. Nineteen other facilities have not contacted the Department regarding their plans (some of these may no longer be operating in the

state). We are sending a letter to the latter group asking them to be in contact with the department within 10 days to obtain a compliance order by consent for developing a plan, or to cease operations. For all expired plan holders we will insist upon a date certain for plan completion.

Fourth, we have included a chart showing the distribution of onshore facility capacities.

If I can provide any additional information, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mead Treadwell".

Mead Treadwell
Deputy Commissioner

enclosures

cc: Senator Drue Pearce
Representative Bill Hudson

1

[THIS IS AN AMENDMENT TO SB 263]

* Sec. 3. INTERIM APPROVAL STATUS. (a) If a person has submitted an oil discharge prevention and contingency plan to the department for review, the department may grant an interim approval of the oil discharge prevention and contingency plan if the department determines that:

(1) the oil discharge prevention and contingency plan substantially complies with oil discharge prevention and contingency plan requirements and related department regulations or

(2) the oil discharge prevention and contingency plan would substantially comply with oil discharge prevention and contingency plan requirements and related department regulations under conditions specified by the department.

(b) If an interim approval is granted under (a)(2) of this section, the conditions specified by the department are part of the oil discharge prevention and contingency plan during the period of time for which the interim approval is granted.

(c) An interim approval is valid for no more than 180 days.

(d) The department may revoke an interim approval if it determines that the oil discharge prevention and contingency plan is no longer in substantial compliance with oil discharge prevention and contingency plan requirements and related department regulations.

1

(e) Interim approval under (a) of this section constitutes approval for purposes of AS 46.04.030 until the interim approval expires or is revoked.

(f) The time limit for a decision by the department under AS 46.04.030(p) does not apply to plans described under (a) of this section.

(g) In this section, "department" means the Department of Environmental Conservation.

THE FOLLOWING PLANS ARE EXPIRED - PLAN HOLDERS HAVE BEEN NOTIFIED:

Northern Region:

Expiration Date

Northland Services [barge]	1/14/89
Pacific Alaska Nome Bulk Plant [terminal]	8/11/89
Yutana Barge Lines [barges]	7/23/89
Barter Island USAF Terminal	4/5/90
Fort Yukon USAF Terminal	3/14/86
Cape Lisburne USAF Terminal	4/13/89
Tin City USAF Terminal	5/14/90
Indian Mountain USAF Terminal	4/13/89
Galena USAF Terminal	5/14/89
St. Michael Fuel Terminal	1/17/88
Tesoro Alaska Airport Terminal	11/15/89

Southcentral Region:

Defense Fuel Terminal, Whittier	n/a
Aleut Corporation Terminal	1/9/90
Shemya AFB Terminal	n/a
Northland Services [vessel]	3/16/88
Orca Oil Terminal, Cordova	2/20/90
USAF Long-Range Radar Stations (4) [terminal]	n/a
Texaco Marine Services [vessel]	4/21/91
Military Sealift Command [vessel]	n/a

THE FOLLOWING PLANS ARE CURRENTLY EXPIRED, PLANS HAVE BEEN SUBMITTED AND ADDITIONAL INFORMATION HAS BEEN REQUESTED WITH A DEADLINE FOR SUBMITTAL:

Southeast Region: **Expiration Date**

Delta Western Yakutat Terminal	1/1/89
Delta Western Juneau Terminal	1/1/89
Sitka Fuels Co., Sitka [terminal]	n/a
Boyer Towing, Barge "Kotznahoo" [vessel]	12/5/90
Totem Oil Terminal, Haines	n/a

Northern Region:

Golden Valley Electric [terminal]	11/12/90
NSB Barrow Oil Terminal	5/25/88
NSB Pt. Hope Fuel Storage [terminal]	5/25/88
NSB Wainwright Fuel Storage [terminal]	7/24/89
NSB Eskimos Inc. [terminal]	3/7/91
Pacific Alaska Kotzebue Bulk Plant [terminal]	7/1/90
Saupe Chevron [terminal]	2/14/88
Fort Wainwright Army Terminal	9/6/89
Eielson Air Force Base Terminal	7/17/89
Mapco North Pole Refinery [terminal]	10/5/90
Ft. Greeley Army Terminal	n/a

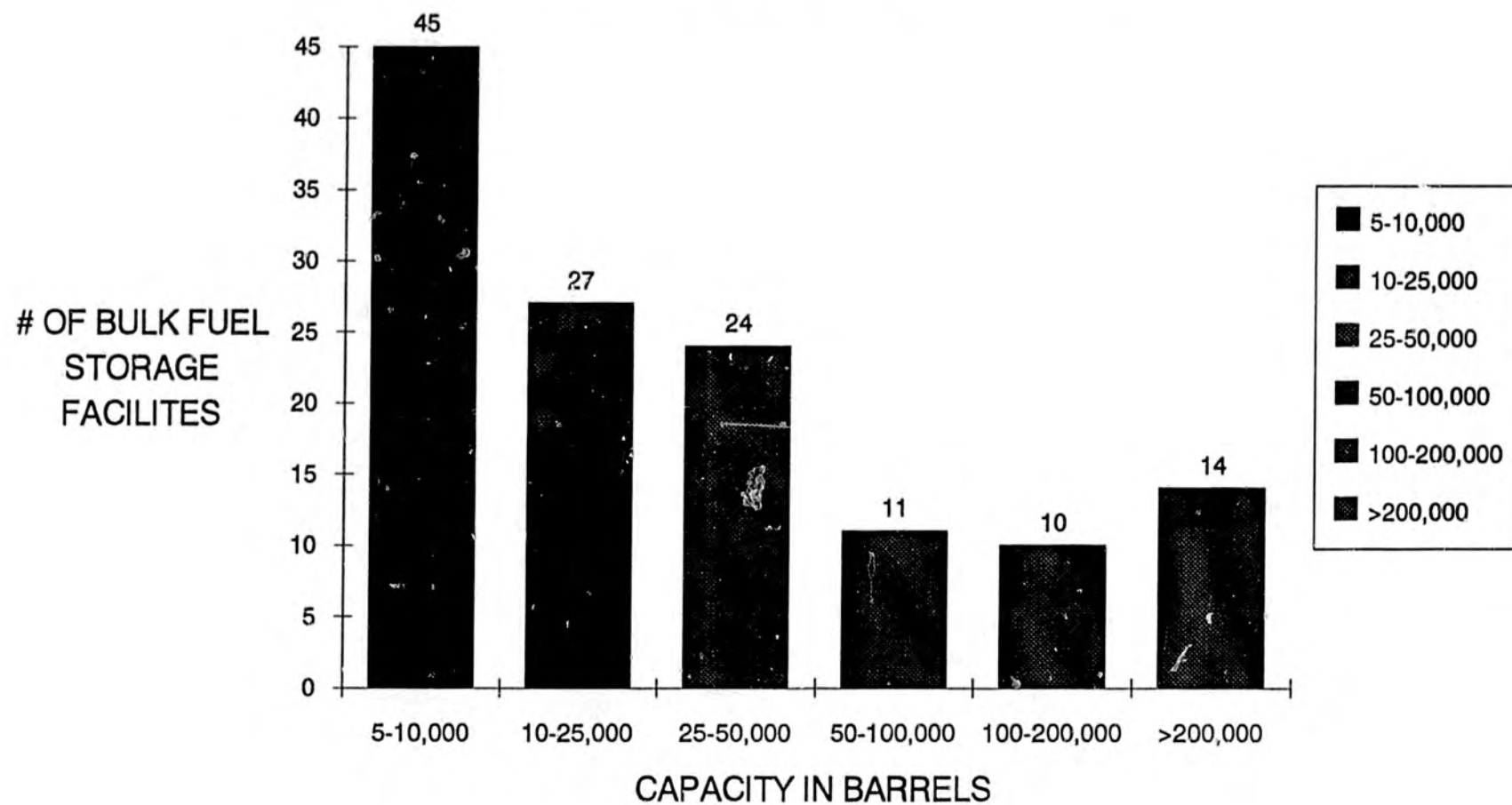
Southcentral Region:

Trident Seafoods, Sand Point Terminal	1/17/91
Terminal Oil Sales, Homer	12/3/90
Delta Western Nikiski Terminal	3/5/91

Amchitka Navy Terminal	4/10/91
North Pacific Fuel Terminal, Kodiak	3/21/91
Pacific Fuel Trading Corp. [vessel]	3/28/91
Petro Marine Services, Unalaska [terminal]	4/11/91
Bering Sea Fisheries [vessel]	10/13/90
Cove Shipping Inc. [tanker]	11/1/90

n/a = has never had an approved plan

BULK FUEL STORAGE FACILITIES IN ALASKA



STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

May 3, 1991

WALTER J. HICKEL, GOVERNOR

(907) 451-2360

Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

Mr. Steve D. Taylor
Environmental & Regulatory Affairs
BP Exploration
P.O. Box 196612
Anchorage, AK 99519-6612

Dear Mr Taylor:

Re: Oil Discharge Prevention and Contingency Plan for the
Prudhoe Bay & Endicott Operations

Based on the review of the above referenced plan the Department herein grants approval of your Oil Discharge Prevention and Contingency Plan. Approval of your contingency plan is granted subject to, and requires continuous compliance with, AS 46.04 and 18 AAC 75.305 through 75.395. Recent inspections of your facility have exhibited that your response capability is at a suitable level.

The Department is approving this plan with the condition that the amended plan you are submitting today will go through the Coastal Zone consistency review process and be determined consistent with the Alaska Coastal Management Program.

This approval is effective immediately and will expire on September 1, 1991. The Department may terminate this approval prior to the expiration date if deficiencies are identified that would adversely affect your company's spill prevention, response, and preparedness capabilities.

The Department is currently reviewing the regulations pertaining to Oil Discharge Prevention and Contingency Plans. Any alterations of the present regulations will apply to any currently approved contingency plans.

As a holder of an approved contingency plan, under AS 46.04.030(g), your failure to have access to the resources identified in the plan and, in the event of a spill, to respond with those resources within the time required by law is a violation of Alaska law. Please carefully review AS 46.04.030 so that you fully understand your obligations.

Any person who disagrees with this decision may appeal the decision by requesting an adjudicatory hearing, using the procedures contained in 18 AAC 15.200-310. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 3220 Hospital Drive, P.O. Box 0, Juneau, Alaska 99811-1800, within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to appeal is waived and the decision becomes final.

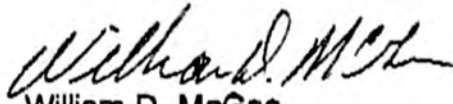
Mr. Steve D. Taylor

- 2 -

May 3, 1991

Thank you for coordinating this plan with the Department. If you have any questions please contact either Larry Katkin or myself.

Sincerely,



William D. McGee
Northern Regional Supervisor

lk/wdm/rg

cc: Mead Treadwell, EQ/DC, Juneau
Brad Fristoe, EQ/NSDO, Fairbanks
Larry Katkin, EQ/NSDO, Fairbanks
Cameron Leonard, AGO, Fairbanks

300.17.078

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

May 3, 1991

WALTER J. HICKEL, GOVERNOR

(907) 451-2360

Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

Mr. David L. Bowler
Conoco, Inc.
3201 "C" Street, Suite 200
Anchorage, AK 99503

Dear Mr. Bowler:

Re: Oil Discharge Prevention and Contingency Plan for the
Milne Point

Based on the review of the above referenced plan the Department herein grants approval of your Oil Discharge Prevention and Contingency Plan. Approval of your contingency plan is granted subject to, and requires continuous compliance with, AS 46.04 and 18 AAC 75.305 through 75.395. Recent inspections of your facility have exhibited that your response capability is at a suitable level.

The Department is approving this plan with the condition that a new plan be submitted by June 1, 1991 that will go through the Coastal Zone consistency review process and be determined consistent with the Alaska Coastal Management Program.

This approval is effective immediately and will expire on September 1, 1991. The Department may terminate this approval prior to the expiration date if deficiencies are identified that would adversely affect your company's spill prevention, response, and preparedness capabilities.

The Department is currently reviewing the regulations pertaining to Oil Discharge Prevention and Contingency Plans. Any alterations of the present regulations will apply to any currently approved contingency plans.

As a holder of an approved contingency plan, under AS 46.04.030(g), your failure to have access to the resources identified in the plan and, in the event of a spill, to respond with those resources within the time required by law is a violation of Alaska law. Please carefully review AS 46.04.030 so that you fully understand your obligations.

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Mr. David L. Bowler

- 2 -

May 3, 1991

Thank you for coordinating this plan with the Department. If you have any questions please contact either Larry Katkin or myself.

Sincerely,



William D. McGee
Northern Regional Supervisor

lk/wdm/rg

cc: Mead Treadwell, EQ/DC, Juneau
Brad Fristoe, EQ/NSDO, Fairbanks
Larry Katkin, EQ/NSDO, Fairbanks
Cameron Leonard, AGO, Fairbanks

300.17.059



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

17th January 1991

Mr Larry Katkin,
Alaska Department of Environmental Conservation,
Northern Region Office,
1001 Noble Street , Suite 350,
Fairbanks, Alaska 99701

Endicott and Prudhoe Bay Oil Discharge Prevention and
Contingency Plan

Dear Mr. Katkin,

This letter is to confirm the agreement reached at our meeting yesterday regarding an Oil Discharge Prevention and Contingency Plan for our Prudhoe Bay and Endicott operations.

As agreed, I herewith enclose 2 copies of the Pollution Prevention and Control Plan, originally submitted to ADEC in December 1988, which you will review and consider for interim approval under HB 567.

In the meantime, in the absence of Regulations pertaining to HB 567 and the understanding that these Regulations when issued will have major implications for C-Plan format and content, we undertake to revise the cover, title page, contact list and initial actions section. These sections will be forwarded to you within the week.

You know of the major improvements which have been made to our North Slope spill response capabilities over the last two years which I believe reflect our commitment to operating in the spirit of HB 567 . I trust that this and the agreement reached yesterday will resolve the concerns expressed in your letter to Mr. Taylor of 8th January 1991.

I look forward to your comments on the enclosed plan and to working closely with you on this subject.

Sincerely,



John P. Hartley.



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

Certified Mail

February 5, 1990

Alaska Department of Environmental Conservation
Attn: Mr. William D. McGee, Supervisor
Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

Renewal of BPX Pollution Prevention and Control Plan

Dear Mr. McGee:

As previously noted in earlier correspondence (see December 13, 1989, June 27, 1989) BP Exploration has not yet received review comments or approval for the revised BPX Pollution Prevention and Control Plan for the Prudhoe Bay Western Operating Area and the Endicott Development submitted to ADEC in December of 1988. Acknowledgement from ADEC of BPX's intent to operate under the revised plan until final review of the plan by ADEC is complete would be helpful to BPX.

BPX will be happy to discuss any element of the revised plan with ADEC as required. If I can provide any additional information or answer any questions please call me at 564-4037.

Sincerely,

Steven D. Taylor, Manager
Environmental and Regulatory Affairs, Alaska

Acknowledgement:

William D. McGee



BP EXPLORATION

BP Exploration (Alaska) Inc.
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

June 27, 1989

Mr. Pete McGee
Alaska Department of Environmental Conservation
Northern Regional Office
1001 Noble Street, Suite 350
Fairbanks, AK 99701

Renewal of Pollution Prevention and Control Plan

Dear Mr. McGee:

BPX (Alaska) Inc. submitted our updated oil discharge contingency plan for Alaska operations entitled Pollution Prevention and Control Plan, in December, 1988 for renewal in accordance with the ADEC regulations, 18 AAC 75. The contingency plan revisions provided updates to the existing, ADEC approved plan. BPX (Alaska) did not receive any agency comments within the 65 days, therefore, we have distributed the plan, and are currently operating in accordance with the updated plan.

If you have any questions, please call me 564-4037.

Sincerely,


Steven D. Taylor, Manager
Environmental & Regulatory Affairs

SDT/SCH

File GC/NU/PPCP

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

452-1714

February 21, 1986

Northern Regional Office
Pouch 1601
Fairbanks, Alaska 99707

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Ms. Sharon Hillman
Senior Environmental Scientist
Sohio Alaska Petroleum Company
P.O. Box 6612
Anchorage, Alaska 99502-0612

Dear Ms. Hillman:

RE: Sohio's Oil Spill Contingency Plan for Alaska Operations

The Alaska Department of Environmental Conservation has completed its review of the subject core document from the standpoint of "terminal facilities", which is the only actual regulatory handle we currently have on this plan in terms of the oil pollution regulations. In this regard, we have found that the plan meets the requirements of the regulations (18 AAC 75.305, et. seq.), and is, therefore, approved as submitted and amended. This approval will be in effect for three years from date of issue. The plan is concurrently found to be consistent with the Alaska Coastal Management Program.

We recognize that this formal approval encompasses a relatively small portion of the plan. We do appreciate the value of this document as a core document for contingency planning and pollution prevention in all aspects of Sohio's operations, including a chapter currently under separate review which will be the oil spill contingency plan for the Endicott project. We appreciate your continuing quality of effort.

Sincerely,

Richard Cormack
Richard Cormack
Environmental Field Officer

RC:tss

cc: P. O'Brien, ADEC/Juneau
P. Cyr, ADEC/Anchorage
D. Warren, ADEC/Fairbanks
G. Zimmerman, ADNRFairbanks
A. Ott, ADFG/Fairbanks
W. Matumeak, NSB/Barrow
P. Wightman, OMB/Fairbanks

300.02a.064
C-plan # 8536-ED016

*Nice
Approval
letter
Thanks
to all!
SR*

Exploration Planning
Environment/Lands
OHIO ANCHORAGE

FEB 24 '86

TE	Herrera	Wagner	
	Togade	Cassetti	
	Henley	Hanson	
	Alrymple	Dippe	
	Tush	Shingleton	
XC	Oppe	Hillman	XC
	Parsons	Platt	XC
	Lombard	Hirsh	
	Sorah	Doglen	
	Brown	Wright	-XC
	Fraker	FILE	

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origina
Legal
Record*

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

TO: Lynn Tomich Kent
Chief, SPPM Section
Div. Env. Quality

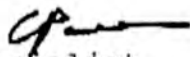
DATE: April 16, 1991

FILE NO.:

THRU:

TELEPHONE NO.: 465-2630

SUBJECT: H.B. 567:
June 1
Implementation

FROM: Christopher Pace 
Environmental Specialist
EQ/SPPM Juneau

I was asked to provide a list of those oil spill contingency plans that will be amended and submitted to the department by June 1, 1991, to satisfy the response planning standards described in Alaska Statute AS 46.04.030(k) and to implement H.B. 567. I was also asked for a list of those facilities/vessels that would be affected by June 1 plan amendments. I enlisted the help of Oil Pollution Control staff at the three region offices to contact plan holders in conducting this survey. This survey primarily reflects the efforts of ten staff in the region offices working to contact 174 plan holders.

EXPLORATION/PRODUCTION FACILITIES:

Owner/Operator	Facility Name	Plan Amendments?
Amoco Production Co.	Amoco Galahad	Yes
ARCO	Beluga River	No
ARCO	Bufflehead	Yes
ARCO	Sunfish/Northland	No
ARCO	Galena	No
ARCO	Swanson	No
ARCO	King Salmon #2	No
CIRI Production	West Fork 1-21	No
CONOCO	Astosch #1	No
Marathon Oil Co.	Cook Inlet Platforms	Yes
Shell Western E & P Inc.	Platforms A & C	No
Stewart Petroleum Co.	West McArthur River #1	No
UNOCAL	Cook Inlet Production	Yes
ARCO	Fireweed Prospect	Yes
ARCO	Stinson	No
BP Exploration	Kuparuk Uplands	Yes
BP Exploration	Sag Delta #12	Yes
BP Exploration	Pt. McIntyre #5	Yes
Chevron USA	Maktar Prospect	Yes
Chevron USA	Canvasback Prospect	Yes
Shell Western E & P Inc.	Shell Western Chukchi Sea	Yes
Texaco	Texaco Chukchi Sea	Maybe

April 16, 1991

OIL TERMINAL FACILITIES:

Owner/Operator	Facility Name	Plan Amendments?
ARCO	ARCO Eastern Operations	Yes
ARCO	Kuparuk Terminal	Yes
U.S. Air Force	Radar Stations	Yes
U.S. Air Force	Shemya AFB	No
Anchorage Light & Power	Station #2	Yes
Anchorage Fuel & Ser Co.	Anchorage Terminal Anchorage Airport	No
Bethel Fuel Sales Inc.	Bethel Terminal	Yes
Chevron USA	Anchorage Terminal	Yes
Chevron USA	Kenai Refinery	No
Crowley Maritime Corp.	Captain's Bay Terminal	Yes
Deep Sea Fisheries	Akutan Terminal	No
U.S. Dept of Defense	Anchorage Terminal	Yes
U.S. Dept of Defense	Whittier Terminal	Yes
Delta Western	Nikiski Terminal	Yes
Delta Western	Wood River Terminal	Yes
Delta Western	Dillingham Terminal	Yes
Delta Western	Dutch Harbor Terminal	Yes
Delta Western	Naknek Terminal	Yes
Mapco Alaska Petroleum	Anchorage Terminal	No
Naknek Electric Inc.	Naknek Power Plant	Yes
U.S. Navy	Amchitka NAS	Yes
North Pacific Fuels	Kodiak Terminal	Yes
Nushagak Electric Inc.	Dillingham Power Plant	Maybe
Orca Oil Co. Inc.	Cordova Terminal	Yes
Peter Pan Seafood	King Cove Terminal	Yes

C-Plan Ammendments

4

April 16, 1991

Harbor Enterprises Inc.	Ballyhoo Terminal	No
Harbor Enterprises Inc.	Resoff Terminal	No
Harbor Enterprises Inc.	Kenai Terminal	No
Harbor Enterprises Inc.	Kodiak Terminal	No
Harbor Enterprises Inc.	Seward Terminal	No
Harbor Enterprises Inc.	Unalaska Terminal	Yes
Phillips Petroleum Co.	Nikiski LNG Terminal	No Contact
Reeve Aleutian Airways	Cold Bay Airport	Yes
City of St. Paul Island	St. Paul Terminal	Maybe
Terminal Oil Sales	Homer Terminal	Yes
Tesoro Alaska Petroleum	Anchorage Terminal	Yes
Tesoro Alaska Petroleum	Kenai Refinery	Yes
Texaco Market & Refining	Anchorage Terminal	No Contact
Trident Seafoods Corp.	Akutan Terminal	No
Trident Seafoods Corp.	Sand Point Terminal	No
U.S. Army	Fort Greely	Yes
U.S. Army	Fort Wainwright	Maybe
BP Exploration	BPX Endicott/Lisburne	Yes
Chevron USA	St. Michael	Yes
Suape Chevron	Fairbanks Terminal	No
Conoco	Milne Point	Yes
Mapco Petroleum	Fairbanks Airport	Yes
Eskimos Inc.	Barrow Terminal	Maybe
City of Galena	Galena Power Plant	No
Golden Valley Electric	North Pole Power Plant	Yes
Kotzebue Electric	Kotzebue Power Plant	Maybe
Mapco Petroleum	North Pole Refinery	Yes
Nenana Fuel	Galena Terminal	Maybe

Nome Joint Utility	Nome Power Plant	Yes
North Slope Borough	Barrow Terminal	Maybe
North Slope Borough	Wainwright Terminal	Maybe
North Slope Borough	Point Hope Terminal	No
Pacific Alaska Fuel	Kotzebue Terminal	Yes
Pacific Alaska Fuel	Nome Terminal	Yes
Petro Star	North Pole Refinery	Yes
Cominco	Red Dog Mine	Maybe
Tesoro Alaska Petroleum	Fairbanks Terminal	Yes
U.S. Air Force	Eielson AFB	Maybe
U.S. Air Force	Tin City AFB	No
U.S. Air Force	Barter Island AFB	No
U.S. Air Force	Fort Yukon AFB	No
U.S. Air Force	Indian Mountain AFB	No
U.S. Air Force	Cape Lisburne AFB	No
U.S. Air Force	Galena AFB	No
Yutana Barge Lines	Fort Yukon Terminal	Yes
Alaska Pulp Co.	Sitka Pulp Mill	Yes
Ketchikan Pulp Co.	Ward Cove Pulp Mill	Yes
UNOCAL	Ketchikan Terminal	Maybe
UNOCAL	Sitka Terminal	Yes
UNOCAL	Juneau Terminal	Yes
Delta Western	Juneau Terminal	Yes
Delta Western	Yakutat Terminal	Yes
White Pass Alaska	Skagway Terminal	Yes
White Pass Alaska	Haines Terminal	Yes
White Pass Alaska	Sitka Terminal	Yes

White Pass Alaska	Petersburg Terminal	Yes
White Pass Alaska	Ketchikan Terminal	Yes
Totem Oil	Haines Terminal	Maybe
Andres Oil	Ketchikan Terminal	Yes
Sitka Fuels	Sitka Terminal	Yes

PIPELINES:

Owner/Operator	Facility Name	Plan Amendments?
Alyeska Pipeline Co.	Trans Alaska Pipeline	Yes
Cook Inlet Pipeline Co.	Cook Inlet Pipeline	Yes
Tesoro Alaska Petroleum	Tesoro Pipeline	Yes

VESSELS:

Owner/Operator	Vessel Name	Plan Amendments?
White Pass Alaska	Frank H. Brown	Yes
A/S N.R. Bugge	Unknown	Yes
Amerada Hess Corp.	St. Lucia Mount Cabrite Seal Island	Yes
American Trading Co.	American Trader Baltimore Trader Chesapeake Trader	Yes
ARCO Marine Inc. (Prince William Sound)	ARCO Alaska ARCO Anchorage ARCO Juneau ARCO Prudhoe Bay ARCO California ARCO Fairbanks ARCO Independence ARCO Sag River ARCO Spirit ARCO Texas	Yes
ARCO Marine Inc. (Cook Inlet)	ARCO Alaska ARCO Anchorage ARCO Juneau ARCO Prudhoe Bay ARCO California ARCO Fairbanks ARCO Independence ARCO Sag River ARCO Spirit ARCO Texas	Yes
Astra Oil Co.	Unknown	Yes
BP America	British Resolution	Yes
Cambridge Tanker Corp.	Unknown	Yes
Chevron Marine Co. (Cook Inlet)	Unknown	Yes
Chevron Shipping Co. (Prince William Sound)	Chevron California Chevron Mississippi Chevron Oregon Chevron Washington Chevron Colorado Chevron Louisiana Chevron Arizona	Yes

Chinese Petroleum Co.	Unknown	No
Daitoh Trading Co. (Cook Inlet)	Unknown	Yes
Daitoh Trading Co. (Dutch Harbor)	Unknown	No
East Asiatic Co. Ltd.	Unknown	Yes
Exxon Shipping Co.	Exxon Benicia Exxon New Orleans Exxon North Slope Exxon Philadelphia Exxon Baton Rouge Exxon San Francisco Exxon Baytown Exxon Jamestown Exxon Long Beach Exxon Galveston	Yes
First Shipmor Associates	Unknown	Yes
First United Shipping	Unknown	Yes
Fourth Shipmor Associates	Unknown	Yes
Intercontinental Bulktank	Unknown	Yes
Interocean Management	Brooks Range Thompson Pass	Yes
Interocean Tanker Corp.	Unknown	Yes
Juneau Tanker Corp.	Unknown	Yes
Keystone Shipping Co.	Atigun Pass Kenai Keystone Canyon Tonsina Prince William Sound	Yes
Mapco Alaska Petroleum	Unknown	No
Marathon Oil Co.	Arctic Tokyo Polar Alaska	Yes
Marine Transport Lines	Unknown	Yes
Maritime Overseas Corp.	Eastern Lion Northern Lion Southern Lion Western Lion Overseas New York Overseas Washington	Yes

	Overseas Boston	
	Overseas Ohio	
	Overseas Juneau	
	Overseas Chicago	
	Overseas Alaska	
Mobil Oil Corp.	Mobil Arctic Mobil Meridian Syosset	No
Navix Lines	Yuyo Breeze	No Contact
U.S. Navy	MSC Vessels	Yes
Ocean Ships Inc.	Lawrence H. Gianella Samuel L. Cobb	Yes
Olsen Enterprises	Unknown	Yes
OMI Corp.	OMI Columbia	Yes
Pacific Fuel Trading Co.	Unknown	Yes
Petro-Diamond Inc. (Dutch Harbor)	Unknown	No
Petro-Diamond Inc. (Cook Inlet)	Unknown	No
Petro Marine Services	Unknown	No
Second Shipmor Associates	Unknown	Yes
Second United Shipping	Unknown	Yes
Stolt Hawk	Unknown	Yes
Tesoro Alaska Petroleum (Cook Inlet)	Unknown	Yes
Tesoro Alaska Petroleum (Prince William Sound)	Unknown	Yes
Texaco Marine Services	Star Connecticut Star Georgia Star Massachusetts Star Mississippi Star Montana Star Oregon Star Rhode Island Brooklyn	No
Third Shipmor Associates	Unknown	Yes
Third United Shipping	Unknown	Yes

April 16, 1991

Trinidad Corp.

Admiralty Bay
Aspen
Glacier Bay

Yes

West Coast Shipping Co.

Coast Range
Sansinena II
Sierra Madre

Yes

Wickland Oil Co.

Unknown

Yes

BARGES:

Owner/Operator	Barge Name	Plan Amendments?
Alaska Marine Charters	Investigator	Yes
Bering Sea Fisheries	King Salmon	Yes
Brix Maritime	Sitka Palmer	Yes
Boyer Towing	Callapooya Kootznahoo	No
Crowley Maritime Corp.	B&R 5 B&R 80-1 B&R 80-2 B&R 80-3 120-1 120-2 160-1 160-4 BC 151 BC 152 BC 154 210 211 212 213 218 251 255 312-3 Arctic PAC 570 Challenger Cordova Nikiski McKinley Ketchikan Palmer Kodiak Juneau 101 102 450-2 450-3 450-4 450-6 450-7 450-8 450-9 450-11 UT 10 250-10	Yes

Crowley (continued):	SATCO 10 SATCO 20 SATCO 21 Barge ST22 Barge ST23 Napamute Kodiak No.1 Eek Orca No.2 Oil No. 1 14 17 450-10 500-2 16 18 254 DB 300 Cinnabar	
Delta Western	DW 280 DW 282	Yes
Flyum's Barge Service	Unknown	No
Forty Niner Trans Co.	FNT-180 FNT-340	Yes
Foss Maritime Co.	Foss 256 Foss 255 Foss Tongass SEA 76 Foss Energizer Phoenix 120 Hanalei	Yes
Kipnuk Fuel Service	Chalin	Yes
Moody's Sea Lighterage	Sealite I ST 20	Maybe
Smith Lightering Co. Inc.	Skip I Ray'Sons	No
United Marine Inc.	UMTB 282 MLC 344 MLC 332 MLC 340-1 MLC 333	Maybe
Northland Services Inc.	ZPC 401 Kvichak Trader	Yes
Yutana Barge Lines	Riverways 7 Riverways 8	Yes

April 16, 1991

Riverways 9
Riverways 10
Riverways 11
Riverways 12
OB-2
OB-3
OB-4
OB-5
OB-6
Frank Turner #1
Polaris #6
Stewart

Samson Tug & Barge	Annahootz	Yes
White Pass Alaska	Alaskan Spirit	Yes
West Coast Shipping Co.	Coast Range Sierra Madre	Yes

SUMMARY:

TOTAL NUMBER OF PLANS:	177
TOTAL NUMBER OF FACILITIES/VESSELS:	308
NUMBER OF PLAN AMENDMENTS:	118
NUMBER OF PLANS MAY BE AMENDED OR UNSURE:	14
NUMBER OF PLANS THAT WILL NOT BE AMENDED:	42
NUMBER OF PLAN HOLDERS NOT CONTACTED:	3

cc: Larry Dietrick
Roy Warren
Joe Suatner
Larry Katkin

MEMORANDUM

State of Alaska

TO: Mike Mansker
Program Manager, Financial Responsibility
and Oil Spill Prevention
Department of Environmental Conservation

DATE: February 1, 1991

FILE NO.:

THRU: Glenn Adams
Project Assistant, Financial Responsibility
DEC

TELEPHONE NO.: (907) 465-2560

SUBJECT: Summary Memo
Problem Issues

FROM: Ted Lehrbach *HL*
Insurance Market Analyst
Division of Insurance
Department of Commerce and
Economic Development

Per your request here is a two issue summary of AS 46.04.040 and the applicable regulations, 18 AAC 20., dealing with financial responsibility (FR) requirements. the following is my insight into what appears to be developing into several complicated and acute problems.

1. **The Unlimited Liability Problem:** During my limited "on loan" time with you, Glenn Adams has informed me about an increasing problem. Apparently, some non-crude tankers and barges are having great difficulty either getting or renewing insurance coverage thru the London market to meet FR requirements. Simply put, the insurance market available to the smaller carriers may be drying up. The result could be that some operators of fuel barges or fuel tankers carrying non crude will be forced into non-compliance with the FR requirements effectively putting them out of business. This, obviously, could result in the disruption of fuel deliveries to small remote villages, communities and fishing fleets.

Last year, as an observer, I attended a meeting between DEC, Dept. of Law and industry representatives Mike Padden an Anchorage Broker and John Gimlet from Lloyds of London. The purpose was to discuss this and other issues. It is my impression that a clear understanding of the "unlimited liability" problem really was not grasped by those in attendance. This problem never went away. It now needs immediate attention.

It seems The London Underwriters and P&I Clubs may not wish to provide the cover fearing they may be held to "unlimited liability" due to the way the DEC FR laws are written. For Example, 46.04.040 (e) contains the following language; *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 another person providing evidence of financial responsibility.* The insurers probably feel that this language might be interpreted to mean that they stand in the shoes of the polluter.

Consider the following scenario. Coverage is provided to an insured subject to the language above, a loss occurs with resulting damages above the policy liability limits. The insured declares bankruptcy or insolvency and thus becomes incapable of providing funds for the excess amount of the loss. Since the polluter is held to be responsible on a strict liability basis for all (100%) damages listed in the above statutes, then the insurers could be subject to unlimited liability under a strict

MEMORANDUM

Ted Lehrbach
DEC comments

reading of this language and a successful "deep pocket theory" legal argument. This argument might run like this, since the intent of the law is to protect the public and third parties from the damages listed in 758,759,760,822,& 030, and, since the insured is not able to respond to the damages above the policy limits, then, for the greater good (ie;the protection of the public interest) section 040 (e) is interpreted to defeat the policy limits in the name of protecting the public interest. Therefore, the insurer as a cautious thinker must consider this worst case scenario.

There is a lot of evidence to show that these insurers are very paranoid of our legal system which they view as simply a tool used by some to finance social engineering. Whether this is valid or not is a subject for other discussions, but it is a perception among many in the insurance industry and it must be recognized and addressed if the two parties are to come to some type of working arrangement.

On the human side of this problem the broader question of "Why is the coverage doing up?" needs to be asked.

Simple Answer: The Insurer's and P&I clubs (who are reinsuring the London underwriters providing the coverage) are concerned about the ambiguities contained in our DEC FR laws, as well as federal and other state laws. In other words, the language of the law is not clear to them. They object to what they feel is imprecise language.

The Dept. of Law has tried to reassure the industry's concerns, saying basically, "Trust us, we know what it means. It may be ambiguous but we know that the state intended to protect your policy limits. The law imputes unlimited liability only upon the polluter. Because we say so, this should be enough to allay your fears." The underwriters are thinking "Sorry, we have reason not to trust you. Ambiguity in the law has caused us harm many times before. We do not trust your court system to give us a fair hearing. Until the language specifically states that the integrity of our policy limits will be protected, we will be faced with confusion and uncertainty in your courts and therefore we choose not to be subject to their decisions."

Result: The underwriters have been trying to protect themselves by inserting an ambiguous clause into their policies in order to try to guard against "unlimited liability". The Dept. of Law responded by saying "you shouldn't have ambiguity in your policy language. Is this a plot to try to deny coverage at a later date?" Thus nothing has been accomplished because the two sides do not trust each other, each attempting to use ambiguity in their language to protect their interests against perceived threats.

Possible Solutions?: First, you need someone to put both sides of the argument into perspective and bring the two parties together, and act as an umpire guiding each thru the raised objections and mis-perceptions. Second, an agreement containing precise language must be created. Each must agree on the intent and content of the language. Precise language is the only way to bring two mistrusting parties together in agreement. Without it, uncertainty and confusion rules.

How?

MEMORANDUM

Ted Lehrbach
DEC comments

(A) Add language to the proposed regulations stating clearly that 46.04.040(e) is not intended to defeat an insurance policy limit or surety bond cap. You then ask the Department of Law to provide a clear decision on the issue that would hold up in our courts. This may work to deflate the industry's fears.

(B) If a statute fix is required, I would recommend adding language similar to the following to 46.04.040 (e) *"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 another person providing evidence of financial responsibility, subject to the limits of liability set forth in such insurance policy or evidence of financial responsibility."*

2. **The P&I Club Issue:** Did the legislature intend to allow the use of P&I Clubs for FR purposes on non-crude tankers and barges? According to current opinion from the Dept. of Law, P&I Clubs, who do not wish to be subject to direct state action (as has been the traditional form) may not be used for FR under the current wording of AS 46.040(l). This conclusion is found in the footnote on the last page of Doug Mertz's January 24, 1991 opinion memo.

The remaining portion of the memo speaks to the use of P&I clubs for FR coverage on crude tankers, stating that P&I Clubs may only be used for amounts of required FR in excess of \$50 million. The opinion is silent on whether the legislature intended to allow P&I clubs to be used for non-crude carriers, which would benefit more from this exemption than would the larger crude oil tankers which do not seem to have problems meeting FR requirements due to their affiliations to large oil companies. Non-crude carriers are often independents. If they are forced out of the market, competition decreases and the consumer is harmed.

An idea to allow non-crude carriers to provide at least 50% of FR requirements thru P&I coverage was suggested in the DEC opinion request of Nov. 27, 1990. Unfortunately the idea was not discussed at any length in the reply opinion from Dept. of Law.

If non-crude carriers were allowed to use P&I clubs who do not wish to be subject to direct state action for their maximum limit of required FR, \$35 million (below the \$50 million threshold), then they would not have to seek additional coverage at additional cost. These carriers must have P&I coverage anyway since they are marine vessels. Non-crude presents less of an environmental risk than does crude. If their pollution FR requirements can be met with their P&I club, it would eliminate the burden of obtaining additional coverage, providing they can find it. P&I coverage traditionally covers pollution clean up costs and the like. However, It does not cover all of the damages listed in 04.040(e).

If the legislature did intend, as some were led to believe, that non-crude carriers could benefit, at least partially, by using P&I clubs for FR purposes, the statute, as written, does not allow it for the following reasons:

A. Non-crude carriers are subject to a maximum FR limit of \$35 million. see AS 46.04.040(c)(2).

MEMORANDUM

Ted Lehrbach
DEC comments

B. The "P&I" partial exemption, 040(l)(2), has a floor of \$50 million for use of P&I clubs, well above the \$35 million maximum required for non-crude tankers. Thus, in the practical world, the exemption is useful only for crude carriers.

C. P&I coverage can of course be used for non-crude carriers providing they submit to direct action in state court and respond to all of the damages outlined in 040(e). They are reluctant to do this because of the "unlimited liability" issue explained earlier. Thus we are caught in a "Catch 22" situation.

CONCLUSION:

You have two serious problems. Connected together they primarily affect the small independent non-crude carrier. It does not exist to any great extent to the large bulk crude carriers. The large oil companies have the capital to either self insure or provide guarantee letters to their leased vessels. The lack of availability and affordability of insurance coverage adversely affects the smaller non-crude carrier. If steps are not taken to work out a solution with the underwriters in the insurance industry soon, the problem will only get increasingly worse.

JIM BERRY & ASSOCIATES

4540 Timberlux Circle
Anchorage, Alaska 99516
(907) 345-5426

March 27, 1991

APR 1991
RECEIVED

Brad Reeve
General Manager
Kotzebue Electric Association, Inc.
P.O. Box 44
Kotzebue, Alaska 99752

Dear Mr. Reeve:

RE: Oil Spill Contingency Plan Regulations

This letter responds to your request for comments regarding ADEC's preliminary draft regulations pertaining to oil discharge prevention and contingency plans (C-plan). The attachment identifies specific sections of the proposed regulations which I think may present concern to rural Alaska operators. My comments are based on experience gained in preparing spill response and prevention plans for approximately 75 fuel terminals and 25 vessels which operate in Alaska.

The C-plan draft regulations were prepared by ADEC to implement 1990 SLA Ch. 191 (HB 567). They were distributed as a proposed draft on March 4 to all C-plan holders. By July 1, and after incorporating public comment, the draft regulations are to be finalized for public review. New regulations are to become effective December 1, and by February 1, 1992 operators are to submit new contingency plans. In the meantime, operators must update their current plans by June 1 to meet the statutory requirements which the proposed regulations are attempting to interpret.

Regardless of the outcome of the regulatory review process, the new statutory requirements will result in considerable expense and will significantly impact all regulated facilities and operators. Compliance with the proposed regulations will be particularly difficult and expensive for rural Alaska facilities and operators.

In my opinion, the proposed regulations were written primarily to regulate the Alyeska Terminal and its tanker trade, and the Cook Inlet operators. Many of the requirements are not practical or achievable for rural facilities.

For example:

- All facilities must maintain in their "area of operation" containment boom, response equipment and temporary storage capacity adequate to recover and store, at minimum, the volume of the largest tank.
- Response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10-foot waves.
- Operators must maintain, separate from facility response equipment, the necessary personnel and equipment to prevent spilled fuel from reaching all sensitive areas and areas of public concern.
- Marine operators must maintain in each "area of operation" the resources adequate to lighten the entire vessel cargo capacity within 48 hours.
- All facility operators must be trained to OSHA/ADOL hazardous waste standards. Currently, this requires certified training of 40 hours for operators and 64 hours for supervisors, and annual refresher courses.
- All plans must be reviewed and updated at least every six months.

If adopted as drafted, the new regulations will require every operator to rewrite its contingency plan to satisfy new format and content requirements. To obtain plan approval, operators will be required to purchase extensive amounts of new equipment, present voluminous environmental and equipment data/boilerplate, train operators to hazardous waste standards, and make commitments which are unobtainable.

The cost per facility to write new C-plans will likely exceed \$50,000. New equipment requirements could easily exceed \$100,000 depending on proximity to sensitive areas and areas of public concern. Initial training costs may vary from \$600-800 per person. Further, it is estimated that rural fuel costs will increase 30 cents per gallon to allow transporters and distributors to meet new expenses and liabilities.

I question whether the proposed regulations and associated costs are the best investment for spill prevention and response for rural operators. It appears the State is uncertain as well. As part of 1990 SLA Ch. 191 the legislature required ADEC to study:

"(1) appropriate locations for regional response [equipment] depots, based on an assessment of

historical evidence of where non-crude discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

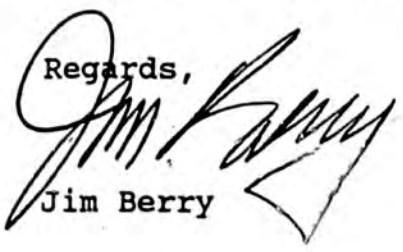
(3) requirements for personnel and equipment that should be based on [vessel] contingency plan holders; and

(4) appropriate roles for industry and state and local government in the purchase, ownership, and positioning of discharge response efforts."

The mandated report is due July 1, 1991. Its affect on the proposed C-plan regulations is unknown. I project that if the proposed regulations are adopted there will be little uniformity in ADEC's interpretation, application and enforcement of the statutes. Operators who attempt to comply will bear the time and expense of being party to an inter-agency educational process. Further, due to confusion regarding implementation and content of the regulations, it is likely there will be numerous changes to the program, as well as possible statutory revisions.

I encourage you to discuss the matter with other rural operators and become involved in the review process. Hopefully, the regulations can be amended or modified in a timely manner. If not, a temporary exemption for rural operators may be appropriate. Effective February 1, 1992, operators who are not in compliance will be subject to a \$5,000 per day fine.

Regards,


Jim Berry

enclosure

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

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GERALDINE M. CARR*
SUZANNE CHEROT**

JOSEPH M. CHOMSKI**
PATRICK B. COLE
KIM DUNN
ERIC A. EISEN**†
RALPH V. ERTZ
JOSEPH W. EVANS**
PAUL EWERS
WILLIAM W. GARNER*
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WILLIAM R. HORN*
HAL R. HORTON**
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OF COUNSEL
JAMES D. NORDALE

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**D.C. AND ALASKA BAR
†MARYLAND BAR
‡VIRGINIA BAR
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1155 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20036
(202) 659-5800
TELECOPIER (202) 659-1027

May 6, 1991

Representative Cliff Davidson
P.O. Box V
Juneau, Alaska 99811

Re: HB312
Our File No.: 401.590.1

Dear Representative Davidson:

We represent Northern Transportation Company, Ltd. Northern Transportation is an affiliate of Inuvialuit Regional Corporation, a Canadian Native corporation. Northern Transportation intends to ship relatively small quantities of refined products to various North Slope communities this summer. The product will be transported by barge; and, as a result, Northern Transportation must obtain ADEC approval of both an oil spill contingency plan and proof of financial responsibility.

Northern Transportation supports the goals behind HB312. The bill would face up to the hard reality that Alaska's refined petroleum trade may be unable to meet the new demands of HB567, which would otherwise take effect in June. With respect to the state's financial responsibility laws, however, Northern Transportation urges that the scope of the legislation be expanded. Without additional statutory or regulatory relief, international commerce in refined products would remain in peril.

On the other hand, deferring the effective date of last year's changes to AS 46.04.040 (financial responsibility) would deprive industry of one beneficial aspect of that legislation.

¹The communities to be served include Barrow, Wainwright, Point Lay, Point Hope and Barter Island--in addition to a single delivery to Prudhoe Bay.

May 6, 1991
Representative Cliff Davidson

Page 2

Let me explain:

A. Financial Responsibility. Under existing law (that is, pre-HB567), Northern Transportation would be required to post approximately \$172,000 of financial responsibility.² Under HB567, the amount would be increased nearly tenfold--to approximately \$1.54 million.³ In-and-of-itself, this substantial increase in required financial responsibility will pose a substantial hardship on small operators.

More fundamentally, the options for providing financial responsibility are decreasing, rather than increasing. Under current law, Northern Transportation has four alternate means of meeting the state's financial responsibility requirements--self insurance, guarantee, surety or insurance. However, ADEC's regulations allow a party to self insure only if it has sufficient United States assets. And, the same requirement applies to any guarantor that the company might seek to employ. See 18 AAC 20.055 and 18 AAC 20.085. Being a foreign company, Northern Transportation is thus limited to two options--insurance or a surety bond.

However, current law (as well as HB567) requires that any insurer or surety must agree to submit to "direct action" in Alaska state courts. "Direct action" means that the injured party may sue the insurance company (or surety) directly, rather than through the insured (as is customarily the case). There has never been very much direct action insurance available, principally because most Protection and Indemnity (P&I) Clubs have declined to provide it. It is for this reason that HB567 allowed non-direct action insurance to be used for any financial responsibility in excess of \$50 million.

Unfortunately, the direct action insurance market now appears to have dried up completely. For example, until recently small amounts of direct action insurance were available through the Portland broker of Gene Sause and Company. However, as the enclosed correspondence indicates, that broker is now no longer able to place any direct action insurance; and, it is our understanding (based on conversations with ADEC) that other potential providers have left the market as well.

²Under existing law, oil barges are required to post an amount equal to the amount required under the federal Clean Water Act, which was \$150/gross ton.

³This amount is calculated on the basis of the carrying capacity of the company's largest barge operating in Alaska, multiplied by \$100/barrel.

May 6, 1991

Representative Cliff Davidson

Page 3

Thus, both current law and HB567 leave Northern Transportation (and, in fact, any international carrier) in an impossible position. They cannot self insure because of ADEC's requirement that the self insured's assets be located in the United States. Conversely, they cannot obtain direct action insurance, because none is available. And, because this problem arises under either current law or HB567, HB312, in its current form, would do nothing to alleviate this barrier to international trade.

We would therefore suggest one of two options:

1. The immediately-effective repeal of the direct action requirement under both current law and HB567. We understand the reasons for the direct action requirement. However, the need for direct action insurance has lessened as the result of other, newly-enacted financial guarantees--including the \$1 billion/incident oil spill fund established under the 1990 federal Oil Pollution Act.

More importantly, "direct action" insurance is no longer possible; or

2. Repeal the requirement, in ADEC's regulations, that a self insurer's assets be domestically located. ADEC could implement this cure itself, since the "domestic asset" requirement does not appear in statute. And, we believe that the change may be necessary for both constitutional and practical reasons. States may not unreasonably discriminate against foreign or interstate commerce. And yet the recent evaporation of any "direct action" insurance means that the agency is doing just that. It is preventing a foreign corporation from self insuring, yet at the same time conditioning the most commercially realistic alternative on an impossible standard.

We hope, through the deliberations on HB312, to convince ADEC that recent events warrant the repeal, and even the emergency repeal, of the "domestic asset" rule. Foreign corporations would still be required to submit to the jurisdiction of Alaska courts, and appoint an agent for service of process in Alaska.

Finally, while HB312 fails to address the recent loss of the "direct action" option, it also overlooks at least one favorable provision of HB567 whose effective date ought not to be postponed. Specifically, HB567 expands the list of available methods for financial responsibility to include letters of credit. While a foreign corporation dealing with foreign banks may still find the letter of credit option difficult, allowing a letter of credit option does provide some flexibility in attempting to meet the requirements of even current law.

2. Oil Spill Contingency Plans. We support a one year extension of the effective date for HB567's new oil spill contingency plan

May 6, 1991

Representative Cliff Davidson

Page 4

requirements. Oil barge operations like Northern Transportation's often navigate in more remote parts of the state, where cleanup capability is very limited. The debate over HB567 focused on Prince William Sound, where the nature of the trade better allows for rapid, large scale increases in cleanup capability. Outside of Prince William Sound, and perhaps Cook Inlet, oil spill cleanup resources, and the ability to expand those resources, are far more limited.

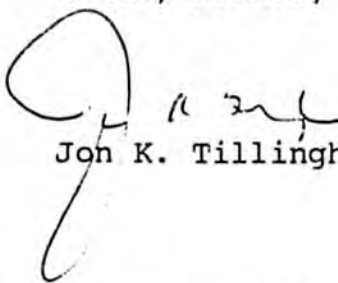
In summary, Northern Transportation supports HB312, with the following amendments:

1. A repeal of the "direct action" insurance requirement--unless ADEC is willing to change its "domestic asset" rule; and
2. The immediate implementation of the letter of credit option for providing financial responsibility.

Thank you for your consideration of our concerns, and we look forward to working with the committee on this legislation.

Sincerely,

BIRCH, HORTON, BITTNER & CHEROT



Jon K. Tillinghast

JKT/kpb

cc: Senator Al Adams
Members of the House Resources Committee
Janice Adair, ADEC

APR-22-91 MON 11:11

GENE SAUSE & CO.

FAX NO. 5032848037

F.C.I

*Hein-Adon
789-567?***GENE SAUSE & COMPANY**ALASKA HILL BUILDING, SUITE 200 • 1800 NORTHWEST FRONT AVENUE • PORTLAND, OREGON 97209
TELEPHONE (503) 811-4101MARINE INSURANCE
GENERAL INSURANCE

DATE: April 22, 1991

TO: Mr. Ed Bain
COMPANY: E.R. Bain Consultants Limited
FAX NO.: (416) 874-0078FROM: Ms. Ginny Wade
COMPANY: Gene Sause & Company
FAX NO.: (503) 894-9037

NO. OF PAGES (including this cover): 1

FOR TRANSMISSION PROBLEMS, PLEASE CALL (503) 223-5893.

SUBJECT: Northern Transportation Company, Limited

Dear Mr. Bain:

Thank you for your April 16, fax regarding your clients movement of Oil Barges into the territorial waters of Alaska.

I am afraid that the Alaska Division of Insurance is slightly confused on what we provided to them as evidence of insurance for our various clients. While it is true that our clients are placed with a Ship Owners Mutual Insurance Club, the insurance that was evidenced to the State of Alaska was a separate Pollution Liability Insurance Policy that we obtain from the Lloyd's Marketplace. In order to meet the State's requirements, it was necessary for us to, in essence, purchase double insurance on the Oil Barges moving in the State of Alaska's waters. This was, of course, a financial burden on our clients, but was the only way to be in compliance with their state laws.

Unfortunately, since the passage of the Federal Oil Pollution Act and the pending June 1, implementation of the State of Alaska's new regulations, the London Marketplace has now firmly stated that they will no longer provide any form of insurance that will be direct action as is required by the State of Alaska. When the current policies we have in place expire, we will be in the same situation as you find yourself.

We are working with the State of Alaska in trying to convince them that their requirements are not commercially available. We are also having meetings later this week with one of the mutual Protection and Indemnity Clubs in order to elicit their assistance in defeating the State of Alaska's proposed statutes. If you would like to check back with me in a week or so, I would certainly be glad to update you on any progress we make toward resolution of the State of Alaska problems.

Best regards,

Ginny Wade

Ginny Wade

GW:wk

INTERNATIONAL GROUP OF P & I CLUBS

78 FENCHURCH STREET, LONDON EC3M 4BT

Telephone: 071 451 2071

Telex: 330000 INTCL

Fax: 071 451 2527

Secretary and Treasurer: D.J.L.

D.J.L. WATKINS

BY FAX

5th April 1991

H.E. Mesirov, Esq,
Robins, Kaplan, Miller & Ciresi
1220 19th St. N.W. Suite 700
Washington D.C. 20036
U.S.A.

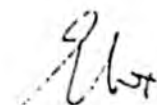
Dear Hal,

Certification: Alaska

Thank you for your letter of 1st April enclosing copy of Foss' letter of 28th March.

Perhaps the simplest answer is to underline that the Clubs in the Group are not prepared to issue certificates of financial responsibility in any of the States. This seems to have been accepted now in Alaska where in practice charterers provide the security required under State law. I regret that there is no flexibility on this issue and hope that Foss will be able to reach a satisfactory conclusion with the State authorities.

Yours sincerely,



p1? D.J.L. Watkins



Alaska State Legislature

*Senate Special Committee on
Oil & Gas*

Please enter into the record my testimony to the

committee name

committee on

SB 263

, dated

4-26-91

bill/subject

This a letter in support of SB 263.

Kodiak Oil Sales Inc. is a fuel distributor serving the Kodiak Area. We are a family owned business and have operated as a family business since 1950.

I would like to encourage the passage of SB 263.

The proposed regulations that came out of HB 567 have created many problems for fuel distributors like us.

There are so many unknown factors and unanswered questions. Trying to comply with regulations that don't actually exist is very confusing for both the State DEC and Industry.

Applying the same standards to Alyeska, Exxon USA and Kodiak Oil Sales Inc. (or electric utilities in Western Alaska) doesn't make sense to me. What does make sense is separating the issues of Crude and Noncrude, then designing regulations that fit the very different industries involved and the very different risks to the environment.

The passage of SB 263 will allow for a more orderly process, one that makes sense both to government and industry. A more orderly process makes for better Laws and better Regulations, regulations that are much better for both government and industry.

Jim Ramaglia
Vice Pres
Kodiak Oil Sales Inc
486-3245

Signed: *Jim Ramaglia*

Testifier

Kodiak Oil Sales Inc.

Representing (Optional)

Box 1487 Kodiak

Address

486-3245 486 3205 (Fax)

Phone No.



P.O. BOX 1487
KODIAK, ALASKA 99615

Attn: Bob Herron

Senator Lyman Hoffman

Fax 465-4523

April 25, 1991

Dear Senator Hoffman:

This is a letter in support of SB 263.

I'm a fuel distributor in Kodiak, and own a NON CRUDE oil terminal. I believe my views are shared by most other "fuel distributors" and "electric utilities" in the State.

House Bill 567 and the regulations that resulted from them have caused companies like mine a lot of heartburn. HB 567 and the regulations that have resulted were written with "tunnel vision" looking primarily to regulate the Alyeska Terminal and its tanker traffic. Many of the requirements are not practical or achievable for rural Alaska.

Using the same set of rules for both Crude and Noncrude operations, is like trying to put a square peg into a round hole. Refined fuel distributors and the barges that service them are much different than Alyeska and the Exxon Valdez.

I have felt throughout the process that a solution would be to separate the issue of crude oil and non crude oil, for both terminals and vessel traffic. Then formulate the laws and regulations around the potential risks that each present. For example a few thousand gallons of diesel fuel or gasoline is a much different threat to the environment than a similar amount of crude oil.

Senate Bill 263 appears to do separate the issues, but I would like to suggest one change.

Section 1. (b) remove the wording " with storage capacity of less than 10,000 barrels"

Many non crude terminals in the State are greater than 10,000 barrels. The costs that larger facilities are having to undertake should also be considered when looking at the impact of regulations.

Yours truly,

Jim Ranaglia
Vice pres

186-3245 Phone
186-3205 Fax

1991-03-18 17:48 Lowndes Lambert Eastcheap

071 283 1970 P.02

**Lowndes Lambert Marine Limited**

Lowndes Lambert House 53 Eastcheap London EC3P 3HL
 Telephone 071-283 2000
 Facsimile 071-283 1970 and 071-220 7548
 Telex 8814631 Cable Eltelge London EC3

Our Ref: GRLKR/EP/H

18th March, 1991

Gene Sause & Company,
 Albers Mill Building,
 Suite 620,
 1200 Northwest Front Avenue,
 Portland,
 Oregon,
 U.S.A.

For the attention of Ginny Wade

Dear Ginny,

POLLUTION**State of Alaska Financial Responsibility**

Following our recent correspondence and telephone conversations regarding the current position of our London Underwriters in respect of proof of Financial Responsibility, I am writing to advise as follows:-

We have available to us several markets for the insurance of Pollution here in London. There are specific Lloyd's and/or Institute of London Underwriters members plus various agencies here in London who write for and on behalf of the aforementioned. We do also place a Pollution cover specifically for your office. Following the introduction of the United States Oil Pollution Act 1990, these Underwriters reviewed the basis on which they were prepared to offer coverage in respect of this exposure. The outcome of this review was to withdraw all previous forms of cover and offer in its place the "limited" London form. This form does not cover any additional coverage in respect of specific State Regulations. Additionally, they no longer offer nor provide any proof of Financial Responsibility under either the Act or any State Regulation.

I do appreciate this is not what you wanted to hear but must advise that London Underwriters are adamant in their stand in this respect.

Yours sincerely,
 LOWNDES LAMBERT MARINE LIMITED

Gerald Becker



A subsidiary of and agent for Lowndes Lambert Group Limited
 Registered office 53 Eastcheap London EC3P 3HL
 Registered number 136551 England

TOTAL P.02

A APR 1 1991
NUSHAGAK ELECTRIC CO-OPERATIVE, INC.P.O. BOX 350
DILLINGHAM, ALASKA 99576TELEPHONE (907) 842-5251
* * TELECOPIER (907) 842-2799 * *

ALASKA

Telecopy Transmittal Sheet
(Transmitting from Canon FAX-610)

TO: REP GEORGE VAIKO

Attn: _____ FAX Number: 465 2997

No. Pages: 9 DATE: 4-1-91 TIME: _____
(incl. this page)

FROM: DAVE BOUKER

MESSAGE

RE: HB 567 PASSED IN 1990WE ARE BEGINNING TO FEEL NEGATIVE
IMPACT OF THIS LEGISLATION.I HAVE WRITTEN TO JOHN SANDOR, DEC
COMMISSIONER, ON MARCH 21, 1991 AND ON
APRIL 1, 1991 CONCERNING THIS MATTER.
COPIES OF LETTERS ENCLOSED.ENERGY COSTS HAVE ALREADY RISEN AS IS
EVIDENCED BY 24% INCREASE IN FINANCIAL
RESPONSIBILITY INSURANCE TO \$26000 PER YR.
ACCORDING TO LATEST FIGURES (ENCLOSED)
INCREMENTAL COSTS TO RURAL UTILITIES
AS RESULT OF NEW HB 567 REQUIREMENTS
MAY EXCEED \$100,000.WE NEED SOME RELIEF — CAN YOU HELP?

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE
CALL: (907) 842-5251 OR (907) 842-5295



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

March 21, 1991

John Sandor, Commissioner
Department of Environmental Conservation
PO Box 0
Juneau, AK 995811

Dear Commissioner:

Last year the Legislature passed House Bill 567 which addresses financial responsibility for oil terminal operators, as provided in A.S. 46.04.040. Presently, this piece of legislation was introduced as a response to the Exxon Valdez spill.

As so often is the case, hasty legislation makes for bad law, and I believe that such a condition exists here. Unfortunately, this piece of legislation failed to address existing shortcomings in the financial responsibility statute and appears to merely perpetuate a weakness that really isn't in anyone's best interests.

At hearings during consideration of HB-567, I did have the opportunity to comment on this issue. However, I do not believe that I did a very good job on the matter because problems still exist in the statute.

In the meantime, I have prepared a paper on financial responsibility of oil terminal operators which is relevant to these comments. Please note the attached.

If you should be so inclined, I would be happy to discuss this matter further.

Please advise.

Sincerely,

David F. Bouker
General Manager

lwb
Enc.

FINANCIAL RESPONSIBILITY

AS 46.04.040 (a) requires proof of financial responsibility for a non crude oil terminal in the amount of \$25 per incident for each barrel of capacity at the terminal or \$1,000,000 whichever is greater...

AS 46.04.040 (e) states that financial responsibility may be demonstrated by one of the following:

1. Self Insurance
2. Insurance
3. Surety
4. Guarantee
5. Letter of Credit approved by the dept.
6. Other proof of financial responsibility approved by the dept.

Nushagak Electric Cooperative, Inc. has non crude capacity as follows:

Tank No. 1	520,000 gal.	12380 bbls.
Tank No. 2	520,000 gal.	12380 bbls.
Tank No. 3	24,000 gal.	571 bbls.
	<u>1,064,000 gal.</u>	<u>25333 bbls.</u>

NEC is financially unable to self insure and has purchased liability insurance to meet the financial responsibility requirements from foreign insurers. In 1989 the cost of insurance was \$.021 per gallon of capacity; in 1990, the cost increased to \$.026 per gallon of capacity. This represented a 23.8% increase or making a total annual cost of \$23 per consumer. There is nothing to indicate that increases in cost will not continue.

The following factors are appropriate to the discussion on the requirements of the existing statute:

1. It would seem that exposure to oil spills should be more properly based on thru-put rather than capacity. Two tank farms of identical capacity would have widely varying exposures depending on the amount of fuel pumped in and out. Therefore it would seem reasonable as well as sensible to base the financial responsibility requirements on thru-put and not capacity.
2. Oil Spill Pollution Liability Insurance is not available from domestic insurers; it is available from Lloyds of London only.
3. There is probably great diversity on how terminal operators provide financial responsibility with large operators being generally self insured and smaller operators (those least able to pay) purchasing insurance or letters of credit.

Letters of credit while costing substantially less than insurance provide a false sense of security to the operator and to the state. If a spill does occur, the state immediately forecloses on the letter of credit and the small rural terminal operator may find himself suddenly increasing his debt load by \$1,000,000 or more.

The impact of such a situation may well be to bankrupt the operator which is frequently a municipality or a small non profit rural electric cooperative and thus placing themselves in a financially precarious position. Very likely it will be the state legislature that has to bail the terminal operator out thus ultimately paying for the damage claim that the state initiated.

4. Purchasing liability insurance including pollution liability insurance never provides coverage for damages incurred on the insured's premises. Generally, terminal spills originate on the insured's premises and depending on magnitude, may spread to others' premises. At that point, the pollution liability insurance would begin to apply.

This condition could have the undesired impact of the terminal operator having insufficient resources to clean up a spill occurring on his own premises but being able to produce legally acceptable financial responsibility.

5. As of this writing, it would appear that there is little incentive for an oil terminal operator to improve his facility. There seems to be little enforcement of standards of construction applicable to tank farms and related diking facilities. There is no state or federal inspection program in use that can offer even a modicum of oversight or standardization in the operation and development of tank farms.
6. The financial responsibility based on capacity rather than thru-put serves as a deterrent to installing additional capacity. Diesel fuel is the single largest component of the cost of electricity in the rural areas. All too frequently, the rural area is served by a single supplier thus creating a monopolistic position (and attendant high prices). In the Dillingham area the installation of additional capacity resulted in a fuel cost to NEC approximating 50% of that of the single source supplier. This resulted in savings of approximately \$48,000 per month of which \$16,000 resulted in direct savings to the state in reduced need for PCE. The rural community is held hostage to the single source supplier and existing regulations exacerbate this situation.

INSURANCE POOLING

The concept of insurance pooling may meet a substantial need for financial responsibility for all terminal operators in the state. This concept would provide for the establishment of an insurance pool presumably operated as a subsidiary of the Division of Insurance whereby all terminal operators would be obligated to provide support by premiums based on thru-put in their facilities.

Advantages of such a system would include:

1. Each operator would have the same liability or cost based on his own activity.
2. Since it is anticipated that there would be 100% participation, the unit cost of premiums would be much lower than are presently paid to Lloyds.
3. This program would be self supporting; administration costs would be paid from premiums. Additionally, it is believed such a program could also support an inspection program which would in turn help to minimize exposures.
4. The accumulation of revenues from the pooling could, at some future date, be sufficient to fund future potential liabilities. This could result in premium moratoriums.
5. Funds paid in the pool would remain in the state rather than fueling our balance of payments deficit.
6. The state would be assured that the goal of environmental protection for all pollution liability exposures was adequately covered thus meeting the purpose and expectations of financial responsibility.
7. Insurance pooling would promote competitive pricing, help to lower fuel costs and establish less reliance on PCE by providing incentives to build adequate capacity; present plan penalizes any additional capacity.

(ljc:reports/finres)



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

April 1, 1991

John A. Sandor, Commissioner
Department of Environmental Conservation
PO Box 0
Juneau, Alaska 99811-1800

Dear Commissioner:

On March 21, 1991 I wrote to you concerning the shortcoming of the financial responsibility requirements of HB 567 which was passed in the last session of the legislature.

Subsequent to that date our consultant prepared an analysis of the Oil Spill Contingency Plan Regulations outlined in your letter of March 4, 1991 which were also affected by HB 567.

Total impact of this legislation is yet to be felt but we do not necessarily believe it to be all in the public interest and request your review of it. If, in fact, "the proposed regulations were written primarily to regulate the Alyeska terminal and its tanker trade and the Cook Inlet operators," they have no reason to be applied to small rural Alaskan communities where energy costs are already at astronomical levels that are, in fact, supported by the state subsidized PCE program.

Again referring to my original letter of March 21 and its enclosures on financial responsibility, I believe that mandatory insurance pooling might solve DEC's concerns and the financial viability of the small rural operator.

In the meantime I am also enclosing an excerpt from our consultant, Jim Berry and Associates, on this matter for your review.

Sincerely,

David F. Bouker
General Manager

ljc

RE: Oil Spill Contingency Plan Regulations

This letter responds to your request for comments regarding ADEC's preliminary draft regulations pertaining to oil discharge prevention and contingency plans (C-plan). The attachment identifies specific sections of the proposed regulations which I think may present concern to rural Alaska operators. My comments are based on experience gained in preparing spill response and prevention plans for approximately 75 fuel terminals and 25 vessels which operate in Alaska.

The C-plan draft regulations were prepared by ADEC to implement 1990 SLA Ch. 191 (HB 567). They were distributed as a proposed draft on March 4 to all C-plan holders. By July 1, and after incorporating public comment, the draft regulations are to be finalized for public review. New regulations are to become effective December 1, and by February 1, 1992 operators are to submit new contingency plans. In the meantime, operators must update their current plans by June 1 to meet the statutory requirements which the proposed regulations are attempting to interpret.

Regardless of the outcome of the regulatory review process, the new statutory requirements will result in considerable expense and will significantly impact all regulated facilities and operators. Compliance with the proposed regulations will be particularly difficult and expensive for rural Alaska facilities and operators.

In my opinion, the proposed regulations were written primarily to regulate the Alyeska Terminal and its tanker trade, and the Cook Inlet operators. Many of the requirements are not practical or achievable for rural facilities.

For example:

- All facilities must maintain in their "area of operation" containment boom, response equipment and temporary storage capacity adequate to recover and store, at minimum, the volume of the largest tank.
- Response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10-foot waves.
- Operators must maintain, separate from facility response equipment, the necessary personnel and equipment to prevent spilled fuel from reaching all sensitive areas and areas of public concern.
- Marine operators must maintain in each "area of operation" the resources adequate to lighten the entire vessel cargo capacity within 48 hours.
- All facility operators must be trained to OSHA/ADOL hazardous waste standards. Currently, this requires certified training of 40 hours for operators and 64 hours for supervisors, and annual refresher courses.
- All plans must be reviewed and updated at least every six months.

If adopted as drafted, the new regulations will require every operator to rewrite its contingency plan to satisfy new format and content requirements. To obtain plan approval, operators will be required to purchase extensive amounts of new equipment, present voluminous environmental and equipment data/boilerplate, train operators to hazardous waste standards, and make commitments which are unobtainable.

The cost per facility to write new C-plans will likely exceed \$50,000. New equipment requirements could easily exceed \$100,000 depending on proximity to sensitive areas and areas of public concern. Initial training costs may vary from \$600-800 per person. Further, it is estimated that rural fuel costs will increase 30 cents per gallon to allow transporters and distributors to meet new expenses and liabilities.

I question whether the proposed regulations and associated costs are the best investment for spill prevention and response for rural operators. It appears the State is uncertain as well. As part of 1990 SLA Ch. 191 the legislature required ADEC to study:

"(1) appropriate locations for regional response [equipment] depots, based on an assessment of

historical evidence of where non-crude discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

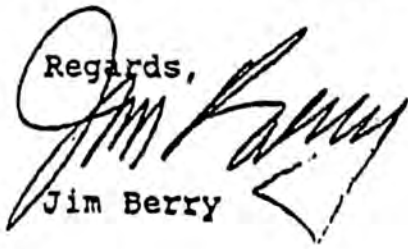
(3) requirements for personnel and equipment that should be imposed on [vessel] contingency plan holders; and

(4) appropriate roles for industry and state and local governments in the purchase, ownership, and positioning of discharge response efforts."

The mandated report is due July 1, 1991. Its affect on the proposed C-plan regulations is unknown. I project that if the proposed regulations are adopted there will be little uniformity in ADEC's interpretation, application and enforcement of the statutes. Operators who attempt to comply will bear the time and expense of being party to an inter-agency educational process. Further, due to confusion regarding implementation and content of the regulations, it is likely there will be numerous changes to the program, as well as possible statutory revisions.

I encourage you to discuss the matter with other rural operators and become involved in the review process. Hopefully, the regulations can be amended or modified in a timely manner. If not, a temporary exemption for rural operators may be appropriate. Effective February 1, 1992, operators who are not in compliance will be subject to a \$5,000 per day fine.

Regards,


Jim Berry

enclosure

Ribelin Lowell & Company
INSURANCE BROKERS INC.3111 C STREET, SUITE 300
ANCHORAGE, ALASKA 99503-1111
Phone: (907) 561-1250 Fax: (907) 561-4315

DESTINATION CITY AND COUNTRY: SITKA

FAX NO.: () 747-5065

DATE: 4-19-91

PAGES: ...
(INCLUDE THIS PAGE)

COMPANY: VENNEBERG INSURANCE, INC. ATTN: JAN WILBUR

MESSAGE

SUBJECT: SITKA FUELS, INC- 6-4-91 EXPIRATION
JAN-

GLORIA MCWHARTAN SHOULD HAVE MENTIONED IN HER... 4-9...
LETTER TO ED THAT WE'RE HAVING TO RE-MARKET THIS
PROGRAM W/ A NEW LEAD UNDERWRITER, WHICH MEANS WE
NEED MORE LEAD TIME. SECONDLY, PREMIUMS ARE UP SUB-
STANTIALLY. MY GUEST IS SITKA FUEL COULD BE LOOKING
AT A \$40-\$50,000. COST. TO MY KNOWLEDGE, LONDON IS THE
ONLY SOURCE FOR LIQUID FUEL TERMINALS.

PLEASE ADVISE IF YOU WANT ME TO PURSUE THIS. GLORIA
SENT A ONE Pg QUESTIONNAIRE W/HER LETTER

TTTUNKS



SENDER:

Ribelin Lowell & Company
Insurance Brokers Inc.

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Senator Dick Eliason
Alaska State Legislature
P.O. Box V
State Capitol Building
Juneau, AK. 99811

May 2, 1991

Dear Senator Eliason:

A marine industry organization from Anchorage advised us on Friday May 26, 1991, of Senate Bill 263, which had been introduced, was in committee, and that testimony was being received on that afternoon. This bill would amend a portion of HB 567 of 1990. It would offer some relief from the regulations that go into effect on 1 June 1991; extending portions of the regs until 1992. We have submitted written comment on this bill to the Oil and Gas Committee. We invite you to review the bill and encourage its passage.

Senate Bill 263 would allow time to study and analyze non-crude operations, including facility operations, transportation of and the economic effects. The operational and engineering standards, established by the state in HB 567, we consider to be unworkable and as a result petroleum transportation operations by our company will be discontinued on June 1, 1991. Operating under the interim approved contingency plan we now have, plus amendments that must be made, we feel cannot be done legally. The opposite of course being illegal, which subjects Samson Tug and Barge to civil penalties, lawsuits, and possible criminal action. We have been advised that other transportation companies are considering this same avenue.

As our State Senator, we would request that you keep us up to date on the outcome of this bill and future bills concerning the transportation of petroleum products.

Sincerely,

Albert M. Snelling
ALBERT M. SNELLING

Albert M. Snelling
ALBERT M. SNELLING
Safety Director

Copy: Congressman Grussendorf
Senator Cotten
Senator Hoffman

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Jerome Brown
Sitka Fuels, Inc.
Box 1947
Sitka, AK. 99835

May 1, 1991

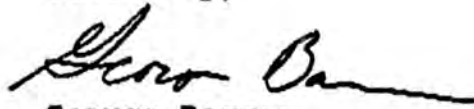
Dear Mr. Brown:

This letter is to inform you that effective 1 June 1991, we will be unable to deliver any petroleum products to your facility. Due to Alaska statutes (HB567) that will become effective June 1, 1991, Samson Tug and Barge will be unable to comply with the law, which we consider unworkable. Further operations under our Contingency Plan would constitute an illegal action on our part. Liability spill insurance coverage for the T/B Annahootz is minimal in comparison to the possible liabilities that could be incurred for a spill incident. Therefore because of regulatory action and increasing cost we are forced to discontinue our fuel delivery service.

Presently, there is legislative action to amend HB 567 and extend previous requirements until January 1992. In the event this bill, SB 263, passes, we will continue our fuel operation and will be able to provide you continued service.

We regret this action to a long and valued customer, however we must protect our company and its employees. Thank you for your patronage and your understanding.

Sincerely,



George Baggen



Alaska State Legislature

SENATE SPECIAL COMMITTEE
OIL & GAS

Please enter into the record my testimony to the

committee name

committee on SB 263
bill/subject

, dated 29 April 1991

We are in favor of SB 263. There must be an understanding of the difference between persistent petroleum products (crude and heavy oils that are going to hang around awhile) and non-persistent petroleum products (gasoline, diesel, and aviation fuels that are going to dissipate thru various avenues in short time) by the regulators, to make HB 567 workable. The industry that transports and stores non-persistent petroleum products are forced to comply with regulations that are aimed at the persistent oil transporters. There is a difference in the two. Something must be done to amend the regulations.

The economic ramifications of HB 567 as it stands is going to be far reaching. Continuing along the trackline now set, the number of transporters in business is going to decline very rapidly. Who is willing to mortgage the company to pay the insurance premium so they can transport gas and oil in Alaska? But worse of all, the consumer in the bush and the small coastal communities and the State of Alaska are going to pay the cost.

To make this bill work, when passed, the legislature and the Department of Environmental Conservation (DEC) must be willing to listen and learn from the industry (the non-persistent gas and oil transporters and facility operators) on who, what, where, when and how the industry functions. To date in dealing with DEC and in reviewing "preliminary draft 1/28/91 - oil discharge and contingency plans", it is easily noticeable, the inexperience of personnel involved in the regulatory process.

Put common sense and communication to work in solving this problem, pass SB 263 and let us study the problem together.

Signed:

Albert M. Orrelling
Testifier

SAMSON TUG & BARGE CO.

Representing (Optional)

P.O. BOX 559, SITKA, AK. 99835

Address

(907) 747-8559

Phone No.

TESTIMONY OF SEAPRO MANAGER CONCERNING SB 283

04/30/91

SEAPRO is a cooperative organization made up of companies who transport, store, and use bulk quantities of oil in Southeast Alaska. With the exception of the Unocal terminal in Ketchikan, none of the companies who make up our membership can be considered "big oil". We are predominantly small businesses, the majority of whom are locally owned. Our members include tug and barge companies, medium and small fuel terminals, mining companies, pulp mills, and others. Our members are located in Juneau, Ketchikan, Sitka, Petersburg, Wrangell, and Thorne Bay. Some of our members have operations which service virtually all the smaller communities and habitations in the region, while others simply consume oil in sufficient quantity to fall within the jurisdiction of the new state law.

We are a relatively new entity, having officially started activities last December after several months of planning and organizational work. One of the main purposes of our organization is to provide a mechanism for making better use of the pollution response assets which already exist within our member companies, and to seek improvements in the overall pollution prevention and response system within our region.

SEAPRO has been working with co-op members, ADEC, the Coast Guard, other state and federal resource agencies, local emergency planning committees, and response organizations outside the region to identify region specific needs, conditions, and concerns which directly relate to the pollution prevention and response infrastructure of the region.

Naturally, the requirements of state law and regulation are a portion of the equation which will drive the final design of our region's system, so SEAPRO has been careful to pay close attention to developments in those areas, but especially to the non-crude oil regulations promulgated under HB 567.

Last Thursday and Friday, I participated in a two day meeting in Anchorage of a working group dealing with ADEC's draft financial responsibility and contingency plan regulations for non-crude oil vessels and facilities. I participated in this working group with the express purpose of trying to contribute the views of our region's companies who are very confused as to how they can comply with several specific provisions, and what impacts these regulations will have on their ability to continue in business. Additionally, as a professional in the pollution prevention and response fields, I had hoped to suggest specific technological language and methodologies which could improve the workability of the proposed rules.

While I am not all that knowledgeable about insurance matters, it appeared that some progress was made toward resolving several of the insurance industry's objections to the draft financial responsibility rules during the first day of these meetings. Unfortunately, less progress was made in addressing technical details of the planning regulations.

It is my opinion that there are serious technical flaws with the draft planning regulations. Additionally, so far as I can determine, there are still no prevention regulations available for us to work with. It is imperative that these regulations, together with the financial responsibility regulations, be considered as a comprehensive package, especially as they relate to the interdependent system of distribution, storage, and use of distilled or refined products which exists in our region of the state. Failure to adopt these regulations as a system will limit their effectiveness and make compliance that much more difficult to achieve.

During these meetings, it was obvious to me that there is a great gap between what the DEC thinks they are saying to industry with these regulations, and what industry in our region believes is being said. This is not simply a matter of semantics. It is also a matter of our assumption of how these regulations will be applied by the state, and interpreted by the courts. These assumptions, even if incorrect, are exacerbated by an atmosphere of confusion caused by the law having an effective date which precedes the state's ability to complete a normal regulatory process.

Many of our businesses are firmly convinced that they cannot comply with certain provisions of the regulations because the technology to meet the required standards does not exist. There is also the problem of acquiring and putting into place capital assets which may meet some of the requirements, in time to comply with the law. Following this logic then, it should be obvious that these businesses believe they are faced with a quandary. Do they continue in business knowing they cannot comply with technical provisions of the regulations and hope that the government will correct the situation eventually, or should they strictly comply with current law and unadopted regulation and cease doing business?

I believe that progress has been and will continue to be made in constructing practical regulations which can satisfy the intent of the legislature. However, the current situation of HB 567 becoming effective in advance of implementing regulations creates an artificial barrier to progress and an atmosphere of uncertainty for our member businesses.

The work to craft functional regulations implementing HB 567 has at least begun, but there is a long way to go. The DEC, our businesses, and the communities of our region need time to do this work. I believe that SB 263 will give us an opportunity to do this work. More importantly, it will also give our member companies some assurance that while the regulations are being crafted, they can continue in business without the fear that they may be unintentionally breaking the law. I urge the legislature to adopt SB 263.

R. M. Mullen

Manager

Southeast Alaska Petroleum Resource Organization



P.O. Box 1947
 Sitka, Alaska 99835
 Phone (907) 747-8460

Post-It® brand fax transmittal memo 7871		# of pages » 4
To <i>Dick Eliason</i>	From <i>Don Brown</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>465-4928</i>	Fax # <i>747 5382</i>	

May 2, 1991

Senator Dick Eliason
 President of the Senate
 Juneau, Ak.

Dear Senator Eliason:

Thank you for your prompt response to my phone call this morning. I am enclosing copies of the three letters I discussed with you. The problem is the outfall of HB 567, passed last session. The regulations being developed by the DEC are not in place and without a program you cannot tell the players. This is generating much concern among players and spectators alike.

At the DEC public hearing in Sitka yesterday evening a large portion of the public expressed a degree of delight that transporters and oilers were getting what they deserved. I did not favor these people with my Economics 101 theme, the consumer pays for all direct and indirect cost in the purchase price. I have been exposed to projected consumer cost per gallon, of the current DEC regulations, of a low of 30¢ per gallon to a high of 57¢ per gallon. Sitka Fuels is going to comply with whatever washes out of this deal and the end user will address all costs except the anxiety factor, and my blood pressure is the same as twenty years ago.

I strongly support the position of SB 263 by Senators Hoffman and Adams, requesting a delay in implementing the effects of HB 567 and bringing some realism to this "Land of Oz".

Thank you for volunteering your staff to distribute to other addressees. I will FAX direct to the Lt. Governors office. All the real halibut fishermen have left town.

Senator Al Adams
 Senator Sam Cotton
 Senator Rick Halford
 Senator Lloyd Jones
 Speaker Ben Grussendorf
 Representative Cheri Davis
 Representative Jerry Mackie
 Representative Robin Taylor
 Lt Governor Jack Coghill

Sincerely,

Don Brown
 Don Brown

Enclosures: Samson 5-1-91
 Venneberg 5-1-91
 Ribelin Towell and Co. 4-19-91

VENNEBERG INSURANCE, INC.

May 1, 1991

225 Harbor Drive
P.O. Box 199
Sitka, Alaska 99835
(907) 747-8625
FAX (907) 747-5065

Jerome Brown
Sitka Fuels, Inc.
P.O. Box 1947
Sitka, AK 99835

Re: Pollution Liability
#L5552/90

Dear Jerome:

The above pollution liability policy for Sitka Fuels, Inc. is due to expire on 6/4/91.

We have been notified by Ribelin Lowell & Co. that the current lead underwriters in London for this program are pulling out. They are in the process of remarketing to new underwriters and believe that they will be able to place the coverage but at a substantially higher premium. Last years cost of \$27,000 is likely to increase to something like \$40,000 - \$50,000.

As you are aware, the problem with marketing this coverage is the requirements that DEC has in the "Alaska Endorsement". We are in the process of getting quotes from two other markets which are able to provide this coverage but without the current wording of the "Alaska Endorsement".

One of these markets, AIG, is a very large writer of environmental impairment liability. They have looked over the current DEC required wording for Alaska and believe that two problems exist. One is that the wording requires the insurer to pay first dollar expense (No Deductible). The other problem exists in changing the coverage from a claims made to an occurrence basis.

The current financial responsibility laws are limiting competition for this coverage to only one source. It is possible for DEC to change the wording requirements and not reduce the coverage that is carried by Sitka Fuels.

If you have any questions on this or need any additional information please let me know.

Sincerely,



Mike Venneberg

SB 263 - APR. 30

Tanks - 5 - 10,000 - 40 50 tanks.
Over 10,000 - 180

Please provide chart showing distribution
of sizes of tanks

SERC (?)

Sen. Pappal

Comp. w/ 72 hr planning for June 1
for cruise -
Post - 72 hr.

H. B. 196 - House Finance 5/1/91

DEC - Adair -
Love it, except:

1. Sunset
2. subsec. (d) - Jim. resp.

News -

Forward Ellis amendment out, incl. in title.
Adopted w/out objection.

~~TH~~

Statute 46.04.030 (e) - "terms + conditions"

18 AAC 75.365

If C-Plans not approved
or conditionally approved, applicant
must apply for variance

Law - variance can be used for
procedural or only substantive
time frames, etc.

Law set only subot.

Larry doesn't feel we need any
authority for interim app'l -
can always issue app'l for
time frame

Q

Stat ROW lease say must have C-plan
Similar permit under lease for
production.

(B)

SB 263 - 4/31

BP - Problems -

1. Legal -

2. No C-Plan

John ^{Holley} - C-Plan Status - PB + Endicott
Lippert - Lumsden
been reviewing '85 plan, which was
modified in '88
2 plans - Paper work in this
week.

Surprise was LZM review; length
of time to complete
Only in last 3 weeks been advised
LZM review required.

Was confusion as to whether had an
existing, approved plan.

Last agreed not submit plans on May 10.
DEC said hurry up, won't be time for LZM
before June 1

Who does LZM? We deal w/

Processing operations previously regulated.
567 brought in everything. Could be
argued their existing plan covers all

(3)

Both: AG currently reviewing whether L2M review req'd.

Larry Nathan: WD BP does pass 567?

BP plan has expired. They sent doc's to renew DEC had nobody in office.

Written doc. not in compliance; believe they have equip. etc; but not correct documentation.

Believe they will not be in compliance for a period of 3-4 weeks.

Dave: If plan expired in 8 - did you ask them to submit whole new plan.

1. Existing plan revised + updated under old law -

2. Need new revisions to 567

BP "going extra mile" - getting together a good doc.

Coraco's C-plan also is expired; also prob. DEC's fault.

DP Palmeries? - Currently approved C-plan? - Chuck

What is issue ~~is~~ before ALG?

Next What are legal concerns as of June 1?

1. 2 neighboring facilities have different response, both approved.
2. Uncertainty w/ CZM approved
3. Is a law with teeth; DEC can shut down;
 - DEC may do that
 - Somebody else may say DEC is doing

Murtz - Can't prevent tirial suits - One operator can sue another, really rack things up, but not be back with litigation

Co-current group - maybe get standing

(7)

Cherxon - Ray Phummer -

Support 263 in present form; strongly
urges amend for ~~the~~ crude.

Finding financial resp. requirements
repelling;

Also finds C-plan rep. confusing.

Miki - closing - marginal cost asser.
w/ Bl 7 - no longer economic.

if weren't formerly reg'd to have
C-plan, then are "newly
regulated" - and are not out
of compliance.

But BP say used to at least have
C-plan

BP- Legal

if LZM is not there,
prob. have approved plan
by June 1

if is, then probably not have
approval by June 1, we'd be
concerned

3d pt suit asking court to shut
down BP

Statute permitting interim approval by DCL
would alleviate.

Pres. Commission - req. everybody to file by
June 1, but defer until June 1 next year
power to shut down.

Dave - Take of RMOD from table

Muel - \$60, DV fiscal

Molly - take studies out of this bill.

Dave - Please provide list of out of compliance holders.

DV: any pending suits? No.

SENATE SPECIAL COMMITTEE ON OIL AND GAS

April 30, 1991

11:12 a.m.

MEMBERS PRESENT

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Lyman Hoffman
Senator Dick Shultz

MEMBERS ABSENT

Senator Bettye Fahrenkamp

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 28

Relating to oil and gas exploration in Alaska and the Presidential Task Force on the Trans Alaska Pipeline System.

SENATE BILL NO. 263

"An Act relating to oil discharge prevention and contingency plans and financial responsibility requirements for noncrude oil operations; and providing for an effective date."

PREVIOUS SENATE COMMITTEE ACTION

SJR 28 - No previous action to record.

SB 263 - See Senate Special Committee on Oil & Gas Committee minutes dated 4/26/91.

WITNESS REGISTER

Kathy Hathway, Staff to Senator Jay Kerttula
P.O. Box V
Juneau, AK 99811

POSITION STATEMENT: Testified on behalf of sponsor of
SJR 28

Riki Ott
Oil Reform Alliance
Box 1430
Cordova, AK

POSITION STATEMENT: Supports SJR 28

Mead Treadwell, Deputy Commissioner
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811

POSITION STATEMENT: Offered information on SJR 28 and
SB 263

Mike Mansker
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811

POSITION STATEMENT: Testified on SB 263

John Ringstad
British Petroleum Exploration
P.O. Box 196612
Anchorage, AK 99519

POSITION STATEMENT: Suggested amending SB 263

ACTION NARRATIVE

Tape 1, side 1

Number 001

#SJR28

The meeting of the Senate Special Committee on Oil and Gas was called to order by CHAIRMAN COTTEN at 11:12 a.m. He introduced SJR 28 (TAPS PRESIDENTIAL TASK FORCE) as the first order of business.

Number 005

KATHY HATHAWAY, staff to Senator Jay Kerttula who is prime sponsor of SJR 28, explained the resolution encourages both the Governor and President Bush to expeditiously appoint members to the Presidential Task Force that has resulted from the Oil Pollution Act of 1990 and which is going to be conducting a two-year audit of TAPS. Senator Kerttula feels that the results of the audit would be useful in encouraging further oil development on the North Slope.

Number 020

RIKI OTT, representing the Oil Reform Alliance, said the need for a Trans Alaska Pipeline presidential audit was evident after the oil spill when other problems with the system surfaced, specifically corrosion in the pipeline.

Ms. Ott noted that the Oil Pollution Act of 1990 wasn't authorized until August of 1990, and by that time, it was too late to get any money appropriated to the task force. The resolution requests that Congress provide full and immediate funding for the task force. The Alliance supports the Citizens Oversight Council on Oil and Other Hazardous Substances to have input into the Governor's appointments to the task force.

Number 058

MEAD TREADWELL, Deputy Commissioner, Department of Environmental Conservation, spoke to some of the other measures that are being taken to accomplish what the audit was set out to do in federal law. He said they do support creating the audit, but they are not sure it is going to happen.

The State Pipeline Coordinator's Office has come together and consists of the Department of Fish and Game, Department of Natural Resources, Department of Environmental Conservation and on the federal side consists the Bureau of Land Management, U.S. Department of Transportation, the Corps of Engineers and the Fish and Wildlife Service. They have brought together the combined federal/state oversight of the pipeline in doing what the audit has set out to do.

A corrosion team has been put together with representatives from the federal and state agencies, and they will be examining all components of the system over the next 20 months.

The General Accounting Office is the process of completing an audit on the pipeline now. Also, the Pipeline Safety Office has just completed a thorough review of Alyeska's oil spill contingency plan.

Deputy Commissioner Treadwell said a lot of the concerns that Congress may have had when they passed the authorization for the task force have already been addressed by the agencies. However, the Governor has requested advice already from the DEC and DNR commissioners' appointments from their departments, and he has names ready for the President whenever the President requests them.

Deputy Commissioner Treadwell said that if the committee wanted to make any modification to the resolution, he would suggest looking at other parts of the Oil Pollution Act of 1990, and asking for funding of certain programs addressing research that were promised under the Act.

Number 115

SENATOR COTTEN requested that Mr. Treadwell get together with committee staff to draft some possible amendments to the resolution. He stated SJR 28 would be back before the committee at a later date.

#

Number 125

#SP263

SENATOR COTTEN introduced SB 263 (OIL SPILL REQUIREMENTS;

NONCRUDE OPERATION) as the next order of business, stating the committee would discuss proposed amendments to the bill.

Number 145

MEAD TREADWELL, Deputy Commissioner, Department of Environmental Conservation, spoke to two potential amendments that were discussed at a previous hearing and are supported by the department.

The first amendment to page 1 removes the 10,000 barrel cap on the study of oil terminal facilities, and, basically, asks DEC to study noncrude facilities of 5,000 barrels or greater. Deputy Commissioner Treadwell estimated that the upper limit cost of the additional study would be \$300,000. He added that the department is in the process of preparing a formal fiscal note.

The second amendment would not only look at the costs of implementing the law on the vessels, barge owners and the operators and the persons they serve, but also would look at the benefits of this law through avoiding cleanup costs through implementation. He said while they understand that this will raise the cost of fuel at various points throughout Alaska and they are sympathetic with that, they also know that at any time a village or community could be asking them for emergency response funds to cover a facility that right now doesn't have sufficient prevention and response capability. He said he felt it was important to take a look at the risks of not having this law in effect for noncrude carriers, as well as the effect that the law will have on the price of fuel.

Number 180

SENATOR HOFFMAN commented that there are a lot of problems with the small refineries that need the studies, but if it is the committee's desire to have this addressed, he would suggest that both of the studies be taken out and put into a separate piece of legislation. He said his primary concern is the effective date.

Number 195

SENATOR COTTEN referred to the first amendment and asked if it was changing the perimeters of the report that they are supposed to submit next year. DEPUTY COMMISSIONER TREADWELL responded that under the law passed last year, the department has two studies that are in the process of being completed. One is due the first of July and the other is due late next year. One is basically an inventory of tank facilities between 5,000 and 10,000 barrels, and the other is a

transportation study. The amendment would take off the upper limit of 10,000 barrels and do a noncrude storage inventory for the entire state. SENATOR HOFFMAN added that the 10,000 limit was put on primarily because it is the average number of crude facilities in rural areas of the state and he wanted to look at the some of the economic factors that this legislation would have on those small users. SENATOR PEARCE added that last year DEC brought the committee a list of storage facilities in the state and a small number of facilities had a storage capacity of more than 10,000 barrels. Ten thousand seemed a likely cutoff point where they needed to survey to see what was out there below 10,000 barrels.

Number 275

SENATOR PEARCE asked how many facilities they think there are that are between 5,000 and 10,000 barrels. DEPUTY COMMISSIONER TREADWELL said he thought that right now that inventory was looking at 40 or 41 tanks.

Number 283

SENATOR HOFFMAN asked what the department's position would be if an upper limit of 150,000 barrels was put on the study. DEPUTY COMMISSIONER TREADWELL responded that he had no idea right now of what it would change as far as the numbers, but he had no problem with 150,000 barrels and didn't know where the best place would be to draw the line.

Number 385

SENATOR PEARCE said she is comfortable with putting into effect on June 1 the 72 hours planning standard for having equipment on site to handle the containment and cleanup of a spill. However, where she has question and where there may be difficulty for anybody trying to write their plan by June 1, is what happens after the 72 hours and with coming up with a definition of what a realistic maximum oil discharge is.

Number 475

MIKE MANSKER, Department of Environmental Conservation, said he chairs the HB 567 Technical Implementation Work Group and they have been struggling with the question of defining a realistic maximum oil discharge and how they are going to implement contingency planning based on the definition of it.

SENATOR COTTEN noted that it appears that by regulation that a realistic maximum oil discharge is already described. SENATOR PEARCE said it does not meet what the legislative intent was last year, nor does it contain what they were told by the department that they were going to do. MIKE MANSKER

agreed with her, saying that the draft response regulations were promulgated without benefit of having drafted the prevention regulations. The problem that the department is having in implementing the bill right now is that realistic maximum oil discharge is seemingly used in conflicting ways in the bill. He said he would be happy to meet with Senator Pearce and brief her on what's been going on with the working group and to discuss potential amendment language.

Tape 1, side 2

Number 001

JOHN RINGSTAD, representing British Petroleum Exploration, stated their interest in trying to expand the bill to include crude oil. There are a couple of areas of concern in the implementation of this, but it is not their intention to slow the bill down.

Number 015

SENATOR COTTEN said he would meet with Mr. Ringstad and other members of British Petroleum in the next couple of days to have a work session to listen to what their interests are.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.

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TELECONFERENCE SITES AND THOSE TESTIFYING:

BETHEL: Bethel Fuel Sales, Ollie Olsen ✓

KOTZEBUE: Brad Reeve, Kotzebue Electric ✓

DILLINGHAM: Dave Bowker, mgr. of Nushagak Electric ✓

ANCHORAGE: Meera Kohler, mgr. of Naknek Electric

~~Steve Peterson~~
Bill Schoephoester, Petro Marine

Steve Peterson, Crowley

NOME:

Joe Murphy, Nome Joint Utilities
Don Stoltz, Arctic Lighterage ✓

SEATTLE:

Randy Collar, Delta-Western

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Jerry McMahon, region vp Pacific ^{Region}
American Waterways Operators ~~Coast~~

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NOME:

Berke Wilson

~~Joe~~ Murphy, Nome Joint Utilities

Don Stoltz, Arctic Lighterage

SEATTLE: Randy Collar, Delta-Western

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Jerry McMahon, region vp Pacific ^{Region}
~~Coast~~
American Waterways Operators

Karen Wood -
ACE -

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KAREN WOOD OF AK CENTER FOR THE ENVIRONMENT WOULD LIKE TO TESTIFY IF POSSIBLE.

JUDY

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SUBJECT LINE TO READ: TC NO., PL/FS, SHORT SUBJECT, DATE

T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: SENATE SPECIAL COMMITTEE ON OIL & GAS
SUBJECT: SB 263; OIL SPILL REQUIREMENTS; NONCRUDE OPERATION
MODERATOR: THERESA/KATHY
SITE: SITKA

PARTICIPANT LIST

TO TESTIFY

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. ALBERT SNELLING,	SAMSON TUG & BARGE		SB 263
2.			

T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: SENATE SPL CMTE ON OIL & GAS
SUBJECT: SB 263
MODERATOR: CHARLENE
SITE: HOMER

PARTICIPANT LIST

TO TESTIFY

~~TESTIFYING~~

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LARRY SMITH, KACHEMAK RESEARCH INSTITUTE			SB263
2.			
3.			

~~TESTIFYING~~
OBSERVING)

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
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T/C NO: 91-04-198
DATE: APRIL 30, 1991
SPONSOR: (S) SPECIAL COMMITTEE ON OIL & GAS
SUBJECT: SB263: OIL SPILL REQUIREMENTS/NONCRUDE OPERATION
MODERATOR: RAE RHODES
SITE: KETCHIKAN

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NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. RICHARD MULLEN, SEAPRO			SB 263
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5.			

OBSERVED

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