

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2120 SCOMM 79: HOUSE SPEC. COMM. ON OIL & GAS, 1991-1992

138

Television can provide perspective—viewers can see for themselves how small the 1002 Area is, in relation to the vastness of the North Slope and the rest of Alaska. They can see how the caribou herds have prospered along with Prudhoe Bay development. They can hear acknowledged experts assure the public that even higher levels of environmental safeguards will be employed at ANWR, due to the valuable lessons learned at Prudhoe. They can witness Eskimo villagers' concurrence with ANWR development. And finally, they can learn how all this will benefit themselves, as ordinary American citizens.

But no matter how heart-warming the concept, no matter how creative the execution, the sheer cost of television should absolutely preclude its use without extensive research and testing, in both pre- and post-production. In fact, such testing may well take place in conjunction with the constituent-opinion research programs advocated in Section 3.

As for media selection, those markets selected for both primary impact and grass-roots support are where Alaska's dollars need to be concentrated. We would therefore recommend that television media buys be made on a local or regional basis, rather than national network buys. Local buys are also advisable because viewer demographics vary from market to market. Cable television, too, would be included in the state's media program, since cable can often be bought on a very cost-effective basis, either as a primary or as a supportive buy.

IV. CONCLUSION

The type of future Alaska faces—the quality of life that may be available for average Alaskans—may well rest with the outcome of the ANWR struggle. The Prudhoe Bay field is declining. The most promising new area for finding sufficient oil to maintain long-term operation of the trans-Alaska pipeline is within ANWR.

For these reasons, we suggest it is not only appropriate but imperative that the state of Alaska move now to protect that future.

A well-developed, well-organized and well-funded national public relations effort is necessary to turn the tide in Congress—a tide brought about by recent, highly-publicized oil spills. But success rests with having all parts of the machine working smoothly together.

Once your initial plan has been formulated, the persons representing all the key elements should be gathered in one spot for a single presentation and assignment of responsibilities—and those members of the state legislature most closely involved with the program should be present not only to lend their support, but to learn first-hand from the participants about the problems and opportunities available around the country.

Following this initial briefing session, other such meetings should be regularly scheduled (even though all personnel and offices involved in this effort will be in regular telephone and fax contact).

And finally, it is of vital importance that John Katz, at Alaska's office in Washington, D.C., be in a continual position to direct organizational activities as needed, and to summon assistance whenever and wherever it may be required.

V. PRO-ANWR BUDGET ESTIMATE

<u>Research</u>	
Environmental, Opinion, Creative	\$250,000
<u>Informational Brochure Series</u>	\$700,000
<u>Native Support Programs</u>	\$60,000
<u>Press Kits</u>	\$100,000
<u>News Bureaus</u>	\$150,000
<u>Photo Pool</u>	\$25,000
<u>Video Presentation</u>	\$100,000
<u>Editorial Board Briefings</u>	\$30,000
<u>News Releases, Video/Audio Releases and Syndicated News Service</u>	\$300,000
<u>Outside Alaskans</u>	\$35,000
<u>Business-to-Business</u>	\$50,000
<u>Trade Association</u>	\$30,000
<u>Vendor/Supplier Program</u>	\$35,000
<u>Chamber of Commerce/Civic Organizations</u>	\$75,000
<u>Alaska Ambassadors</u>	\$60,000
<u>VIP Delegations</u>	\$100,000
<u>Trade Unions</u>	\$60,000
<u>Direct Mail</u>	\$1,650,000
<u>Advertising/Advertising Production including print and broadcast</u>	<u>\$12,500,000</u>
Total Budget Estimate	\$16,310,000

Alaska Coalition For American Energy Security

P.O. Box 10-1515 Anchorage, Alaska 99510-1515 Telephone (907) 561-8641

January 31, 1991

Representative Jim Zawacki
Alaska State Legislature
Court, Room 612
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Zawacki:

The Alaska Coalition for American Energy Security is a non-profit organization, composed of eighteen Alaska organizations who are advocating the opening of the Arctic National Wildlife Refuge (ANWR) Coastal Plain to environmentally responsible oil and gas exploration, development and production. The Coalition acts as the coordinating agency on the Coastal Plain issue for these groups. Last year, the Coalition worked with the Governor's office and the legislature to promote legislation to help fund an advertising and grassroots lobbying program in the "south 48." Although supported by the Administration and key legislators, the program was not funded at the end of the session. Since that time, we have worked with legislators and industry representatives to refine the proposal, a copy of which is attached. We have presented this proposal to the new Administration in the hope Governor Hickel will request the funding be added to this year's supplemental budget.

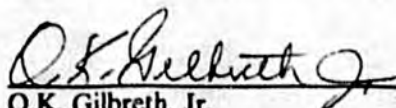
Last year, this National Grassroots and Advertising Campaign was reviewed and accepted by our Congressional Delegation, industry strategists and the Office of the Governor in Washington, D.C. All believe it is a good approach and is essential to the effort to open the Coastal Plain. This year, the oil industry is considering funding a complementary program and is developing strategy assuming that the state will take responsibility for their part. Several legislators have indicated they would approve such a plan, depending on the final bill.

The State has undertaken programs of a similar nature in its tourism and fishery industry promotions. From the economic standpoint, this program is an excellent investment. Included in last year's federal budget estimates was a figure of \$1.9 billion for lease bonuses from ANWR, but the increase in the North Slope crude price has caused some analysts in Washington to conclude that ANWR lease bonuses now could reach \$6 billion. Under the worst royalty scenario of a 50/50 split, the State could receive from \$0.95 billion to \$3 billion from lease bonuses alone within two years after congressional approval of leasing and development. Thus, for a program investment of \$11 million, the State stands to make from \$950 million to \$3 billion in two years whether oil is found or not.

We would like to meet with you and your staff to explain the proposal. Since time may become a problem in obtaining approval and designing a program, we urge your to support inclusion of this program in the Governor's supplemental budget request. We would be happy to meet with you and your staff at any time.

Yours truly,

ALASKA COALITION FOR
AMERICAN ENERGY SECURITY


O.K. Gilbreth, Jr.
Executive Director

OKG:dkc
Enclosure

January 1991

The Alaska Coalition for American Energy Security

by

The Office of the Governor

and

The Alaska State Legislature

prepared for

The Coastal Plan of the Arctic National Wildlife Refuge

to promote the opening of

National Grassroots and Advocacy

7/10

Alaska Coalition For American Energy Security

P.O. Box 10-1515

Anchorage, Alaska 99510-1515

Telephone (907) 561-8641

NATIONAL GRASSROOTS AND ADVERTISING CAMPAIGN TO PROMOTE THE OPENING OF THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE

EXECUTIVE SUMMARY

OBJECTIVE:

To conduct a national grassroots and advertising campaign to promote the opening of the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) to oil exploration, development and production.

PURPOSE:

To show members of Congress that key constituencies in their home districts support oil activities on the ANWR Coastal Plain.

TARGET:

Business and community leaders, electronic and print media, associations and civic groups.

PLAN:

To contract with a professional grassroots lobbying and media firm to implement the campaign with guidance from the State of Alaska and Alaska's congressional delegation, and to coordinate the campaign with oil industry representatives, and the National and Alaska Coalitions.

BUDGET:

National Grassroots Program	\$5,564,000
National Advertising Program	\$5,679,000
Total Cost of Campaign	\$11,243,000

RECOMMENDATION:

- 1) To include this funding in the supplemental budget so that the program can be implemented in a timely manner.
- 2) To coordinate the program through the state's Washington, D.C. Office of the Governor.

The Alaska Coalition for American Energy Security is conducting a pilot grassroots campaign in five targeted congressional districts in the Lower 48. After visiting three areas, the Coalition believes more strongly than ever that this type of strategy is necessary to pass pro-development legislation.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
A. Program Strategy	1
B. Benefits to the State	1
C. Timing of a Grassroots and Advertising Campaign	2
D. Contributions From the Oil Industry and Third-Party Groups	3
II. GRASSROOTS CAMPAIGN	4
A. RESEARCH	4
1. Issue Research and Message Development	4
2. Opposition Monitoring	4
B. PUBLIC RELATIONS	5
1. Targeted Media Relations	5
2. Cultural ANWR Video	5
C. DISTRICT CONSTITUENCY	6
1. Grasstops Roundtables	6
2. Familiarization Tours	6
D. DIRECT CONTACT	6
1. Grassroots Communication	6

III.	ADVERTISING CAMPAIGN	8
A.	TARGETED MEDIA PLACEMENT AND PRODUCTION	8
1.	Television Advertising and Production	8
2.	Print Advertising and Production	8
IV.	BUDGET	9
	<u>GRASSROOTS CAMPAIGN</u>	
A.	RESEARCH	9
1.	Issue Research and Message Development	9
2.	Opposition Monitoring	9
B.	PUBLIC RELATIONS	9
1.	Targeted District Media Relations	9
2.	Cultural ANWR Video	9
C.	DISTRICT CONSTITUENCY	9
1.	Grasstops Roundtables	9
2.	Familiarization Tours	10
D.	DIRECT CONTACT	10
1.	Grassroots Communication	10
	<u>ADVERTISING CAMPAIGN</u>	
A.	Targeted Media Placement and Production	11
1.	Television Advertising and Production	11
2.	Print Advertising and Production	11

V. ATTACHMENTS

A. Federal Income Budget for 1993

I. INTRODUCTION

A. Program Strategy

The Alaska Coalition for American Energy Security urges that the Alaska State Legislature fund a national grassroots and advertising campaign supporting oil exploration and development on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR).

The Coalition is a third-party constituency group dedicated to promoting the opening of the ANWR Coastal Plain to environmentally-sound oil operations. Formed in 1987, the Coalition's membership includes organizations and businesses representing all segments of Alaska's economy.

The focus of a national grassroots campaign will be to identify key congressional districts throughout the United States. The ANWR message will be localized for each targeted area. The grassroots effort is designed to generate organization resolutions, editorials and articles in the media, coverage on local radio and television, speeches and presentations before business and civic groups, meetings with community and business leaders, and ultimately letters to members of Congress advising them of constituency support for opening the ANWR Coastal Plain.

The nucleus of the national advertising campaign will be a series of television commercials and newspaper/magazine advertisements to be used in conjunction with the grassroots program in targeted congressional districts throughout the United States. The commercials and advertisements will highlight the key issues surrounding the ANWR Coastal Plain debate, and will support the pro-ANWR arguments to Members of Congress and their constituencies.

B. Benefits to the State

The State of Alaska is the only entity that can successfully undertake a campaign of this magnitude. The state is viewed as the most credible source of information on the ANWR Coastal Plain issue. The state has developed a reputation in the Lower-48 as being in the forefront of environmental issues, and takes a firm stand on development practices throughout Alaska. Therefore, when the state advocates ANWR Coastal Plain development, the American public will listen.

The state will receive direct economic benefits when the ANWR Coastal Plain is opened to oil leasing. President Bush's 1993 budget (Attachment 1) expects income from initial Coastal Plain lease sales to be \$1.9 billion. However, during the recent budget negotiations, revenue from lease sales as high as \$6 billion were projected. At worst, the state will receive half, whether or not oil is discovered beneath the Coastal Plain. Funding an ANWR advocacy campaign should be viewed as an investment for the state.

Production at Prudhoe Bay is expected to decline to half of what it is today by the beginning of the next century, according to the University of Alaska's Institute of Social and Economic Research. It is anticipated that the production rate will drop 12 to 15 percent each year. Prudhoe Bay accounts for three-quarters of all North Slope production, and North Slope crude provides about 25 percent of the nation's oil supply.

In 1990, Prudhoe Bay averaged 1.4 million barrels of oil per day. However, the Alaska Department of Revenue has predicted that daily production will drop to 900,000 barrels per day by 1995, and 400,000 barrels per day by the year 2000. Since oil development can take anywhere from 10 to 15 years, it is vital that the State advocate ANWR development now.

**C. Timing of a Grassroots
and Advertising Campaign**

The U.S. Congress has addressed the issue of whether or not to allow oil activities on the ANWR Coastal Plain since 1987. Both the Senate Energy Committee and the House Merchant Marine and Fisheries Committee passed an ANWR bill to allow oil development on the Coastal Plain.

In light of the situation in the Middle East, ANWR Coastal Plain legislation is expected to be debated this year. Domestic crude oil production in 1990 had the sharpest annual decline in history, while petroleum imports reached an all-time high. An increase in imports was driven not by major increases in consumption (the more important factor until two years ago), but by decreases in domestic production.

Declining domestic production and rising foreign imports are the types of issues that grab the attention of most Americans. To be successful in passing ANWR legislation in 1991, we must force the issue in Congress today. A national grassroots endeavor will educate key constituencies (in targeted districts) about the ANWR issue and motivate them to take action.

**D. Contributions From the
Oil Industry and
Third-Party Groups**

Both the oil industry and third-party constituency groups will continue to work behind the scenes to gain support for opening the ANWR Coastal Plain. The oil industry has hosted trips to the North Slope and ANWR for the last five years. Getting a first-hand look at the area is one of the most effective ways to change people's perceptions about oil development in Alaska.

In addition to oil industry contributions, many businesses and organizations have supported the ANWR effort over the past several years. Both the National and Alaska Coalitions are involved in building a network of businesses and organizations who favor the opening the ANWR Coastal Plain. The National Coalition recruits and builds a constituency with national organizations. The Alaska Coalition works with statewide organizations to gain support for ANWR. The Alaska Coalition also acts as the coordinating arm for the entire ANWR effort among third-party constituency groups in Alaska.

II. GRASSROOTS CAMPAIGN

A. RESEARCH

1. Issue Research and Message Development

Before determining how to move and activate the public and political establishment, it is imperative that we understand how the people we are trying to gain as allies view the issue. It is important to determine current attitudes and perceptions on oil development in general and on ANWR specifically. Analyzing these attitudes will result in the identification of target groups within the general public who can be approached through a variety of channels to secure the groups support and action.

Identify ways to better position the issue to these constituencies. Determine those themes and messages most likely to motivate people to take action. It is important to note that while this research will look at the broader population, only a relatively small percentage of Americans need to be targeted for mobilization efforts.

Conduct both qualitative and quantitative research among those subgroups that will ultimately make up the target audiences. Strategy and messages for the subgroups may vary. Conduct a series of focus groups to further define and refine the message, then test the assumptions through quantitative research.

2. Opposition Monitoring

Build a profile of our opposition. It will be difficult to manage a successful campaign without fully understanding the political and campaign thinking of those who will fight against ANWR Coastal Plain oil development. Identify environmentalists who may be persuaded to support oil development on the Coastal Plain.

B. PUBLIC RELATIONS

1. Targeted Media Relations

Correct misperceptions and overcome non-perceptions about ANWR and related issues. The messages must be clear, concise, forceful and above all consistent. Regardless of the source or format, the messages received by the public through the public relations effort must be anchored in two central themes.

The issue of foreign energy dependence is a real and growing threat that must be addressed immediately; and Prudhoe Bay, an oil field that accounts for almost 25 percent of our nation's energy supply will soon decline.

The first thing that a member of Congress reads every morning is his or her hometown newspaper. It is critical, therefore, that we fully educate local media on the issues surrounding ANWR.

Identify local journalists who are, or should be, aware of this issue and through a series of communication, insure that they are informed of the potential effects, both national and local, of oil development on the ANWR Coastal Plain. Provide factual and objective information delivered by credible sources.

2. Cultural ANWR Video

Develop a documentary film history of the importance of North Slope oil development to the nation, and to the survival of the Eskimo people and their culture. The story would be told through the eyes of the Eskimo people. The documentary would be balanced and objective and keyed for showing on Public Television as well as in schools and clubs. The video could also be used as a news-backgrounder for the media.

C. DISTRICT CONSTITUENCY

1. "Grasstops" Roundtables

A grasstops program will provide a highly-targeted vehicle for educating legislators on the importance of the issue. A grasstops program is a vehicle through which influential local advocates can express their opinions and concerns directly to their legislator. In essence it is the creation of a "kitchen cabinet" for an elected official.

The importance of grasstops is that it brings to one table a variety of key local decision-makers to demonstrate depth and breadth of community support -- thus preventing elected officials from distilling your message as one dominated by a single industry or interest.

2. Familiarization Tours

Establish a program to bring members of Congress, governors, mayors, key congressional staff, and editorial boards to the North Slope to visit existing oil production facilities, and to see the ANWR Coastal Plain. This program would supplement the industry's program of tours to the North Slope.

D. DIRECT CONTACT

1. Grassroots Communication

Grassroots communication has enormous impact on most legislators. It is extremely difficult to ignore the voice of your constituents. Given the facts on the issue, large numbers of constituents can be recruited and mobilized on ANWR's behalf.

Directly contact households in targeted districts, educate them on the issue of ANWR, then offer them the means and opportunity to communicate with their legislators on the issue. The message will vary according to the interests and motivation of different target groups, but the approach will remain constant.

Send a self-mailer quickly hitting the "high points" of the ANWR issue as it relates to their concerns and interests.

Use a follow-up letter to provide more detail on the issue. Solicit a "call to action."

Make a phone recruitment call to sign up volunteers.

Send a "constituent letter kit" to volunteers. The personalized package will profile the state's position and show the volunteer how exactly to carry his or her message to the legislator.

Make a performance call to remind the volunteer of the issues and insure that he or she has communicated with the legislator.

Use re-recruitment when necessary. It will also be possible to reactivate a particular congressional district as the need arises.

In addition to targeted members of the public, this program would also be implemented with key community and business leaders. Volunteers would be asked to do one or more of the following:

- a. Write their legislators.
- b. Call their legislators.
- c. Attend a meeting.
- d. Recruit a friend.
- e. Write a letter to the editor.
- f. Sign a petition.

III. ADVERTISING CAMPAIGN

A. TARGETED MEDIA PLACEMENT AND PRODUCTION

1. Television Placement and Production

Television would include placement in the key congressional districts. Produce four, :30 second spots. Television production would consist of shooting four :30 second commercials.

2. Print Placement and Production

Newspaper and magazine advertising would be placed in key congressional districts. The print ad message could be much more targeted because there are more vehicles to choose from. Print production would consist of six advertisements.

The theme for the television and print advertising would resolve around those issues which are important to individual congressional districts. The advertising program would reinforce the grassroots/grasstops campaign in targeted congressional districts.

IV. BUDGET

GRASSROOTS CAMPAIGN

A. RESEARCH

1. Issue Research and Message Development

This includes quantitative and qualitative analysis of key congressional districts, geo-demographic surveys, attitude and perception analysis, issue identification, message testing, localized focus groups, and follow-up testing during the entire campaign. **\$150,000.**

2. Opposition Monitoring

This includes profile-building, and understanding political and campaign strategy of the opposition. **\$50,000.**

B. PUBLIC RELATIONS

1. Targeted Media Relations

This includes concept development, planning and implementation. The program would be designed to work with key media in specific congressional districts. **\$575,000.**

2. Cultural ANWR Video

This includes production costs to develop a high-quality, professional product. **\$400,000.**

C. DIRECT CONSTITUENCY

1. Grasstops Roundtables

This includes identifying and working with centers of influence in key congressional districts. **\$650,000.**

2. Familiarization Tours

This includes travel and coordination for up to 200 people to visit the North Slope. **\$539,000.**

D. DIRECT CONTACT

1. Grassroots Communication

This includes constituency development in targeted congressional districts. **\$3,200,000.**

GRASSROOTS CAMPAIGN TOTAL: \$5,564,000

ADVERTISING CAMPAIGN

A. TARGETED MEDIA PLACEMENT AND PRODUCTION

1. Television Advertising and Production

Television placement of four :30 second spots in key congressional districts.
\$3,910,000.

Television production (footage for at least four spots) includes concept development, scripts, storyboards, travel expenses, film stock, film crew, national production assistance, national talent, location shooting, studio production, rough cuts, camera cards, props, music, post-production, and account executive coordination and supervision. **\$488,000.**

2. Newspaper Advertising and Production

Newspaper and magazine placement in key congressional districts.
\$1,245,000.

Print production (six ads) includes creative development, copy, national caliber photography and production, location shoots, comps, mechanicals, typography, lithography, creative direction, and coordination. **\$36,000.**

ADVERTISING CAMPAIGN TOTAL: \$5,679,000

TOTAL GRASSROOTS AND ADVERTISING BUDGET: \$11,243,000

Table G-1. BUDGET AUTHORITY AND OUTLAYS BY FUNCTION AND PROGRAM—Continued

(In billions of dollars)

Major function and program	Budget Authority					Outlays				
	1999 actual	1999 estimate	2001 estimate	2002 estimate	2003 estimate	1999 actual	1999 estimate	2001 estimate	2002 estimate	2003 estimate
925 Reduced government mail rates: Proposed legislation			-220	-220	-220			-220	-220	-220
Subtotal, Reduced government mail rates			-220	-220	-220			-220	-220	-220
928 Allowance for contingencies: Relatively uncontrollable programs Other requirements										
Subtotal, Allowance for contingencies										
Total, Allowances			-1,070	-1,121	-1,175			-1,070	-1,121	-1,175
950 UNDISTRIBUTED OFFSETTING RECEIPTS:										
951 Employer share, employee retirement (on-budget):										
Military retired contributions	-18,480	-16,378	-16,480	-16,469	-17,016	-18,480	-16,378	-16,490	-16,469	-17,016
Contributions to HI trust fund	-2,007	-2,157	-2,231	-2,338	-2,457	-2,007	-2,157	-2,231	-2,338	-2,457
Contributions from Postal Service:										
Existing law	-3,433	-3,756	-4,120	-4,344	-4,548	-3,433	-3,759	-4,120	-4,344	-4,548
Proposed legislation			-647	-623	-588			-647	-623	-588
Contributions from other civilian agencies	-5,505	-5,572	-6,591	-7,037	-7,508	-5,505	-5,972	-6,591	-7,037	-7,508
Subtotal, Employer share, employee retirement (on-budget)	-29,425	-28,266	-30,079	-30,811	-32,117	-29,425	-28,266	-30,079	-30,811	-32,117
952 Employer share, employee retirement (off-budget)	-4,858	-5,581	-5,962	-6,470	-7,065	-4,858	-5,581	-5,962	-6,470	-7,065
953 Rents and royalties on the Outer Continental Shelf	-2,929	-2,615	-2,999	-3,432	-3,100	-2,929	-2,615	-2,999	-3,432	-3,100
954 Sale of major assets:										
Sale of power administrations (proposed)			-1,285					-1,285		
Sale of other assets (proposed)				-1,600	-1,600				-1,600	-1,600
Subtotal, Sale of major assets			-1,285	-1,600	-1,600			-1,285	-1,600	-1,600
959 Other undistributed offsetting receipts:										
Spectrum auction, FCC (proposed)			-2,252	-1,126				-2,252	-1,126	
Arctic National Wildlife Refuge leasing (proposed)					-1,901					-1,901
Lease of petroleum reserve (proposed)			-1,000	-393	-394			-1,000	-393	-394
Subtotal, Other undistributed offsetting receipts			-3,252	-1,519	-2,294			-3,252	-1,519	-2,294
Total, Undistributed Offsetting Receipts	-37,212	-36,462	-43,578	-43,833	-46,177	-37,212	-36,462	-43,578	-43,833	-46,177
On-budget	(-32,354)	(-30,881)	(-37,615)	(-37,363)	(-39,112)	(-32,354)	(-30,881)	(-37,615)	(-37,363)	(-39,112)
Off-budget	(-4,858)	(-5,581)	(-5,962)	(-6,470)	(-7,065)	(-4,858)	(-5,581)	(-5,962)	(-6,470)	(-7,065)
Total	1,309,913	1,337,621	1,396,476	1,451,149	1,522,732	1,142,643	1,197,236	1,233,331	1,271,429	1,321,819
On-budget	(1,044,538)	(1,048,100)	(1,078,980)	(1,111,558)	(1,159,082)	(931,732)	(971,452)	(997,374)	(1,026,491)	(1,067,137)
Off-budget	(265,275)	(289,521)	(317,496)	(339,591)	(363,650)	(210,911)	(225,784)	(235,957)	(244,938)	(254,681)

¹ Beginning in 1990, the Federal Deposit Insurance Corporation provides assets for the Bank Insurance Fund, the FDIC Insurance Fund, and the Loan Insurance Fund.

SCOMM

79:11

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1991

FURTHER REFERRALS:

Resources
Judiciary
Finance

Date of Committee Action: 3/11/91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 196

HOUSE BILL NO. 196

LIABILITY OF RESPONSE ACTION CONTRACTORS

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

RECOMMENDATIONS:

be replaced with CS HB 196 ☐ the same title
☐ a new title

☐ have attached amendments(s)

☐ do pass

☐ do not pass

☐ no recommendations

☒ individual recommendations

☐ additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

☐ fiscal impact _____

☐ fiscal note(s) _____

☒ zero fiscal note ADEC.

☐ zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hurd</i>		<i>Mike Savane</i>		X	
<i>Jim [unclear]</i>		<i>Kay Brown</i>		X	
<i>Dave [unclear]</i>		<i>Carol [unclear]</i>			
<i>Frank Phillips</i>					

Bill Hurd
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 196

Revision Date: _____ Department Affected: DEC
 Title: Limited Liability for oil spill BRU: Environmental Quality
response action contractors Component: SPPM
 Sponsor: House Oil & Gas
 Requestor: House Oil & Gas COMPONENT SERIAL NO.

1	0	1	6
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600
 Division: Commissioner's Office Date: March 11, 1991
 Approved by Commissioner: *Janice Adair*
 Agency: AOEC Date: 3/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CSHB 196

TABLE OF CONTENTS

- I. SPONSOR STATEMENT
- II. SECTIONAL ANALYSIS
- III. QUESTIONS/ANSWERS/LIABILITY
- IV. CSHB 196 WITH FISCAL NOTE
- V. APPENDIX
 - A. Administration Position
 - 1) ADEC letter
 - 2) Governor's letter to Rep. Hudson of 4/11/91
 - 3) Current policy on emergency response
 - B. Federal and Other State Laws
 - 1) Federal Oil Pollution Act of 1990, Section 4201 regarding immunity
 - 2) Response contractor liability summary
 - 3) Map of states with legislation
 - 4) Legislative Research, 2/26/91
 - C. Explanatory Diagrams
 - 1) Liability Spectrum: Damages from cleanup Contractors
 - 2) Routes of State recovery from spills (current and proposed law)
 - 3) Routes of private recovery from spills
 - 4) Recovery for simple negligence
 - D. News Articles/Editorials
 - 1) Peninsula Clarion, 4/18/91

- 2) San Francisco Examiner, Editorial of 6/10/91
- 3) Release of 8/2/90 describing California's environmental and fishing groups support
- 4) News ad sponsored by California fishing and environmental groups

E. Public Input (letters, resolutions, etc.)

- 1) A summary of supporting comments
- 2) Alaska Miner's Association, 4/11/91
- 3) Alyeska to Rep. Hudson, 3/15/91
- 4) City of Kenai, 4/10/91
- 5) Conoco, 2/26/91
- 6) Kenai Peninsula Caucus Resolution, 3/22/91
- 6.1) Kenai Peninsula Borough Resolution, 4/16/91
- 7) Marine Spill Response Corporation, 3/1/91
- 8) Marine Spill Response Corporation, 3/25/91
- 9) North Peninsula Chamber of Commerce Resolution, 3/7/91
- 10) Oil Reform Alliance Position Paper
- 11) Pacific Fisheries Legislature Task Force Resolution, 4/16/90
- 12) Regional Citizen's Advisory Council
- 13) Sierra Club California, 4/21/90
- 14) Tesoro Alaska to Sen. Jones, 3/20/91
- 15) UCIDA, 4/2/91
- 16) UCIDA, 4/23/91
- 17) U.S. Coast Guard, 8/28/90
- 18) U.S. Oil and Refining to Rep. Hudson, 3/18/91
- 19) Ventura County Commercial Fishermen's Association, 5/4/90

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

May 1, 1991

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

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

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

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

The bill also requires that a Response Action Contractor who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e) and as approved by the Department of Environmental Conservation. There is some question as to whether this amendment will actually expand access to response action services as it is possible that a RAC may simply elect to withhold service rather than accept financial responsibility in a format that it finds unacceptable.

The benefits of this bill extend beyond encouragement of rapid initial response. The implementation of HB 567 in June of this year will require the demonstration of significant

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

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

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

In summary, CSHB 196

1. Shifts the liability for damages caused a RAC's simple negligence during the first 15 days of oil spill cleanup to the spiller so long as the RAC.
 - a. Does not cause personal injury.
 - b. Does not violate an order of the On Scene Coordinator.
 - c. Does not substantially deviate from the applicable oil spill contingency plan.
2. Calls for a study of the state's liability laws to be done by next legislative session.
3. Sunsets these provisions in one year so this legislature will be able to reconsider the issue.
4. Requires that a RAC who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e) and as approved by the Department of Environmental Conservation.

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

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

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

1. The Substantive Sections:

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

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

Subsection (c) provides that if, for any of the reasons stated

above, the oil spill RAC's liability is not limited to "gross negligence," the injured party will have to prove simple negligence in order to hold the oil spill RAC liable. However, if the oil spill RAC also caused the spill, the RAC will still be strictly liable.

Subsection (d) was added by House Judiciary and provides that a Response Action Contractor who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e). These include the following: 1) self insurance; 2) insurance; 3) surety; 4) guarantee; 5) letter of credit; and 6) insurance pools such as Protection and Indemnity Clubs ("P & I Clubs"). The intent is to assure that Alaska shippers and other users of spill response services have the same options for demonstrating financial responsibility to a RAC as they do to the State.

The requirements of this amendment are effective as to any response action contract entered into or renewed on or after the effective date of the legislation.

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

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

Section 9. This section sets out the type of people who are covered by the limitation of liability in Section 8. It uses

existing law's definitions of "response action contract" and "response action contractors," with one important addition -- volunteers are now covered by the limitation of liability. See p. 7, l. 8.

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

2. The Conforming Amendments.

Section 1. Section 3, as we have seen, transfers certain liabilities from the oil spill RAC to the spiller. It does so by adding a definition of "damages" for which the spiller is responsible to Alaska's basic strict liability law (AS 46.03.822). Since Section 3 now sets out the damages for which the spiller is liable, there is no longer any need to repeat the now-redundant list in Section 822(a). Section 1 therefore deletes this now-surplus language (p. 1, ls. 11-13); otherwise, it makes no change in the liability statute. Except for the bracketed and capitalized language on page 1, all of Section 1 merely sets out existing law.

Section 4 and Section 6. Section 8 creates limitations on liability specific to oil spill response action contractors. AS 46.03.823 is an existing liability statute dealing with all hazardous waste cleanup contractors (including oil spill RACs). Section 4 and Section 6 remove oil spill RACs from the coverage of

Section 823 by inserting the words "other than oil" on p. 3, l. 28 and p. 4, l. 19. Except for these words, the remainder of these sections simply set out existing law, which will still be applicable to people involved in other types of hazardous substances cleanup.

Section 13. This section provides an immediate effective date.

3. "Sunset" Provisions.

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

QUESTIONS AND ANSWERS REGARDING CSHB 196 (JUDICIARY)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMORANDUM

March 7, 1991

SUBJECT: Response action contractor civil liability - (HB 196)

TO: Representative Bill Hudson

FROM: Michael F. Ford *m.f.*
Legislative Counsel

The following is a section by section analysis of HB 196:

Section 1 - Findings and Purpose.

Section 2 - Deletes provisions concerning the types of damages for which a person will be strictly liable. These provisions are reinserted in section 3.

Section 3 - Adds a definition of "damages." Provides that damages includes acts or omissions of a response action contractor for which the response action contractor is not liable, under the provisions of AS 46.03.823 or 46.03.825.

Section 4 - Excludes an oil spill response action contractor from the provisions of this section.

Section 5 - Provides that an oil spill response action contractor is not liable for damages resulting from the release or threatened release of oil, unless the liability would exist if the contractor had not responded to the release or threatened release, or the contractor acted with gross negligence or intentional misconduct. Also provides that in the event of a lawsuit to recover for personal injury or death, this section would not apply.

Section 6 - Adds definitions of "response action", "response action contract", and "response action contractor."

Representative Bill Hudson
March 7, 1991
Page 2

Section 7 - Repealer.

Section 8 - Effective date.

MFF:mi
91-047.mai

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

January 28, 1991

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

TO: Representative Bill Hudson

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

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

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

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

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

Representative Bill Hudson
January 28, 1991
Page 2

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

Please contact me if you have further questions.

MFF:gc
91-039.glc

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 196

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Page 1, line 3:

Delete "definition"

Insert "definitions"

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

Insert "and 'response action contractor'"

Page 5, line 11:

Delete "and"

Page 5, line 14, following "contract":

Insert "; and

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

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 196

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Page 2, lines 21 - 23:

Delete all material and insert:

"(b) It is the purpose of this Act to

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

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

TO: HB 196

Page 4, line 10:

Delete "a response plan or"

Insert "an"

Page 4, line 20, following "apply to":

Insert "(1)"

Page 4, line 21, following "death":

Insert "; or

(2) an act or omission contrary to a representation of the response action contractor asserting limited liability under (a) of this section, if

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

(B) the act or omission was the result of gross negligence or intentional misrepresentation"

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

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

6 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) oil spill response action contractors operate in a crisis atmosphere and are required
8 to make immediate decisions on the basis of often incomplete information and poor communications;
9 the emergency nature of oil spill cleanup sets the activity apart from other more long-term forms of
10 environmental remediation;

11 (2) oil spill response action contractors with no involvement in the oil spill itself, and
12 who respond to the oil spill in good faith, face an unreasonable risk of involvement in litigation over
13 the oil spill;

14 (3) the magnitude and immediacy of the risk to the state's environment from the

1 production, transportation, and storage of oil in large quantities, particularly near and across state water,
2 require that special measures be taken to ensure that adequate containment and cleanup equipment are
3 promptly available within the state; no other commercial or industrial activity in the state presents the
4 same risk of sudden and catastrophic harm or requires the same extensive advance provision of local
5 response services;

6 (4) the unreasonable legal risks borne by oil spill response action contractors hinders the
7 state's goal of encouraging prompt and sufficient oil spill response by

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

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

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

14 (5) the United States Congress and the legislatures of several coastal states have recently
15 enacted legislation insulating innocent oil spill response action contractors from these unreasonable legal
16 risks; this has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill
17 response services to the state; and

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

21 (b) It is the purpose of this Act to

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

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

26 (3) place this state on an equal competitive footing with other states in attracting oil spill
27 cleanup capability to this state; and

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

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

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

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

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

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

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

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

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

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

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

1 liable under AS 46.03.823 or 46.03.825.

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

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

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

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

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

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

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

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

28 (2) an act or omission contrary to a representation of the response action
29 contractor asserting limited liability under (a) of this section, if

30 (A) the representation was incorporated into a contingency plan approved
31 under AS 46.04.030 of a person responsible for the release or threatened release under

1 AS 46.03.822; and

2 (B) the act or omission was the result of gross negligence or intentional
3 misrepresentation.

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

5 (14) "response action" means an action taken in mitigation or cleanup of a
6 hazardous substance release or threatened release, including investigation, evaluation, plan
7 development, mapping and surveying, engineering, design and construction, removal, and
8 equipment provision;

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

12 (A) the department;

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

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

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

19 (16) "response action contractor" means

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

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

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

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

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

HOUSE BILL NO. 196

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced: 3/6/91

Referred: House Special Committee on Oil and Gas, Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

6 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) oil spill response action contractors operate in a crisis atmosphere and are required
 8 to make immediate decisions on the basis of often incomplete information and poor communications;
 9 the emergency nature of oil spill cleanup sets the activity apart from other more long-term forms of
 10 environmental remediation;

11 (2) oil spill response action contractors with no involvement in the oil spill itself, and
 12 who respond to the oil spill in good faith, face an unreasonable risk of involvement in litigation over
 13 the oil spill;

14 (3) the magnitude and immediacy of the risk to the state's environment from the

1 production, transportation, and storage of oil in large quantities, particularly near and across state water,
2 require that special measures be taken to ensure that adequate containment and cleanup equipment are
3 promptly available within the state; no other commercial or industrial activity in the state presents the
4 same risk of sudden and catastrophic harm or requires the same extensive advance provision of local
5 response services;

6 (4) the unreasonable legal risks borne by oil spill response action contractors hinders the
7 state's goal of encouraging prompt and sufficient oil spill response by

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

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

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

14 (5) the United States Congress and the legislatures of several coastal states have recently
15 enacted legislation *insulating* ^{States} innocent oil spill response action contractors from these unreasonable legal
16 risks; this has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill
17 response services to the state; and

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

21 (b) It is the purpose of this Act to ¹⁻²⁻³⁻⁴ encourage prompt oil spill cleanup efforts by limiting the
22 liability of innocent oil spill response action contractors whose acts or omissions are a good faith
23 response to an oil spill.

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

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

1 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (b) The limitation on liability contained in (a) of this section does not apply to an action
21 for personal injury or death. *or - 2-A & B*

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

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

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

30 (A) the department;

31 (B) another person who has entered into an agreement with the department

1 that provides for response action subject to the department's oversight and control;

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

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

6 (16) "response action contractor" means

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

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

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

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

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

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

WALTER J. HICKEL, GOVERNOR

TELEPHONE
(907) 465-2600

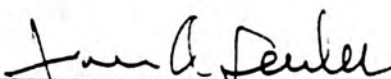
March 11, 1991

POSITION PAPER

HB 196

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

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



John A. Sandor
Commissioner

CSHB 196 Background

SECTION A.

No. 1



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 11, 1991

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

Greetings:

It has come to my attention that some of the major transporters of bulk petroleum products are in the process of reviewing their responsibilities under Ch. 191, SLA 1990, to prepare contingency plans and to clean up spills of oil and other hazardous substances by June 1, 1991. It is my understanding that the cost of preparedness, because of the lack of response action contractors willing to operate in Alaska, among other aspects of the Act, is so high that these transporters are reconsidering the economics of serving Alaska distributors.

We must quit the overall belief that spill responsibilities are limited to the multinational corporations (the worst possible event while ANWR and other national events towards wetlands and coastal exploration are on the Congressional minds would be a airlift or river barge loaded with fuel would cause a major spill and no clean up contractor available). The Juneau boat harbor is a situation that did happen and is documented in the following paragraph.

Last weekend the group here in Juneau that is organized to respond to oil spills was called out by the Coast Guard to clean up a spill caused by the sinking of a vessel in the small boat harbor. The group responded, but the next day they met to consider whether or not they would respond in the future because of the liability imposed on response action contractors under Ch. 191. I do not know what their decision was, or if they have reached a decision, but their concern may be an indicator that cooperatives organized to respond to spills either may refuse to respond to spills by persons who are not members of the cooperatives or that cooperatives may be forced to disband, leaving no organization available to respond to spills.

April 11, 1991

Emergencies could even cause a special session, which may be required if amendment cannot be achieved in this session and fuel supplies, especially for those areas of the state that are not equipped to clean up spills, are disputed or not delivered to those communities dependent upon bulk shipments, including the communities on the Interior river systems.

I am also concerned that even if the bulk transporters of petroleum products continue in the Alaska trade, the price of fuel may rise severely because of the necessity to cover the increased costs of spill response. This could have a major impact on the prices of home heating fuel, automobile gasoline and diesel fuel and fuel for electrical generation equipment throughout Alaska, but especially in the small, rural communities. If fuel deliveries are disrupted, the fishing season could be seriously affected.

I hope that you will look carefully at this problem to make sure that we are able to maintain fuel shipments and provide adequate spill response capability throughout the state at the same time.

Respectfully,

A handwritten signature in cursive script that reads "Bruce Kendall Sr".

Bruce B. Kendall, Sr.
Legislative Liaison

ALASKA'S POLICY ON EMERGENCY RESPONDERS:

AS 09.65.090...A person at a hospital or any other location **WHO RENDERS EMERGENCY CARE OR EMERGENCY COUNSELING TO AN INJURED, ILL, OR EMOTIONALLY DISTRAUGHT PERSON** who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

...This section does not preclude liability for civil damages as a result of **GROSS NEGLIGENCE OR RECKLESS OR INTENTIONAL MISCONDUCT.**

AS 09.65.091...A person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency **DURING A STATE OF EMERGENCY DECLARED BY AN AUTHORIZED REPRESENTATIVE OF THE STATE OR LOCAL GOVERNMENT** is not liable for the death of or injury to any person or damage to any property caused by that person's actions, except when the trier of facts finds that the person acted **INTENTIONALLY, RECKLESSLY, OR WITH GROSS NEGLIGENCE.**

"(iii) into or on the waters of the exclusive economic zone; or

"(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

"(B) In carrying out this paragraph, the President may—

"(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

"(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

"(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(2) DISCHARGE POSING SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE.—(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

"(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

"(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

"(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(3) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

"(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President.

"(4) EXEMPTION FROM LIABILITY.—(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President.

"(B) Subparagraph (A) does not apply—

"(i) to a responsible party;

"(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(iii) with respect to personal injury or wrongful death; or

"(iv) if the person is grossly negligent or engages in willful misconduct.

"(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

"(5) OBLIGATION AND LIABILITY OF OWNER OR OPERATOR NOT AFFECTED.—Nothing in this subsection affects—

"(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

"(B) the liability of a responsible party under the Oil Pollution Act of 1990.

"(6) RESPONSIBLE PARTY DEFINED.—For purposes of this subsection, the term 'responsible party' has the meaning given that term under section 1001 of the Oil Pollution Act of 1990."

(b) NATIONAL CONTINGENCY PLAN.—Subsection (d) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)) is amended to read as follows:

"(d) NATIONAL CONTINGENCY PLAN.—

"(1) PREPARATION BY PRESIDENT.—The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

"(2) CONTENTS.—The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

"(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

"(B) Identification, procurement, maintenance, and storage of equipment and supplies.

"(C) Establishment or designation of Coast Guard strike teams, consisting of—

"(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

"(ii) adequate oil and hazardous substance pollution control equipment and material; and

"(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

"(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

"(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

"(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

"(G) A schedule, prepared in cooperation with the States, identifying—

RAC Liability: Summary of Recent Legislation

State	No Liability for Negligence	Time Limit for Limited Liability	Liability for Gross Negligence	Liability for Intentional Misconduct	Liability for Personal Injury or Wrongful Death	Liability for Not Following Nat. Contingency Plan or Lawful Authority	Responsible Party Liable for RAC Negligence
PR 199	X		X	X	X	X	X
Federal	X		X§	X	X	X	X
California	X†*	X	X	X	X	X	X
Delaware	X		X	X	X		X
Florida	X		X	X	X#	X	X
Georgia	X		X	X	X	X	X
Hawaii	X		X	X	X#	X	
Miss.	X		X	X	X	X	X
Texas	X		X	X	X#	X	
Virginia	X		X§	X	X	X	X
Wash.	X†		X	X	X#		

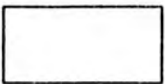
† Good faith requirement.

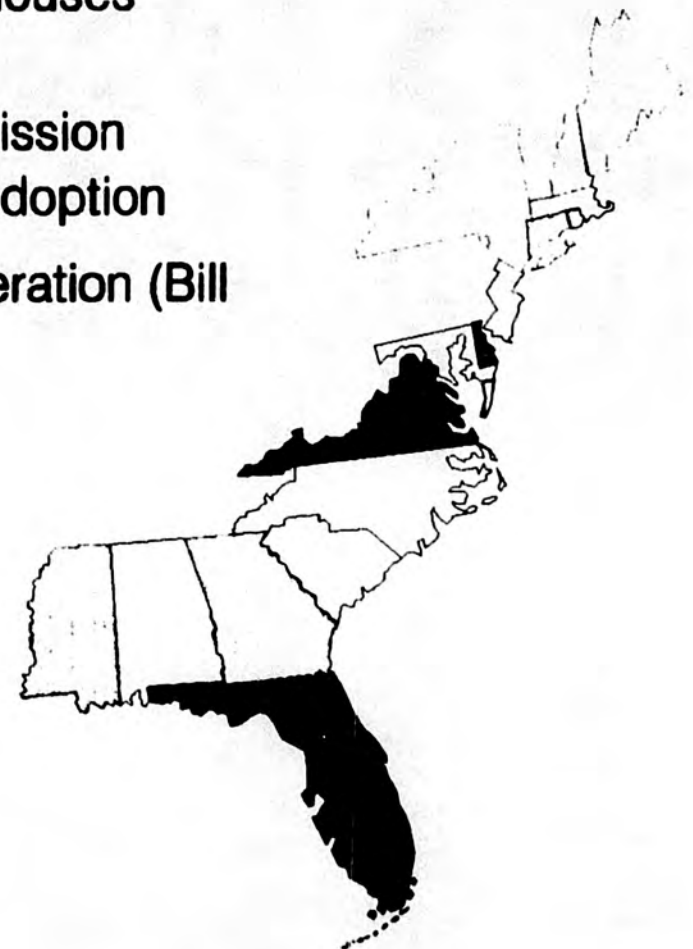
§ Act of God, act of war, and act of third party are defenses.

* Must be certified by State.

Personal injury and wrongful death not specifically mentioned.

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS

-  - Enacted
-  - Passed Both Houses
-  - Special Commission
Recommends Adoption
-  - Active Consideration (Bill
Introduced)
-  - No Activity



CSHB 196 Background
SECTION B,
No. 3

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3331

February 26, 1991

MEMORANDUM

TO: Representative Bill Hudson

FROM: Glenn T. Gray ^{TG}
Legislative Analyst

RE: Oil Spill Response Contractor Liability Laws in Other States
Research Request 91.144

You asked about liability laws in other states concerning oil spill response contractors. Specifically, you requested information about states which have limited liability for contractors and their reasons for doing it. You also asked about states that have considered but rejected such legislation.

We contacted staff attorneys, resource agency officials or legislative staff in 16 states to obtain the information for this memorandum. An attempt was made to contact more than one person from each state to confirm information. For some states it was difficult to locate anyone who had a thorough understanding of the implications of response contractor liability statutes. We also contacted staff from several national organizations: the Coastal States Organization, the National Conference of State Legislatures, and the Marine Spill Response Corporation (MSRC).

This memorandum begins with background information about the effort to limit the liability of response action contractors. A brief description of how various states have dealt with contractor liability follows. The memorandum concludes with a summary of national trends regarding liability regimes for oil spill clean up contractors.

Background

Since the federal Oil Pollution Act of 1990 passed in August, many states report that the Marine Spill Response Corporation (formerly the Petroleum Institute Response Organization) and oil spill response contractors have lobbied them to limit the liability of response action contractors. The federal law limits liability for persons who respond to an oil spill in federal waters as long as they act consistently with the National Contingency Plan [33 U.S.C. 1321 (c)(4)]. Responders are still liable, however, for personal injury and wrongful death, and if they are grossly negligent or engage in wilful

CSHB 196 Background

SECTION B,

No. 4

misconduct. The act does not preempt states from enacting more stringent liability regimes [33 U.S.C. 1321(o)(2)].¹

Laws which limit liability for persons who respond to spills of oil or hazardous materials are commonly referred to as good samaritan laws. While some states exempt only people who are not compensated, other states have changed their laws to be consistent with federal law. Rather than holding contractors strictly liable, or liable for simple negligence, such states limit contractor liability to gross negligence, wilful misconduct, personal injury or wrongful death. Definitions of these different standards of liability may be found in Attachment A.

The federal Oil Pollution Act of 1990 requires that owners or operators of tank vessels and oil facilities develop response plans. These plans must show that owners or operators have personnel and equipment to "remove to the maximum extent practicable a worst case discharge . . ." [33 USC 321(j)(5)]. For many facilities and tankers, the MSRC provides the only feasible means to comply with this provision. The MSRC is a nonprofit organization funded by the Marine Preservation Association (MPA), a group of oil industry companies. According to David Larkin, director of government affairs for the MSRC, the organization operates independently from the MPA. The MSRC plans to have five regional response centers and 23 pre-staging areas where equipment will be stored. Mr. Larkin says that because an oil spill can spread across the jurisdictions of many states, it is important to have consistent liability standards. Otherwise, in the event of a spill, contractors would have to respond to different rules in each state. Mr. Larkin also says that insurance costs for unlimited liability are prohibitive, and if a state does not have adequate immunity for the responders, the MSRC will have to consider what its role will be in that state.

The MSRC's involvement in Alaska is unclear. According to Mr. Larkin, the MSRC has no plans to locate a pre-staging area in Alaska, and current liability standards do not provide an incentive to consider this option. The MSRC document in Attachment B does, however, refer to a planned pre-staging area in Alaska. Alyeska Pipeline Service Company currently provides spill response assistance for tankers transporting oil from the TransAlaska Pipeline. According to Gene Burden, a vice-president for Tesoro, Alyeska requires Tesoro to obtain one billion dollars of direct action insurance for it to transport oil in Prince William Sound. Such insurance is difficult, if not impossible to obtain (see Attachment C, Legislative Research Memorandum 90.200). Mr. Burden says that coverage through a Protection and Indemnity (P&I) club would

¹After an oil spill, state and federal authorities may bring separate actions against a contractor based on their individual standards.

not provide direct action and would be cost prohibitive for Tesoro.² Mr. Burden believes that insurance requirements would be reduced if Alaska limits the liability for response action contractors. He also says that frivolous litigation would be reduced by changing the current law.

Arkansas

According to Steve Weaver, chief legal council for the Department of Pollution Control and Ecology, Arkansas holds oil spill response contractors responsible for simple negligence. He says that in 1985 legislation was passed that held contractors responsible for gross negligence, but that the oil industry supported a law passed in 1989 making contractors liable for simple negligence. Mr. Weaver said that Arkansas wants to keep response contractors to as high a standard as possible.

California

The California General Assembly passed a bill last year that includes a provision to limit liability for people who respond to oil spills (other than for gross negligence, wilful misconduct, personal injury, or wrongful death). The law limits liability for people who act in good faith and in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the on-site coordinator or the United States Coast Guard. The act restricts the limitation of liability for response action contractors for 60 days after they begin cleanup with a possible extension of 30 days.

According to Dr. Jim Rote, principal consultant for the California General Assembly Office of Research, the provision limiting a response contractor's liability to 60 days resulted from a compromise between lobbying efforts of the California trial lawyers and response contractors. Dr. Rote believes that the limitation of liability for response contractors is justified because they respond to emergencies and may be compared to other emergency responders such as ambulance drivers and fire fighters. The 60-day limit encourages contractors not to become careless.

Connecticut

According to Charles Zieminski, principal emergency response coordinator for the Department of Environmental Protection, Connecticut has no cap on liability for negligence. Other than during a few oil spills in the early 1970s, Connecticut has not had much recent experience with response contractors. Mr.

²Direct action means that a claimant could recover costs directly from the insurer without going through Tesoro.

Representative Hudson
February 26, 1991
Page 4

Zieminski says that he is not aware of efforts to change current liability laws for oil spill clean up contractors.

Delaware

The Delaware General Assembly recently passed legislation consistent with federal law concerning liability of response contractors. The legislation is awaiting the governor's signature. According to Shari Wilson, staff attorney for the Attorney General's Office, contractors may be liable for simple negligence if they significantly increase the damage resulting from an oil spill. Contractors may get around this provision if they subcontract with a party who does not receive compensation for spill clean up, such as the MSRC.

Florida

Legislation passed last year by the Florida legislature limits the liability of persons responding to an oil spill as long as they are not grossly negligent (FS 376.09). This provision appears to include response action contractors, although a separate provision (FS 376.319) provides indemnification for response contractors for simple negligence if they have a written contract with the state. Several state officials with whom we spoke were unable to explain why the state would need to indemnify a contractor for simple negligence if the contractor were only liable for gross negligence and wilful misconduct.

Hawaii

The Hawaii legislature passed legislation during 1990 that apparently limits the liability of response action contractors. The law states that no person shall be liable "as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with this chapter or at the direction of an on-scene coordinator," unless the actions resulted from gross negligence or intentional misconduct. There is a question whether the legislature intended to limit the liability of contractors because the language modifies section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) instead of section 119 of that act (section 119 exempts response action contractors from strict liability for the clean up of hazardous substances).

Louisiana

Louisiana law currently holds response contractors strictly liable for their clean up efforts. MSRC has reportedly said that if Louisiana does not limit liability for response action contractors, the MSRC would reconsider its plans to locate one of its five regional centers in Louisiana.

Maine

Maine's good samaritan law currently limits the liability of people who respond to oil spills as long as they do not receive compensation. Response contractors receiving payment are liable for simple negligence. According to Barbara Foster of the National Conference of State Legislatures, the MSRC said that it would not provide an office in Maine if liability for response action contractors was not limited. The legislature is currently considering a bill to limit liability to gross negligence. Perry Cogburn, an oil and hazardous materials specialist for the Maine Department of Environmental Protection, says that there has not been a problem with response contractors and if the laws are too strict contractors may not respond to spills.

Maryland

Maryland currently does not limit the liability of response action contractors. The legislature is expected to consider a bill this session that has provisions similar to those of the federal government.

Last week during a regional response team drill in Chesapeake Bay, contractors refused to respond to the spill because of Maryland's liability regime.³ The drill proceeded under the assumption that an oil tanker had collided with a container ship carrying hazardous waste. The United States Coast Guard (USCG) took control of the "spill" but could not convince the contractors to respond. The USCG received verbal approval from the Governor of Maryland and written approval from the state's director of the Department of Environment to exempt contractors from liability during the drill. There were, however, concerns about the legality of such an exemption. According to Lt. Commander Shultz, coordinator for the National Response Team, the USCG considered towing the boats into Virginia waters much to the alarm of Virginia authorities. The drill will continue on March 12, with the beginning of the second day of the imaginary spill.

Mississippi

Mr. Charles Chism, director of the Office of Pollution Control, says that Mississippi does not limit the liability for response action contractors. A bill currently being considered by the state legislature would limit contractor liability. Mr Chism says he does not object to such a liability limitation.

³Although there was actually no accident or oil spill, authorities proceeded throughout the drill as if it was real.

Representative Hudson
February 26, 1991
Page 6

New York

Sherry Chrimes, assistant counsel for the Department of Environmental Conservation, says that New York has resisted attempts by the oil industry to limit the liability of response action contractors. The current law holds contractors liable for simple negligence. Ms. Chrimes said that the state often uses response contractors and that the current law is adequate. She says that response contractors should be held to the same standard of liability as other contractors.

North Carolina

Ed Gavin, of the Office of General Council for the Department of Natural Resources and Community Development, says that North Carolina has no limitation for liability for contractors who clean up oil spills. He says that there has not been much effort to change the current law, and that North Carolina has only a few oil terminals, a pipeline and a small oil refinery.

Oregon

Contractors responding to an oil spill currently have unlimited liability. The legislature, however, is considering limiting the liability of response contractors. Bruce Southerland, of the Department of Environmental Quality, said that because Oregon borders the Columbia River with Washington, the states usually try to have compatible oil spill legislation. (Washington currently limits the liability of contractors.)

Pennsylvania

Fred Osman, director of Environmental Emergency Response, says that the Pennsylvania legislature passed an act during November 1990 limiting response action contractor liability to wilful misconduct or gross negligence. He thinks that simple negligence is not a good standard for response action contractors because they respond to emergencies in an effort to prevent damage to the environment and property.

Virginia

David Orms, an environmental program manager for the Department of Environment, says that Virginia has patterned its contractor liability law after the federal Oil Pollution Act of 1990. He does not think that limiting contractor liability to gross negligence poses a problem.

Mr. Orms says that during a regional response team drill he attended last week in Chesapeake Bay, response action contractors refused to respond to the oil

spill in Maryland waters because that state does not limit liability for contractors. The contractors, however, said they would respond to the imaginary spill when it reached Virginia waters.

Washington

Washington limits the liability of response action contractors to a standard of gross negligence and wilful misconduct. The state is currently developing contractor standards for uncompleted work. According to Don Reif of the Department of Ecology, contractors will have to prove that they have a certain amount of insurance to pay for clean up work that they have not completed. Harry Reinart, legislative counsel for the House Environment Committee, says that because spillers have strict liability, it is not necessary to hold contractors to such a high standard. Mr. Reinart believes that it may be difficult to obtain contractors if they are held to too high of a standard.

Conclusion

Opinions differ concerning the extent a response contractor should be held liable for damage resulting from its actions. Some officials from other states believe that contractors should be held accountable for their actions during an oil spill clean up. They are concerned that a contractor may use cheaper, less efficient equipment if their liability is limited. They also express concern that a contractor may not be as careful when their liability is limited. One state official thought that in cases where the identity of a spiller cannot be determined or if a spiller were to go bankrupt, there would be no way to recover costs for damages resulting from the actions of a contractor if that contractor, was not liable and insured for simple negligence.

Several states have passed legislation that resembles liability standards found in the Oil Pollution Act of 1990, and additional state legislatures are considering such legislation. Some states have modified the federal legislation to require contractors to comply with state oil spill contingency plans or the direction of an on-scene coordinator. California limits the liability of contractors for 60 days with a possible 30-day extension while providing no time limit for volunteers. Officials from these states feel that response contracts should have limited liability similar to other emergency response personnel such as policemen and fire fighters. Many of these officials express concern that contractors would not be available if liability standards were too rigid.⁴ The high cost of insurance for simple negligence

⁴Lt. Commander Shultz, coordinator for the National Response Team, is not aware of any instances where contractors have refused to respond to a spill other than the regional response drill which occurred in Maryland waters last week.

Representative Hudson
February 26, 1991
Page 8

was also cited as a reason for limited liability. The MSRC supports state legislation resembling federal law so that there will be consistency during oil spills that reach the waters of more than one state.

The Federal Oil Pollution Act of 1990, however, permits states to require higher standards. David Slade, general council for the Coastal States Organization, says that while his organization does not recommend how states should respond to the liability question, one option available would be to keep the simple negligence liability standard but to place a cap on the amount of liability. This option would reduce the liability of response action contractors and give them some incentive to operate carefully. The Coastal States Organization expects to release a white paper next month about how states have responded to a number of issues relating to the Federal Oil Pollution Control Act of 1990. A copy of this paper will be forwarded to your office as soon as we receive it.

I hope this information is helpful. Please contact this office if we may be of additional assistance.

Attachments

CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

CSHB 196 (Resources) and Federal Law vs. Existing Alaska Law

Liability Under Existing Alaska Law and
CSHB 196(R) After 15/30 Days

Liability Under CSHB(R) 196 for First 15/30
Days and Federal Law

Not
Even
Simply
Negligent

Simply
Negligent

Grossly
Negligent

Substantial
Violation
Of
Contingency
Plan

Violated
OSC
Order

Intentionally
Caused
Harm

Caused
Personal
Injury
or
Death

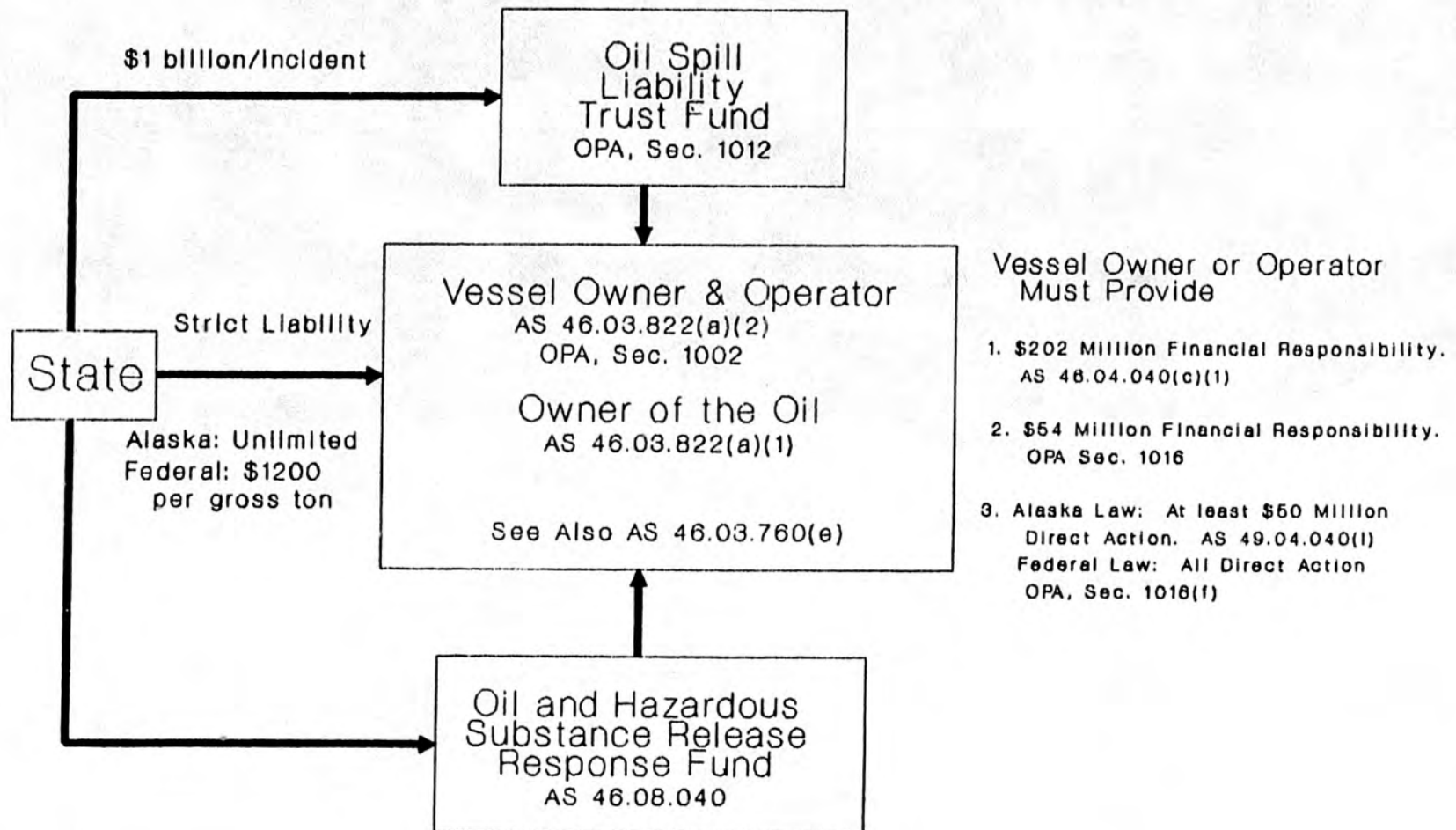
Note:
Arguable
Liability
Here Under
Existing Law

Note: Vessel and Oil Owner Both Expressly Liable
for Simple Negligence of Cleanup Contractor
Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for
Simple Negligence of Cleanup Contract Under
Sec. 4201(a)(c)(4)(C) of OPA

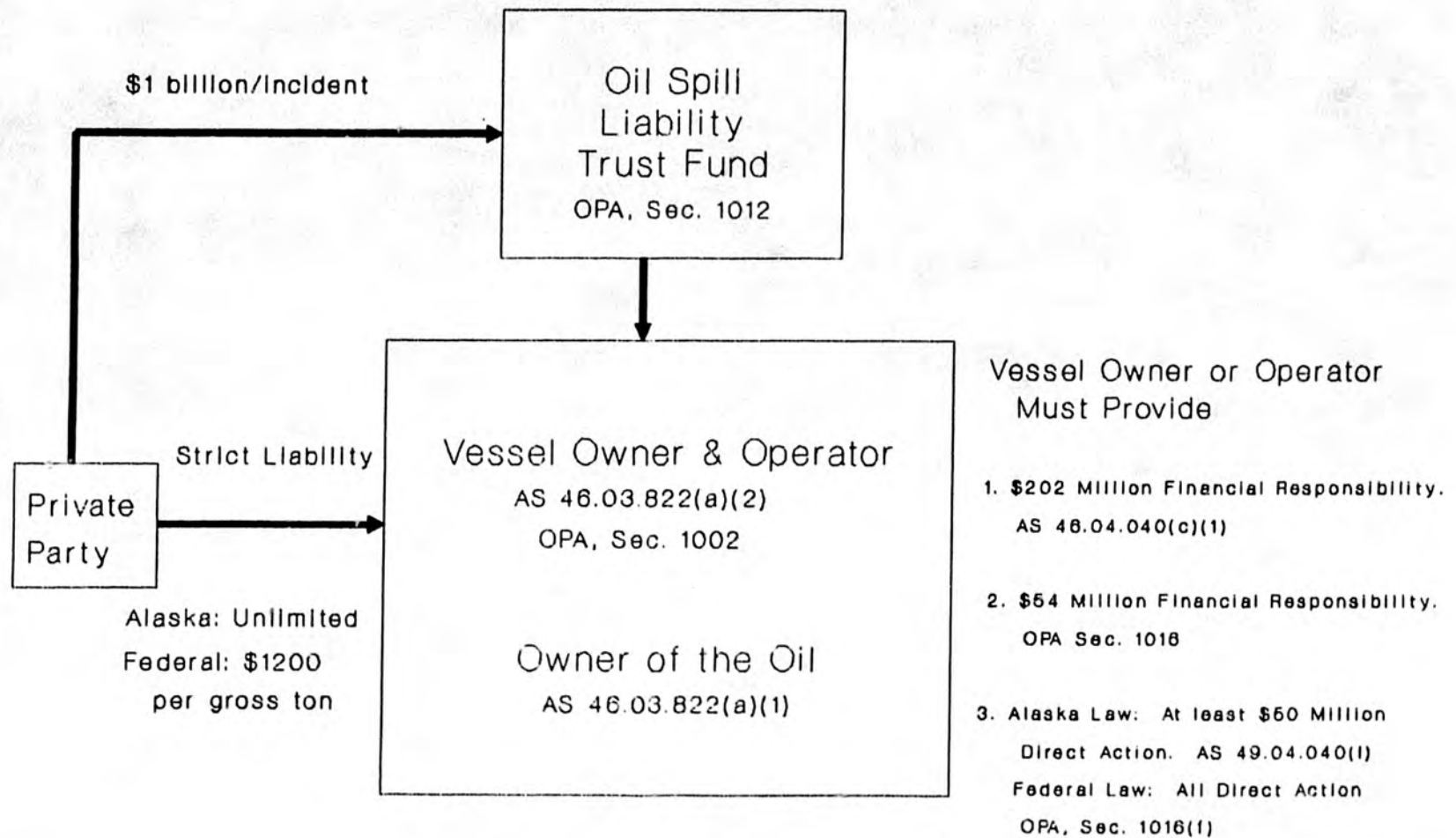
RECOVERY OF CLEANUP COSTS CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



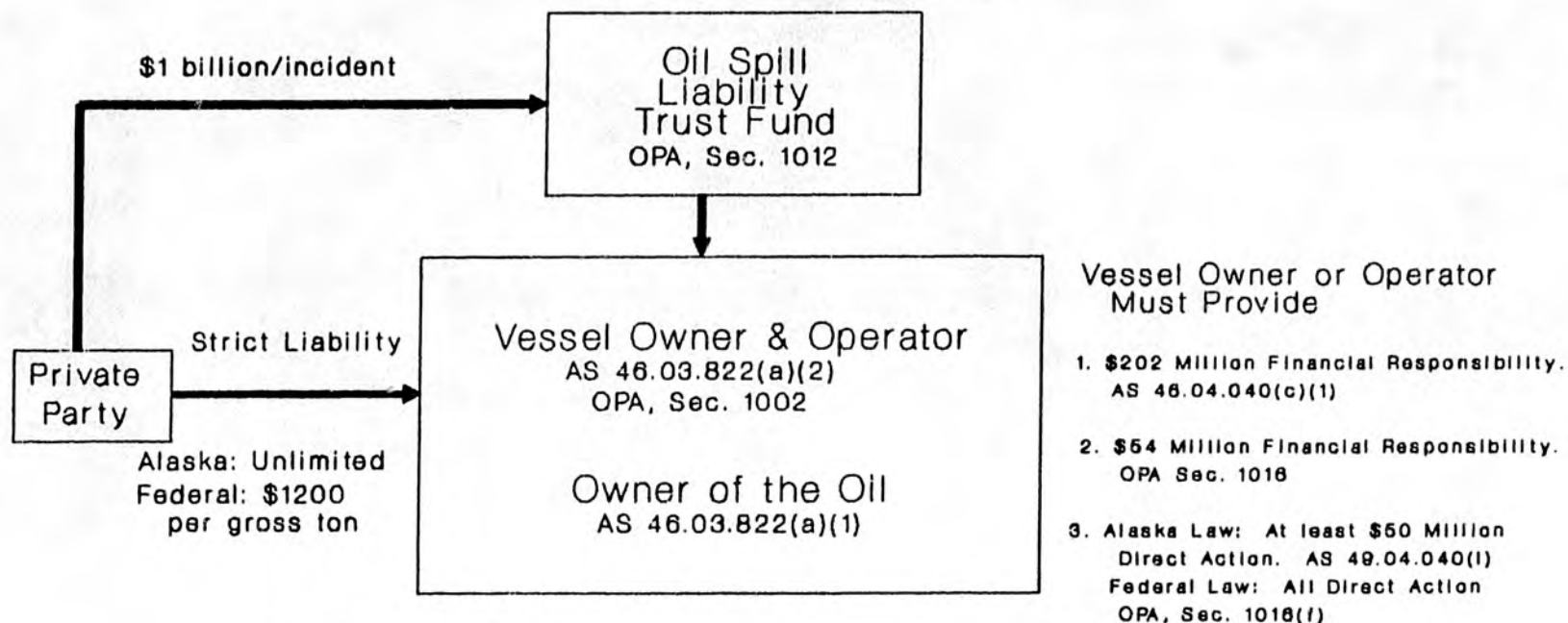
DAMAGE RECOVERY CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



DAMAGE RECOVERY FOR CLEANUP CONTRACTOR'S SIMPLE NEGLIGENCE*

Under CSHB 196



Note: Vessel and Oil Owner Both Expressly Liable for Simple Negligence of Cleanup Contractor Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for Simple Negligence of Cleanup Contractor Under Sec. 4201(a)(c)(4)(C) of OPA.

•Based on a Crude Spill From 90,000 DWT Oil Tanker

Alyeska blasted for billion-dollar bond

Borough Mayor Don Gilman Wednesday blasted Alyeska Pipeline Service Co. for what he calls an "unreasonable" demand that threatens to shut down Tesoro-Alaska Petroleum Corp.'s Nikiski refinery.

Alyeska is requiring Tesoro to come up with a \$1 billion bond to continue shipping oil from the Alyeska pipeline terminal in Valdez to Cook Inlet.

Tesoro officials say they can't possibly meet the requirement. And since they get 90 percent of the crude oil for their Nikiski refinery from Valdez, the refinery would be in serious trouble if it was no longer able to ship from there, said Tesoro vice president Gene Burden.

Gilman said the major member companies of Alyeska — Exxon, British Petroleum and ARCO — are using Tesoro as a pawn in order to pressure the Legislature to pass a bill restricting Alyeska's liability in the event of a spill.

"They're using Tesoro," Gilman said. "They're being unreasonable."

But Alyeska spokesperson Marnie Isaacs said the \$1 billion requirement is necessary because of the liability Alyeska could be subject to if it responds to a spill from Tesoro or another shipper in Prince William Sound.

"Alyeska serves as the initial response action contractor for those vessels calling at the terminal in Valdez," she said. "Because of the state's liability requirements, Alyeska ... asked the owner-operator or charter of the vessels to pledge a billion dollar bond, which, simply put, indicates they would have access to funds to manage the claims arising from a spill."

The other five companies operating vessels in Prince William Sound — Exxon, BP, ARCO, Shell and Chevron — have been able to comply with the \$1 billion requirement, mainly by pledging \$1 billion in

corporate assets.

But Tesoro can't do that, Burden said.

"All five of those other companies are very, very large companies," he said. "Our whole company's only worth \$200 million. To come up with a bond of a billion dollars is just not possible."

He thinks Tesoro should not be required to put up as large an amount as the other companies because Tesoro transports only a small percentage of the oil coming from the terminal, its tanker loads are much smaller, and it has taken many preventive measures, including the recent introduction of a double-bottomed tanker.

Alyeska and Tesoro have worked out a temporary agreement that allows Tesoro to continue operating in the Sound until June 1 with \$1 billion in insurance, rather than a bond.

Alyeska says it may lower its requirements if the Legislature passes a bill limiting Alyeska's liability in case problems occur when it responds to a spill.

"The core of the problem rests with the state's current liability laws," Isaacs said.

The way the law stands now, the standard of liability is "simple negligence," which Isaacs said could mean if Alyeska responds according to its plan with the state, but inadvertently loses some oil from a boom, it could be held liable.

Alyeska wants the standard of liability for a spill responder to be "gross negligence," which is harder to prove in court than simple negligence.

Tesoro also favors such a bill because it would limit the liability for the Cook Inlet spill response cooperative of which Tesoro is a member.

But fishing and environmental groups are opposed to the idea because they believe it would lessen the incentive for spill responders to be prepared.

A compromise bill, which sought to limit liability but only for the first 15 days after a spill and only if a company does not "substantially deviate" from its contingency plan, was passed out of the House Resources Committee Tuesday.

But Alyeska is not satisfied with the language in the bill, Isaacs said. "The bill is helpful, but it doesn't go quite far enough," she said. "We feel present language does not allow us to relax our liability standards."

Mayor Gilman also favors legislation limiting spill responders' liability because the Kenai Peninsula Borough is a member of the Cook Inlet response cooperative and taxpayers could also be held liable for problems resulting from the cooperative's response to a spill.

But Gilman, a former state senator, does not believe the legislation will pass. He says the bill has to get through two more House committees and the full House

and the Senate, and he doesn't believe that will happen in the remaining 34 days of the legislative session.

He believes Alyeska is being inflexible about the bill.

"They don't want anything less than gross negligence," he said. "What I think is happening is Alyeska is trying to get the gross negligence standard, and they're doing it on the backs of Tesoro."

"The big three (Exxon, BP and ARCO) are using this thing unmercifully and unnecessarily," Gilman said.

Isaacs says that Alyeska is "very sympathetic to Tesoro's situation."

"We would like to find a way to accommodate Tesoro's needs and still protect the company's (Alyeska's) liability," she said.

Some of Tesoro's supporters in borough and state government have suggested the Alyeska owner companies are trying to put Tesoro out of business, but Isaacs denies that and Gilman says he does not believe that's the case, either.

"But if that's the fallout, they could care less," he said. "The big guys just don't care. They could care less if this refinery closed down."

The Kenai Peninsula Borough Assembly cares a great deal, however.

Tesoro employs about 150 people on the borough, according to Burden. The company provides a good chunk of borough tax revenues.

The Borough Assembly unanimously passed a resolution Tuesday night, which was supported even by fishing groups, urging the Legislature to intervene on Tesoro's behalf.

Burden says if Tesoro and Alyeska can't come to an agree-

ment, Tesoro will file suit against the pipeline company, which would include seeking an injunction to allow the company to continue shipping out of Prince William Sound after June 1.

SEC 7
Mc 1

A 18 Sunday, June 10, 1990 ★ ★ ★

San Francisco Examiner



WILLIAM R. HEARST III
Editor and Publisher

LARRY KRAMER
Executive Editor

FRANK MCCULLOCH
Managing Editor

TOM DEARMORE
Editor, Editorial Pages

JAMES E. SEVRENS
General Manager

PAMELA BRUNNER SCOTT *Deputy Managing Editor*

STEPHEN COOK *Foreign/National Editor*

BARBARA FRENCH *Business Editor*

JAY JOHNSON *Executive News Editor*

JOHN A. KIRKPATRICK III *Assistant Managing Editor, News*

TIM PORTER *Metropolitan Editor*

GLENN SCHWARTZ *Sports Editor*

PAUL WILNER *Assistant Managing Editor, Features*

WARREN HINCELE *Assistant Editor*

JIM WOOD *Assistant Editor*

Oil spill groups need legal assist

CONSIDER WHAT might occur if a fire department responding to a blaze could be sued for damages resulting from its firefighting. A lawyer might ride on every truck. And a no-fault contract might have to be negotiated before a hose was unrolled.

Of course this would be silly, not to mention counterproductive. Yet such is the problem being confronted by organizations formed to respond to oil spills. Cleanup consortiums such as Clean Bay in the Bay Area and Clean Seas in Southern California remain under the threat of lawsuits. In Sacramento, legislators now are debating proposals that would add so-called Good Samaritan language to protect oil-cleanup groups from litigation except in situations of overt misconduct or negligence.

This dispute pits the oil industry, and environmental groups such as the International Bird Research and Rescue Center and the Coast Guard, against the California Trial Lawyers Association. There are two major oil spill bills now moving toward passage, AB 2603 authored by Assemblyman Ted Lempert, D-San Mateo, and SB 2040 by State Senator Barry Keene, D-Mendocino. Neither addresses this issue. It is essential that "Good Samaritan" sections be added.

The trial lawyers contend that the distinction between spillers and responders is not so clean as portrayed, since the responding organizations often are nonprofit entities created by the oil shippers. It has

been charged that laxness on the part of Alyeska, an oil company-owned cleanup company, contributed to damage caused by the grounding of the Exxon Valdez in Alaska.

That may sound legally sensible, but it is not a practical argument from the public's point of view. Rapid response is one of the keys to successful response. Time will cause the spill to worsen. Yet the threat of lawsuits may cause delay by cleanup crews until responsibility is made clear.

But while some are oil company-owned, other groups are not. The Ventura County Commercial Fishermen's Association created FORT — the Fisherman's Oil Response Team — to protect the sensitive Channel Islands and nearby coastal communities. Through FORT, fishermen on their own boats can be called upon by clean-up coordinators during an emergency. And they can be on the scene immediately, not days later. But FORT and its fisherman cannot place themselves in a position to accept unlimited liability.

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

CSHB 196 Background

SECTION D.

No. 2



THE PBN COMPANY
1225 Eighth Street
Suite 600
Sacramento, CA 95814
(916) 444-3671

FOR IMMEDIATE RELEASE:
August 21, 1990

NEWS

CONTACT:
Carri Cummings
916/444-2671
or
Peter Necarsulmer and
Peter Bartelme
415/989-0536

STATEWIDE ADS HIT TRIAL LAWYERS FOR BLOCKING OIL SPILL CLEANUP BILL

SACRAMENTO -- Multi-million dollar lawsuits are not among the hazards Good Samaritans should face when they rush to help clean up an oil spill off the California coast, the state's residents are being told this week by a full-page advertisement running in 11 major newspapers.

Appearing today and Wednesday, the ad states that legislation California urgently needs to arm itself against the ravages of offshore oil spills is being blocked by the powerful California Trial Lawyers Association "for the oldest reason of all -- they want the fees."

Readers are urged in the ad to call a toll free number (1-800-325-6000, operator 9752), to send free mailgrams to their state legislators and express support for language providing limited immunity from lawsuits for oil spill cleanup teams.

The ad, sponsored by the International Bird Rescue Research Center, Ventura County Commercial Fishermen's Association, Clean Bay, Clean Coastal Waters and Clean Seas, was paid for by the non-profit Petroleum Industry Response Organization (PIRO), which is in the process of changing its name to the Marine Spill Response Corporation.

The California Trial Lawyers Association recently used its lobbying influence to remove the "Good Samaritan" language from the bill, SB 2040 by Sen. Barry Keene, D-Benicia. The Good Samaritan provisions give individuals and organizations trying to clean up an oil spill limited immunity from liability lawsuits. No change would be made in the liability faced by the spiller, and the immunity for cleanup teams would not extend to acts of willful misconduct or gross carelessness.

Similar Good Samaritan language was recently approved unanimously by Congress in the federal oil spill cleanup bill.

Keene's measure, which has broad support, creates a \$150 million oil spill emergency response mechanism funded by a 25-cents-per-barrel tax on all crude oil, either produced in California or imported into the state. The California State Senate approved SB 2040 by a 34-3 vote June 21.

However, Keene said, in the State Assembly, trial lawyers have thrown "a political roadblock" around SB 2040 in their battle to remove the Good Samaritan language. They succeeded in substantially watering down the language in the bill's first Assembly committee hearing and the response organizations have joined in a massive effort to have the protections restored.

-mc-

San Francisco Office: Two Embarcadero Center • Suite 2530 • San Francisco, CA 94111 • (415) 989-0536

AUG 22 '90 5:23

9164439663

CSHB 196 Background

SECTION D,

No. 3

5 by the Federal On-Scene Coordinator [or by the State official with responsibility for oil spill oil
6 response].
7 (b) Subparagraph (a) does not apply--
8 (1) to a responsible party;
9 (2) with respect to personal injury or wrongful death; or
10 (3) if the person is grossly negligent or engages in willful misconduct.
11 (c) A responsible party is liable for any removal costs and damages that another person
12 is relieved of under subparagraph (a).
13 (d) Nothing in this section affects the liability of a responsible party for oil spill
14 response under State law.

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

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

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

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

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

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

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



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

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

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

CALL US.

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

CALL TOLL FREE.
1-800-325-6000.
Ask for Operator 9752.

This is a toll free
Western Union Service.

WRITE US.

Fill out this coupon and send it to us:

YES! I support Senate Bill 2040 (Keene) and
provisions for California's oil spill recovery
teams. Please add my name to the list of
people who want to say yes to the environment.

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Return to: International Bird Rescue
Research Center 125 9th Street, Suite 100
Sacramento, CA 95811

OR, TELL 'EM YOURSELF.

Please Mr. Senator:
Don't let the trial lawyers keep oil recovery
teams off the beach. Please pass the U.S. Congress
and the California State Senate by passing
Senate Bill 2040 (Keene).

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Send to: Hon. V. _____

Capitol, Sacramento

CSHB 196 Background

SECTION D,

No. 4

SPONSORED BY
International Bird Rescue Research Center
Clean Bay • Clean Coastal Waters • Clean Seas
Ventura County Commercial Fishermen's Association
Marine Spill Response Corporation

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)
Alaska Delegates: Sen. Eliason
Sen. Zharoff
Rep. Davidson
Rep. Navarre

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

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

...The San Francisco Examiner, June 10, 1990

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

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

...International Bird Rescue Research Center, et al., August 1990

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

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

April 11, 1991

Representative Cliff Davidson
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: CSHB 196 (Oil & Gas)

Dear Representative Davidson:

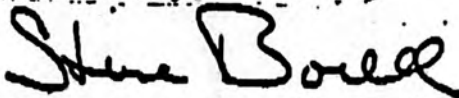
The Alaska Miners Association supports this bill.

Anyone involved in oil spill cleanup and response should be encouraged to concentrate on the work at hand, i.e. cleaning up the spill, without being concerned that their every decision and action will be subject to detailed scrutiny and possible liability.

Without this change/clarification at least two things will occur:

1. Cleanup efforts will be hampered and delayed through concerns for liability, and
2. The cost for all petroleum products to outlying areas of the state will increase unnecessarily as suppliers seek to protect themselves from frivolous charges, acts of omission, and honest mistakes.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Phil Holdsworth
Kent Dawson