

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2127 SCOMM 79: HOUSE SPEC. COMM. ON OIL & GAS, 1991-1992

145

Memorandum

State of Alaska

Oil and Gas Conservation Commission

To: Representative Kay Brown Date: March 22, 1991

Telephone: 279-1433
Fax number: 276-7542

From: David W. Johnston
Chairman ~~SS~~

Subject: H.B. 212

The Commission understands the purpose of this bill is to apply extended confidentiality provisions only to stratigraphic test wells on unleased acreage. We recommend more specific language in paragraph (g) than currently proposed. The language "wells drilled solely for geologic information" can be interpreted to mean any well that is plugged and abandoned after drilling whether it is a stratigraphic test or an oil and gas exploratory well. We suggest using the term stratigraphic test in the statute, with a definition under AS 31.05.170 (i.e., stratigraphic test means a hole drilled for the sole purpose of gaining structural or stratigraphic information, or both, and not drilled with the intent of encountering oil or gas.)

Also, "...the disposition of all affected unleased land" is entirely too broad. We suggest: "...the disposition of all unleased land within 'x' miles of the wellbore." Actual distance can be worked out in committee hearings.

Paragraph (j) raises constitutionality questions relative to data from private lands. We suggest adopting language consistent with the decision of the Alaska Supreme Court after it rules in the KIC well case.

We would also recommend that the statute be amended to exclude all development wells from the 24 month confidentiality period under paragraph (f). Confidentiality should extend only to exploratory wells, not development wells. A development well can be defined as any well drilled to a defined oil or gas pool.

Finally, we question why AS 31.05.035 is referenced in AS 42.06.440, and suggest deleting the reference. The statutes are unrelated, the former refers to well data, the latter to pipeline information.

We look forward to participating in the committee hearings for this bill.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

April 8, 1991

The Honorable Bill Hudson, Chair
House Special Committee for Oil and Gas
P.O. Box V
Juneau, AK 99811

Dear Representative Hudson:

Subject: HB 212, which limits extended well confidentiality to wells drilled solely for geologic information.

Position: The Department of Natural Resources supports this bill.

Background: Currently, when an oil and gas well is drilled in Alaska, the owner of the well must file certain geologic and oil and gas information related to the well with the Alaska Oil and Gas Conservation Commission. The information required to be filed includes drilling logs, directional surveys, and other subsurface information. The state is required to keep this information confidential for two years. Under some circumstances, however, the state must extend this period of confidentiality if the owner so requests.

This bill would amend existing statutes to limit the circumstances under which the state extends confidentiality of well information for wells drilled on or after July 1, 1991. It would prevent all wells that are wholly or in part drilled for the purpose of finding oil and gas from receiving an extension of confidentiality for well data beyond the standard two year period. The bill would limit extended confidentiality to wells drilled solely for geologic information.

Currently, extended confidentiality must be granted where well data contains significant information relating to the valuation of unleased land in the same vicinity. This is too broad a standard for judging confidentiality extensions. Because almost all wells are near some unleased land (environmentally sensitive areas, federal land, private land, etc.), companies can apply for extended confidentiality in too many cases.

Under both the existing law and this bill, extended confidentiality would continue to terminate after the disposition of all unleased land affected by the well information. In addition, under both the existing law and this bill, confidentiality may be waived by the well owner.

This bill could increase the bonus bids received by the state for oil and gas leases because the availability of information would decrease the risk that companies must bear and would increase competition because more companies would participate in sales.

Please let me know if you need additional information related to this bill.

Sincerely,

Harold C. Heinze
Harold C. Heinze
Commissioner

enclosure

cc: Representative Brown
Representative Koponen
Representative Sharp
Bruce Kendall, Legislative Liaison, Office of the Governor
David Johnston, Chair, Oil and Gas Conservation Commission

SCOMM

79:13

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS:

Resources

Judiciary

Finance

Date of Committee Action: 4-29-91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 299

HOUSE BILL NO. 299

MUNICIPAL LIABILITY/HAZARDOUS SUBSTANCES

"An Act relating to municipal and utility liability for releases or threatened releases of hazardous substances."

RECOMMENDATIONS:

be replaced with _____

CSHB 299

☒ the same title

☐ a new title

☐ have attached amendments(s)

☐ do pass

☐ do not pass

☐ no recommendations

☒ individual recommendations

☐ additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s):

(Dept)

APPROVES PREVIOUS:

(Dept/Date)

☐ fiscal impact _____

☐ fiscal note(s) _____

☐ zero fiscal note _____

☐ zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	☒	<i>[Signature]</i>			
<i>[Signature]</i>	☒				
<i>[Signature]</i>	☒				
<i>[Signature]</i>	☒				
<i>[Signature]</i>	☒				

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSIONBILL NO. HB 299

Revision Date:

Title: Municipal and utility liability for
release of hazardous substancesDepartment Affected: DECBRU: Environmental QualitySponsor: House Oil & Gas Comm.Component: E.Q. ProjectsRequestor: House Oil & Gas Comm.

COMPONENT SERIAL NO.

1 | 0 | 1 | 6

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Division: Commissioner's OfficePhone: 465-2600
Date: 4/30/91Approved by Commissioner: [Signature]
Agency: Dept. of Environmental ConservationDate: 4/30/91

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

Alaska State Legislature
House of Representatives

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032



SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

April 19, 1991

To: House Members of the Oil and Gas Committee

From: Representative Dave Choquette *[Signature]*

Re: Municipal Liability for Release of Hazardous Substances
by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil.

The proposed legislation would do three things. It would remove★
municipal or utility liability for:

★ ★ ★ ★ ★

- a. the costs or damages that result from the release of the hazardous substance into a right of way or easement, when that release is discovered or occurs as a result of excavation by the municipality or utility;
- b. the storage of the excavated material in the easement or right of way; and
- c. the reuse or replacement of the excavated material in the easement or right of way in or near the point of excavation.

None of these provisions would apply if the municipality or utility caused the release or threatened release by their negligence, recklessness, or intentional misconduct.

If this bill were to be adopted, the municipality or utility would still be responsible for testing excavated soil. If it is contaminated, they will contact DEC to make them aware of the problem and go on to complete their project or needed repairs. DEC would then be able to find the responsible parties who would embark on a complete cleanup of the hazardous substance instead of only a partial cleanup within a municipal, utility, or state right-of-way.

I welcome your suggestions on this bill, and hope we can come to agreement on it so that it may be introduced by the House Special Committee on Oil and Gas.

Thank you.

**POSITION PAPER
HAZARDOUS MATERIAL CLEANUP
MUNICIPALITY OF ANCHORAGE**

**Municipality Liability for Release of Hazardous Substances by
Another Person**

It is essential that Municipalities receive a waiver of liability for the cleanup of hazardous substances generated by or from a facility or vessel owned by another person. Construction projects, throughout the state and in Anchorage, will grind to a halt if the current statute is not amended.

Contamination by petroleum products is common in developed areas because of leaking underground fuel storage tanks (i.e., gasoline, furnace oil) and surface spills from vehicles, fuel stations, homeowners, etc. It is almost impossible to do extended deep excavation in Anchorage for laying or relaying a water or sewer main, telephone cable, electric cable or gas lines without encountering some evidence of petroleum products.

Unless the contamination was the direct result of negligence or misconduct by the utility, the utility should not be liable for cleanup of contamination, within Municipal rights-of-ways, discovered while either designing or constructing a utility project. The Municipality should report the discovery of any contamination to the Alaska Department of Environmental Conservation and then proceed on with the project.

It is imperative that construction contracts not be halted or delayed. The short Alaskan construction season does not allow time for project delays. The Municipality or utilities will also be liable for substantial damage claims from contractors for delay caused by halting work. In a large project these delay claims could cost more than cleaning up the contamination caused by others solely because Municipalities or utilities are perceived to be a deep pocket.

The provision of essential services such as roads, storm drains, water and sewer mains, gas lines, cable television, telephone cable, and electric cable will be severely delayed and the cost substantially increased if this issue is not promptly resolved. A number of projects in Anchorage and the surrounding area are on hold now because of this issue.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHOQUETTE

TO: HB 299

Page 2, lines 20 - 30:

Delete all material.

Insert the following new subsections to read:

"(k) If the municipality or utility, as appropriate, has complied with (l) of this section, a municipality or utility is not liable under this section for costs or damages as a result of a release or threatened release of a hazardous substance in a municipal, state, or utility easement or right-of-way that occurs or is discovered as a result of excavation by the municipality or the utility in the easement or right-of-way, storage of the excavated material in the easement or right-of-way, or reuse or replacement of the excavated material in the easement or right-of-way in or near the point of excavation unless the release or threatened release was caused by actions or omissions of the municipality or utility that constitute negligence, recklessness, or intentional misconduct. In this subsection,

(1) "municipality or utility" includes an employee of a municipality or utility who is acting in the performance of official duties as an employee of the municipality or utility;

(2) "municipal, state, or utility easement or right-of-way" means a right-of-way related to a highway, road, trail, bridge, tunnel, road drainage structure, underground or overhead utility, or other road-related or utility-related structure owned or controlled by the state, a municipality, or a utility;

(3) "utility" has the meaning given in AS 42.05.720.

(l) A municipality or utility that has reasonable cause to suspect that it has discovered a release or threatened release of a hazardous substance as a result of excavation by the municipality or the utility in a municipal, state, or utility easement or right-of-way shall report that suspicion to the department as soon as practicable considering the location of the discovery and the availability of communication alternatives."

HAZARDOUS MATERIALS IMPACT
ON
DOT/PF CENTRAL REGION PROJECTS

DRAFT

The following are typical projects which have encountered hazardous materials during design development.

1. Boniface Parkway - Tudor to Debarr
2. Sterling Highway MP79-94
3. Eagle River Highland Drive
4. Raspberry Road
5. Minnesota/International Airport Road Interchange
6. Old Seward Highway Dowling to Huffman
7. Anchor River Intersection
8. AIA Ramp Reconstruction
9. DeArmoun/Rabbit Creek Interchange

Hazardous materials can be expected on almost all major projects which are located within established developed areas.

The consequence of encountering hazardous materials during project development is dependent upon when the identification occurs. If the material is identified during design development, the associated costs and delays can be managed and to some extent controlled. If, however, the material is identified during construction when you have contract obligations, the cost and schedule impacts are more difficult to manage. It is, therefore, essential to adopt a process which assures early identification of potential hazardous materials sites and audits those sites in a systematic manner.

The range of impacts we have experienced include delays of up to several years in project delivery, added costs for material disposal and complicated right-of-way procurement requiring litigation to accomplish resolution.

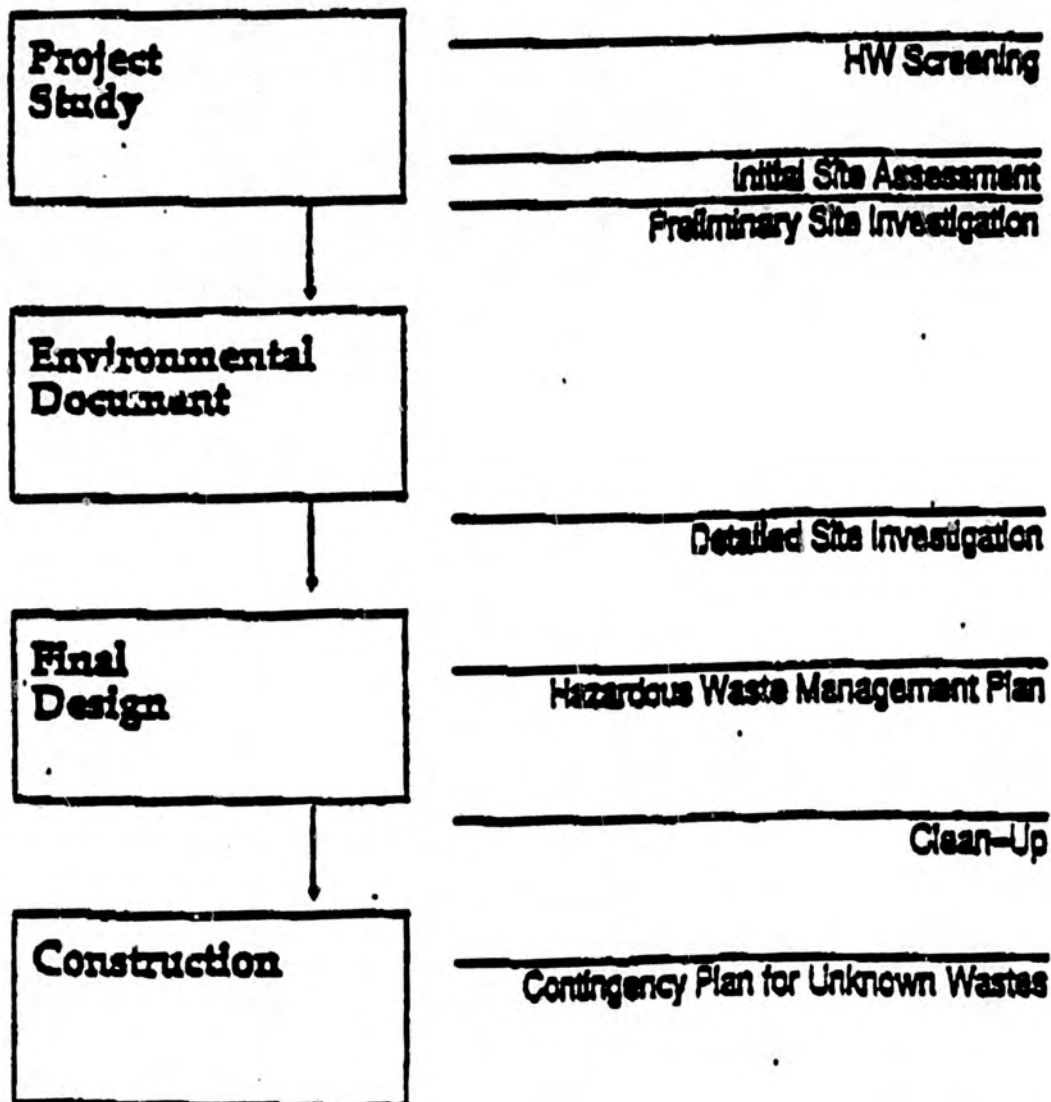
Attached are outlines and checklists developed by AASHTO for use as a guide for dealing with hazardous waste during project development.

Attachments

DRAFT

FIGURE 1

PROJECT DEVELOPMENT/HAZARDOUS WASTE STEPS



STEPS IN HAZARDOUS WASTE PROCESS

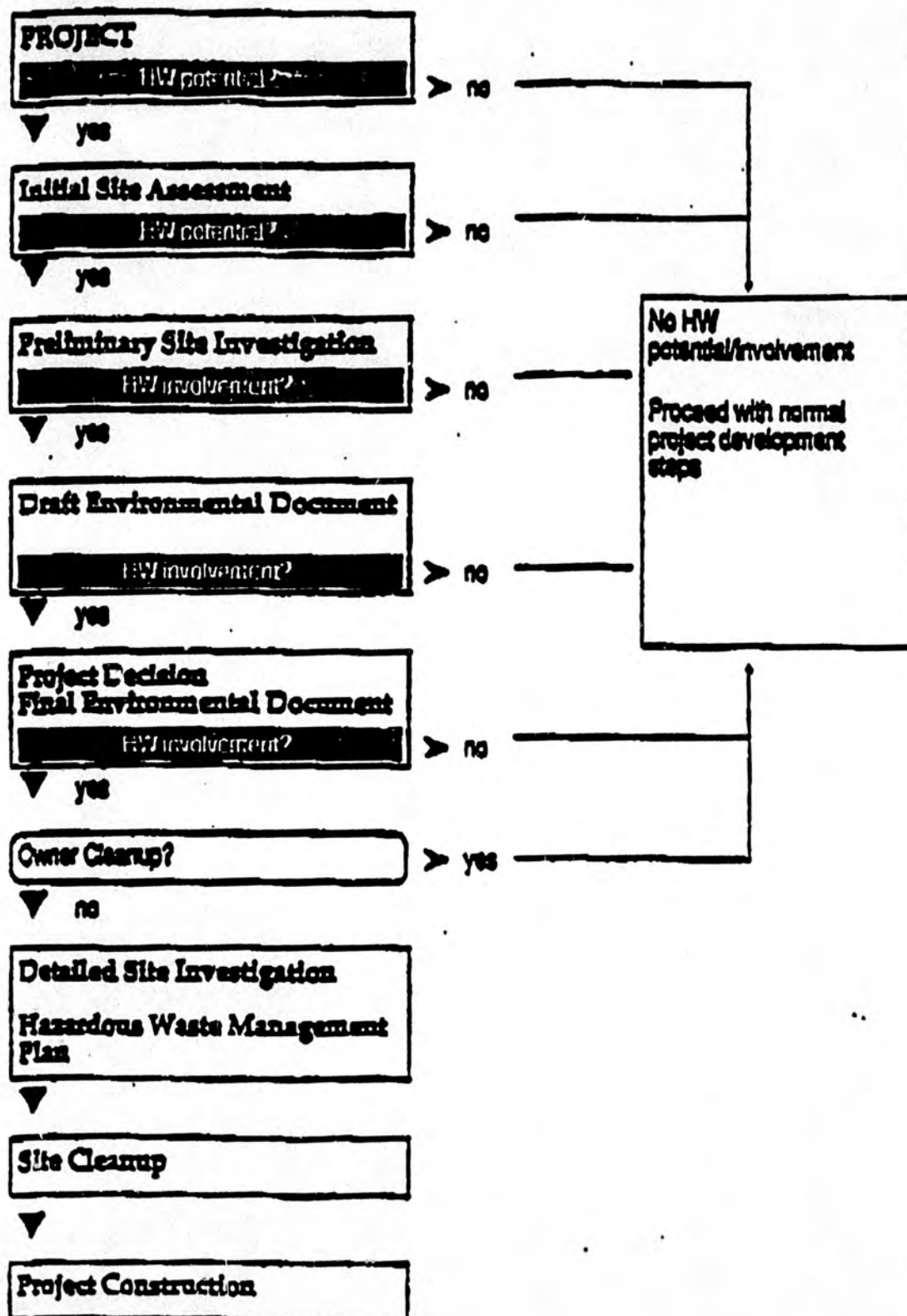


FIGURE 3

INITIAL SITE ASSESSMENT (ISA) CHECKLIST

Project Information
 District _____ County _____ Route _____ Postmile _____
 Description _____

Does the project have potential hazardous waste involvement?

Screening Criteria
 1. Project features: New R/W? _____ Excavation? _____ Relocate utilities? _____
 2. Land Use History and Development Setting _____ (rural/urban)
 Current land uses _____
 Previous land uses _____
 Adjacent land uses _____

(Industrial, Light Industry, Commercial, Agriculture, Housing, Other — LIST)

3. In-house records review _____
 4. Any known hazardous waste sites in vicinity? _____ (If yes, identify & explain)

(If no HW potential determined, sign form
 screening information)

otherwise survey project as necessary to supplement

Optional Records
 County Assessor _____ Fire Dept. _____ Sanborn Inc. _____ Other _____

(Take photos of sites or sketch on back of ISA)

Visual Inspection _____ date _____

Storage Structures	Contaminations	Potential asbestos-containing materials
Underground tanks _____	Surface staining _____	Buildings _____
Surface tanks _____	Oil sheen _____	Sprayed-on fireproofing _____
Sumps _____ Ponds _____	Odors _____	Pipe wrap _____
Drains _____ Basins _____	Vegetation damage _____	Frable tile _____
Transformers _____	Other _____	Acoustical plaster _____
Landfill _____		
Other _____		
Site(s) _____	Site(s) _____	Site(s) _____

Comments _____ Conducted by: _____

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WALTER J. HICKEL, GOVERNOR

April 30, 1991

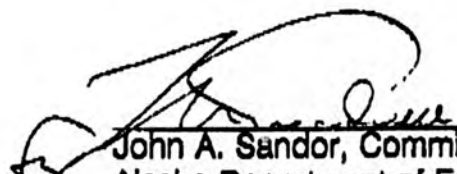
BILL NUMBER: CSHB 299 (O&G)

TITLE: Relating to municipal and utility liability for releases or threatened releases of hazardous substances.

DEPARTMENT POSITION: DEC does not oppose this bill.

ANALYSIS:

This legislation would exempt from the strict liability statutes municipalities and utilities which discover a release or possible release of hazardous substance in a state, municipal, or utility right-of-way during excavation, providing the release or threatened release was caused by the municipality's or utility's negligence, recklessness or intentional misconduct, and providing the municipality or utility reports the release or threatened release to DEC as required under current law.



John A. Sandor, Commissioner
Alaska Department of Environmental Conservation

Municipality of Anchorage



ENTERPRISE ACTIVITIES

P.O. BOX 198850
ANCHORAGE, ALASKA 99519-8850
(907) 343-4906

Tom Fink,
Mayor

April 16, 1991

Representative Dave Choquette
House of Representatives
P.O. Box X
Juneau, Alaska 99811

Dear Representative Choquette:

We have reviewed your draft House Bill, attached, and find it acceptable.
Sec. 2. AS 46.03.822 satisfies the concerns of the Municipality of Anchorage,
its utilities and the expectations of private utilities. We would expect sup-
port from all other municipalities and utilities throughout the state.

Thank you for your assistance.

Sincerely,

Will Gay
Will Gay
Executive Manager

Attachment

Kon

Fairbanks Municipal Utilities System

April 23, 1990

VIA FAX - 11:42 AM

The Honorable Steve Frank
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811



Dear Senator Frank:

This letter is to request that you support House Bill 547 or have similar language added to another bill which is likely to pass. This bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in rights-of-way owned by municipalities, unless the release of the hazardous waste was caused by actions of the municipality.

Enclosed is a memo from Ron Smith, the Fairbanks Deputy City Attorney, which shows that there is currently a real risk to the City to excavate in City rights-of-way for underground utilities. We just learned that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the utility right-of-way is suing the City using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

While I am sure that AS 46.03.822 was never intended to be this broadly interpreted, this lawsuit shows that it can be. Even if the courts ultimately resolve this in favor of municipalities the City can expend a tremendous amount of money defending such a law suit. If a legal theory is arguable, then with their deep pockets municipalities make attractive targets to lawyers.

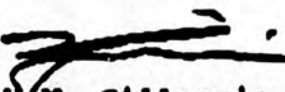
As you are aware the City of Fairbanks, as well as other Alaskan cities, is having serious financial trouble. Granting municipalities this exemption is something the Legislature can do to assist municipalities without costing the State any money.

Municipal Utilities System

**The Honorable Steve Frank
April 23, 1990
Page Two**

Again, I urge you to support this bill. If I or Ron Smith can assist in any way or answer any questions, please call me at 459-6211 or Ron Smith at 459-6340.

Sincerely,


**V.M. Gillespie
Deputy City Manager-
Utilities**

Enclosure: Memo of Ron Smith, April 20, 1990

**cc: City Council
Public Utilities Board**

City of Fairbanks

From the
City Attorney's Office

MEMORANDUM

APR 23 1990

Deputy City Mgr.
UNRMS

TO: Virgil Gillespie, Deputy City Manager - Utilities
FROM: *Ron Smith*
Ron Smith, Deputy City Attorney
SUBJECT: House Bill No. 547 - Liability of MUS for Clean-up of
Spill Discovered by MUS While Installing Underground
Utilities
DATE: April 20, 1990

Yesterday I received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for Anchorage, 343-4906. He asked that the City support House Bill No. 547 and in particular request the support of Senator Steve Frank.

This Bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in right-of-ways owned by municipalities unless the release of the hazardous waste was caused by actions of the municipality.

He related that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the Anchorage right-of-way is suing Anchorage using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

I could not believe that the statute could be interpreted this broadly. However, it imposes strict liability on owners of "a facility, from which there is a release...of a hazardous substance." "Facility" is defined to include "a site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located (emphasis added)."

It is not absolutely clear that Anchorage is going to be liable. However, I called Cam Leonard, the Assistant Attorney General who advises DEC here in Fairbanks. He told me that there have not yet been any court decisions interpreting this statute. He also agreed with me that imposition of liability to clean up would not be fair to a utility that has done nothing wrong. However, it was his opinion that the statute was written very broadly and that it could be argued that a municipal utility could be held liable for the cost of clean up of oil discovered when excavating to install an underground utility line.

House Bill No. 547
April 20, 1990
Page Two

Therefore, I request that MUS take a strong position that there be a statutory exemption for municipalities in this case. House Bill 547 does this and it should be adopted or the language in it attached to a bill that is going to be adopted this year. Bill Huffman mentioned that House Bill 220 on LUST (Leaking Underground Storage Tanks) is likely to be adopted and concerns the same subject matter.

cc: Brian Phillips
Kaye Barthelme
John Miko
Marty Lanum
Jon Paul Stenberg



BETHEL UTILITIES CORPORATION

3380 C Street, Suite 210
Anchorage, Alaska 99503
Phone: (907) 562-2500
FAX: (907) 562-2502

May 4, 1990

The Honorable John Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

VIA FAX - 4:15 P.M.

Dear Senator Binkley:

Today, we received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for the Municipality of Anchorage. He asked that we contact you regarding a development that places clean-up liability on a Utility or Municipality that discovers petroleum product, or other hazardous waste, even though such waste was not caused by them.

From time to time we are required to dig up the ground in Bethel, Alaska. According to AS 46.03.822, if in the course of performing our work we discover a petroleum waste product, we have the responsibility and liability to clean up that waste. If we caused the waste situation, such as dig up a fuel line or our equipment leaks, then it is our responsibility to clean it up. But, if we simply discover a waste situation, we should not be burdened with anything more than reporting it to the proper authorities.

It is our understanding that HB 220 on LUST (Leaking Underground Storage Tanks) and HB 367 are bills that can provide an exemption from liability created by AS 46.03.822 to utilities or municipalities to clean up hazardous waste discovered by them, unless the release of hazardous waste was caused by the actions of them.

We strongly urge you support any legislation that will limit our liability to clean up a hazardous waste discovery if we did not cause it. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'TSS Sterrett, Jr.', is written over a horizontal line.

Thomas S. Sterrett, Jr.
Controller

XO: Mr. Harold Borrego, Pres. of Bethel Utilities Corp.
Mr. Edward Tilbury, V.P. of Bethel Utilities Corp.
Mr. Bill Huffman, Asst. Enterprise Manager, MOA

SCOMM

79:14

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 1, 1991

FURTHER REFERRALS:

Resources
Finance

Date of Committee Action: May 6, 91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 312

HOUSE BILL NO. 312

OIL SPILL REQUIREMENTS; NONCRUDE OPERATION

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

RECOMMENDATIONS:

be replaced with CS HB 312 ☐ the same title ☐ a new title

☐ have attached amendments(s)

☐ do pass

☐ do not pass

☐ no recommendations

☐ individual recommendations

☐ additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

☐ fiscal impact _____

☐ fiscal note(s) _____

☐ zero fiscal note _____

☐ zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David Phillips</i>	✓				
<i>Tay Brown</i>	✓				
<i>Mike Tolome</i>	✓				
<i>Bill Hudson</i>	✓				
<i>David Phillips</i>	✓				
<i>Jim Brown</i>	✓				

Bill Hudson
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

FISCAL NOTE

Bill No.

HB 312

Revision Date: May 6, 1991

Department Affected: Environmental Conservation

Title: "An Act relating to oil
discharge c-plans & fin. resp. "

BRU: Environmental Quality

Component: Environmental Quality Projects

Sponsor: Davidson

COMPONENT SERIAL

Requestor:

NUMBER 1016

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	60	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60	0	0	0	0	0

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

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

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	60					
FEDERAL FUND						
OTHER						
TOTAL	60	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED.

If Sections 1, 2, 3 of the bill are removed, the fiscal impact of this bill is zero. Handwell 5/6/91

Prepared By: Lynn Kent

Phone: 465-2630

Division: Environmental Quality

Date: May 6, 1991

Approved by Commissioner: *Handwell*

Agency: Department of Environmental Conservation

Date: 5/6/91

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

HB 312 Fiscal Note Attachment (5/6//91)
Department of Environmental Conservation

The Department has previously been tasked with developing a report to the legislature (due January 31, 1992) with recommendations concerning discharge prevention and contingency requirements that should be enacted for noncrude oil terminal facilities with storage capacities of 5-10,000 barrels.

The only fiscal impact of this legislation is the requirement for the Department to conduct an analysis that would include the following:

- the probable economic costs and effects imposed by any new standards recommended for noncrude oil terminal facilities with a capacity of 5-10,000 barrels and on persons served by those facilities.
- the probable economic costs and effects imposed on non-crude vessel owners and operators and the persons they serve by the new requirements (HB 567) for contingency planning and proof of financial responsibility.

This type of economic analysis would require a thorough knowledge of oil spill prevention and contingency planning requirements and implementation, oil spill response costs, the marine insurance market, and economic analyses. The results of this analysis will include an estimate of incremental costs of noncrude oil to consumers.

The Department will contract for these services and estimates the amount for conducting this work at \$60.0. Contract management will be provided with existing Department staff.

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Bill Hudson, Chair
House Special Committee on Oil and Gas

FROM: Representative Cliff Davidson *CD by JKA*

DATE: 6 May 1991

SUBJECT: House Bill 312: Non-crude Oil Spill Requirements

House Bill 312 modifies provisions enacted in the 16th Legislature as House Bill 567. Specifically HB 312 changes the effective date for a portion of the new law relating to oil and hazardous substance discharges for non-crude operations.

Under HB 567, new state laws concerning contingency planning requirements and financial responsibility requirements for both crude oil and non-crude oil go into effect on June 1, 1991. For a variety of reasons, the regulations for those new statutes will not be completed prior to that time.

The period of time between when the law goes into effect and when the regulations are adopted will be a period of great uncertainty for Alaska's non-crude operators. To eliminate that uncertainty, I have introduced House Bill 312 to delay the implementation date for one year until June 1, 1992.

Sections #1-3 of HB 312 expand the scope of studies required by HB 567 and delay the date for completion date of those studies. In the interest of speeding passage of HB 312, I am requesting that the Committee delete these sections from the bill. That should eliminate the need for a fiscal note and referral to the Finance Committee.

Section #4 changes the application of the current effective date (June 1, 1991) for new contingency planning and financial statutes from both crude oil and non-crude oil to just crude oil.

Section #5 establishes a new effective date (June 1, 1992) for new contingency planning and financial statutes for non-crude oil.

Thank you for your expeditious hearing of this legislation.

AMENDMENT #2

Sec. _____. Section 15, CH. 191, SLA 1990 is amended to read:

Sec. 15. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. ~~AN~~ ACTION BROUGHT UNDER AS 46.03.758, 46.03.759, 46.03.760(A) OR (E), 46.03.822, OR as 46.04.030(G) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] MAY BE BROUGHT IN A STATE COURT DIRECTLY AGAINST THE INSURER, THE GROUP, OR ANOTHER PERSON PROVIDING EVIDENCE OF FINANCIAL RESPONSIBILITY. The applicant, and an insurer, surety, [OR] guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an [AN] insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the department of Commerce and Economic Development as not disapproved for use in the state.

Sec. _____. Section 15, CH. 191, SLA 1990 is amended by adding a new section to read:

Sec. _____ (not within Sections 11 - 18). AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. [AN ACTION BROUGHT UNDER AS 46.03.758, 46.03.760(a) OR (e), OR 46.03.822 MAY BE BROUGHT IN A STATE COURT DIRECTLY AGAINST THE INSURER OR ANOTHER PERSON PROVIDING EVIDENCE OF FINANCIAL RESPONSIBILITY.] The applicant, and an insurer, surety, or guarantor shall appoint an agent for service of process in the state. An insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

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May 6, 1991

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

Re: HB312
Our File No.: 401.590.1

Dear Representative Davidson:

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

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

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

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

May 6, 1991
Representative Cliff Davidson

Page 2

Let me explain:

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

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

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

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

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

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

May 6, 1991

Representative Cliff Davidson

Page 3

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

We would therefore suggest one of two options:

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

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

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

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

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

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

May 6, 1991
Representative Cliff Davidson

Page 4

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

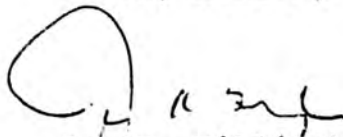
In summary, Northern Transportation supports HB312, with the following amendments:

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

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

Sincerely,

BIRCH, HORTON, BITTNER & CHEROT



John K. Tillinghast

JKT/kpb

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

APR-22-91 MON 11:11

GENE SAUSE & CO.

FAX NO. 6032849037

P. 01

*Hein-Adon
789-5673***GENE SAUSE & COMPANY**ALBANY HILL BUILDING, SUITE 200 • 100 NORTHWEST FRONT AVENUE • PORTLAND, OREGON 97208
TELEPHONE (503) 533-4807MARINE INSURANCE
GENERAL INSURANCE

DATE: April 22, 1991

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

NO. OF PAGES (including this cover): 1

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

SUBJECT: Northern Transportation Company, Limited

Dear Mr. Bain:

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

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

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

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

Best regards,

Ginny Wade

Ginny Wade

GW:wk

seapro

Southeast Alaska Petroleum Resource Organization
540 Water Street Suite 202 Ketchikan, Alaska 99901
(907) 225-7002 Fax (907) 247-1117

FACSIMILE TRANSMISSION COVER SHEET

Date 05/06/91 Number of Pages 04

Destination REP. BILL HUDSON Attn-Dept LORI

City - Country JUNEAU Fax No. (-) 465-2299

Subject HB-312 TESTIMONY

PLEASE INCLUDE IN THE RECORD OF TODAY'S HEARING.

Sent By R. MULLEN

TESTIMONY OF SEAPRO MANAGER CONCERNING HB 312

05/08/91

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

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

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

As apart of this work, we have carefully examined the current draft regulations resulting from adoption of HB 567, as they relate to the interdependent non-crude oil network of Southeast Alaska. In addition to our internal analysis work, we have participated in a DEC sponsored working group addressing non-crude issues, have participated in public work shops on the regulations, and have provided lengthy written comments to the Department.

While I am not all that knowledgeable about insurance matters, it appeared to me that some progress was made toward resolving several of the insurance industry's objections to the draft financial responsibility rules during working group meeting held in Anchorage two weeks ago. Unfortunately, less progress was made in addressing technical details of the planning regulations during those meeting, and we understand the prevention portions of the regulations have not yet reached draft form.

It is my opinion, as a professional in the pollution response field, that there are serious technical flaws with the draft planning regulations. Since there are no draft prevention regulations to consider, it is not possible to offer any opinion as to technical merit. It is my opinion, however, that these regulations will be at least equally as flawed technically as the draft planning regulations, because of the lack of technical expertise within the Department.

Through our work I have just mentioned, and our work to improve the pollution prevention and response capabilities of the Southeastern region, we have determined that there is massive confusion as to what is happening, or will happen, to our non-crude oil distribution network.

Many of our businesses are firmly convinced that they cannot comply with certain provisions of the regulations because the technology to meet the required standards does not exist. There is also the problem of acquiring and putting into place capital assets which may meet some of the requirements, in time to comply with the law. Even though we are told that the planning regulations are only "planning standards", virtually all of us believe otherwise. We believe that if a commitment is made in writing to satisfy a planning, or any other kind of standard, then we will be held accountable to that standard at a minimum as a test of performance in the event of an oil spill.

These assumptions, even if incorrect, are exacerbated by an atmosphere of confusion caused by the law having an effective date which precedes the State's ability to complete a normal regulatory process.

Following this logic then, it should be obvious that our members, as well as numerous other entities around the state, believe they are faced with a quandary. Do they continue in business knowing they cannot comply with technical provisions of the regulations and hope that the government will correct the situation eventually, or should they strictly comply with current law and unadopted regulation and cease doing business?

The network for distributing non-crude oil in our region, and I assume in other regions of the state, is complex and interdependent. The regulations being developed will be potentially devastating to this network if these regulations are not crafted carefully. ADEC has demonstrated by their attempt at writing the planning regulations that they need assistance in understanding the technical workings of our network, and time to acquire this knowledge.

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

It is my hope that HB 312 will give us the time we need to help ADEC craft compliable regulations. More importantly, it will also give our member companies some assurance that while the regulations are being crafted, they can continue in business without the fear that they may be unintentionally breaking the law. I urge the House to adopt HB 312.

R. M. Mullen

Manager

Southeast Alaska Petroleum Resource Organization



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

May 6, 1991

Representative Bill Hudson
House Oil & Gas Committee
PO Box V
Juneau, AK 99811

FAX TRANSMITTAL MEMO
TO: Bill Hudson
House Oil & Gas Committee FAX # 465-2299
FROM: M. KOHLER PHONE 246-4261
CO NAKNEK ELECTRIC FAX # 246-6242
Post-It brand fax transmittal memo 7071

NO. OF
PAGES

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Dear Representative Hudson and Committee Members:

I had intended to present verbal testimony via tele-conference during today's scheduled hearing on HB 312 but unfortunately I am a victim of technology - a paucity of ports precludes Naknek from being added as a site today.

I urge your committee to support this bill to the fullest extent possible as it is imperative that the Department of Environmental Conservation have adequate time to develop clear, defensible and enforceable regulations for non-crude facilities, as required by HB 567.

An unfortunate fact of life in Alaska is that our per capita usage of petroleum products is probably the highest in the United States. This is probably even higher in rural Alaska as petroleum is used for the generation of electricity, to heat our homes and businesses, to fuel our cars, airplanes and off-road vehicles and to power our fishing and recreational boats. Access to Rural Alaska is limited by the seasons and the weather, so we have no choice but to build large storage facilities to hold our bulk fuel purchases.

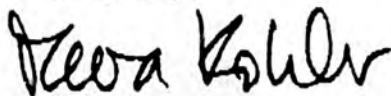
HB 567 requires that contingency plan holders like Naknek Electric Association submit revised C-Plan's to meet prevention and response standards envisioned by HB 567 based upon our interpretation of the legislation. By the end of this month ADEC should receive literally hundreds of revised C-Plans that they are to review and approve (or disapprove) within 65 days. Each C-Plan will reflect the submitting organization's interpretation of the requirements of HB 567. Against what standard are these plans to be assessed? The draft regulations? The HB 567 technical non-group is currently undergoing major efforts to review and offer comments on these draft regulations and I expect very substantial revisions to the regulations before they are finalized.

The unique problems of remote rural Alaska deserve special attention in the writing of the spill regulations. Refined petroleum products are necessary and expensive luxuries here and they do not pose the same risks to the environment that the production and transportation of crude oil does. Naknek Electric's 40,000 barrel diesel storage facility does not present the same risks as a similar facility at a Cook Inlet refinery that fills and empties their tanks several times a week. That we should have to meet identical prevention, response and financial responsibility standards is ridiculous. A 50,000 barrel tank barge stopping at thirty small coastal communities to fill their holding tanks cannot possibly address the myriad of natural and unnatural events that could cause the spillage of some or all of their cargo at any one of their ports of call or in transit thereto.

I am assured it was not the intent of Legislature to preclude the delivery and storage of petroleum products in rural Alaska by the passage of HB 567. This may however be the inadvertent end result if a realistic period of time is not given to properly assess the needs and concerns of rural Alaska and to formulate realistic regulations for the transportation and storage of the refined petroleum products that we depend upon for all of our energy needs.

Thank you listening to our concerns.

Sincerely,



Meera Kohler
General Manager

MK/cc

The Honorable Cheri Davis
House of Representatives
Juneau, Alaska 99833

Dear Cheri,

In their Legislative wisdom, the Legislature has seen fit to pass and implement HB 567, over the objections of business people all over the state of Alaska, in another classic cave-in to the Environmental special interest groups.

As we told some of you last year, no existing business, in this or any other region, can comply with the Engineering and operational standards set forth by the State.

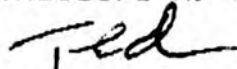
Without relief from you, all businesses subject to HB 567 will be in violation of that law as soon as it becomes effective, which is June 1, 1991.

Some modifications are being attempted, but without support of SB 263 and HB 312 by the house to delay implementation of HB 567, it will be impossible to conduct our businesses legally until realistic regulations can be implemented.

I and others that are being impacted, urge you, as our representatives to strongly support, and lead the house in passing HB 312.

In another vein, Thanks for your strong support for the Timber Receipts bill that came out of the House, I am sure your many hours of thought and hard work had a lot to do with the passage, and especially the way it passed. I have sent Senator Jones a letter asking his help and leadership in having the Senate do the same.

Theodore M. Smith



Alaska Fuel Service
P.O. Box 749
Petersburg, Alaska 99833

Page 2 of 2



Alaska State Legislature

Please enter into the record my testimony to the Oil & Gas Committee
committee name
committee on HB 312, dated May 6, 1991
bill/subject

This is testimony in support of HB 312.

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

I would like to encourage the passage of HB 312.

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

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

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

The passage of HB 312 will allow for a more orderly process, one that makes sense both to government and industry. A more orderly process makes for better Laws and better Regulations, regulations that are much better for both government and industry.

Jim Ramaglia
Vice Pres
Kodiak Oil Sales Inc

Signed: 486-3245

Testifier

Kodiak Oil Sales Inc.

Representing (Optional)

Box 1487 Kodiak AK

Address

486-3245

486-3205 Fax

Phone No.

May 3, 1991

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

Dear Representative Hudson:

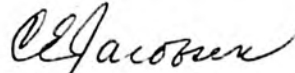
Last year's House Bill 567 goes into effect on June 1, 1991. Taku Oil, which is a small business, will be expected to obtain increased insurance, increased equipment to clean up a spill within 72 hours and will have to pay more for fuel. All of this will be passed on to the public as a higher fuel cost.

HB 567 was passed in reaction to the Exxon/Valdez spill. Some consideration should be given to the reason for passage of that bill versus the impact on small non-crude operators like Taku Oil, Inc.

Accordingly, I would appreciate your support for SB 263, which will extend for a year the effective date of HB 567. This will allow for realistic regulations to be proposed (they are not yet available to the public) and quite frankly, give us a chance to petition for a change in the law to recognize the interests of non-crude operators.

I appreciate your cooperation.

Yours very truly,



C. E. Jacobsen, President
Taku Oil Company

OIL SPILL/FINANCIAL RESPONSIBILITY REGULATIONS (HB 567)

Prepared by: David F. Bouker
May 3, 1991

PRESENTED MAY 6, 1991

House Bill 567 was passed in 1990 as a response to problems encountered in the Prince William Sound oil spill. The initial bill, when proposed, did not distinguish between crude and non-crude fuel storage facilities. The final version, which passed, did recognize the distinction but left considerable to be desired.

Unfortunately, it did not go far enough. For example, frequency of exposure was ignored. The majority of terminal oil operators, i.e., those with storage facilities under 10,000 barrels' capacity are not even covered by the statute because it would presumably be a hot potato politically. That makes it, however, no less a threat to the environment.

Along these lines, HB 567 was written essentially to encompass those oil terminal facilities with 10,000 barrels' capacity. ^{or more} However, it would seem that exposure to oil spills should be more properly based on thruput rather than capacity. Two tank farms of identical capacity would have widely varying exposures depending on the amount of fuel pumped in and out. Additionally, capacities of tank farms north of Dutch Harbor are generally greater than those in ice-free ports because they have to hold an entire winter's fuel supply.

Therefore, we believe it would seem reasonable as well as sensible to base the financial responsibility requirements of the statute on thruput and not capacity.

Our environmental consultant, Jim Berry, writes:

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

These costs have to be and will be provided by the public in the form of increased utility bills therefore resulting in increased PCE participation by the state, increased fuel and grocery bills, and increased freight and passenger air fare costs. For example, it cost me, here in Dillingham, \$1.78 per gallon for stove oil and \$2.05 for gas in the last month. Any incremental cost will be spread out over a rather thin segment of the population therefore exacerbating an already unhealthy economic climate in rural Alaska.

As far as I am aware, no effort has ever been made to assess the economic impact of HB 567. Instead, it would appear that the overall thrust of the statute is not prevention of spills but to establish a pool of money that can be utilized to clean up spills. There are some problems with this approach that have even left insurance companies reluctant to become involved. To the best of our knowledge, the only insurance available at this time is provided by Lloyds of London.

We do believe oil spill regulation is necessary; however, it should be focused on prevention as well as financial responsibility. We believe that the state should have prevention regulations drawn up in such a fashion that small rural communities

can reasonably expect to meet them without incurring financial hardship. Therefore, we believe that the state must make some effort to assess the impact of these statutes and regulations on its own citizens. This is not a case of Exxon footing the bill. We are doing it to ourselves.

(5/3/91:lwb:reports\HB567)

Prepared by : David F. Boukar

FINANCIAL RESPONSIBILITY

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

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

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

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

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

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

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

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

Page 2

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

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

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

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

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

Page 3

INSURANCE POOLING

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

Advantages of such a system would include:

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

(ljc:reports/finres)

Dillingham Legislative Information Office
Office - (907) 842-3319 Fax - (907) 842-5105

ATTN: _____ FAX: ⁴⁶³⁻³⁰⁰¹
~~465-2299~~ PHONE: _____

INSTRUCTIONS: Please deliver these additional 8 pages
as requested by the H Spec Committee on Oil & Gas
TC 91-05-024

DISPOSAL OF ORIGINAL: Discard_____ Hold for Pickup_____

TRANSMITTED BY: *ame*

114 BERRY & ASSOCIATES

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

Post-It™ brand fax transmittal memo 7871		# of pages > 8
To	LEG INFO O.	
From	NEC	
Co.	AM: AMS	
Ch.	DME B.	
Dept.	842 5319	842 5251
Fax #	842 5105	842 2799

RE: Oil Spill Contingency Plan Regulations

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

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

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

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

For example:

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

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

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

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

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

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

(2) appropriate discharge response times;

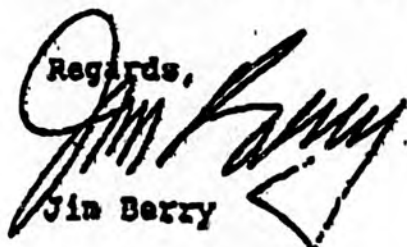
(3) requirements for personnel and equipment that should be imposed on [vessel] contingency plan holders; and

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

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

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

Regards,


Jim Berry

enclosure

SECTIONAL ANALYSIS

PRELIMINARY DRAFT 1/28/91

ARTICLE 4. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN

18 AAC 75.305 Application for Approval

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

Five copies of the draft plan are to be submitted - ADEC may require additional copies. Coastwise marine operators (Crowley/Foss) may be subject to submitting plans to each of the 15 entities within the Alaska Coastal Management Program. Further, the current interpretation is that the operator is to respond to each entity which presents questions or requests additional information.

18 AAC 75.310 Application for Amendment

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

18 AAC 75.320 Contingency Plan Contents

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

(1) Section 1 -- Emergency Action Plan

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

(1) Section 1 (A)

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

(2) Section 2 (C) (iii)

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

(2) Section 2 (C) (iv)

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

(2) Section 2 (C) (v)

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

(2) Section 2 (D) (v)

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

(2) Section 2 (G)

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

(2) Section 2 (H) (1)

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

(3) Section 3 -- Response Procedures

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

18 AAC 75.340 Spill Volume Preparedness Standards

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

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

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

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

18 AAC 75.345 Containment, Control, and Cleanup Requirements

18 AAC 75.345(a)

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

-20-

18 AAC 75.345(b)

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

18 AAC 75.345(c)

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

18 AAC 75.345(d)

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

18 AAC 75.345(e)

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

18 AAC 75.345(f)

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

18 AAC 75.345(h)

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

18 AAC 75.345(i)

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

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

18 AAC 75.355 Training

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

18 AAC 75.355 Training

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

18 AAC 75.380 & 385 Inspection & Discharge Exercises

ADEC may conduct unannounced inspections and require unannounced discharge exercises.

SCOMM

79:15

FISCAL NOTE

No. 1Bill Version: HB 339(H) Publish Date: 5/17/91STATE OF ALASKA
1991 LEGISLATIVE SESSIONRevision Date: _____ Department Affected: Revenue/Natural ResourcesTitle: "An Act related to credits against certain payments due the state, ..." BRU: Revenue Operations
Component: Oil & Gas AuditSponsor: Rules Committee by request of GovernorRequestor: _____ COMPONENT SERIAL NO.

1	1	5
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Expenditures/Revenues: (Thousands of Dollars)

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

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

REVENUE	- - - (\$0)	(\$20mm) -	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	- - - (\$0)	(\$20mm) -	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	- - - (\$0)	(\$20mm) -	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

(see attachment)

Prepared By: Roger Marks
Division: Oil & Gas AuditPhone: 277-5627
Date: 5/10/91Approved by Commissioner: _____
Agency: _____Date: 5-13-91

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

()

Analysis:

"An act relating to credits against certain payments due the state, earned by drilling stratigraphic test wells on unleased land; and providing for an effective date."

This bill would give exploratory incentive credits, in the form of reductions in existing royalty or tax obligations to the state, for drilling stratigraphic test wells (or conducting other similar testing) on unleased state acreage. Under the Alaska Statehood Act the state must complete its land selections by January 1994. This bill provides drilling incentives so that the state would have more information on resource potential for making its selections. Stratigraphic test wells are drilled off structure and are explicitly designed not to find oil, but to gather geological information on the area. Usually companies pool funds to make such tests.

The credit would only be available for work done between July 1, 1991, and March 1, 1993. There is a \$20 million cap on total credits that can be granted for all work. Credits cannot exceed 50 percent of the cost of the work, and a credit cannot exceed 50 percent of the payment toward which it is being applied.

It is possible that the entire \$20 million ceiling would not be reached and the direct cost to the state would be less. The bill is targeted toward interior basins whose resource potential is poor to moderate. Therefore the expected return from testing may still not be sufficient to justify testing, even with the credit. No such tests have been performed without the credit over the last several years. The estimated cost of a stratigraphic test well is approximately \$8 million. Therefore it would take five such wells to obtain the \$20 million limit.

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA

1992 LEGISLATIVE SESSION

BILL NO. HB 339Revision Date: 21-Jan-92Department Affected: Natural ResourcesTitle: Stratigraphic Test Well CreditsBRU: Petroleum Management

Components: _____

Sponsor: Rules for GovernorRequestor: House Oil & GasCOMPONENT SERIAL NO. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: -0-

ANALYSIS: (Attach a separate page if necessary)

Would allow up to \$20 million in credits against royalty and tax payments for drilling stratigraphic test wells and providing the information to the state.

Prepared by: Carol WilsonPhone: 465-2400Division: Commissioner's OfficeDate: 21-Jan-92Approved by Commissioner: Harold C. HeinzeDate: 21-Jan-92Agency: Department of Natural Resources

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

FISCAL NOTE

No. 2STATE OF ALASKA
1991 LEGISLATIVE SESSIONBill Version: HB 339(H) Publish Date: 5/17/91

Revision Date: _____ Department Affected: Natural Resources
 Title: Stratigraphic Test Well Credits BRU: Petroleum Management
 Component: _____
 Sponsor: Rules for Governor
 Requestor: _____ COMPONENT SERIAL NO. 439

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Would allow up to \$20 million in credits against royalty and tax payments for drilling stratigraphic test wells and providing the information to the state.

Prepared By: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 5/9/91

Approved by Commissioner: Harold C. Heinze *CWH*
 Agency: Natural Resources Date: 5/9/91

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

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 17, 1991

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to credits for drilling stratigraphic test wells. The bill authorizes the commissioner of natural resources to extend exploration incentive credits under AS 38.05.180(i) to persons drilling stratigraphic test wells between July 1, 1991 and July 1, 1993 on land in the state.

Currently, AS 38.05.180(i) permits the commissioner to grant oil and gas lessees credits against royalty and tax payments due the state. The credits are limited to one-half of a lessee's costs for drilling an exploratory well or performing geophysical work.

The purpose of the new credits is to encourage the drilling of stratigraphic test wells on land not currently under oil or gas lease. In an effort to obtain information that would help the state complete, by January 1994, its selection of land under the Alaska Statehood Act, all the major oil and gas companies operating in the state have already been asked to consider drilling stratigraphic test wells on unleased land; none are motivated in the absence of credits.

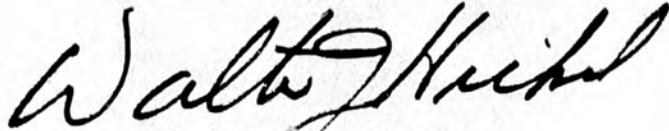
The bill requires the driller to provide the state with well data before a credit is approved. This assures that no credit will be granted unless the state receives, in exchange for the credit, information bearing on the selection of land under the Alaska Statehood Act.

The total of all credits granted for drilling stratigraphic test wells may not exceed \$20,000,000. If drillers' costs approved for credit exceed \$20,000,000, then \$20,000,000 in credits would be pro-rated among the drillers on the basis of approved costs.

The Honorable Ben Grussendorf - 2 -

AS 38.05.180(i) is rewritten by the bill to prevent that subsection from becoming unduly cumbersome through the addition of the language providing for the new credits. No substantive change has been made in the existing provisions.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

January 24, 1992

The Honorable Bill Hudson, Chair
House Special Committee for Oil and Gas
State Capitol
Juneau, AK 99811-1182

Dear Representative Hudson:

Subject: House Bill 339, relating to incentive credits for drilling stratigraphic test wells.

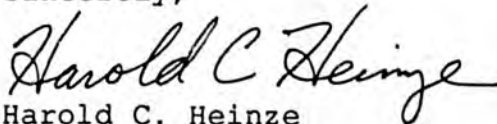
Position: The Department of Natural Resources supports this bill. It's enactment will allow the state to obtain subsurface information critical to choosing the best possible land for the state's remaining 20 million acre entitlement. As an added benefit, this bill will encourage industry to begin exploration of poorly understood interior basins.

Background: The purpose of this bill is to encourage the drilling of stratigraphic test wells on land not currently under oil or gas lease. The state needs subsurface information to better evaluate the hydrocarbon potential of interior sedimentary basins. The bill requires the driller to provide the state with well data before a credit is approved. This assures that no credit will be given unless the state receives information related to state land selections in return.

Currently, the department may grant oil and gas exploration incentive credits against royalty and tax payments due the state. The credits are limited to one-half of a lessee's costs for drilling an exploratory well or performing geophysical work on state oil and gas leases. This bill extends the exploration incentive program under 38.05.180 (i) to all land in the state until September 1, 1993.

Recommendation: To ensure the state has sufficient information to select land that meets the economic needs of Alaskans, now and in the future, please schedule a hearing for and support this bill.

Sincerely,



Harold C. Heinze
Commissioner

cc: Committee Members
Paul Fuhs, Legislative Liaison, Office of the Governor
Jim Eason, Director, Division of Oil and Gas

SCOMM

79:16

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Immunity for SERC, LEPCs, and HSSTRC BRU: Spill Prevention and Response
 Component: Spill Prevention, Planning and Management
 Sponsor: Governor
 Requestor: Governor COMPONENT SERIAL NO.

1	4	3	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050
 Division: Commissioner's Office Date: December 10, 1991
 Approved by Commissioner: Janice Adair for John Sandoz
 Agency: Department of Environmental Conservation Date: December 10, 1991

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Page ___ of ___

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 407
(H) Publish Date: 1/16/92

Revision Date: _____
Title: An Act providing for immunity for the Alaska Emergency
Response Comm. _____
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Risk Management
Component: Risk Management

COMPONENT SERIAL NO.

0	0	7	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: No impact on the Division of Risk Management's budget.

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock
Division: Risk Management

Phone: 465-2180

Date: 12.10.91

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Nancy Bear Usera by rw
Date: Dec. 16, 1991

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS
HB 407

An act providing statutory immunity for the Alaska State Emergency Response Commission and the Hazardous Substance Spill Technology Review Council and their members while acting within the course and scope of their official duties unless gross negligence or intentional misconduct is involved. Gross negligence, intentional misconduct or acts which fall under federal law are excluded from this immunity statute.

This bill will make it easier to get qualified members to serve on these very sensitive and important Commissions. The Division of Risk Management is in favor of this legislation.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 16, 1992

*The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill providing immunity for the Alaska State Emergency Response Commission (Alaska SERC), local emergency planning committees (LEPCs) established by Alaska SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC) and their members from civil damages and costs resulting from any acts or omissions occurring within the course and scope of their official duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct or may be the subject of relief under an applicable federal law.

This bill adds a new section to AS 46.13 which at present does not address the question of the liability of the Alaska SERC, LEPCs, or HSSTRC nor the personal liability of the members of these entities.

State officials and members of the public serve on Alaska SERC, LEPCs, and HSSTRC. In performing tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, and the management of hazardous substances, the individuals appointed to these entities serve to protect the health and welfare of the citizens of this state.

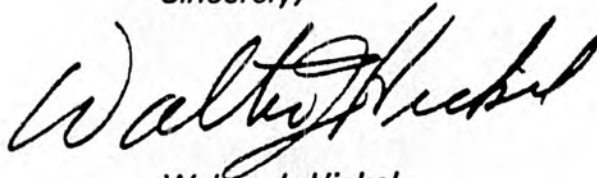
The potential exposure to liability arising from these statutorily authorized activities may dissuade qualified and otherwise interested members of the public from accepting appointments to the Alaska SERC, LEPCs, and HSSTRC. In order for the

The Honorable Ben Grussendorf
January 16, 1992
Page 2

Alaska SERC, LEPCs, and HSSTRC to function effectively and to encourage the participation of qualified individuals, AS 46.13 should provide immunity for these entities and their members for any act or omission occurring within the course and scope of their statutorily authorized activities, except for those acts or omissions which constitute gross negligence or intentional misconduct or which may be the subject of relief under applicable federal law.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Walter J. Hickel". The signature is fluid and cursive, with the first name "Walter" being more prominent and the last name "Hickel" following in a similar style.

Walter J. Hickel
Governor

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

WALTER J. HICKEL, GOVERNOR

Phone: (907) 465-5000
Fax: (907) 465-5070

January 27, 1992

The Honorable Bill Hudson
Chairman
House Special Committee on
Oil and Gas
P.O. Box V
Juneau, AK 99811

Dear Representative Hudson:

HB 407 was recently referred to your committee after introduction by the Governor. This bill would provide immunity to the members of the Alaska State Emergency Response Commission (SERC), the Local Emergency Planning Committees (LEPCs) created under the SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC or TRC) for their acts or omissions which are in accordance with their official duties, unless the act or omission constitutes gross negligence or intentional misconduct or which may be the subject of relief under an applicable federal law.

As explained in the Governor's transmittal letter, state officials and members of the public serve on the SERC, the LEPCs and the RTC. Each of these entities is charged with tasks relating to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic substance release reporting, and the management of hazardous substances. The potential exposure to liability arising from these statutorily mandated activities may discourage qualified individuals from accepting appointments to the SERC, LEPCs and RTC.

The success of the SERC, LEPCs and RTC are critical to the success of the State of Alaska in emergency preparedness when dealing with oil spills or other hazardous substance releases. Enclosed herewith is a legal opinion relating to this issue that may be of interest to the members of your committee when reviewing HB 407. We are also enclosing statutes from other states which have adopted this kind of immunity for members of their SERC, and the federal law allowing for citizen suits against members of a SERC. HB 407 would not affect this federal law.

The Honorable Bill Hudson

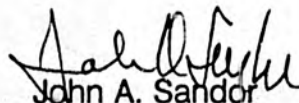
-2-

January 27, 1992

We respectfully ask that you schedule this bill for a hearing at the earliest possible convenience. We look forward to your favorable action.

If you need any further information, please do not hesitate to contact Janice Adair, the Department's legislative liaison, at 465-5050.

Sincerely,


John A. Sandor
Commissioner

JA/vr (CO-comm\hudson.407)

Enclosures: Legal Opinion
Statutes

cc: Paul Fuhs, Governor's Office

MEMORANDUM OF AGREEMENT

1. Recitals

There currently exist liability concerns by persons who contribute their time and service to the State Emergency Response Commission ("SERC"), Local Emergency Planning Committees ("LEPCs"), and the Hazardous Substance Spill Technology Review Council ("HSSTRC"). By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs, and the HSSTRC. This agreement is entered into between the Department of Law, the Division of Risk Management in the Department of Administration, and the Commissioner of Environmental Conservation on behalf of the SERC, LEPCs, and the HSSTRC.

2. State Defense of Claims

The State of Alaska (State) agrees to defend the SERC and its members, SERC-approved LEPCs and their members, and the HSSTRC and its members against all non-insured claims arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, and the HSSTRC. When defense is provided under this agreement, the State will select and retain counsel to represent the members and entities covered by this agreement. The State will not be obligated to pay expenses of defense counsel

independently retained by members and entities without the approval of the Division of Risk Management.

3. Indemnification

The State agrees to indemnify the SERC, SERC-approved LEPCs, the HSSTRC, and their members for non-insured judgments arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, the HSSTRC, except that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct, or for punitive damages.

4. Definition of Non-Insured Claims and Judgments

As used in this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment (including a settlement) for which a member or entity covered by this agreement or a member's employer is not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of defense costs and assignment of defense counsel. In the event of inability to reach such agreement, the State will, with prior written approval, reimburse the member covered by this agreement for reasonable non-insured defense costs and attorney fees incurred in defense of claims.

5. Notice of Claim

A member or entity covered by this agreement against whom a claim is made must submit a written request for defense to the State of Alaska, Division of Risk Management within 30 days of knowledge or receipt of a claim.

6. Conditions

The State will appear and defend a member or entity covered by this agreement unless and until it is determined by the State that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, or the HSSTRC, or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the member or entity in defense against the claim. The member or entity shall not, except at their own cost, admit liability, voluntarily make any payment, assume any obligation, or incur any expense, without prior approval of the Division of Risk Management. Failure to provide timely notice of a claim, conduct prejudicial to the State's position, or failure to cooperate in defense voids the State's obligations under this agreement.

7. Recision of this Agreement

This memorandum of agreement may be revoked by the State upon 30 days notice to the entities covered by this agreement.

DATED: 6-12-91

Charles E. Cole
Attorney General
Department of Law

DATED: 6/13/91

Brad Thompson
Brad Thompson, Deputy Director
Division of Risk Management
Department of Administration

DATED: 6/13/91

John Sandor
John Sandor
Commissioner
Department of Environmental
Conservation

PROPOSED MEMORANDUM OF AGREEMENT

1. The State agrees to defend members of the State Emergency Response Commission (SERC), SERC approved Local Emergency Planning Committees (LEPCs) and their members and members of the Hazardous Substance Spill Technology Review Council (HSSTRC), against all non-insured claims arising from acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of SERC, SERC approved LEPCs, and the HSSTRC. The State further agrees to indemnify SERC members, SERC approved LEPCs and their members, and HSSTRC members for non-insured judgments against SERC members, approved LEPCs and their members, and HSSTRC members with the exception that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct.

2. As used in paragraph 1 of this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment for which the defendant or the defendant's employer are not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of costs and assignment of counsel. In the event of inability to reach such agreement, the State will reimburse the defendant for non-insured costs and attorney fees incurred in defense of claims.

3. A defendant against whom a claim is made must submit a written request for defense with the State of Alaska, Division

of Risk Management within 30 days of knowledge or receipt of a claim. The State will appear and defend the defendant unless after investigation it is determined that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the defendant in defense against the claim. Failure to provide timely notice of a claim, conduct prejudicial to the State's position or failure to cooperate in defense voids the State's obligations under this agreement.

4. It is understood that there currently exists genuine liability concerns by persons who contribute their time and service to the SERC, LEPCs and the HSSTRC. By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs and the HSSTRC. It is further understood that the State will present a bill and seek legislation which will provide defense and indemnification similar to that provided by this agreement. This memorandum of agreement may be revoked by the State upon 30 days notice.

DATED: _____

Douglas B. Baily
Attorney General

DATED: _____

Division of Risk Management

MEMORANDUM

State of Alaska

Department of Law

October 29, 1990

Page 1

TO: Hon. Dennis D. Kelso
Department of Environmental
Conservation

DATE:

FILE NO.:

TEL. NO.:

Honorable Dennis D. Kelso
Commissioner
Department of Environmental
Conservation

SUBJECT: October 29, 1990

FROM:

RECEIVED
OCT 31 1990

465-3603

Liability of SERC, LEPC
and HSSTRC members

Bill Mellow

Bill Mellow
Assistant Attorney General
Special Litigation-Juneau

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

Your opinion request seeks answers concerning potential liability of members of the above identified committees. I could go into a lengthy legal analysis of tort liability exposure, governmental immunities and qualified immunities but time constraints ^{1/} require that for now the solution to your concerns be met with a general statement of the law plus a state assurance of protection from non-insured liability exposure.

The short answer to liability exposure is that, generally, there is liability exposure for negligence which has been a legal cause of injury unless immunity is granted by law or court decision. Governmental agencies and employees are immune from liability for discretionary function negligence. AS 09.65.070 (municipalities); AS 09.50.250 (state). This form of immunity extends to high level planning activities which probably would be found by our courts to encompass most official actions of SERC, LEPC and HSSTRC members. Additionally, "member[s] of the governing body, a commission, or a citizen's advisory committee of a municipality of the state" are immune from liability for ordinary negligence occurring within the course and scope of official duties. AS 09.17.050.

As you acknowledge in your opinion request letter, liability is mostly hypothetical but the fear is real enough to

^{1/} The file was assigned to me while I was away most of the summer farming in Oregon. I am retiring from state employment at the end of October and thus, I am unable to devote the necessary research time needed for a careful analysis. Additionally, I have been advised by Camille Stephens that, most important, is an assurance of protection which can be given at the November 3, SERC meeting.

RECEIVED

SEP 19 1991

A.D.E.C.
COMMISSIONER'S OFFICE

justify a request for some degree of protection. As above noted, there exists only a slight potential for liability for negligence in planning for and implementation of responses to discharges of oil and hazardous substances. The best way to resolve the fear of liability and the cost of defense against the threat of liability is by contractual or legislative indemnification.

Attached is a proposed memorandum of agreement. The agreement extends a guarantee of defense of claims arising within the authority granted the respective committees and their members by state and federal law. The agreement also extends a guarantee of indemnification for damages for negligence. This memorandum of agreement should quell fears of committee members and will provide interim protection pending legislatively extended protection.

Concerning legislative action, I or my successor will draft a proposed bill which would immunize members from liability but, as you are well aware, such a bill would not easily pass into law and may well be watered down substantially as it winds its way through the hearing committees. I would anticipate that as a part of preparation of an explanation for justification of such a law that an extensive legal opinion memorandum will be prepared. The department's analysis will be provided to you.

Following is a restatement of questions raised by your letter along with an answer.

Question 1. What liability, if any, may exist for the SERC or the Council as state agencies or entities.

Answer. State agencies are liable for non-discretionary negligence. Discretionary (immune) activities are high level planning activities which are determined on a case by case basis. To quote the Alaska Supreme Court, the distinction between planning level (immune) and operational level (not immune) activities depends upon "the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception." Carlson v. State, 598 P.2d 969, 972 (Alaska 1979).

Question 2. What liability, if any, do the members of the SERC accrue due to their activities, or inactivity, as SERC members? If there is liability, will the state represent and indemnify the members should an award be made?

Answer. Planning decisions by SERC members are usually going to fall within the category of "discretionary" immune

activities. 2/ Where activities or inaction cross the line into operational negligence, members will be protected pursuant to the terms of the Memorandum of Agreement (MOA).

Question 3. If the state will represent and indemnify the SERC members, are there any limits?

Answer. The state will represent, without monetary limit, for ordinary negligence claims occurring within the course and scope of authority granted by law. By way of example, the state would represent the member on a claim that while intoxicated, the member slandered a SERC consultant if the state's initial investigation led to a conclusion that the conduct occurred within the course and scope of official duty but, at most, only ordinary negligence occurred. If the state investigative determination was proven to be wrong concerning the degree of negligence, the state would not pay a judgment where the fact finder determined that the defendant's conduct rose to the level of gross negligence or intentional misconduct.

Question 4. [Are the answers to questions 2 and 3 the same as to the HSSTRC and its members?]

Answer. Yes.

Question 5. Where a LEPC is formed under the auspices of a local government, does the local government run the risk of liability?

Answer. Yes, the local government runs the same risk as the state but the MOA will protect against non-insured liability.

Question 6. What are the liability risks to an LEPC or its individual members?

Answer. If a LEPC is "a commission, or a citizen's advisory committee of a municipality of the state" its members are immune for ordinary negligence for action or inaction within the course and scope of official duties but are subject to liability for gross negligence. AS 09.17.050(a)(4). If a LEPC is a state agency commission the answer to question 2 would be applicable along with the caveat of footnote 2 concerning "employees." The

2/ AS 09.50.250 protects "employees" of the state. It is probable that the court would broadly construe "employee" to include the seven public members listed as potential appointees in AS 46.13.010.