

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2121 SCOMM 79: HOUSE SPEC. COMM. ON OIL & GAS, 1991-1992

139

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To Al Hastings	From Jon T	
Co.	Co.	
Dept. 401546.3	Phone #	
Fax #	Fax #	

Alyeska pipeline
SERVICE COMPANY

1000 SOUTH BRADSHAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 876-1811, TELEFAX (907) 876-1817

March 15, 1991

Representative Bill Hudson
Capitol Room 111, MS 3100
Box V
Juneau, Alaska 99811

Re: H.B. 196

Dear Representative Hudson:

You recently asked Paul Richards to comment on H.B. 196 on behalf of Alyeska Pipeline Service Company. We have reviewed the issue of potential legislative changes to response action contractor liability in the context of the financial responsibility requirements in our Oil Spill Response Service Agreements. As a result of this review, we have developed the following statement of our position:

"Alyeska Pipeline Service Company, which operates the trans Alaska pipeline system, is an initial oil spill response action contractor for tank vessels in Prince William Sound. The vessels have incorporated Alyeska's initial response plan into their contingency plans. Under the terms of contracts between Alyeska and the owners, operators or charterers of these vessels, Alyeska is indemnified for costs and certain liabilities that might arise out of Alyeska's response on behalf of a vessel. The contracts also require that the party contracting on behalf of a vessel demonstrate financial responsibility to perform its indemnity obligations. Tesoro has been unable to demonstrate compliance with the financial responsibility provisions of the standard contract and is presently operating under a temporary agreement that expires on June 30, 1991. Alyeska has advised Tesoro that the temporary agreement will not be extended.

"Alyeska supports enactment of Alaska legislation that a response action contractor can be liable for simple negligence in its oil spill response activities ONLY when its acts are inconsistent with the National Contingency Plan or directives of the President or when its actions cause personal injury or death. Congress enacted this standard in section 4201(a) of the Oil Pollution Act of 1990. If such legislation becomes law in Alaska, Alyeska will reduce the financial responsibility requirements for all tank vessels contracting for its initial oil spill response

278-5026

SECTION E,
No. 3

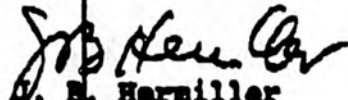
Representative Bill Hudson
March 15, 1991
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services. The amounts of such reduced requirements have not been determined. However, on the basis of Tesoro's current financial condition and available insurance coverage, and existing insurance coverage of owners of the vessel that Tesoro is using to transport its oil, Alyeska is confident that Tesoro will have no difficulty in arranging to meet such revised financial responsibility requirements.

"If the Alaska law ultimately adopted has a narrower exemption from liability for simple negligence than that provided by federal law, Alyeska will review the financial responsibility requirements of its contracts for initial oil spill response in light of the exposure to liability that remains under the new law. If substantial exposure to liability for simple negligence remains, Alyeska may not be able to reduce the financial responsibility requirements to a level that Tesoro can meet."

Please contact me or Mr. Richards if we may be of further assistance.

Sincerely yours,


D. B. Harniller
President

snk

cc: Gene Burden
Paul Richards

PACIFIC FISHERIES LEGISLATIVE TASK FORCE



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Mary Morgan

PACIFIC FISHERIES LEGISLATIVE TASK FORCE RESOLUTION Concerning "Oil Spill Responder's Limited Immunity"

WHEREAS, it is in the interests of the citizens and resources of California, Oregon, Washington, Alaska, and Idaho to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to oil spills anywhere along our coastlines; and

WHEREAS, the success of the modern-day spill response organization depends upon countless fishermen, subcontractors, veterinarians, and other part-time specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW, THEREFORE, BE IT RESOLVED by the Pacific Fisheries Legislative Task Force that the fishermen and other spill responders, who perform under adverse conditions to the best of their trained abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

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; and

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damage caused by responder's simple negligence.

COPIES of this Resolution shall be transmitted to the Honorable George Bush, President of the United States; and Members of the United States Senate and the House of Representatives of Alaska, Washington, Oregon, California, and Idaho.

ADOPTED JUNE 16, 1990,
IN SITKA, ALASKA



Interoffice Communication

To D. L. Bowler
 From J. S. Haley
 Date February 26, 1991
 Subject Increased Cost to Milne Point Unit due to Alyeska's Oil Spill Response Service Agreement

Pursuant to a request from your office we have attempted to develop the additional costs to Conoco, the Overriding Royalty Interest Owners and the State of Alaska for Milne Point Unit production as a result of Alyeska's Oil Spill Response Agreement. The weighted average additional costs (which reduces the net-back value by an equal amount) are estimated as follows:

	Increased costs/ (Reduced Net Back to Unit)
February 1991	\$3.69/Bbl
March 1991	\$0.39/Bbl
April 1991	\$0.10/Bbl*

*This number is not expected to continue in the future as it reflects a cycle in the markets that may not often be repeated. We expect this number to be higher in May and thereafter even under existing sales arrangements.

The above figures represent the volume weighted increased costs. These numbers represent our best estimate of the increased costs based on current contracts, some of which are tenuous at best, given the circumstances. We have been fortunate in selling our March and April production under terms that closely approximate pre-November 1990 sales. However, if we lost our best surviving market the cost per barrel could increase \$4.00 to \$5.00 per barrel or more over pre-November sales contracts. Our current market is very precarious and may be viewed as only a 30 day arrangement. Thus, it is imperative that we get some relief from the Alaska legislature to have any assurances that net-backs for Milne Point Unit crude are not significantly reduced because of implementation of Alyeska's Oil Spill Response Service Agreement.

The State of Alaska stands to share improved net-backs by the passage of the "Good Samaritan" law for companies shipping oil through Prince William Sound.

J. S. Haley
 JSH:it
 cc: J. R. Sverfoid
 D. R. Heinzer

FINANCIAL LOSS - STATE OF ALASKA

MILNE POINT ROYALTY - CURRENT STATUTE

Month	Loss M\$
1	0
2	317
3	37
4	10
5	43
6	422
7	436
8	450
9	424
10	432
11	427
12	450
TOTAL	3,448



April 10, 1991

CITY OF KENAI

"Oil Capital of Alaska"

210 Fidalgo Avenue
Kenai, Alaska 99611

TELEPHONE 283-7535

FAX 907-283-3014

Representative Bill Hudson, Chairman
House Oil and Gas Committee
State of Alaska
P.O. Box V
Juneau, AK 99811

RE: **[REDACTED] LIABILITY LIMITS FOR OIL CLEAN-UP
CONTRACTORS**

The City Council of the City of Kenai, at their meeting of April 3, 1991 unanimously stated their support of House Bill 196. The bill, as you are aware, is designed to afford limited immunity from lawsuits to citizenry groups responding to oil spills caused by another, unless the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

These groups consist of spill response contractors, countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared, on an emergency basis, to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information.

Exposure to unlimited liability in the course of response activities may deter responders from performing clean-up activities on behalf of the person or persons actually responsible for the spill.

The City Council of the City of Kenai supports House Bill 196 and encourages the Alaska State Legislature to pass this legislation. Where limitations on immunity are granted to responders, it is

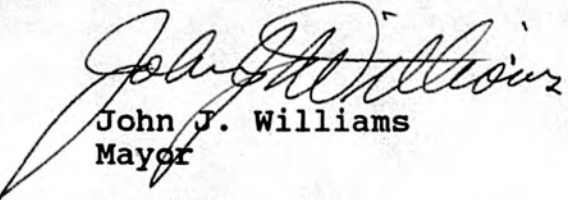
Representative Bill Hudson
April 10, 1991
Page 2

important that victims be fully protected and compensated for damages. The party responsible for the spill in the first instance should be liable for any damages caused by the responders' simple negligence.

Again, the City Council of the City of Kenai supports this legislation.

Sincerely,

CITY OF KENAI



John J. Williams
Mayor

JJW/clf



David N. Lakin
Director of Government Affairs

March 1, 1991

Patrick J. Malone, Aide
Representative Mike Navarre
Alaska State Legislature
P.O. Box V
Juneau, Alaska, 99811

Dear Mr. Malone:

MSRC indeed supports efforts to amend Alaska's current responder immunity law.

Basically, we believe oil spill responders should receive limited immunity to encourage them to become involved and act boldly in the chaotic and risky business of oil spill response. We are attempting to have responder immunity provisions at least as protective as those contained in the Oil Pollution Act of 1990 (Section 4201), adopted by coastal states and certain other jurisdictions of the U.S. The federal statute provides immunity from removal costs or damages to anyone rendering care, assistance or advice consistent with the National Contingency Plan (NCP) or as otherwise directed by the federal on-scene coordinator. We also believe that responder actions in accordance with the directions given by appropriate state officials should be immune. This limited immunity would not pertain to acts of gross negligence or willful misconduct or to cases of personnel injury or wrongful death. Furthermore, the responsible party (i.e., the owner or operator of the vessel or facility) would be made liable for any damages for which immunity is provided to responders.

Below are the answers to the questions submitted in your letter of February 22, 1991. If you need any additional information regarding this or related spill response issues involving MSRC or responder immunity, please contact me.

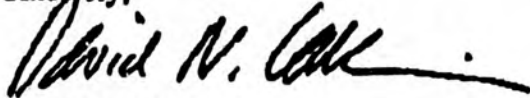
1. While no final decision has been made about whether MSRC will operate in Alaska, we consider the current state law to be a substantial disincentive to MSRC involvement. (We note however, that Alaska's statute predates the federal act). You should know that by resolution, our Board of Directors has reaffirmed the importance of state responder immunity provisions to the role MSRC could eventually have in a given state. As a national mutual benefit (not-for-profit) corporation, we must consider our total liability exposure so as not to jeopardize the entire national response system because of the laws of any particular state.

Mr. Patrick J. Malone
March 1, 1991
Page Two

2. Yes, four coastal states to date have adopted the federal immunity standard. In 1990, Florida, Virginia and Hawaii enacted such legislation. On January 31, 1991 the Governor of Delaware signed a similar law. Commissions and task forces in Alabama, Louisiana, Maine and Texas, which have closely examined the oil spill issue on a comprehensive basis, have all recommended the adoption of the federal responder immunity standard. So far this year, responder immunity legislation which tracks the federal law, has passed the state senates in Georgia and Mississippi. Our current information indicates the Oregon House Committee on Environment and Energy agreed to introduce the federal language as a committee bill on February 18.
3. California's comprehensive oil spill legislation contains the federal responder immunity provision. Unfortunately, it limits its time to a maximum of 90 days. Furthermore, there are several other provisions which we feel make it unsuitable for use as model state legislation.

I hope this information is helpful and provides with the background you need for Mr. Navarre to introduce his bill. As I stated before, if I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



David N. Lakin
Director of Government Affairs

GSD/jlh



Key Questions About Limited Liability for Oil Spill Responders

1. Who are oil spill responders?

- The resources required to respond to a serious oil spill include a broad cross section of fishermen, barge operators, bird and animal rescue centers, spill response contractors and spill cooperatives. Each of these organizations and subcontractors need limited immunity if they are to be expected to respond unhesitantly to oil spills.

2. Why do spill responders need limited immunity?

- Without reasonable protection from liability, the countless private persons and organizations necessary to respond to a major oil spill will not be willing to participate unhesitantly in spill clean-up activities.

- Instead, like doctors intimidated by malpractice insurance costs, they will become inordinately concerned with the need for advice from their lawyers and the desire to have state or federal authorities clear every decision before proceeding. For many, the risk will simply be too great and they will decline to participate at all.

3. Why do spill responders need immunity now when they have been responding to spills for years without immunity?

- Since the Exxon Valdez spill, the costs and litigation exposure flowing from oil spills have escalated dramatically.

- Exxon and its responder Alyeska, for example, have spent nearly \$2 billion already and they face another \$3 to 5 billion in liability claims. With unlimited liability and uninsurable levels of exposure, the risks have become too high.

4. What is the "good samaritan" immunity provision being proposed?

- Under federal legislation and under the laws of the states of Florida, Virginia, and Hawaii spill response organizations (as distinct from those who are responsible for the spill) are not liable for removal costs or damages arising from their response activities, unless they act with gross negligence or willful misconduct, or cause personal injury or death.

- MSRC and the existing spill response organizations seek this same limited immunity for responders in the oil spill legislation before other state legislatures.

5. Are there precedents for this form of immunity?

- Yes. There are other examples of good samaritan immunity covering organizations like fire and police departments, emergency paramedics, medical personnel and others.

- In nearly every instance, the public policy justification for granting limited immunity is the same: the need to insure that highly trained personnel remain willing to respond unhesitatingly despite adverse and sometimes dangerous circumstances, and to ensure that they remain willing to make difficult decisions with less than complete information.

6. Doesn't granting limited immunity to the responder simply let the spiller off the hook thereby pushing the cost onto the innocent victim?

- To the contrary, where the responder is immune, the proposed amendment would expressly make the spiller liable both for its own spill related action and for the responder's acts or omissions as well.

- Moreover, where the spiller cannot compensate the injured party for its damages (e.g., where the spiller has been rendered bankrupt by the spill), the victim is compensated by the federal fund which is paid for entirely by the oil industry.

- Thus, the immunity provision works to allocate risk only as between the spiller and the responder; it does not deny the innocent victim full compensation.

7. Why should oil spill response organizations be granted limited immunity when those who handle hazardous waste disposal on land continue to operate without immunity?

- In the on-land hazardous waste response, the clean-up entity ordinarily has several weeks, if not months, to test, analyze and review appropriate response procedures before beginning clean-up operations.

- By contrast, in any major spill, the response organization literally has only a few hours to marshal its initial resources at the scene and to begin making outcome determinative decisions.

- These critical, time-sensitive decisions often must be made in the midst of nearly total chaos, adverse weather, fast moving currents, high seas and far less than complete information. Time is of the essence and there is no opportunity for the studied review available to the on-land hazardous waste response organization.

8. Why wouldn't the responders' concerns be satisfied by indemnification from the spiller?

- The concept of indemnification requires the defendant (responder) to exhaust all administrative and judicial remedies before the right to indemnification from the spiller arises. Given the high probability that negligence allegations will arise in nearly every catastrophic response, the responder's management would routinely be tied up in

years of time consuming and costly depositions, trial preparation and actual litigation before becoming eligible for consideration for indemnification.

- Moreover, a system which exposes the responder to these highly disruptive transaction costs will have an inherent chilling affect on responder's willingness to act boldly and decisively in future spills. Instead of rushing into the fray, responders will rush to their lawyers and await every opportunity to have some state or federal authority direct, and thereby insulate, their every move.

- Again, time is of the essence and responders must be encouraged to make difficult decisions under inordinately adverse conditions and with far less than complete information.

9. Won't limited immunity enable responders to be sloppy in the performance of their work?

- No. A sloppy or casual responder will quickly find that it has crossed the line between simple negligence, for which it is immune, and gross or willful negligence, for which it has no immunity.

- Oil spill response is fast becoming one of the most intensely monitored and regulated activities anyone can undertake. Federal, state and local authorities, not to mention the press, television, environmentalists, local fishermen and the public at large, monitor the responder's every move.

10. Isn't immunity just a special interest measure sought by the the oil companies that support the large spill cooperatives?

- No. While it is correct that some of the largest spill response organizations are funded by oil companies, the immunity is broadly supported by nearly everyone who wants to participate in the clean-up of spills caused by someone else.

- Throughout the country, local groups like fishermen bird rescue personnel are actively urging legislatures to grant immunity to those who respond to oil spills. Without immunity, they too cannot participate actively in oil spills without inviting unlimited and unacceptable liability exposure.

- Moreover, the U.S. Coast Guard and some environmental groups support responder immunity in recognition of the fact that without this provision, they will not have the resources needed to deal with oil spills.

- This growing call for responder immunity has been strongly and expressly endorsed by editorials in The San Francisco Examiner, the Wall Street Journal, and other newspapers all urging immunity be granted to oil spill responders.

A Model State Act Regarding Limited Immunity for Persons Responding to Oil Spills

proposed by the
Marine Spill Response Corporation

This model State Act makes State law consistent with new federal oil spill legislation that provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or the threat of an oil spill. The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan (NCP), or under the direction of the Federal On-Scene Coordinator (OSC) or the appropriate State official. Because the plans and orders may not cover every detail or eventuality of a spill response, actions that are in keeping with the overall objectives of the plans or Coordinator's orders are deemed to be within the scope of this Act.

Just as with response to fire, response to an oil spill must be immediate and decisive. Like firemen, oil spill responders cannot control the timing or location of their work. Both types of responders must take immediate action based on very limited information, attacking the problem quickly if there is to be any realistic chance of mitigating the worst harm. Limited immunity for firefighters has been long recognized because of these circumstances, and this bill extends similar protection to oil spill responders.

Without similar immunity, the enormous financial risks and liability exposures associated with spill response will deter those persons who are not responsible for the initial spill, such as cleanup contractors, fishermen, and barge owners, from prompt, aggressive cleanup, or even from any response at all. The United States Congress recognized the need to provide limited immunity to oil spill responders in the Oil Pollution Act of 1990. However, Congress did not preempt State oil spill liability laws, so a similar provision is needed in State law. Federal and State responder liability laws should be uniform. To respond decisively, responders must be able to act without being forced to consider the boundaries or interaction of varying liability regimes.

The liability for damages resulting from the oil spill cleanup efforts falls on the party responsible for the initial discharge, not on persons trying to help clean up or mitigate the damage. Under this bill, victims of oil spill damage will have a means of compensation. They may recover from the person responsible for the initial discharge or, where the responsible party is unidentified or unable to pay, from the federal Oil Pollution Fund (and, perhaps a State fund, if provided by State law). In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

Some States provide immunity only to those persons who do not charge for their services. Refusing immunity to persons who charge for their services in the context of catastrophic oil spills works to deny the public the benefit of cooperatives and subcontractors who have the expensive oil spill response equipment and trained personnel that are the key to mitigating damage from the spill, but who must be able to charge for their services in order to maintain their readiness. Volunteer responders have a role, too, but professional responders equipped with their equipment and training have the greatest likelihood of making a significant difference in the spill response. Thus, this act covers all responders, whether they volunteer or work for pay.

This draft State legislation was developed by the Marine Spill Response Corporation (MSRC), a nonprofit mutual benefit corporation organized exclusively to promote the welfare of the public by mitigating environmental damage to the coastal and certain upstream waters of the United States. This newly created organization seeks to establish a program to render its best efforts to contain and cleanup certain large oil spills beyond local response capabilities. It will use funds provided by the oil and shipping industries to build, staff and equip five regional response centers and numerous prepositioned equipment sites. Together with a host of other responders, MSRC hopes to dramatically improve this nation's ability to respond to large oil spills in coastal and tidal areas, in part through bold and decisive response to a spill event. Responder immunity is a critical requirement for that type of rapid response.

1 Section 1. *[Short Title.]* This act may be cited as the [State] Act Regarding Liability for
2 Persons Responding to Oil Spills.

1 Section 2. *[Definitions.]* For the purposes of this Act the term:

2 (1) "damages" means damages of any kind for which liability may exist under the laws
3 of this State resulting from, arising out of, or related to the discharge or threatened discharge
4 of oil.

5 (2) "discharge" means any emission (other than natural seepage), intentional or
6 unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting,
7 emptying, or dumping;

8 (3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S.
9 Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal
10 responses under subpart D, or the official designated by the lead agency to coordinate and direct
11 removal under subpart E, of the National Contingency Plan;

12 (4) "National Contingency Plan" means the National Contingency Plan prepared and
13 published under section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)),
14 as amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

15 (5) "oil" means oil of any kind or in any form, including, but not limited to, petroleum,
16 fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

17 (6) "person" means an individual, corporation, partnership, association, State,
18 municipality, commission, or political subdivision of a State, or any interstate body.

19 (7) "removal costs" means the costs of removal that are incurred after a discharge or
20 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the
21 costs to prevent, minimize, or mitigate oil pollution from such an incident;

22 (8) "responsible party" means a responsible party as defined under § 1001 of the Oil
23 Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

1 Section 3. *[Exemption From Liability.]*

2 (a) Notwithstanding any other provision of law, a person is not liable for removal costs
3 or damages which result from actions taken or omitted to be taken in the course of rendering
4 care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed

Introduced by: Brown

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

A RESOLUTION OF THE KENAI PENINSULA CAUCUS CONCERNING "OIL SPILL RESPONDER'S LIMITED IMMUNITY."

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and,

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and,

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities.

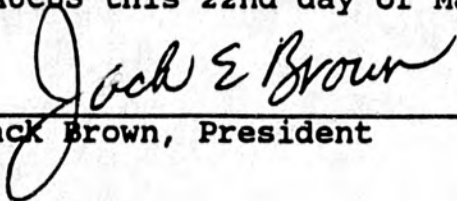
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and,

BE IT FURTHER RESOLVED, that the Kenai Peninsula Caucus supports and encourages Alaska State 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; and,

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

PASSED BY THE KENAI PENINSULA CAUCUS this 22nd day of March, 1991.



Jack Brown, President

ATTEST:



John J. Williams, Secretary

(3/8/91)

Introduced by: Brown, Superman
Date: April 16, 1991
Action: ADOPTED
Vote: UNANIMOUS

KENAI PENINSULA BOROUGH

RESOLUTION 91-37 (SUBSTITUTE)

A RESOLUTION SUPPORTING TESORO ALASKA

WHEREAS, the continued operation of the Tesoro Refinery is being threatened by an unreasonable demand by Alyeska management; and

WHEREAS, Alyeska is demanding Tesoro to secure a billion dollars insurance bond; and

WHEREAS, Tesoro Alaska has in good faith attempted to secure this bond; and

WHEREAS, Tesoro Alaska can provide a billion dollars of P and I insurance and Alyeska rejected this offer; and

WHEREAS, Tesoro Alaska contributes substantially to the tax base of the Kenai Peninsula Borough:

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1: That the Kenai Peninsula Borough Assembly urges the Alaska State Legislature to intervene on Tesoro's behalf and resolve this situation.

Section 2: That copies of this resolution be distributed to Governor Walter Hickel, the Alaska State Legislature, Tesoro Alaska and Alyeska.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 16th DAY OF April, 1991.


James W. Skogstad, Assembly President

ATTEST:


Acting Borough Clerk

Kenai Peninsula Borough
Resolution 91-37 (Sub
Page 1 of 1 Pages

CSHB 196 Background

SECTION E,
No. 6.1



Marine Spill Response Corporation
G. Stephen Duca
Vice President
Readiness and External Affairs

March 25, 1991

Representative Bill Hudson
Chairman
House Special Committee on Oil and Gas
Alaska House of Representatives
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Mr. Chairman:

In your letter of March 6, 1991 addressed to our General Counsel Mr. Joseph E. Lees, you asked for **comments on HB 196**. We have carefully reviewed the bill. **Sections 1, 2, 3 and Sec. 5, (46.03.825) are of particular interest to MSRC.** In general, MSRC supports state legislation that enacts a limited immunity for all oil spill responders as protective as the provision found in PL 101-380. It appears that the intention of HB No. 196 is to accomplish this and therefore our comments are intended to help bring about this end. For your convenience I am enclosing model legislation on responder immunity that MSRC has prepared to assist states as they consider this legislative issue.

The language of H.B 196 concerns itself with "response action contractors", a defined term in the proposed legislation. **MSRC feels that limiting immunity to this category of responders is not in consonance with the intent of the legislation.** As noted in the bill/s preamble, limited immunity is needed because it is in the public interest to promote a bold, vigorous response during emergencies. Yet a "response action contractor" is a person who must act pursuant to a written contract or agreement to provide "response Actions". (See 46.03.826(15).) To assure themselves that they qualify for responder immunity however, they first have to assure that written contracts are in place. This could delay the response and thus by limiting immunity on the basis of a responders status as a "response action contractor", the state will limit the quality of the response needed during spills.

~~The language of Section 2 of the bill could be interpreted to make oil spill responders liable if a spill occurs from one of their vessels during response and cleanup operations. (See Sec. 46.03.822)). This is inconsistent with the stated purpose of the bill to provide responders with a limited immunity because they are required to act under emergency conditions. Oil spill containment vessels (barges, dracones, etc.) are a critical, integral part of a responder's offshore operations. To limit a responder's immunity with respect to such an important part of spill response operations renders all response operations hostage to the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of the bill.~~

Specific comments, keyed to the draft bill, are provided in an additional enclosure. ~~In general these are clarifications of bill language to insure that:~~

- (1) all responders are provided with immunity irrespective of their status as operating under a contract, volunteer, etc.,
- (2) spills from response vessels will not convert the status of a responder to a responsible party.

Thank you for your opportunity to provide you with our insights into this important piece of legislation. Please don't hesitate to contact me if there is anything further you may need.

Sincerely,



G. S. Duca
Vice President
Readiness and External Affairs

Enclosures

A Model State Act Regarding Limited Immunity for Persons Responding to Oil Spills

proposed by the
Marine Spill Response Corporation

This model State Act makes State law consistent with new federal oil spill legislation that provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or the threat of an oil spill. The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan (NCP), or under the direction of the Federal On-Scene Coordinator (OSC) or the appropriate State official. Because the plans and orders may not cover every detail or eventuality of a spill response, actions that are in keeping with the overall objectives of the plans or Coordinator's orders are deemed to be within the scope of this Act.

Just as with response to fire, response to an oil spill must be immediate and decisive. Like firemen, oil spill responders cannot control the timing or location of their work. Both types of responders must take immediate action based on very limited information, attacking the problem quickly if there is to be any realistic chance of mitigating the worst harm. Limited immunity for firefighters has been long recognized because of these circumstances, and this bill extends similar protection to oil spill responders.

Without similar immunity, the enormous financial risks and liability exposures associated with spill response will deter those persons who are not responsible for the initial spill, such as cleanup contractors, fishermen, and barge owners, from prompt, aggressive cleanup, or even from any response at all. The United States Congress recognized the need to provide limited immunity to oil spill responders in the Oil Pollution Act of 1990. However, Congress did not preempt State oil spill liability laws, so a similar provision is needed in State law. Federal and State responder liability laws should be uniform. To respond decisively, responders must be able to act without being forced to consider the boundaries or interaction of varying liability regimes.

The liability for damages resulting from the oil spill cleanup efforts falls on the party responsible for the initial discharge, not on persons trying to help clean up or mitigate the damage. Under this bill, victims of oil spill damage will have a means of compensation. They may recover from the person responsible for the initial discharge or, where the responsible party is unidentified or unable to pay, from the federal Oil Pollution Fund (and, perhaps a State fund, if provided by State law). In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

Some States provide immunity only to those persons who do not charge for their services. Refusing immunity to persons who charge for their services in the context of catastrophic oil spills works to deny the public the benefit of cooperatives and subcontractors who have the expensive oil spill response equipment and trained personnel that are the key to mitigating damage from the spill, but who must be able to charge for their services in order to maintain their readiness. Volunteer responders have a role, too, but professional responders equipped with their equipment and training have the greatest likelihood of making a significant difference in the spill response. Thus, this act covers all responders, whether they volunteer or work for pay.

This draft State legislation was developed by the Marine Spill Response Corporation (MSRC), a nonprofit mutual benefit corporation organized exclusively to promote the welfare of the public by mitigating environmental damage to the coastal and certain upstream waters of the United States. This newly created organization seeks to establish a program to render its best efforts to contain and cleanup certain large oil spills beyond local response capabilities. It will use funds provided by the oil and shipping industries to build, staff and equip five regional response centers and numerous prepositioned equipment sites. Together with a host of other responders, MSRC hopes to dramatically improve this nation's ability to respond to large oil spills in coastal and tidal areas, in part through bold and decisive response to a spill event. Responder immunity is a critical requirement for that type of rapid response.

1 Section 1. *[Short Title.]* This act may be cited as the [State] Act Regarding Liability for
2 Persons Responding to Oil Spills.

1 Section 2. *[Definitions.]* For the purposes of this Act the term:

2 (1) "damages" means damages of any kind for which liability may exist under the laws
3 of this State resulting from, arising out of, or related to the discharge or threatened discharge
4 of oil.

5 (2) "discharge" means any emission (other than natural seepage), intentional or
6 unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting,
7 emptying, or dumping;

8 (3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S.
9 Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal
10 responses under subpart D, or the official designated by the lead agency to coordinate and direct
11 removal under subpart E, of the National Contingency Plan;

12 (4) "National Contingency Plan" means the National Contingency Plan prepared and
13 published under section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)),
14 as amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

15 (5) "oil" means oil of any kind or in any form, including, but not limited to, petroleum,
16 fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

17 (6) "person" means an individual, corporation, partnership, association, State,
18 municipality, commission, or political subdivision of a State, or any interstate body.

19 (7) "removal costs" means the costs of removal that are incurred after a discharge or
20 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the
21 costs to prevent, minimize, or mitigate oil pollution from such an incident;

22 (8) "responsible party" means a responsible party as defined under § 1001 of the Oil
23 Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

1 Section 3. *[Exemption From Liability.]*

2 (a) Notwithstanding any other provision of law, a person is not liable for removal costs
3 or damages which result from actions taken or omitted to be taken in the course of rendering
4 care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed

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.

Enclosure (2)

PAGE/LINE

REMARKS

1/1

Delete "civil". Statutes generally provide specific penalties for acts that are deemed to be criminal offenses. Removing the word "civil" clarifies the intent of the statute.

1/1-2

Delete "response action contractors" and replace it with "responders". ("Responder(s)" should be used wherever "oil spill contractor(s)" appears in the bill.) All responders to an oil spill need to have a limited immunity as they go about the work of responding to and mitigating the effects of a release, whether or not they have a response action contract. The basis for this limitation rests upon the need for bold, vigorous action in the face of the emergency conditions, lack of information/conflicting information, the responder's inability to control essential elements that directly affect his operations, such as the weather during a spill and the limitations of technology on the efficacy of the operations that he is able to undertake. For example bird/animal rescue and community volunteers face the same category of problems as those responding to the spill with mechanical cleanup capabilities.

2/21

"limiting the liability of innocent" should be changed to, "providing a limited immunity to".

2/22-23

Delete, "are...spill." and replace with, "do not constitute gross negligence or willful misconduct and are consistent with the National Contingency Plan (NCP) or as otherwise directed by the President or by a State official with responsibility for oil spill response. This immunity does not apply to cases of personal injury or wrongful death."

3/8-11

This subparagraph appears to make the responder liable for releases of hazardous materials from one of his vessels (barges, dracones, etc.) engaged in receiving recovered oil/oily wastes that would be categorized as hazardous substances. The collection of recovered oil/oily debris is a critical, integral task in the response and cleanup operational scenario. To limit his immunity with respect to such an important part of spill response operations renders all response operations hostage to

the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of performance of the bill.

- 3/12-17 This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. (See previous remarks for supporting rationale.)
- 4/8 Given the complexity of Alaska's liability laws, it is important that the immunity provision be begin with the phrase, "Notwithstanding any other provision of law,".
- 4/9-11 "act...coordinator". Recommend replacement of this portion of the bill with, "who renders care, assistance or advice for a release or threatened release of oil that is consistent with the National Contingency Plan (NCP) or as otherwise directed by the President or by the state official with responsibility for oil spill response." See previous remarks for supporting rationale.
- 4/15-17 This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. Section 46.03.825(a)(1) provides an exception to responder immunity if the response action contractor would have been liable for the release or threatened release under state of federal law even "if that contractor had not carried out a response action" with respect to the release or threatened release. This section may simply be trying to prevent the spiller from taking advantage of the immunity. However this provision could apply to non-spiller responders too. For example, there may be liability under the Alaska law for a person who fails to comply with the terms and conditions of a response action contract of a remedial action plan, or a contingency plan. Thus, if a responder has a contract with a potential spiller to respond in a certain way, then under the state law the contractor must respond in accordance with the contract. This could make the responder liable for the release "if that contractor had not carried out a response action". As a result, the responder may be denied immunity.

4/after 21

Recommend add a provision that makes the responsible party liable for removal costs and damages that another person is relieved of under this section of the bill. (See MSRC model bill.)

North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99635
NORTH PENINSULA CHAMBER OF COMMERCE

(907) 776-8369

FROM 907 659 8308

RESOLUTION

A RESOLUTION SUPPORTING OIL SPILL RESPONDER'S LIMITED IMMUNITY

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE NORTH PENINSULA CHAMBER OF COMMERCE:

Section 1: That the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to the best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

Section 2: That the North Peninsula Chamber of Commerce supports and encourages Alaska State 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; and

90.08.17 11:35

CSHB 196 Background

SECTION E,

No. 9

North Peninsula Chamber of Commerce

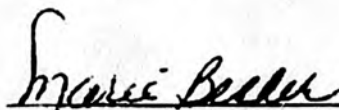
P.O. Box 8053

Nikiski, Alaska 99635

(907) 776-8369

Section 3: That where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

ADOPTED BY THE NORTH PENINSULA CHAMBER OF COMMERCE ON THIS
7th DAY OF March, 1991.


Marie Becker, President of THE
NORTH PENINSULA CHAMBER OF COMMERCE

FROM 907 659 8388

90.08.17 11:35



Please enter into the record my testimony to the

Resources

committee name

committee on

H.B. 196

dated

4-10-89

bill/subject

I've watched Tesoro's growth over the years and know how important they are to the peninsula and the state. I'm concerned about environmental protection and think that the Spill Responder should commence actions immediately. I also understand that Tesoro has no other source of crude oil feed to their refinery than through shipping via Elmerston Washington from Valdez to Nikiski and that Alaska is demanding \$1 Billion in Insurance or cash that Tesoro can't meet. If Alaska does not change this requirement they (Tesoro) could be put out of business. I support a law that will treat Spill Responders like other emergency Responders. Tesoro has always made an effort to keep the area informed of their problems and projects. They have good credibility in our community and have a major impact on the economy here.

I strongly urge the Resources Committee to pass this Bill on and do everything possible to get it passed this session.

Signed:

Maki Beeler

Testifier

Public

Representing (Optional)

P.O. Box 8205

Address

Nikiski, Alaska 99635

Phone No.



Oil Reform Alliance



ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.09.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Seider
Executive Director

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Alaska
m brs:
Eliason
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Davieson
Nauwne

PACIFIC FISHERIES LEGISLATIVE TASK FORCE



PACIFIC FISHERIES LEGISLATIVE TASK FORCE RESOLUTION Concerning 'Oil Spill Responder's Limited Immunity'

CHAIRMAN
Senator Ron Soto

VICE CHAIRMAN
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WASHINGTON
Senator Jack Metcalf
Senator Pat McCullum
Representative Bob Baker
Representative Sam Wilson

PAST CHAIRMAN
Assemblyman Carl Meyer
Senator Ed Bradley

EXECUTIVE DIRECTOR
Mary Morgan

WHEREAS, it is in the interests of the citizens and resources of California, Oregon, Washington, Alaska, and Idaho to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to oil spills anywhere along our coastlines; and

WHEREAS, the success of the modern-day spill response organization depends upon countless fishermen, subcontractors, veterinarians, and other part-time specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW, THEREFORE, BE IT RESOLVED by the Pacific Fisheries Legislative Task Force that the fishermen and other spill responders, who perform under adverse conditions to the best of their trained abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

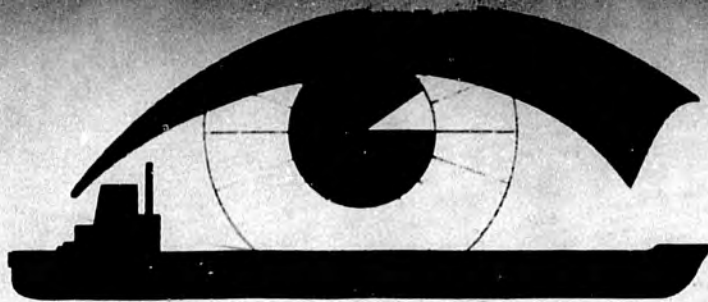
BE IT FURTHER RESOLVED, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in

cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damage caused by responder's simple negligence.

COPIES of this Resolution shall be transmitted to the Honorable George Bush, President of the United States; and Members of the United States Senate and the House of Representatives of Alaska, Washington, Oregon, California, and Idaho.

ADOPTED JUNE 16, 1990,
IN SITKA, ALASKA



REGIONAL CITIZENS' ADVISORY COUNCIL

WHAT IS THE REGIONAL CITIZENS' ADVISORY COUNCIL (RCAC)?

The Regional Citizens' Advisory Council (RCAC) was established in response to the Exxon Valdez oil spill to be a regional citizens' oversight organization. Alyeska Pipeline Service Company, the operator of the Trans Alaska Pipeline Terminal at Valdez, worked cooperatively with the citizens affected by the spill to form RCAC. Members include:

Communities in the affected area:

- City of Cordova
- City of Homer
- City of Kodiak
- City of Seldovia
- City of Seward
- City of Valdez (2)
- Kodiak Island Borough
- Kenai Peninsula Borough
- Alaska State Chamber of Commerce
- Chugach Alaska Corporation
- Cordova District Fishermen United
- Kodiak Village Mayors Association
- National Wildlife Federation
- Prince William Sound Aquaculture Corp

HOW WAS RCAC ESTABLISHED?

After the spill, the state required Alyeska to submit an aggressive new prevention and response (contingency) plan. The Alaska Oil Spill Commission had strongly recommended increased citizen involvement.

CSHB 196 Background

**SECTION E,
No. 12**

RCAC emerged from this process, incorporating as a nonprofit to insure independence. The resulting contract with Alyeska requires that it provide an annual budget of \$2 million for "as long as oil flows through the line" and ready access to all its facilities. The federal Oil Pollution Act of 1990 reinforced this action and specified terms.

WHAT IS THE STRUCTURE OF RCAC?

A sixteen-member board and staff accomplishes its goals primarily through three working committees:

- *Port Operations and Vessel Traffic Systems (POVTS)*
- *Oil Spill Prevention and Response (OSPRC)*
- *Terminal Operations and Environmental Monitoring (TOEM)*

Additionally, a *Scientific Advisory Committee (SAC)*, comprised of scientists and technical experts, reviews research proposals and advises the working committees and the council on technical issues.

The contract specifies that RCAC committees will perform:

- *independent research and monitoring of oil spill prevention and response efforts*
- *tanker safety*
- *environmental effects of terminal operations.*

RCAC uses this information to develop recommendations for environmental safeguards to Alyeska and government regulatory agencies.

THE RCAC IS INDEPENDENT OF ALYESKA

"The Council is willing to participate in the citizens' advisory process for the public and Alyeska on a permanent basis only on the conditions that it be truly independent from Alyeska and that Alyeska provide the Council with a permanent source of adequate funding." (Alyeska/RCAC contract)

WHY IS RCAC NEEDED?

A major lesson learned from the Exxon Valdez spill is that oil transportation is a risky business, and the people who bear the burden of

that risk must be involved at all levels of decision making. No substitute exists for local knowledge experience and commitment. Often we have been adversaries working against one another rather than citizens' cooperatively seeking progress and improvements.

STATUS AND UPDATE ON COMMITTEE ACTIVITY:

Oil Spill Prevention and Response Committee (OSPRC)

- Alyeska C-Plan Comments: To date, the OSPRC has provided comments on Appendix A. Scenarios, Appendix D. Training, and Appendix E. Community and Fishing Vessel Involvement. The Council has approved all three sets of these comments.
- State 1991 Response Plan for Exxon Valdez Oil Spill: OSPRC drafted comments on this plan and the council approved them.
- State Oil and Hazardous Materials Substance Discharge Prevention and Contingency Plan Comments: The committee provided comments to DEC on their draft Prevention and Contingency Plan and hired two experts to comment also. DEC requested additional comments and assistance from OSPRC to refine the plan in greater detail due to the caliber of comments and demonstration of commitment.
- Transition Issue Resolution: OSPRC drafted a resolution expressing concern with the 72-hour transition and nearshore response issues for address by the council. This position is being used by RCAC representatives in the Alyeska Contingency Plan Steering Committee and its working groups.
- Alyeska Contingency Plan Steering Committee and Working Groups: OSPRC members are actively involved in the technical working groups under the Steering Committee. Members work with others to improve the contingency plan. OSPRC members sit on the dispersants/burning/bioremediation, oily waste and the nearshore protection, and beach cleanup working group.
- "Safe Spill" Literature Search and RFP: Members of the committee supported a literature search for "Safe Spill," a non-toxic, biodegradable crude oil substitute. Currently, the draft RFP is in the final stages of development and should be forwarded to the council by the March 21-23 meeting.

- **White Papers:** The committee is contracting for white papers and briefings in several key areas and has identified potential experts for papers on small-boat technology, risk assessment, and bioremediation. The ECO risk assessment contract, which analyzes the Alyeska Risk Assessment Document by Technica, is under way. The small-boat technology contract was recently finalized and should be completed by May.

Port Operations and Vessel Traffic Systems Committee (POVTS)

- POVTS reviewed proposed changes in the Vessel Traffic System and a letter has been sent to the Coast Guard requesting information regarding its decision to utilize a dependent surveillance system in Prince William Sound.
- Vessel escort procedures have been reviewed, and letters have been sent to shipping agencies and pilots seeking their views on the desirability of having a tug attached during a portion of the transit. A subcommittee will address this issue. Its members have observed the operation of tractor and conventional tugs in Puget Sound March 1, 2, and 3 and will report its findings to the council.
- POVTS committee commissioned Jim Dickson, safety officer at the Sullom Voe Harbor Authority, Shetland Isles, to develop a document which identified oil spill prevention actions that are appropriate to Alaska and Prince William Sound. RCAC recently received the second draft of his report, and it is being circulated for public review through April 22, 1991.
- POVTS reviewed the proposed Coast Guard regulations pertaining to the requirement for double hulls on tankers drafted a position paper and submitted it to the council for its endorsement and support.

Terminal Operations and Environmental Monitoring Committee (TOEM)

TOEM opened an office in Valdez last month. Current activities include:

- Setting up a series of public meetings in the communities of Prince William Sound to identify the public's environmental concerns about oil industry activities. These meetings will likely take place in late April or early May.

- Soliciting a critical analysis of the design and modeling of Alyeska's air monitoring program in the Valdez area.
- Hiring a consultant to complete an inventory of actual and potential sources of environmental pollution stemming from terminal and tanker operations. These issues will be catalogued in a computerized "matrix" for ready access.
- Drafting a request for proposals for a report on the likely fate and effects of hydrocarbons emitted into the air during tanker loading at the Alyeska terminal. If warranted, the next step would be an actual field study.
- The ultimate task of the committee is to physically monitor effects on the environment caused by oil industry activities in Prince William Sound. This comprehensive environmental monitoring program is a significant scientific undertaking that will require extensive field work over several years. Most of what the committee is doing now is in preparation for this task.

Scientific Advisory Committee (SAC)

- SAC has established request for proposal procedures, completed a biological monitoring and socioeconomic modeling RFP for RCAC approval and has reviewed the OSPRC's "safe spill" RFP.

All committees meetings are open to the public, and in 1991 committees plan to hold their meetings in member communities to keep the public involved and informed.



SIERRA CLUB

CALIFORNIA

April 21, 1990

To: The Honorable Members of the Senate Judiciary Committee

From: Gordon E. Hart

Re: SB 2040 (Keene)

Although the Sierra Club does not yet have a position on SB 2040, we have been participating fully in negotiations with the author and the affected industries for over three months. Because of the substantial progress which has been made in these negotiations, we support the bill's passage out of the Judiciary Committee at this time, in order to further the negotiations.

The principal controversial issues in the negotiations which are before the Judiciary Committee relate to immunity for responders, and criminal penalties for spillers. With respect to criminal penalties for spillers, we strongly support the bill's current inclusion of criminal sanctions for spillers who reasonably should have known that they were discharging or spilling oil. We have, in the spirit of compromise, supported a variety of relaxations in the penalty section of the bill. This last relaxation sought by industry and resisted by the author would be unacceptable. Criminal sanctions are constitutional even if triggered to a strict liability standard. Although we would prefer a strict liability approach, we can accept the "reasonably should have known" standard, which imposes upon operators an appropriate, and critical, duty to regularly and diligently inspect their operations.

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. We are convinced that it is possible to draft language which meets these conditions, and we would support the inclusion of such language in SB 2040.

The issue of ensuring that injured parties can be made whole is intimately linked to the issue of the size of the oil spill response fund, which will be considered in the Appropriations Committee. In all of the various immunity proposals we have reviewed, there are a certain number of scenarios where damages must be paid from the oil spill response fund in order for the injured party to be made whole. We do not have a difficulty with

SB 2040, p.2

the limited use of the fund for this purpose, but we are very concerned that the fund is not large enough in the current language of the bill to assure that all damages can be paid. SB 2040 limits total payments, from the "upfront" fund, or the additional borrowing authority, to 500 million dollars. Since, in certain cases, the administrator will be assuming the obligations and liability of unknown or insolvent responsible parties, the 500 million dollar fund limitation imposes a de facto liability cap on those types of spills.

Since economically deprived fishermen and merchants, injured wildlife and obliterated habitat do not disappear simply because the spiller happens to be unknown or insolvent, we believe that the borrowing authority which supplements the 150 million dollar fund must be unlimited. In all potential oil spill scenarios, we must ensure that all injured parties can be made whole. The inclusion of responder immunity language therefore makes it doubly important to keep the borrowing authority unlimited.

We greatly appreciate Senator Keane's willingness to include us in these negotiations, and we look forward to continuing in the effort to provide the California Coast with the type of protection it deserves.

March 20, 1991

Senator Lloyd Jones
Chair, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Subject: Your Letter of Inquiry dated March 18, 1991
regarding CSHB 196

Dear Senator Jones:

Thank you for your interest in the potential impacts of CSHB 196 on our operations. Tesoro views the benefits from this bill to fall into two categories:

1. Broad Public Benefits

HB 196 will actually enhance the effectiveness of spill responders and will bring Alaska up to standards comparable with that adopted by many coastal states during the past year. Many of the general benefits of the bill have been communicated in previous correspondence and meetings. The major effect will be to make emergency spill response services available with terms that operations such as Tesoro can meet.

2. Specific Benefits to Tesoro

Tesoro operates a 80,000 bpd refinery at Kenai which relies on Alaska North Slope Crude Oil (ANS) for 90% of its feedstock. Approximately 45,000 bpd of this oil is purchased directly from the State. This oil is transported from Valdez to Kenai on the "Overseas Washington", a double bottom tanker chartered by Tesoro. In order to operate in Alaska waters the vessel must have a Oil Spill Contingency Plan. The availability of resources necessary to obtain approval of the Plan in Prince William Sound means that Tesoro must contract with Alyeska for the initial response services. Alyeska, as a Response Action Contractor, has established a requirement for \$1 Billion in directly actionable financial responsibility as a condition for making the necessary response services available. Tesoro has an estimated value of \$200 Million and is not able to provide this level of financial responsibility. Passage of HB 196 is expected to make it possible for Tesoro to reach a long term agreement for these vital spill response services.

The negative impact of failing to get this legislation passed is expected to include costly, and time consuming litigation between Tesoro and Alyeska with no guarantees to Tesoro that the outcome will result in a requirement Tesoro could meet. Tesoro's ability to maintain uninterrupted operations is threatened in the

Senator Lloyd Jones
March 20, 1991
Page 2 of 3

absence of an agreement with (or successful legal action to compel) Alyeska to provide the spill response services. There are no alternative crude oil supplies available to Tesoro. An interruption in operations could have significant impacts on the Company as well as the State of Alaska in the areas of PEOPLE, TAX BASE LOSS, and FUEL SUPPLY INTERRUPTIONS.

PEOPLE

Tesoro employees 222 people in the state with annual payroll of approximately \$11.6 Million. In addition Tesoro is the majority owner of Interior Fuels in Fairbanks with 26 employees and is a joint venture partner in Northstores Ventures which operates 7-11's in Alaska with 325 employees. The combined payroll of these 573 employees is approximately \$17.5 Million.

TAX BASE COST

Tesoro is also a major component of the Kenai Peninsula tax base with the most recent year's tax payment for Ad Valorem taxes of \$1.383 Million. The company is a major contributor to numerous civic and social organizations in the state and our employees are very active contributors of time and resources in the communities in which we operate.

FUEL SUPPLY INTERRUPTIONS

An interruption in Tesoro's operations would have immediate impacts on a large segment of Alaska. Tesoro is one of the largest suppliers of home heating oil; jet fuel, and gasoline. The enclosed charts illustrate the percentage of the Alaska market that is supplied by Tesoro products.

Gasoline Supplies

Tesoro supplied approximately 63% of the gasoline consumed in the State of Alaska during 1990. The gasoline is marketed by Tesoro's 120+ stations (including 7-11's), Chevron, and Texaco in South Central Alaska and the Interior.

Jet Fuel

Approximately 29.6% of 1990's Jet Fuel delivered in Alaska was manufactured by Tesoro. The international cargo operations, as well as passenger traffic of Anchorage International, would be threatened until alternative fuel supplies could be arranged for shipment via tanker to Anchorage. This product presently is

Senator Lloyd Jones
March 20, 1991
Page 3 of 3

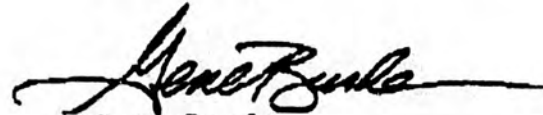
delivered to Anchorage via Tesoro's pipeline between the Refinery and Anchorage. The availability of an uninterrupted supply of jet fuel has contributed to the development of Anchorage as an international hub for cargo traffic.

Diesel

The Alaska fishing industry and home heating customers rely heavily on diesel fuel manufactured by Tesoro. During 1990 approximately 22.3% of the diesel fuel sold/distributed in Alaska was Tesoro's. The diesel and home heating fuel is distributed from Western Alaska to North Western Alaska including many interior locations.

The passage of CSHB 196 will contribute to the resolution of a difficult problem for our company that has significant implications to the State of Alaska. Again, I appreciate your interest and will be available to discuss these matters at your convenience.

Sincerely,

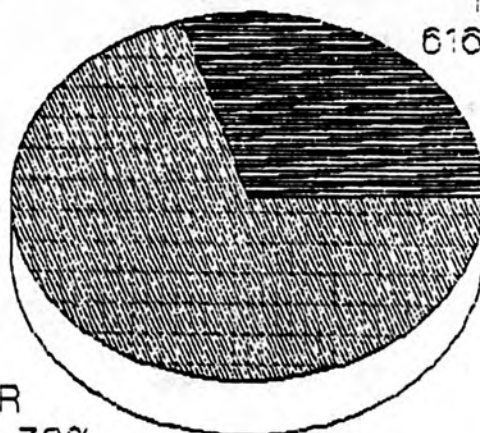


Gene Burden
Vice President -
Environmental &
Government Affairs

Enclosures

TESORO

JET FUEL SALES CY 1990 (BBLs)



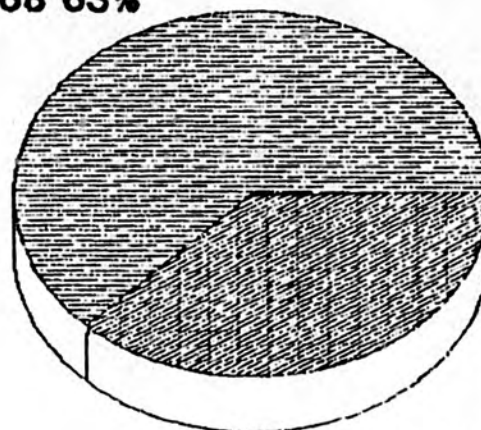
TESORO
6160073 30%

OTHER
14633650 70%



GASOLINE FUEL SOLD IN ALASKA (BBLs) CY 1990

TESORO 3805168 63%



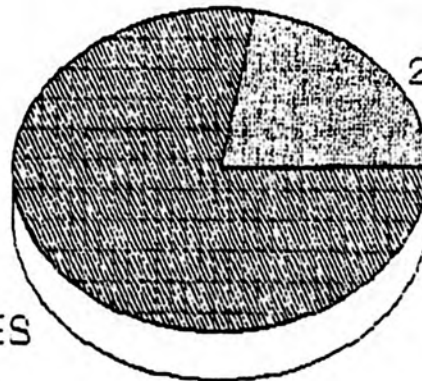
OTHER SOURCES 2265431 37%



DIESEL SALES IN ALASKA (BBLs) CY 1990



HOME HEATING OIL



TESORO
2660325 22%

OTHER SOURCES
9254077 78%

MARINE & FISHING FLEETS




UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4049 KENAI, ALASKA 99611

(907) 283-3600

283-3600

FAX (907) 283-3306

**UCIDA OPPOSES HB 196 & ITS OBJECTIVE OF LOWERING
FURTHER LIABILITY STANDARDS FOR RAC'S**

April 2, 1991

1. In both 1989 & 1990 the Alaska legislature lowered the standard of liability for RAC's from the normal standard of "strict liability", i.e. liable for whatever injuries the person caused, whether he was negligent or not.

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.

2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.

3. In 1989 legislature stated that:

"To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time their response action services were performed."

standards and practices at the time that response action

4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

CHANGED → 5. As proposed, the RAC would be immunized from liability for rogue actions taken that were contrary to applicable plans and orders of the agency directing the response.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities

Then Matthews
Then Matthews

Post-It™ brand fax transmittal memo 7671	
To: <i>UFA-R-P-K</i>	From: <i>UCIDA</i>
Co.:	Co.:
Dept.:	Phone #:
Fax #:	

CSHB 196 Background

**SECTION E,
No. 15**



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600

FAX (907) 283-3306

April 23, 1991

Representative Dave Donley
House Judiciary Chair

CSHB 196 Background

SECTION E,
No. 16

Dear Rep. Donley,

United Cook Inlet Drift Association (UCIDA) represents some 400 of the 585 Cook Inlet salmon drift permit holders. UCIDA would like to express our continued opposition to CS for House Bill No. 196 which was reported out of House Resources.

You have already received two presentations we made to House Resources on April 10 and April 16, 1991. Rather than repeat our positions we will try and briefly summarize:

1) Current liability statutes for RACs in fact do comprise Good Samaritan concepts. In 1989 and again in 1990, the legislature limited RAC liability. RACs are currently liable only for their own acts or omissions which cause damages if those acts or omissions "were not in accordance with generally accepted professional standards and practices at the time their response action services were performed." (AS 46.03.823(a)).

2) Current liability statutes constitute good public policy in balancing the public's interests and the legitimate concern of RACs. Under current legislation, damaged parties are not covered under all possible scenarios. This fact is outweighed, in part, by the public good that is served by a prompt response by RACs doing their best - i.e. "performing in accordance with generally accepted professional standards ... etc."

3) CS for HB 196 does not address the issue that is driving this legislation - bonding requirements by Alyeska - the "Seven

illusion that this is anything other than strong arm tactics by Alyeska aimed at lowering its own liability standards.

Recently, RACs other than Alyeska have jumped on the band wagon. It is only natural for any private enterprise to seek to insulate itself as much as possible from any liability for its actions. We would remind the committee that there has never been a spill in Alaska for which a RAC could not be found. Indeed, RACs fell all over themselves to get a piece of the action after the Exxon Valdez spill. Finally, in this regard, to the best of our knowledge the only RAC alleged to have acted negligently during the Exxon Valdez was Alyeska.

Alyeska has made statements referring to the "simple negligence" standard and how if it responds according to its plan with the state, but loses some oil from a boom, it could be held liable (Clarion 4/18/91, enclosed). This leads us to conclude that Alyeska either has not read AS 46.03.823(a) or that they are not prepared to fully inform the public about current state statutes.

It is obvious who stands to benefit from the lowering of RAC liability standards. The other side of the coin is that the cost of damages will shift to someone else.

Who may suffer? Since "strict liability" for an RAC's own acts or omissions has been already removed by current legislation for most instances, injured parties currently must show negligence - i.e. currently litigation is necessary to show that the RAC did not act "in accordance with generally accepted professional standards ...etc."

CS for HB 196 purports to place liability for the acts or omissions of a RAC for which the RAC is not liable under AS 46.03.823 (gross negligence) on the party strictly liable for the spill as defined in AS 46.03.823(a).

UCIDA has some doubt about the responsible party being forced to assume liability for damages caused by a RAC not directly under its control, let alone the actions of 2nd & 3rd party RACs or volunteers.

Indeed, it is somewhat surprising that attorneys for those owners who might be held strictly liable for the release are not very actively opposing this shift of liability on to their clients.

However, if we concede that it may be possible to shift this legal liability to "responsible parties strictly liable" for the release, UCIDA contends that for negligent acts by RACs, victims will often have no practical or legal resource for compensation for the following reasons:

- A) The responsible party may be unknown.
- B) The responsible party may have few if any assets.
- C) Under AS 46.03.758 3(h), the responsible party is not liable for civil penalties if the discharge occurred solely as a result of:
 - 1) An act of God,
 - 2) An act of a third party with whom the person charged has not been made jointly & severally liable,
 - 3) A negligent or intentional act of the state of Alaska or the United States, or
 - 4) An act of war

Finally, UCIDA understands the provisions found in the Federal Oil Pollution Act of 1990 (Sec. 4201) are being cited as precedents for the present legislation. Federal legislation of this type represents the lowest common denominator in terms of liability standards. Alaska and many of its fishing organizations, including UCIDA, fought long and hard to maintain the state's rights to craft legislation and set liability standards higher than the federal standards. The House Senate Conference Committee which drafted this legislation was not receptive to input from the public with respect to limiting industry liability.

In conclusion:

1) Tesoro has a legitimate concern with its bonding requirements, and UCIDA requests that to the extent possible this legislation be recrafted to address the bonding issue.

2) Legislation probably cannot be expected to resolve this dispute between members of the private sector.

U.S. Department
of Transportation
United States
Coast Guard



Commander
Eleventh Coast Guard District

Union Bank Bldg.
488 California
Long Beach, CA 90802-4300
Main Street (d)

Ph: (213) 499-5201

5090

AUG 28 1990

The Honorable Willie L. Brown Jr.
Speaker, California State Assembly
State Capitol
Sacramento, California 95814

Dear Mr. Brown:

I am writing to you to express concern about legislation that is important to the interests of the United States Coast Guard and the State of California. The legislation, currently being debated in the Assembly, is Senate Bill 2040.

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 16th. That Act provides limited federal immunity for all oil spill responders. The Coast Guard did not object to that provision because we believe that the issue is related to the national interest in promoting quick, effective responses to oil spills and their threats. Effective response requires resources from both the public and private sectors.

A law that does not address responders' concerns 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 these factors into account if effective programs are to be put in place.

I urge you to give full consideration to limited immunity provisions for all oil spill responders other than liable parties in your deliberations on SB 2040.

Sincerely,

M. E. GILBERT
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

CSHB 196 Background

SECTION E,

No. 17

U.S. OIL & REFINING CO.

5150 Wilshire Boulevard • Los Angeles, CA 90036
P.O. Box 36913 • (213) 938-7156 • TWX 9103213973

WILLIAM C. KITTO
Vice President
Crude Oil Supply

18 March 1991

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

Dear Representative Hudson:

U.S. Oil & Refining Co. and its wholly owned subsidiary, U.S. Oil Supply Co., have been involved in the business of transporting ANS crude oil from Valdez to the State of Washington and to other Alaskan ports by tankers for several years. This activity was necessary to supply U.S. Oil & Refining Co.'s refinery in Tacoma, Washington with crude oil as well as to supply other refineries such as Tesoro, Texaco, and Shell.

Alyeska had agreed to provide clean-up services to shippers of crude oil from Valdez in case such shippers spilled crude in Prince William Sound. When Alyeska decided, however, that its legal liability resulting from these services was unlimited even though it had not caused the spill, Alyeska demanded indemnity from such shippers in the amount of \$1 billion. Such a requirement could not be satisfied through insurance by the shippers or tanker owners and thus prevented U.S. Oil & Refining Co. and others from continuing to transport ANS crude. Of course, for the owners of Alyeska and other very large oil companies, the requirement was not impossible to meet. They just indemnify Alyeska by contract. This is not an option open to smaller companies such as ourselves.

We believe in taking responsibility for our own actions and insuring these activities to the extent possible. Ships which we used were members of TOVALOP and always provided \$700 million of P&I insurance; and we as shippers always met the financial responsibility requirements of the State of Alaska and are members of CRISTAL. However, to be required to indemnify others such as Alyeska for their negligence and in such a substantial sum as \$1 billion not only seems unreasonable but is in fact impossible. The result was our being prevented from continuing to transport ANS to our refinery in Tacoma. The economic impact of not buying barrels delivered on U.S. Oil vessels is estimated to be over \$5 million per year.

CSHB 196 Background

SECTION E.

No. 18

Representative Bill Hudson
18 March 1991
Page 2

The proposed House Bill No. 196 would limit the liability of the spill responders such as Alyeska. Since it would apparently satisfy Alyeska that its potential liability would be covered by insurance available to shippers, we are hopeful that companies such as ours would be able to transport ANS as they have done in the past. It does not avoid or limit the liability of anyone who spills oil nor do we believe it should. However, the oil spill responder who did not create the spill is then permitted to quickly respond to the clean-up need without taking on unreasonable responsibility for the spill created by others.

Your help in advancing the proposed legislation will be greatly appreciated.

Very truly yours,

U.S. OIL & REFINING CO.

W.C. Kitto

W.C. Kitto
Vice President

Ventura County Commercial Fishermen's Association

SERVING COMMERCIAL FISHERMEN SINCE 1987

V.C.C.F.A. * 1567 SPINNAKER DRIVE * STE. 203-199 * VENTURA, CALIF. 93001
(805) 985-9705

Honorable George Deukmejian
Governor of California
State Capital First Floor
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hours of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to responders as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALDEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Janice

CSHB 196 Background

SECTION E,
No. 19

HOUSE AMENDMENT TO SENATE BILL NO. 2987

To the Secretary of the Senate:

This is to notify you that the House of Representatives adopted the following amendment(s):

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8. SECTION 1. This act may be cited as the Mississippi
9. Liability of Persons Responding to Oil Spills Act.
10. SECTION 2. For the purposes of this act the term:
11. (a) "Damages" means damages of any kind for which
12. liability may exist under the laws of this state resulting from,
13. arising out of, or related to the discharge or threatened
14. discharge of oil;
15. (b) "Discharge" means any emission (other than natural
16. seepage), intentional or unintentional, and includes, but is not
17. limited to, spilling, leaking, pumping, pouring, emitting,
18. emptying or dumping;
19. (c) "Federal on-scene coordinator" means the federal
20. official predesignated by the U.S. Environmental Protection Agency
21. or the U.S. Coast Guard to coordinate and direct federal responses
22. under subpart D, or the official designated by the lead agency to
23. coordinate and direct removal under subpart E, of the National
24. Contingency Plan;
25. (d) "National Contingency Plan" means the National
26. Contingency Plan prepared and published under Section 311(d) of
27. the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as

28. amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104
29. Stat. 484 (1990);

30. (e) "Oil" means oil of any kind or in any form,
31. including, but not limited to, petroleum, fuel oil, sludge, oil
32. refuse and oil mixed with wastes other than dredged spoil; but
33. does not include petroleum, including crude oil or any fraction
34. thereof, which is specifically listed or designated as a hazardous
35. substance under subparagraphs (A) through (F) of Section 101(14)
36. of the Comprehensive Environmental Response, Compensation, and
37. Liability Act (42 U.S.C. 9601) and which is subject to the
38. provisions of that act;

39. (f) "Person" means an individual, corporation,
40. partnership, association, state, municipality, commission, or
41. political subdivision of a state, or any interstate body;

42. (g) "Removal costs" means the costs of removal that are
43. incurred after a discharge of oil has occurred or, in any case in
44. which there is a substantial threat of a discharge of oil, the
45. costs to prevent, minimize or mitigate oil pollution from such an
46. incident;

47. (h) "Responsible party" means a responsible party as
48. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.
49. L. No. 101-380, 104 Stat. 484 (1990).

50. SECTION 3. (1) Notwithstanding any other provision of law,
51. a person is not liable for removal costs or damages which result
52. from actions taken or omitted to be taken in the course of
53. rendering care, assistance or advice consistent with the National
54. Contingency Plan or as otherwise directed by the federal on-scene
55. coordinator or by the state official with responsibility for oil
56. spill response.

57. (2) Subsection (1) does not apply:

58. (a) To a responsible party;

59. (b) To personal injury or wrongful death; or

60. (c) If the person is grossly negligent or engages in
61. willful misconduct.
62. (3) A responsible party is liable for any removal costs and
63. damages that another person is relieved of under subsection (1).
64. (4) Nothing in this section affects the liability of a
65. responsible party for oil spill response under state law.
66. SECTION 4. The Commission on Environmental Quality shall
67. promulgate any necessary rules and regulations in order to carry
68. out the provisions of this act.
69. SECTION 5. This act shall take effect and be in force from
70. and after its passage.

Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; TO
4. REQUIRE THE COMMISSION ON ENVIRONMENTAL QUALITY TO PROMULGATE
5. RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT; AND
6. FOR RELATED PURPOSES.

CHARLES J. JACKSON, JR.
Clerk of the House of Representatives

By: Senators Bilbo, Hall

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2987
(As Passed the Senate)

1. AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL
2. SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE
3. NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; AND
4. FOR RELATED PURPOSES.

5. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6. SECTION 1. This act may be cited as the Mississippi
7. Liability of Persons Responding to Oil Spills Act.

8. SECTION 2. For the purposes of this act the term:

9. (a) "Damages" means damages of any kind for which
10. liability may exist under the laws of this state resulting from,
11. arising out of, or related to the discharge of threatened
12. discharge of oil;

13. (b) "Discharge" means any emission (other than natural
14. seepage), intentional or unintentional, and includes, but is not
15. limited to, spilling, leaking, pumping, pouring, emitting,
16. emptying or dumping;

17. (c) "Federal on-scene coordinator" means the federal
18. official predesignated by the U.S. Environmental Protection Agency
19. or the U.S. Coast Guard to coordinate and direct federal responses
20. under subpart D, or the official designated by the lead agency to
21. coordinate and direct removal under subpart E, of the National
22. Contingency Plan;

23. (d) "National Contingency Plan" means the National
24. Contingency Plan prepared and published under Section 311(d) of
25. the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as
26. amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104
27. Stat. 484 (1990);

28. (e) "Oil" means oil of any kind or in any form,
29. including, but not limited to, petroleum, fuel oil, sludge, oil
30. refuse and oil mixed with wastes other than dredged spoil; but
31. does not include petroleum, including crude oil or any fraction
32. thereof, which is specifically listed or designated as a hazardous
33. substance under subparagraphs (A) through (F) of Section 101(14)
34. of the Comprehensive Environmental Response, Compensation, and
35. Liability Act (42 U.S.C. 9601) and which is subject to the
36. provisions of this act;

37. (f) "Person" means an individual, corporation,
38. partnership, association, state, municipality, commission, or
39. political subdivision of a state, or any interstate body;

40. (g) "Removal costs" means the costs of removal that are
41. incurred after a discharge of oil has occurred or, in any case in
42. which there is a substantial threat of a discharge of oil, the
43. costs to prevent, minimize or mitigate oil pollution from such an
44. incident;

45. (h) "Responsible party" means a responsible party as
46. defined under Section 1001 of the Oil Pollution Act of 1990, Pub.
47. L. No. 101-380, 104 Stat. 484 (1990).

48. SECTION 3. (1) Notwithstanding any other provision of law,
49. a person is not liable for removal costs or damages which result
50. from actions taken or omitted to be taken in the course of
51. rendering care, assistance or advice consistent with the National
52. Contingency Plan or as otherwise directed by the federal on-scene
53. coordinator or by the state official with responsibility for oil
54. spill response.

55. (2) Subsection (1) does not apply:

56. (a) To a responsible party;

57. (b) To personal injury or wrongful death; or

58. (c) If the person is grossly negligent or engages in
59. willful misconduct.

60. (3) A responsible party is liable for any removal costs and
61. damages that another person is relieved of under subsection (1).

62. (4) Nothing in this section affects the liability of a
63. responsible party for oil spill response under state law.

64. SECTION 4. This act shall take effect and be in force from
65. and after its passage.

Citation
DE LEGIS 5 (1991)
1991 Delaware Laws Ch. 5 (S.B. 6)

Rank(R)
R 1 OF 1

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DE-LEGIS P

DELAWARE 1991 SESSION LAW SERVICE
FIRST SESSION OF THE 136TH GENERAL ASSEMBLY
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Additions and deletions are not identified in this document.

Ch. 5
S.B. No. 6
HAZARDOUS WASTE **CLEANUP--LIABILITY** OF THIRD PARTIES

AN ACT TO AMEND TITLE 10, DELAWARE CODE, RELATING TO LIMITATION OF **LIABILITY**
FOR **OIL** AND HAZARDOUS MATERIAL DISCHARGE **CLEANUP**.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by adding thereto
a new Section to read as follows:

<< DE ST TI 10 s 8135 >>

"s 8135. Limitation on **Liability** of Third Parties Rendering Assistance in **Oil**
or Hazardous Material Discharge **Cleanup**.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the **liability** of any person rendering care, assistance, or advice to prevent, minimize or mitigate **oil** or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, wilful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of **liability** as set forth in Subsection (a) of this Section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under Subsection (a) of this Section.

(d) This Section shall not be construed to limit any **liability** of any person for personal injuries or wrongful death as a result of the acts or omissions of such person."

<< DE ST TI 10 s 8134 >>

Section 2. Amend Chapter 81, Title 10 of the Delaware Code by striking s 8134 in its entirety.

SYNOPSIS

This bill is proposed by the Delaware River and Bay Oversight Committee. The bill would limit liability for removal costs and damages (other than personal injury or wrongful death) of a third party who renders assistance in a cleanup operation to those acts which amount to gross negligence or reckless, wilful, wanton, or intentional misconduct.

Approved January 31, 1991.

DE LEGIS 5 (1991)
END OF DOCUMENT

1. any action brought by the state, a county, city, or district.
 2. (h) Except as provided in Section 1431.2 of the Civil
 3. Code, liability under this section shall be joint and
 4. several. However, this section does not bar a cause of
 5. action that a responsible party has or would have, by
 6. reason of subrogation or otherwise, against any person.

7. (i) This section does not apply to claims for damages
 8. for personal injury or wrongful death, and does not limit
 9. the right of any person to bring an action for personal
 10. injury or wrongful death under any provision or principle
 11. of law.

12. (j) Any payments made by a responsible party to
 13. cover liabilities arising from a discharge of oil, whether
 14. under this division or any other provision of federal, state,
 15. or local law, shall not be charged against any royalties,
 16. rents, or net profits owed to the United States, the state,
 17. or any other public entity.

18. (k) Any action which a private or public individual or
 19. entity may have against a responsible party under this
 20. section may be brought directly by the individual or
 21. entity or by the state on behalf of the individual or entity.
 22. However, the state shall not pursue any action on behalf
 23. of a private individual or entity which requests the state
 24. not to pursue that action.

25. (l) For the purposes of this section, "vessels" means
 26. vessels as defined in Section 21 of the Harbors and
 27. Navigation Code.

28. **8670.56.6.** (a) (1) Except as provided in subdivisions
 29. (b) and (d), and subject to subdivision (c), no person,
 30. including, but not limited to, an oil spill cooperative, its
 31. agents, subcontractors, or employees, shall be liable
 32. under this chapter or the laws of the state to any person
 33. for costs, damages, or other claims or expenses as a result
 34. of actions taken or omitted in good faith in the course of
 35. rendering care, assistance, or advice in accordance with
 36. the National Contingency Plan, the state oil spill
 37. contingency plan, or at the direction of the administrator,
 38. onsite coordinator, or the Coast Guard in response to a
 39. spill or threatened spill of oil.

40. (2) The qualified immunity under this section shall

1. not apply to any oil spill response action which is
 2. inconsistent with the directions of the Coast Guard, the
 3. director, or, in the absence of overriding directions of the
 4. Coast Guard or the director, is inconsistent with
 5. applicable contingency plans implemented under this
 6. division.

7. (3) Nothing in this section shall, in any manner or
 8. respect, affect or impair any cause of action against or any
 9. liability of any person or persons responsible for the spill,
 10. for the discharged oil, or for the tanker, barge, terminal,
 11. pipeline, or facility from which the oil was discharged.
 12. The responsible person or persons shall remain liable for
 13. any and all damages arising from the discharge, including
 14. damages arising from improperly carried out response
 15. efforts, as otherwise provided by law.

16. (4) The qualified immunity under this section shall
 17. only apply to response activity during the first 60 days
 18. after the spill for persons whose primary purpose is the
 19. business of responding to oil spills and who are regularly
 20. engaged in the business of responding to oil spills. No
 21. immunity shall attach to response activity after
 22. expiration of the first 60 days for the parties described
 23. herein.

24. (5) The qualified immunity under this section shall
 25. attach, without the limitation described in paragraph (4),
 26. to those responding parties that do not "regularly
 27. engage" in the oil spill response business and to persons
 28. and entities who are primarily dedicated to the
 29. preservation and rehabilitation of wildlife. There shall be
 30. no limitation on the duration of the immunity.

31. (b) Nothing in this section shall, in any manner or
 32. respect, affect or impair any cause of action against or any
 33. liability of any party or parties responsible for the spill, or
 34. the responsible party's agents, employees, and
 35. subcontractors, for the discharged oil, or for the tanker,
 36. terminal, pipeline, or marine facility from which the oil
 37. was discharged.

38. (c) The responsible party or parties shall:

39. (1) Notwithstanding subdivision (b) or (h) of Section
 40. 8670.56.5, or any other provision of law, be strictly and

1 jointly and severally liable for all damages arising
2 pursuant to subdivision (g) of Section 8670.505 from the
3 response efforts of its agents, employees, subcontractors,
4 or an oil spill cooperative of which it is a member or with
5 which it has a contract or other arrangement for cleanup
6 of its oil spills, unless it would have a defense to the
7 original spill.

8 (2) Remain strictly liable for any and all damages
9 arising from the response efforts of a person other than
10 a person specified in paragraph (1).

11 (d) Nothing in this section shall immunize a
12 cooperative or any other person from liability for acts of
13 gross negligence or willful misconduct in connection with
14 the cleanup of a spill.

15 (e) This section shall not apply to any action for
16 personal injury or wrongful death.

17 (f) As used in this section, a "cooperative" means an
18 organization of private persons which is established for
19 the primary purpose and activity of preventing or
20 rendering care, assistance, or advice in response to a spill
21 or threatened spills of oil.

22 (g) Except for the responsible party, membership in a
23 cooperative shall not, in and of itself, be grounds for
24 liability resulting from cleanup activities of the
25 cooperative.

26 (h) For purposes of this section, there shall be a
27 rebuttable presumption that an act or omission described
28 in subdivision (a) was taken in good faith.

29 (i) In any situation in which immunity is granted
30 pursuant to subdivision (a) and a responsible party is not
31 liable, is not liable for noneconomic damages caused by
32 another, or is partially or totally insolvent, the fund
33 provided for in Article 7 (commencing with Section
34 8670.46) shall, in accordance with its terms, reimburse
35 claims of any injured party for which a person who is
36 granted immunity pursuant to this section would
37 otherwise be liable.

38 (j) The immunity granted pursuant to subdivision (a)
39 shall apply to a cooperative only if that cooperative has
40 contracted with the administrator to respond to oil spills

1 in accordance with the state oil spill contingency plan
2 and this chapter. The administrator shall enter into
3 contract with any cooperative that is qualified and that
4 offers to contract on mutually acceptable terms, in
5 accordance with the state oil spill contingency plan and
6 this chapter.

7 (j) (1) The immunity granted by this section shall
8 only apply to response efforts that are undertaken after
9 the administrator certifies that contracts with qualified
10 and responsible persons are in place to ensure an
11 adequate and expeditious response to any foreseeable oil
12 spill that may occur in marine waters for which the
13 responsible party (A) cannot be identified or (B) is
14 unable or unwilling to respond, contain, and cleanup the
15 oil spill in an adequate and timely manner. In negotiating
16 these contracts, the administrator shall, to the maximum
17 extent practicable, procure the services of persons who
18 are willing to respond to oil spills with no, or lesser,
19 immunity than that conferred by this section, but, in no
20 event, a greater immunity. The administrator shall make
21 the certification required by this subdivision on an annual
22 basis. Upon certification, the immunity conferred by this
23 section shall apply to all response efforts undertaken
24 during the calendar year to which the certification
25 applies. In the absence of the certification required by
26 this subdivision, the immunity conferred by this section
27 shall not attach to any response efforts undertaken by any
28 person in marine waters.

29 (2) In addition to the authority to negotiate contracts
30 described in (1) above, the administrator shall also be
31 authorized to negotiate and enter into indemnification
32 agreements with qualified and financially responsible
33 persons to respond to oil spills that may occur in marine
34 waters for which the responsible party (A) cannot be
35 identified or (B) is unable or unwilling to respond,
36 contain, and cleanup the oil spill in an adequate and
37 timely manner.

38 (3) The administrator may indemnify response
39 contractors for (A) all damages payable by means of
40 settlement or judgment that arise from response efforts

1 to which the immunity conferred by this section would
2 otherwise apply, and (B) reasonably related legal costs
3 and expenses incurred by the responder, provided that
4 indemnification shall only apply to response efforts
5 undertaken after the expiration of any immunity that
6 may exist as the result of the contract negotiations
7 authorized in this subdivision. In negotiating these
8 contracts, the administrator shall, to the maximum extent
9 practicable, procure the services of persons who are
10 willing to respond to oil spills with no, or as little, right to
11 indemnification as possible. All indemnification shall be
12 paid by the administrator from the Oil Spill Response
13 Trust Fund.

14 (k) (1) With regard to a person who is regularly
15 engaged in the business of responding to oil spills, the
16 immunity conferred by this section shall not apply to any
17 response efforts by that person that occur later than 60
18 days after the first day the person's response efforts
19 commence.

20 (2) Notwithstanding the limitation contained in
21 paragraph (1), the administrator may, upon making all
22 the following findings, extend the period of time, not to
23 exceed 30 days, during which the immunity conferred by
24 this section applies to response efforts:

25 (A) Due to inadequate or incomplete containment
26 and stabilization, there exists a substantial probability
27 that the size of the spill will significantly expand and (i)
28 threaten previously uncontaminated marine or land
29 resources, (ii) threaten already contaminated marine or
30 land resources with substantial additional contamination,
31 or (iii) otherwise endanger the public safety or welfare.

32 (B) The remaining work is of such a difficult or
33 perilous nature that extension of the immunity is clearly
34 in the public interest.

35 (C) No other qualified and financially responsible
36 contractor is prepared and willing to complete the
37 response effort in the absence of the immunity, or a lesser
38 immunity, as negotiated by contract.

39 (3) The administrator shall provide five days' notice of
40 his or her proposed decision to either extend, or not

1 extend, the immunity conferred by this section.
2 Interested parties shall be given an opportunity to
3 present oral and written evidence at an informal hearing.
4 In making his or her proposed decision, the administrator
5 shall specifically seek and consider the advice of the
6 relevant Coast Guard representative. The administrator's
7 decision to not extend the immunity shall be announced
8 at least 10 working days before the expiration of the
9 immunity to provide persons an opportunity to terminate
10 their response efforts as contemplated by paragraph (4).

11 (4) No person or their agents, subcontractors, or
12 employees shall incur any liability under this chapter or
13 any other provision of law solely as a result of that
14 person's decision to terminate their response efforts
15 because of the expiration of the immunity conferred by
16 this section. A person's decision to terminate response
17 efforts because of the expiration of the immunity
18 conferred by this section shall not in any manner impair,
19 curtail, limit, or otherwise affect the immunity conferred
20 on the person with regard to the person's response efforts
21 undertaken during the period of time the immunity
22 applied to such response efforts.

23 (5) The immunity granted under this section shall
24 attach, without the limitation contained in this
25 subdivision, to the response efforts of persons who are not
26 regularly engaged in the business of responding to oil
27 spills. Persons who are not regularly engaged in the
28 business of responding to oil spills includes, but is not
29 limited to, (A) persons who are primarily dedicated to
30 the preservation and rehabilitation of wildlife and (B)
31 persons who derive their livelihood primarily from
32 fishing.

33 (l) As used in this section, "response efforts" means
34 rendering care, assistance, or advice in accordance with
35 the National Contingency Plan, the state oil spill
36 contingency plan, or at the direction of the administrator,
37 onsite coordinator, or the Coast Guard in response to a
38 spill or threatened spill of oil.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT
SECOND SUBSTITUTE HOUSE BILL NO. 2494

Passed the House February 13, 1990
as amended
Yeas 98 Nays 0

Passed the Senate March 1, 1990
as amended
Yeas 42 Nays 1

March 6, 1990: The House concurred in the Senate amendments
and passed the bill as amended by the Senate.

Yeas: 96 Nays: 0

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that
the attached is enrolled SECOND SUBSTITUTE HOUSE BILL NO. 2494
as passed by the House of Representatives and the Senate on the dates herein set forth.

Alan Thompson
ALAN THOMPSON, Chief Clerk

1 ((department-at-its-office-in-Olympia,-or-a-regional-office--thereof,
2 of--such--discharge--or--entry)) coast guard and the division of
3 emergency management. The notice to the division of emergency
4 management within the department of community development shall be
5 made to the division's twenty-four hour state-wide toll-free number
6 established for reporting emergencies.

7 NEW SECTION. Sec. 25. (1) The following persons shall not be
8 liable for necessary expenses or property damage caused by an act or
9 omission of that person during the cleanup of oil spilled into the
10 navigable waters of the state, unless the act or omission was
11 performed in bad faith or with gross negligence:

12 (a) The state or any unit of local government;

13 (b) A person who volunteers to assist in the cleanup of the
14 spilled oil; and

15 (c) A person meeting the standards of section 4 of this act.

16 (2) This section shall not affect the liability of any person
17 responsible for the spilled oil or responsible for the facility or
18 covered vessel from which the oil was spilled.

19 NEW SECTION. Sec. 26. A new section is added to chapter 88.16
20 RCW to read as follows:

21 An oil tanker under escort of a tug or tugs pursuant to the
22 provisions of RCW 88.16.190 shall not exceed the service speed of the
23 tug or tugs that are escorting the oil tanker.

24 Sec. 27. Section 8, chapter 18, Laws of 1935 as last amended by
25 section 2, chapter 264, Laws of 1987 and RCW 88.16.090 are each
26 amended to read as follows:

27 (1) A person may pilot any vessel subject to the provisions of
28 this chapter on waters covered by this chapter only if appointed and
29 licensed to pilot such vessels on said waters under and pursuant to
30 the provisions of this chapter.

31 (2) A person is eligible to be appointed a pilot if the person is
32 a citizen of the United States, over the age of twenty-five years and
33 under the age of seventy years, a resident of the state of Washington
34 at the time of appointment and only if the pilot applicant holds as a
35 minimum, a United States government license as a master of freight

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 342B-7, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) If the director determines that [the] any person has
4 violated an accepted schedule[,] or an order issued under this
5 section, [any rule adopted pursuant to this chapter, any condition
6 of a permit or variance issued pursuant to this chapter, or has
7 continued to violate this chapter,] the director shall impose
8 penalties by sending a notice in writing, either by certified mail
9 or by personal service, to that person, describing such
10 nonadherence or violation with reasonable particularity."

11 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
12 amended by deleting the definition "individual wastewater system".

13 [""Individual wastewater system" means a facility which
14 disposes of treated or untreated domestic wastewater generated
15 from dwelling units or other sources generating domestic
16 wastewater of similar volume and strength such as: (1)
17 developments of a density not greater than one dwelling unit per
18 5,000 square feet of ultimate development; (2) developments with
19 buildings other than dwellings but involving the generation of

1 pollutant or contaminant concerned, taking into
2 consideration the characteristics of such hazardous
3 substance[,] or pollutant or contaminant, in light of
4 all relevant facts and circumstances; and precautions
5 were taken against foreseeable acts or omissions of any
6 such third party and the consequences that could
7 foreseeably result from such acts or omissions; or
8 (4) Any combination of the foregoing paragraphs.

9 [(c)] (d) No person shall be liable under this chapter or
10 otherwise under the laws of the State or any of the counties,
11 including the common law to any government or private parties for
12 costs, damages, or penalties as a result of actions taken or
13 omitted in the course of rendering care, assistance, or advice in
14 accordance with this chapter or at the direction of an on-scene
15 coordinator, with respect to an incident creating a danger to
16 public health or welfare or the environment as a result of any
17 release of a hazardous substance or pollutant or contaminant or
18 the threat thereof. This subsection shall not preclude liability
19 for costs, damages, or penalties as the result of gross
20 negligence or intentional misconduct on the part of such person.

21 (e) No county or local government shall be liable under
22 this chapter for costs or damages as a result of actions taken in
23 response to an emergency created by the release or threatened

ENROLLED

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

1 A bill to be entitled
2 An act relating to pollution; amending s.
3 206.9935, F.S., relating to taxes imposed for
4 coastal protection; providing for certain
5 offshore oil drilling activity; providing for
6 catastrophic discharge; creating s. 253.035,
7 F.S.; requiring commercial vessels to anchor in
8 designated anchorage areas; amending s.
9 310.071, F.S.; providing for evaluation of
10 certificated deputy pilots; amending s.
11 310.101, F.S.; providing additional grounds for
12 disciplinary actions by the Board of Pilot
13 Commissioners; providing certain accountability
14 in directing foreign vessels; amending s.
15 310.111, F.S.; providing for report of certain
16 marine incidents; amending s. 310.141, F.S.;
17 providing that certain vessels are subject to
18 pilotage, and reenacting s. 310.161, F.S.,
19 relating to penalties for piloting without a
20 license, to incorporate said amendment in a
21 reference thereto; creating ss. 313.21, 313.22,
22 313.23, and 313.24, F.S.; authorizing ports to
23 regulate certain vessel movements and adopt
24 certain guidelines for bottom clearance, vessel
25 movements, and traffic communications; amending
26 s. 376.031, F.S.; providing definitions;
27 amending s. 376.051, F.S.; providing for
28 issuance of spill prevention and response
29 certificates; amending s. 376.06, F.S.;
30 providing a penalty for operation of a terminal
31 facility without a required registration

1068,
22

CODING: Words stricken are deletions; words underlined are additions.

Fl. - Spill Response

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

1 certificate; increasing the maximum application
2 fee; amending s. 376.065, F.S.; prohibiting
3 operation of a terminal facility without a
4 spill prevention and response certificate;
5 providing requirements for application and
6 operation; providing a penalty; amending s.
7 376.07, F.S.; providing for rules of the
8 Department of Natural Resources; providing for
9 spill prevention, abatement, and cleanup and
10 for wildlife rescue and rehabilitation;
11 requiring adequate booming in the transfer of
12 pollutants; providing penalties; prohibiting
13 use of certain lobster traps after a specified
14 date; creating s. 376.071, F.S.; requiring
15 certain vessels to maintain spill prevention
16 and control contingency plans; providing
17 requirements; providing penalties; amending s.
18 376.09, F.S.; providing certain immunity from
19 liability for described persons; amending s.
20 376.11, F.S.; providing additional sources and
21 uses for moneys in the Florida Coastal
22 Protection Trust Fund; amending s. 376.12,
23 F.S.; increasing certain maximum liabilities
24 for pollutant cleanup costs and damages;
25 specifying conditions for limits on liability;
26 providing financial security requirements;
27 providing penalties; providing liability of
28 cargo owner; specifying conditions for use of
29 certain defenses; providing an exemption from
30 certain notification requirements; creating s.
31 376.121, F.S.; providing liability for damages

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CODING: Words stricken are deletions; words underlined are additions.

1 guilty-of a felony of the second degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084, as required
3 in s. 837.012 ev-837-01.

4 (h) Requirements that any registrant causing or
5 permitting the discharge of a pollutant in violation of the
6 provisions of ss. 376.011-376.21, and at other reasonable
7 times, be subject to a complete and thorough inspection. If
8 the department determines there are unsatisfactory preventive
9 measures or containment and cleanup capabilities, it shall, a
10 reasonable time after notice and hearing in compliance with
11 chapter 120, suspend the registration until such time as there
12 is compliance with the department requirements.

13 (i) Such other rules and regulations as the exigencies
14 of any condition may require or as may reasonably be necessary
15 to carry out the intent of ss. 376.011-376.21.

16 (3) After July 31, 1990, no lobster trap or traps to
17 be deposited into waters of the state shall be impregnated
18 with a petroleum product that may be released from such trap
19 or traps. After July 31, 1993, no person shall deposit into
20 the waters of the state any lobster trap or traps that have
21 been impregnated with a petroleum product that may be released
22 from such trap or traps into the waters of the state.

23 Section 15. Section 376.071, Florida Statutes, is
24 created to read:

25 376.071 Spill contingency plan.--After December 31,
26 1990, any vessel operating in state waters with a storage
27 capacity to carry 10,000 gallons or more of pollutants as fuel
28 and cargo shall maintain an adequate written ship-specific
29 spill prevention and control contingency plan. Any such
30 vessel shall have on-board a "spill officer," designated by
31 the contingency plan, who is responsible for training crew

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NOTE: Words stricken are deletions; words underlined are additions.

1 members to carry out spill response efforts required in the
2 contingency plan and coordinating all on-board response
3 efforts in case of a spill. An adequate plan shall include
4 provisions for on-board response, including notification,
5 verification, pollutant incident assessment, vessel
6 stabilization, discharge mitigation, and on-board discharge
7 containment, in accordance with this chapter, department
8 rules, and the Florida Coastal Pollutant Spill Contingency
9 Plan. A plan in compliance with the federal requirement for a
10 ship-specific spill contingency plan shall satisfy the
11 requirements for an adequate ship-specific spill contingency
12 plan required by this section. On or after January 1, 1991,
13 the master of a vessel with a storage capacity to carry 10,000
14 gallons or more of pollutants as fuel and cargo, which vessel
15 is operating in state waters without an adequate contingency
16 plan, commits a noncriminal infraction. The master shall be
17 cited by the department and shall appear before the county
18 court for the county in which the violation occurred or the
19 county court closest to the location at which the violation
20 occurred. The civil penalty for such an infraction shall be
21 up to \$5,000. An adequate contingency plan must be submitted
22 to the department prior to the vessel reentering a Florida
23 port. Failure to submit the required plan shall result in a
24 civil penalty of \$10,000.

25 Section 16. Present subsections (5) and (6) of
26 section 376.09, Florida Statutes, are renumbered as
27 subsections (6) and (7), respectively, and a new subsection
28 (5) is added to said section to read:

29 376.09 Removal of prohibited discharges.--

30 (5) Notwithstanding the provisions in subsection (4),
31 any person who is authorized by the department or the federal

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CODING: Words stricken are deletions; words underlined are additions.

1 government or the person alleged to be responsible for the
 2 discharge, or by a designee thereof, to render assistance in
 3 containing or removing pollutants shall not be liable for
 4 costs, expenses, and damages, unless such costs, expenses, and
 5 damages are a proximate result of acts or omissions caused by
 6 gross negligence or willful misconduct of such authorized
 7 person.

8 Section 17. Subsections (2) and (6) and paragraph (c)
 9 of subsection (4) of section 376.11, Florida Statutes, are
 10 amended to read:

11 376.11 Florida Coastal Protection Trust Fund.--

12 (2) The Florida Coastal Protection Trust Fund is
 13 established, to be used by the department as a nonlapsing
 14 revolving fund for carrying out the purposes of ss. 376.011-
 15 376.21. To this fund shall be credited all registration fees,
 16 penalties, judgments, damages recovered pursuant to s.
 17 376.121, other fees and charges related to ss. 376.011-376.21,
 18 and the excise tax revenues levied, collected, and credited
 19 pursuant to ss. 206.9935(1) and 206.9945(1)(a). Charges
 20 against the fund shall be in accordance with this section.

21 (4) Moneys in the Florida Coastal Protection Trust
 22 Fund shall be disbursed for the following purposes and no
 23 others:

24 (c) All costs and expenses of the cleanup,
 25 restoration, and rehabilitation of waterfowl, wildlife, and
 26 all other natural resources damaged by the discharge of
 27 pollutants, including the costs of assessing and recovering
 28 damages to natural resources, whether performed or authorized
 29 by the department or any other state or local agency.

30 (6) The department shall recover to the use of the
 31 fund from the person or persons causing the discharge or from

1 the Federal Government, jointly and severally, all sums owed
 2 or expended from the fund, pursuant to s. 376.12(6)(3), except
 3 that recoveries resulting from damage due to a discharge of a
 4 pollutant or other similar disaster shall be apportioned
 5 between the Florida Coastal Protection Trust Fund and the
 6 General Revenue Fund so as to repay the full costs to the
 7 General Revenue Fund of any sums disbursed therefrom as a
 8 result of such disaster. Requests for reimbursement to the
 9 fund for the above costs, if not paid within 30 days of
 10 demand, shall be turned over to the Department of Legal
 11 Affairs for collection.

12 Section 18. Effective October 1, 1990, section 376.12,
 13 Florida Statutes, is amended to read:

14 376.12 Liabilities and defenses of terminal facilities
 15 and vessels.--

16 (1) Because it is the intent of ss. 376.011-376.21 to
 17 provide the means for rapid and effective cleanup and to
 18 minimize cleanup costs and damages, any vessel, or its agents
 19 or servants, who permits or suffers a prohibited discharge or
 20 other polluting condition to take place within state
 21 boundaries shall be liable to the fund for all costs of
 22 cleanup or abatement, up to an amount not to exceed \$50 \$14
 23 million or \$625 \$100 per gross registered ton of such vessel,
 24 whichever is the lesser. When the department can show that
 25 such discharge was the result of willful or gross negligence
 26 or willful misconduct within the privity or knowledge of the
 27 owner or operator or agent thereof, such owner or operator
 28 shall be liable to the fund for the full amount of such sums
 29 expended. When a discharge of pollutants occurs from a
 30 terminal facility, recovery of costs of abatement and cleanup
 31 shall be limited to an amount not to exceed \$25 \$8 million,

transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 9-6.14:11, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;
 2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or
 3. There has been a significant change in the best available technology since the plan was approved.
- D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:
1. Approval was obtained by fraud or misrepresentation;
 2. The plan cannot be implemented as approved; or
 3. A term or condition of approval has been violated. (1990, c. 917.)

Editor's note. — Acts 1990, c. 919, cl. 2 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this

section shall become effective on July 1, 1992. Clause 3 of this act also stated that the Board should regard certain considerations in adopting such regulations.

§ 62.1-44.34:16. Financial responsibility. — A. (For effective date see Editor's note) The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Underground Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator whose financial responsibility is accepted by the Board under this

subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

D. Acceptance of proof of financial responsibility shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;
2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or
3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

E. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

F. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or the operator of the tank vessel had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board. (1990, c. 917.)

Editor's note. — Acts 1990, c. 917, cl. 4 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective 90 days after the effective date of such regulations. Clause 4 also provides that in promulgating such regula-

tions, the Board shall provide that, if evidence of financial responsibility provided to the federal government or any other state meets the requirements of subsection C of this section, comments shall be accepted by the Board in full or partial satisfaction requirements of subsection A of this section as appropriate.

§ 62.1-44.34:17. Exemptions. — Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil. (1990, c. 917.)

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge. — A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat

of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or \$10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section. (1973, c. 417; 1976, c. 51; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acts 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in

the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:19. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1978, c. 816; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend § 62.1-44.34:4, which was repealed by Acts 1990, c. 917. The effect of this amendment was to add lands and storm drain systems in the Commonwealth, along with

state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, this amendment has been effectuated in this corresponding new Code section.

1 coastal waters or at any other place where, unless controlled or
2 removed, they may drain, seep, run, or otherwise enter coastal
3 waters.

4 (8) "Discharge cleanup organization" means any group
5 or cooperative, incorporated or unincorporated, of owners or
6 operators of vessels or terminal facilities and any other persons
7 who may elect to join, organized for the purpose of abating,
8 containing, removing, or cleaning up pollution from discharges of
9 oil or rescuing and rehabilitating wildlife or other natural
10 resources through cooperative efforts and shared equipment,
11 personnel, or facilities. Any third-party cleanup contractor,
12 industry cooperative, volunteer organization, or local government
13 shall be recognized as a discharge cleanup organization, provided
14 the commissioner properly certifies the organization.

15 (9) "Federal fund" means the federal oil spill
16 liability trust fund.

17 (10) "Fund" means the coastal protection fund.

18 (11) "Harmful quantity" means that quantity of oil the
19 discharge of which is determined by the commissioner to be harmful
20 to the environment or public health or welfare or may reasonably be
21 anticipated to present an imminent and substantial danger to the
22 public health or welfare.

23 (12) "Hazardous substance" means any substance, except
24 oil, designated as hazardous by the Environmental Protection Agency
25 pursuant to the Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and
2 designated by the Texas Water Commission.

3 (13) "Marine terminal" means any terminal facility
4 used for transferring crude oil to or from vessels.

5 (14) "National contingency plan" means the plan
6 prepared and published, as revised from time to time, under the
7 Federal Water Pollution Control Act [33 U.S.C. Sec. 1321 et seq.]
8 and the Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

10 (15) "Natural resources" means all land, fish,
11 shellfish, fowl, wildlife, biota, vegetation, air, water, and other
12 similar resources owned, managed, held in trust, regulated, or
13 otherwise controlled by the state.

14 (16) "Oil" means oil of any kind or in any form,
15 including but not limited to crude oil, petroleum, fuel oil,
16 sludge, oil refuse, and oil mixed with wastes other than dredged
17 spill, but does not include petroleum, including crude oil or any
18 fraction thereof, which is specifically listed or designated as a
19 hazardous substance under subparagraphs (A) through (F) of Section
20 101(17) of the Comprehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which
22 is subject to the provisions of that Act, and which is so
23 designated by the Texas Water Commission.

24 (17) "Owner" or "operator" means:

25 (A) any person owning, operating, or chartering

1 national contingency plan, in responding to the discharge the
 2 commissioner or the state-designated on-scene coordinator shall to
 3 the greatest extent practicable act in accordance with the national
 4 contingency plan and cooperate with the federal on-scene
 5 coordinator or other federal agency or official exercising
 6 authority under the national contingency plan.

7 (c) The commissioner or the state-designated on-scene
 8 coordinator may act independently to the extent no federal on-scene
 9 coordinator or authorized agency or official of the federal
 10 government has assumed federal authority to oversee, coordinate,
 11 and direct response operations.

12 Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to
 13 the commissioner's authority under this chapter, any person or
 14 discharge cleanup organization may assist in abating, containing,
 15 or removing pollution from any unauthorized discharge of oil. This
 16 chapter does not affect any rights not inconsistent with this
 17 chapter that any such person or organization may have against any
 18 third party whose acts or omissions caused or contributed to the
 19 unauthorized discharge.

20 (b) Any person or discharge cleanup organization that
 21 renders assistance in abating, containing, or removing pollution
 22 from any unauthorized discharge of oil may receive compensation
 23 from the fund for response costs, provided the commissioner
 24 approves compensation prior to the assistance being rendered.
 25 Prior approval for compensation may be provided for in the state

1 coastal discharge contingency plan. The commissioner, on petition
 2 and for good cause shown, may waive the prior approval
 3 prerequisite.

4 Sec. 40.101. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.

5 (a) No action taken by any person or discharge cleanup
 6 organization to abate, contain, or remove pollution from an
 7 unauthorized discharge of oil, whether such action is taken
 8 voluntarily, or pursuant to the national contingency plan or state
 9 coastal discharge contingency plan, or pursuant to a discharge
 10 response plan required under this chapter, or pursuant to the
 11 request of an authorized federal or state official, or pursuant to
 12 the request of the responsible person, shall be construed as an
 13 admission of responsibility or liability for the discharge.

14 (b) No person or discharge cleanup organization that
 15 voluntarily, or pursuant to the national contingency plan or the
 16 state coastal discharge contingency plan, or pursuant to any
 17 discharge response plan required under this chapter, or pursuant
 18 to the request of an authorized federal or state official, or
 19 pursuant to the request of the responsible person, renders
 20 assistance or advice in abating, containing, or removing pollution
 21 from an unauthorized discharge of oil is liable for response costs,
 22 damages, or civil penalties resulting from acts or omissions
 23 committed in rendering such assistance or advice, except for acts
 24 or omissions of gross negligence or willful misconduct.

25 Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may

1 establish and maintain equipment and personnel at places the
 2 commissioner determines may be necessary to facilitate response
 3 operations.

4 Sec. 46.106. REFUSAL TO COOPERATE. (a) If a responsible
 5 person, or a person or discharge cleanup organization under the
 6 control of a responsible person, participating in operations to
 7 abate, contain, and remove pollution from any unauthorized
 8 discharge of oil, reasonably believes that any directions or orders
 9 given by the commissioner or the commissioner's designee under this
 10 chapter will unreasonably endanger public safety or natural
 11 resources or conflict with directions or orders of the federal
 12 on-scene coordinator, the party may refuse to comply with the
 13 direction or orders.

14 (b) The party shall state at the time of refusal the reason
 15 or reasons why the party refuses to comply. The party shall give
 16 the commissioner written notice of the reason or the reasons for
 17 the refusal within 48 hours of the refusal.

18 Sec. 46.107. PRESUMPTION OF NATURAL RESOURCES DAMAGES.

19 (a) In any action to recover natural resources damages, the amount
 20 of damages established by the commissioner in conjunction with
 21 state-designated natural resources trustees, according to the
 22 procedures and plans contained in the state coastal discharge
 23 contingency plan shall create a rebuttable presumption of the
 24 amount of such damages.

25 (b) The commissioner may establish the rebuttable

1 presumption by submitting to the court a written report of the
 2 amounts computed or expended according to the state plan. The
 3 written report shall be admissible in evidence.

4 Sec. 46.108. DERELICT VESSELS AND STRUCTURES. (a) A person
 5 may not leave, abandon, or maintain any structure or vessel
 6 involved in an actual or threatened unauthorized discharge of oil
 7 on public or private lands or at a public or private port or dock,
 8 in a wrecked, derelict, or substantially dismantled condition,
 9 without the consent of the commissioner.

10 (b) The commissioner may remove any vessel or structure
 11 described in Subsection (a) of this section and may recover the
 12 costs of removal from the owner or operator of the vessel or
 13 structure.

14 Sec. 46.109. REGISTRATION OF TERMINAL FACILITIES. (a) A
 15 person may not operate or cause to be operated a terminal facility
 16 without a discharge prevention and response certificate issued
 17 pursuant to rules promulgated under this chapter.

18 (b)(1) As a condition precedent to the issuance or renewal
 19 of a certificate, the commissioner shall require satisfactory
 20 evidence that:

21 (A) the applicant has implemented a discharge
 22 prevention and response plan consistent with state and federal
 23 plans and regulations for prevention of unauthorized discharges of
 24 oil and abatement, containment, and cleanup of pollution when such
 25 discharge occurs; and

... except for acts
 of willful misconduct.
 EQUIPMENT AND PERSONNEL. The commissioner may

SENATE BILL 179

By: Senator Coleman of the 1st, Allen of the 2nd and Hammill of the 3rd

AS PASSE

AN ACT

To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to provide for limited immunity from liability for persons responding to an oil spill or threat of an oil spill; to provide for definitions; to provide for applicability; to provide for certain liability regarding removal costs and damages; to provide for liability with respect to certain responsible parties; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, is amended by adding at the end thereof a new article, to be designated Article 7, to read as follows:

"ARTICLE 7

12-5-500. As used in this article, the term:

(1) 'Damages' means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) 'Discharge' means any emission, other than natural seepage, whether intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(3) 'Federal on-scene coordinator' means the federal official designated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses under subpart D or the official designated by the lead agency to coordinate and direct removal under subpart E of the National Contingency Plan.

(4) 'National Contingency Plan' means the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act, 31 U.S.C. 1321(d), as amended by the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

(5) 'Oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(6) 'Person' means an individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(7) 'Removal costs' means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(8) 'Responsible party' means a responsible party as defined under Section 1001 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

12-5-501. (a) Notwithstanding any other provision of law, 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 federal on-scene coordinator or by any state official with responsibility for oil spill response.

(b) Subsection (a) of this Code section shall not apply:

- (1) To a responsible party;
- (2) With respect to personal injury or wrongful death;
- (3) If the person is grossly negligent or engages in willful misconduct; or
- (4) To a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.).

(c) A responsible party shall be liable for any removal costs and damages that another person is relieved of under subsection (a) of this Code section.

(d) Nothing in this Code section shall affect the liability of a responsible party for oil spill response under any applicable state law."

Section 2. All laws and parts of laws in conflict with this Act are repealed.

**STATES WITH ACTION SINCE
1990**

**LIMITING THE SPILL RESPONDER
FROM SIMPLE NEGLIGENCE
LIABILITY**



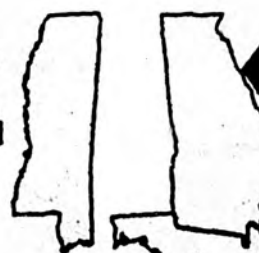
California:
Provides immunity for
first 60, 90 days
after the spill.
"Lempert-Keene Oil Spill
Prevention & Response Act"
of 1990 (Cal. Code 8670.56.6)

Virginia:
Sec.62.1-44.34:18 D.
1990

Delaware:
Senate Bill 6
Enacted 2/91



Mississippi:
Bill passed
Senate 2/91

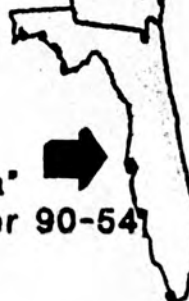


Georgia:
Passed
Senate
61-0
2/91

Hawaii:
Act 298, 1990



Florida:
Chapter 90-54
1990



**OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION**

WHO DOES THE BILL APPLY TO?

**The bill applies only to innocent cleanup contractors --
those who had no involvement in the spill itself.**