ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4979 HRES HB 459

551

Original sponsors: Davis, Koponen,
Navarre, et al.

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 459 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

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

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) The following persons are strictly liable, jointly and severally, for damages to persons or property, public or private, including damage to the natural resources of the state and the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned the hazardous substance and who arranged for disposal or treatment of the substance by another party

or entity, or arranged with a transporter to transport the substance for disposal or treatment by another party or entity, at a facility or incineration vessel that contained the substance and that was owned or operated by the party or entity; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an employee of a third party is in privity of contract with the person who is otherwise liable if the third party or employee and the person are parties to a land contract, deed, or other instrument transferring title or possession, unless the real property on which the facility in question is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person by a preponderance of the evidence establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes one or more of the following circumstances:

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a government entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person acquired the facility by inheritance or bequest.

(d) To establish that a person had no reason to know that the hazardous substance was disposed of, on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection the court shall take into account any specialized knowledge or experience the person has; the relationship of the purchase price to the value of the property if uncontaminated;

commonly known or reasonably ascertainable information about the property; the obviousness of the presence or likely presence of contamination at the property; and the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility and who would otherwise be liable; however, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not affect the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility.

(g) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe

or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

The strongest ~~brew~~ Brood Brewed

McDonough also sent the CIRCULAR 1151

this language still prov's a "midnight-dumpin sit'n" as to Mertz – but elim's the remote/perpetual liability issue – absolve you seller but not owner or disposer of solvents –

→ Carbon [illegible] – [illegible] – [illegible]

[illegible]

Mertz [illegible]

Send – (2)

[illegible]

Mertz explains [illegible]
Send's disgruntled employee – not covered unless he's out of employment –
Mertz explains [illegible] landowner provisions on his 3/6/85 handout –
Navarre – "appropriate inquiry" – suppose you weren't able to because you bought the property a long time ago –

Judy Eckholm raises ex. of a person buying a home on a subdiv. made from an old homestead — unkempt [illegible] etc. — will be a [illegible] for [illegible] [illegible] by the household. — [illegible] — it [illegible] [illegible] [illegible] by [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

3/5/88
Metz

SUBSTITUTE LANGUAGE AT "A":

(4) a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and

NEW LANGUAGE AT "B":

(5)(1) The term "privity of contract" in (b)(1)(B) of this section includes, but is not limited to, being a party to land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of subsection ~~107~~(b)(3)(a) and (b).
2(A) (3)

(2)(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3)(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

4(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02-576(2/77)

Judy Eckholm raised ex. of a person buying a home on a subdiv. made from an old homestead — unforeseen utils etc. — wd be resp. for wastes buried by the homesteader. — Meets - if anyone wd be [illegible]

[illegible]

[illegible]

Terry [illegible]

[illegible]

5-1465A

3/5/88
Metz

SUBSTITUTE LANGUAGE AT "A":

(4) a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and

NEW LANGUAGE AT "B":

(5)(1) The term "privity of contract" in (b)(1)(B) of this section includes, but is not limited to, being a party to land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii)

is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of subsection ~~107~~(b)(3)(A) and (B).

2(A) (B)

(2)(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3)(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

4(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

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Anchorage Branch
Anchorage, Alaska

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, Plaintiff, vs. TESORO ALASKA PETROLEUM COMPANY, PETRO PRODUCTS, INC., and ROBERT E. SANDEN, individually, and d/b/a SANDEN FUEL COMPANY, Defendants.	Case No. 3AN-86-14457 Civil

TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Dated: January 27, 1988

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CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, Plaintiff,	)	
vs.	)	Case No. 3AN-86-14457 Civil
TESORO ALASKA PETROLEUM COMPANY, PETRO PRODUCTS, INC., and ROBERT E. SANDEN, individually, and d/b/a SANDEN FUEL COMPANY, Defendants.	)	

TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The State seeks to impose liability on Tesoro for the acts or omissions of a party who is not Tesoro's agent, employee, or partner and with whom Tesoro has no contracts and virtually no dealings. Alaskan law does not permit this result. Whether cast as breach of statute, nuisance, negligence or strict liability, the State's claims fail because Tesoro has no connection with the alleged gasoline spill at Sanden's Peters Creek station.

Counts I-VI, IX, XI and XII of the Complaint allege Tesoro violated of the State Environmental Conservation Act and Oil Pollution Control Act. These statutes require that a party must own or control the gasoline immediately before its entry into the groundwater for liability to attach. It is undisputed -- indeed the State acknowledges in the Complaint (First Amended

Compl. ¶ 26) -- that Tesoro did not own or control the gasoline at Sanden's station immediately before its alleged entry into the groundwater. In addition:

- Tesoro has never sold any gasoline to Sanden or the Peters Creek station;
- Tesoro has no ownership interest in the Sanden station, the gasoline at that station or any of the underground storage tanks and lines in question;
- Tesoro has no contracts or agreements to sell gasoline or other products to Sanden or the Peters Creek station.

Thus, Tesoro cannot be liable under any of the statutory counts alleged in the State's Complaint. (See Section II infra.)

Counts VII, VIII, X, and XIII of the Complaint allege various claims of common law nuisance, trespass, strict liability and negligence. Each of these common law counts is premised on the notion that Tesoro was an agent or joint venturer with Sanden's Peters Creek Station and therefore can be liable for its acts and omissions. Yet, Sanden and Tesoro are separate, independent businesses with no contractual relationship and virtually no contacts. Nor has Tesoro, through any acts or omissions, created an apparent agency relationship or joint enterprise under Alaska law. Indeed, both Sanden and his independent distributor, Petro Products, agree that Tesoro has:

- No participation or control over the operation of Sanden's business or the Peters Creek station;
- No partnership, agency, or joint venture with Sanden or the Peters Creek station;

- No right to share in the profits or income from Sanden's business or the Peters Creek station;

- Never made or received any payments from Sanden or the Peters Creek station.

In fact, Tesoro's only contract in this case, a 1985 distributor agreement with Petro, Sanden's distributor, expressly disclaims any agency, partnership, joint venture, or other form of joint enterprise. Thus, Tesoro cannot be subject to common law liability under any theory of agency or joint enterprise. (See Section III infra.)

Finally, each of the State's common law counts is also deficient as a matter of law. Specifically, the strict liability claim fails because the storage of gasoline is not an ultra-hazardous activity and, even if it were, Tesoro has no ownership or control over the gasoline or the tanks and lines which stored it. Likewise, the State's common law claims for trespass, nuisance, and negligence fail because Tesoro did not own or possess the gasoline and has performed no intentional or negligent act with respect to it. Quite simply, Tesoro has done no more than sell gasoline to an independent distributor. If a wrongful act occurred at all, it took place two stages later in the chain of distribution at which time Tesoro neither owned the gasoline, nor had any contracts with the independent dealer that possessed it. Thus, Tesoro cannot be liable under any of the State's common law claims. (See Section IV infra.)

The language of the statutes involved, as well as Alaskan common law, preclude an action against Tesoro for an alleged leak at a station that it does not own or operate and over which it exercises no control. This result -- barring claims against a refiner when it has no connection with the injury involved -- is precisely what the Alaskan courts and legislature intended. It is not a harsh result. The State loses nothing. Sanden, who owned the station and tanks in question, and Petro, who delivered the product and owned it immediately before Sanden, are still parties in this case. If the State can prove its claims against those parties, it will be made whole.

UNDISPUTED FACTS

On December 4, 1986, the State filed an amended complaint against three defendants, Robert Sanden, d/b/a Sanden Fuel Co., Petro and Tesoro, alleging that gasoline from underground storage tanks or underground lines located at Sanden's service station had leaked into the soil, contaminating the Peters Creek aquifer. (Complaint at ¶¶ 23, 24). The following testimony of Robert Sanden, the owner of Sanden Fuel Company; George Petrovich, the owner of Petro Products; and Wade Rodgers, Tesoro's Marketing Manager in Alaska, catalogues the undisputed facts in support of Tesoro's motion.

1. The Peters Creek station alleged to be the source of the leak is owned entirely by Sanden. Tesoro has no ownership

interest in the station, the underground tanks and lines, or other equipment.

- Sanden Dep. at 113, 117;
- Petrovich Dep. at 11-12;
- Rodgers Dep. at 8.

2. Tesoro had no role in the design, construction, or financing of Sanden's station, or any of its storage tanks, lines, or other equipment. Tesoro does not have the duty to inspect, repair or modify the storage tanks, lines or other equipment at Sanden's Peters Creek station.

- Sanden Dep. at 116-117;
- Rodgers Dep. at 9.

3. Tesoro has never sold any gasoline to Sanden or the Peters Creek station. Tesoro has never held any security interest in, or lien on, the Peters Creek station or any gasoline sold to Sanden.

- Sanden Dep. at 113, 115-116, 310, 316;
- Petrovich Dep. at 11-13;
- Rodgers Dep. at 8-9.

4. Tesoro has never had any contractual relationships with Sanden.

- Sanden Dep. at 116-117;
- Rodgers Dep. at 9.

5. Tesoro and Sanden Fuel Company are discrete, independent businesses. Tesoro has never participated in, or had

any control over, the day-to-day operations of Sanden's business or the Peters Creek station.

- Sanden Dep. at 117-119;

- Rodgers Dep. at 9.

6. Sanden has posted two signs, on either side of the kiosk at the Peters Creek station, which state:

"This Station Is Independently
Owned And Operated"

These signs were placed at Sanden's station at Tesoro's request.

- Sanden Dep. at 117-119.

7. Sanden is not an agent, partner, or joint venturer with Tesoro. Tesoro and Sanden have never shared any profits or income from the Peters Creek station, nor does Tesoro have any right to share any of the profits or income from the Peters Creek station.

- Sanden Dep. at 112-113, 119;

- Rodgers Dep. at 13-14.

8. The gasoline alleged by the State to have leaked from Sanden's tanks was purchased by Sanden from Petro, an independent distributor that purchases petroleum products and resells them to service stations and other consumers.

- Complaint at ¶ 25-26;

- Petrovich Dep. at 13-14.

9. Tesoro's only relationship with Petro is governed by a July, 1985 Distributor Agreement. (A copy of this Agreement

is located at Appendix II, Tab A). Section 7(a) of this Agreement provides that:

> "Title to, risk of loss, and liability for all products delivered hereunder passes to Distributor [here Petro] at the time and place of delivery."

Delivery to Petro occurs at Tesoro's Anchorage terminal near the end of the Kenai Pipeline. Tesoro does not deliver any gasoline to Sanden.

- Petrovich Dep. at 12-13;
- Rodgers Dep. at 10-12

10. Section 3 of the Agreement gives Petro the right to select retail dealers as "Tesoro branded operations." Pursuant to this provision, Petro selected Sanden Fuel Company's Peters Creek station as a Tesoro branded operation. For any branded operation it selects, Petro has responsibility to ensure that such outlets are in compliance with all federal, state, and local laws, including all environmental laws and regulations.

- Agreement at ¶ 14;
- Rodgers Dep. at 12;
- Petrovich Dep. at 17-18.

11. Tesoro and Petro have specifically agreed, in Section 23 of the Agreement, that Petro is only a distributor of Tesoro products, not its agent, partner, or joint venturer. Specifically, that provision states:

> "This Agreement is intended to establish and authorize Distributor to be a branded distributor of Tesoro products. This Agreement is not intended and shall not be construed to

create any agency, partnership, joint venture or other form of joint enterprise, and it is understood that Distributor shall conduct its business at its own risk and expense and for its own account."

- Agreement at ¶ 23;

- Rodgers Dep. at 13-14;

- Petrovich Dep. at 10-11, 17-18.

ARGUMENT

I. Summary Judgment Is Appropriate In Groundwater Pollution Cases.

Under Rule 56(c) of the Alaska Rules of Civil Procedure, summary judgment is proper where the pleadings and supporting evidence show that there are no genuine issues of any material fact. See Williams v. City of Valdez, 603 P.2d 483, 489 (Alaska 1979); Alaska National Bank v. Linck, 559 P.2d 1049, 1051 (Alaska 1977). It is well settled that summary judgment in groundwater pollution cases is proper if the foregoing requirements are met. In State Department of Environmental Protection v. Exxon Corp., 151 N.J. Super. 464, 468, 376 A.2d 1339, 1342 (Super Ct. 1977), the Court granted defendant summary judgment where, as here, stipulated facts demonstrated that defendant's acts were in no way related to the alleged pollution. See also Rounds v. Hoelscher, 428 N.E.2d 1308, 1312 (Ind.App.3 1981) (summary judgment granted in groundwater pollution cases); Kopp v. Zawistoski, 118 Wis. 2d 820, 822, 346 N.W.2d 469, 471 (1984) (per curiam) (unpublished limited precedent opinion) (same);

Commw. Department of Environmental Resources v. Steward, 24 Pa. Commw. 493, 498, 357 A.2d 255, 258 (Commw. Ct. 1976) (same).

II. Neither The Environmental Conservation Act Nor The Oil Pollution Control Act Can Apply To Tesoro.

The State's Complaint contains nine counts that allege violations of Alaskan environmental statutes against all three defendants. They are:

Environmental Conservation Act (ECA) AS 46.03.010 et. seq. (1987)

Count I	Section 822	(Strict Liability)
Count II	Section 760(e)	(Reimbursement of State's Expenses)
Count III	Section 755(a)	(Failure to Report Pollution)
Count IV	Section 760(a)	(Civil Penalties for Pollution)
Count V	Section 780	(Restoration of Natural Resources)
Count VI	Section 800	(Statutory Nuisance)
Count XI	Section 765	(Injunctive Relief for Violation of Oil Pollution Control Act)
Count XII	Section 765	(Injunctive Relief for Violation of the Hazardous Substance Release Control Act)

Oil Pollution Control Act (OPCA) AS 46.04.010 et. seq. (1987)

Count IX	Section 10	(Civil Penalties for Discharge of Oil)

As detailed below, none of these statutory claims are applicable to defendant Tesoro.

A. Count I -- Strict Liability.

Section 822 of the ECA, as amended by Section 826(3) (1986), imposes strict liability on those parties that own or have control over a hazardous substance which enters the ground-water of the State:

> Section 822. Strict liability for the discharge of hazardous substances. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry.
> (AS 46.03.822) (emphasis added)

It is undisputed that Tesoro did not own the gasoline which allegedly leaked from Sanden's tank. (Undisputed Fact No. 3) Title to the product passed to Petro at the Anchorage terminal and then from Petro to Sanden when Petro delivered the gasoline into Sanden's tanks. (Undisputed Fact No. 9). Tesoro can therefore not be held liable under the ownership provision of Section 822.1/

1/ The legislative history of the 1986 amendments to the ECA reveals that, in determining liability under Section 822, the word "owning" is to be accorded the commonly understood meaning of holding title to the substance. The February 5, 1986 Senate Resources Committee staff report states that the 1986 amendment was meant to restore the original commonly understood meaning of the term "owner." In that regard, Alaskan Assistant Attorney General Thomas M. Jahnke testified in a May 7, 1985 letter to Representative Sund, Chairman of the House Resources Standing Committee, that,
(Footnote Continued)

"Having control over a hazardous substance" is defined in subsection 826(3) as "producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the water, surface, or subsurface land of the state . . . ." (AS 46.03.826(3)) (emphasis added) Tesoro did not produce, handle, store, transport, or refine the gasoline "immediately before" its entry upon the water or subsurface land of the State. Substantial time and numerous activities by other parties occurred between Tesoro's last contact with the gasoline and the alleged pollution. Specifically, Petro picks up the product at Tesoro's terminal and then drives to Peters Creek. It is then deposited in Sanden's tanks. Finally, there is no telling how long the product remained in Sanden's tanks before it allegedly leaked into the ground. That could be weeks or months.

Given this chain of events, it is obvious that Tesoro did not produce, handle, store, transport, or refine gasoline

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(Footnote Continued)
for the purposes of Section 822 liability, "owners" are those persons with title to the hazardous substance. (pg. 1) The letter goes on to state:

> The word "owner" has a clear definition in the common law and common usage. It is not necessary to define the term in the statute because the common law and common usage provide the definition applied in the Alaska Courts. AS 01.10.010; AS 01.10.040.

(A copy of this letter is located at Appendix II, Tab B).

"immediately before" its asserted entry upon the subsurface lands or waters of the State.2/ Consequently, under the plain language of Section 822, strict liability cannot attach to Tesoro.

B. Count II -- Statutory Penalty And Reimbursement For Cleanup Expenses.

Section 760(e) of the ECA imposes a duty to reimburse the State for all cleanup expenses on "a person who violates or causes or permits to be violated a provision of AS 46.03.740 . . . ." Section 740 in turn provides that "A person may not discharge, cause to be discharged, or permit the discharge of petroleum . . . or a residuary product of petroleum, into, or upon the waters"3/ of the State. (emphasis added) As this statutory language reveals, only if a party actually

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2/ The phrase "immediately before" has not been construed by any court with reference to the Alaska Environmental Conservation Act. However, other courts have accorded the phrase a common-sense definition. In Pearl River Valley Water Supply Dist. v. Wood, 252 Miss. 580, 172 So.2d 196, 205 (1965), the Court construed "immediately before," in a condemnation proceeding and held that the value of the land immediately before the taking was that value, without any interval of time. Id. at 207. See also C&R Transport, Inc. v. Campbell, Tex., 406 S.W.2d 191, 195 (Tex. 1966) ("immediately" means without any interval of time); People v. White, 15 Mich.App. 527, 166 N.W.2d 639-640 (Ct. App. 1969) (same).

3/ The State also seeks statutory penalties under Section 760(a), (AS 46.03.760(a)), which allows for the imposition of penalties against persons who permit or cause pollution of subsurface land or water as proscribed in Section 710. (AS 46.03.710)

discharges pollutants, or causes or permits such a discharge, can liability attach.

The State does not allege Tesoro discharged any pollutants in this case. Nor did Tesoro permit or cause the alleged leak at the Peters Creek station. Under Alaska law, "permission" requires knowledge and consent of the act. As the Court in Alaska Mines & Minerals, Inc. v. Alaska Industrial Board, 354 P.2d 376, 378 (Alaska 1960) stated:

> The word "permit" means "to allow the act***of, to authorize."

Id. at 378. (citations omitted)

Accord, McKee v. Travelers Ins. Co., 315 S.W.2d 852, 857 (Mo. App. 1958) ("'Permission' or 'to permit' implies knowledge and consent").4/ Tesoro did not have knowledge of or consent to the alleged leak or any action which could have caused the leaks. Tesoro had no role in the design, construction, or financing of the underground storage tanks and lines (Undisputed Fact No. 2) and had no duty to inspect, modify or repair such tanks and lines. (Id.)

4/ See Hostetler v. Ward, 704 P.2d 1193, 1200 (Wash. App. 1985), review denied, 41 Wash. App. 343 (1986) ("permit" in statute "requires an affirmative assent"); Hinkle v. Siltamaki, 361 P.2d 37, 41 (Wyo. 1961) ("permit" in statute "implies knowledge, consent, and wilfulness on the part of the owner, or such negligent conduct as is equivalent thereto").

Nor did Tesoro "cause" any violations of Sections 710 or 740. Alaska law applies the common sense notion of causality; namely, a "cause" is that action which was a "substantial factor in bringing about the harm." Ketchikan Gateway Borough v. Saling, 604 P.2d 590, 598 (Alaska 1979).5/ Similarly, the Court in United States v. Outboard Marine Corp., 549 F. Supp. 1032, 1035-36 (N.D. Ill. 1982) found that the defendant-supplier of polychlorinated biphenyls did not "cause" discharge under the Federal Refuse Act, noting the absence of "any case in the 80-year history of the Refuse Act in which one other than the actual discharger was held liable for causing or suffering the discharge." Tesoro's only conduct in this case was to sell petroleum products to Petro, at Tesoro's Anchorage Terminal. The cause, if any, of the alleged spill occurred two steps later in the distribution chain sometime after the gasoline was stored in

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5/ See Osborne v. Russell, 669 P.2d 550, 555-57 (Alaska 1983) (conduct may be the legal cause of harm "if the negligent act or omission 'was more likely than not a substantial factor in bringing about the injury,'") quoting Sharp v. Fairbanks North Star Borough, 569 P.2d 178, 181 (Alaska 1977) (proximate cause can only exist "if the negligent act 'was more likely than not, a substantial factor in bringing about the injury'"); State v. Fabritz, 348 A.2d 275, 280 (Md. 1975), cert. denied, 425 U.S. 942 (1976) (a cause is that action which "brings about an effect or that produces or calls forth a resultant action or state."); Cf. Artesian Water Co. v. Gov. of New Castle County, 659 F. Supp. 1269, 1283 (D. Del. 1987) (applying substantial factor test to determine causation in private cost recovery action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.).

the tanks of Sanden's Peters Creek station. Thus, Tesoro did not cause the alleged injury because it was not a "substantial factor" in producing the alleged discharge of petroleum products. Accord, State, Department of Environmental Protection v. Ventron Corp., 182 N.J. Super 210, 440 A.2d 455, 463 (Super. Ct. 1981) (owner's acts were not substantial factor in proximately causing toxic condition).6/ Since Tesoro has not "permitted" or "caused" a discharge of petroleum, it has not violated Section 740. Therefore, the State's claim for damages under Section 760 must be denied.

C. Count III -- Statutory Penalties For Failure To Report Leak.

Section 755(a) of the ECA provides that any person in charge of a facility must immediately report any discharge of pollutants to the Department of Environmental Conservation.

> Section 755(a). Discharge reporting.
> (a) A person in charge of a facility, operation or vessel, as soon as the person has knowledge of any discharge from the facility, operation or vessel in violation of AS 46.03.740 or 46.03.750 shall immediately notify the department of the discharge.

6/ Dean Prosser has noted that when "a court so uses 'substantial factor,' it imposes a prerequisite to legal responsibility that must be satisfied even in those cases where the 'but for' test is plainly satisfied." W. Keeton, C. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on Torts, § 41 at 268 (5th Ed. 1984); see also Gold, Causation in Toxic Torts: Burdens of Proof, Standards of Persuasion, and Statistical Evidence, 96 Yale L.J. 376, 389-92 (1986); Wright, Causation in Tort Law, 73 Calif. L. Rev. 1735, 1787-90 (1985) (and sources cited therein).

(AS 46.03.755(a)) (emphasis added)

It does not appear that any Court has construed Section 755 or applied the phrase "in charge of a facility." Similar language does, however, appear in Section 311 of the Federal Water Pollution Prevention and Control Act. 33 U.S.C. § 1321(b)(5). Federal courts interpreting the phrase "in charge of a facility" in that statute have limited liability to facility owners or operators. For example, in United States v. Mobil Oil Corp., 464 F.2d 1124 (5th Cir. 1972), the Court held that the phrase "any person in charge of a vessel or of an onshore facility" was limited to the owners and operators of that vessel or facility. The Court reasoned that only the owners or operators have the opportunity and capacity to make timely discovery of discharges and to report those discharges:

> The owner-operator of a vessel or a vacility [sic] has the capacity to make timely discovery of oil discharges. The owner-operator has power to direct the activities of persons who control the mechanisms causing the pollution. The owner-operator has the capacity to prevent and abate damage. Accordingly, the owner-operator of a facility governed by the WPCA, such as the Mobil facility here, must be regarded as a "person in charge" of the facility for the purposes of § 1161 [recodified at ¶ 1321(b)(5)].

Id. at 1127. (emphasis added)7/

7/ See United States v. Republic Steel Corp., 491 F.2d 315, 317 (6th Cir. 1974) (adopting holding of Mobil Oil decision that owners and operators are persons in charge of a facility);
(Footnote Continued)

Since Tesoro was not the owner or operator of the Peters Creek station or the underground tanks and lines in issue (Undisputed Fact No. 1), it does not have the capability to discover, report and abate the alleged discharge. Mobil Oil, 464 F.2d at 1127. Tesoro thus cannot be deemed to be "in charge of" Sanden's station and cannot be liable under Section 755(a) of the ECA.

D. Count IV -- Civil Penalties For Violation Of Alaskan Water Quality Standards.

In Count IV, the State requests civil penalties against defendants for violation of Alaska water quality standards for petroleum hydrocarbons.8/ (18 AAC 70.020) The State's request for civil penalties against Tesoro once again rests on the

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(Footnote Continued)
Apex Oil Co. v. United States, 530 F.2d 1291, 1293 (8th Cir. 1976), cert. denied, 429 U.S. 827 (U.S. 1976) ("We conclude *that an owner-operator is 'in charge' of his facility within the meaning of § 1161."); United States v. Mackin Const. Co., 388 F. Supp. 478, 481 (D. Mass. 1975) (holding that fuel oil seller was not liable as "person in charge of a vessel or of an onshore facility" since that phrase "clearly denotes possession and dominion"); United States v. Skil Corporation, 351 F. Supp. 295, 298-99 (N.D. Ill. 1972) (holding that phrase "person in charge" means "the person who was at the facility at the time and was in charge under the management provisions or of the handling of that part of the facility which related to the oil spillage"); State v. Bunker Hill Co., 635 F. Supp. 665, 672 (D. Idaho 1986) (adopting holding of Mobil Oil decision with reference to owners and operators in context of claim under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.).

8/ Section 760(a) of the ECA provides for the assessment of
(Footnote Continued)

strained interpretation that Tesoro conducted an operation that caused a violation of the water quality standard. It did not.

Tesoro does not own the Peters Creek station or hold any interest in Sanden's business or property. (Undisputed Facts Nos. 1 and 2). Tesoro does not have any control over the operation of Sanden's business or the Peters Creek station. (Undisputed Fact No. 5). Likewise, Tesoro had insufficient contact with the station or its operation to have "permitted or caused" the violation. (See discussion at pp. 12-15 supra.) Thus, the claim that Tesoro "conducted" an operation which caused a violation is without basis.

E. Count V -- Restoration Of Natural Resources.

Count V seeks damages to replenish injured and degraded groundwaters pursuant to Section 780 of the ECA. (AS 46.03.780) That provision establishes liability for restoration of natural resources where there has been a predicate violation of either the ECA, Oil Pollution Control Act, or the Hazardous Substances Release Control Act. The State does not specify any predicate violation of these acts. Rather, by incorporating the preceding paragraphs of the Complaint, it relies on Sections 760(a), (e), 755, 740, or 710 of the ECA for its predicate violation. Because

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(Footnote Continued)
civil penalties where a person violates, causes or permits to be violated a regulation or lawful order of the Department of Environmental Conservation. (AS 46.03.760(a))

Tesoro did not cause any violations of these statutes (as discussed in Sections II A-D, supra), Tesoro is exempt from liability under Section 780 of the ECA.

F. Count VI -- Statutory Nuisance.

Count VI seeks recovery under Section 800 of the ECA for statutory nuisance.9/ That provision states:

> Section 800. Water nuisances. (a) A person is guilty of creating or maintaining a nuisance if the person puts a dead animal carcass, or part of one, excrement, or a putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner befouls, pollutes, or impairs the quality of a spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes. (AS 46.03.800(a))

Tesoro has not done any of these things. All acts relating to the product in issue, e.g., the storage, handling, and delivery of gasoline were performed by Petro and Sanden. Indeed, Tesoro has no association with the gasoline once Petro assumes title and liability for it at the Anchorage Terminal. This lack of causation between any act of Tesoro and the groundwater in issue forecloses statutory liability under Section 800.

9/ Section 800(b) of ECA (AS 46.03.800(b)) provides that any person who refuses to abate the nuisance upon order of the Department of Environmental Conservation is liable for damages. The DEC, however, has never served Tesoro with any abatement order. For this reason alone, Tesoro cannot be liable for damages under Section 800.

G. Count XI -- Injunctive Relief For Violation Of The Oil Pollution Control Act.

In Count IX, the State seeks an injunction, pursuant to Section 765 of the ECA (AS 46.03.765), requiring defendants to cleanup all petroleum products allegedly spilled in violation of Section 20 of the Oil Pollution Control Act (AS 46.04.020) which states:

> Section 20. Removal of Oil Discharges. (a) A person causing or permitting the discharge of oil shall immediately contain and cleanup the discharge. (AS 46.04.020(a))

As with the similar language in the ECA, "cause" and "permit" are undefined in the Oil Pollution Control Act. Alaska law -- and common sense -- suggest however, that "permitted" requires knowledge of and consent to the act in question. (See discussion at pp. 12-15, supra).10/ Likewise, "caused" has been accorded a common sense meaning that refers to one act compelling a certain consequence. See Alvey v. Pioneer Oilfield Services, Inc., 648 P.2d 599, 600 (Alaska 1982) ("Proximate cause exists where the negligent act was, more likely than not, a substantial factor in bringing about the injury.")11/

10/ See Winterton v. Van Zandt, 351 S.W.2d 696, 700 (Mo. 1961) ("permission" means an act of permitting, formal consent, authorization, leave, license or liberty granted).

11/ See Challis Irrigation Co. v. State, 107 Idaho 338, 689 P.2d 230, 231 (Ct. App. 1984) (to constitute a cause a negligent act must be a "material element and a substantial factor"); Rudeck v. Wright, 709 P.2d 621, 625 (Mont. 1985) (in medical (Footnote Continued)

Tesoro did not cause or permit the discharge of oil as it did not own, operate, or have control over the Sanden station, or its lines and tanks. (Undisputed Facts No.1 and 2). Nor did Tesoro have any knowledge of the alleged discharge.

H. Count XII -- Injunctive Relief For Violation Of The Hazardous Substance Release Control Act.

In this Count, which also seeks injunctive relief under Section 765 of the ECA, the State seeks to require all defendants to begin cleanup procedures necessitated by their violations of the Hazardous Substance Release Control Act. Section 20 of this Act states in pertinent part:

> Section 20. Containment and cleanup of a released hazardous substance.
> (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release. (AS 46.09.020(a))

As discussed above, (see discussion at pp. 12-15, supra) Tesoro's only action -- transferring the product to Petro at its Anchorage terminal -- cannot be a "cause" of the alleged leak in issue. Indeed, two other parties, Petro and Sanden, controlled and held title to the products in question prior to the alleged leaks.

Moreover, the Hazardous Substance Release Act (HSRA) does not even apply to spills of "uncontaminated refined oil," or

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(Footnote Continued)
mismanagement case, substantial factor test is appropriate); Brennen v. City of Eugene, 285 Or. 401, 591 P.2d 719, 723 (1979) (substantial factor test adopted).

gasoline, which the State alleges occurred in this case. Section 900 (4)(B) of HSRA states plainly:

> "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil. (AS 46.09.900(4)(B))

Finally, the State's Complaint alleges that the alleged spill was discovered in April 1986, and the cleanup project began shortly thereafter. (Complaint at ¶¶ 6, 17-19). Yet, the Hazardous Substance Release Act was enacted two months later in June 1986. Even if the cleanup and reporting provisions of that statute could apply to gasoline or Tesoro's conduct, the State was on notice of the spill and began cleanup procedures prior to the statute's enactment. Given this timing, the HSRA is not applicable and cannot be enforced against Tesoro.

III. The State's Common Law Counts Fail Because Sanden Is Not An Agent Or Joint Venturer With Tesoro.

Counts VII, VIII, X, and XII of the State's Complaint allege claims of common law nuisance, trespass, strict liability, and negligence. Tesoro's liability under each of these counts is counts is premised on the notion that Sanden was Tesoro's agent or joint venturer and Tesoro therefore can be held liable for Sanden's acts or omissions in the operation of the Peters Creek station. (Complaint at ¶¶ 32-34) This premise is false. As detailed below, Tesoro and Sanden are discrete, independent businesses. They have no contractual relationship whatsoever and Tesoro has done nothing to create an apparent agency or joint enterprise as a basis for liability.

A. Sanden Is Not The Actual Agent Of Tesoro.

Alaska has adopted the Second Restatement standard for determining whether an agency exists between two separate entities. That provision states:

> Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

Green Construction Co. v. State Department of Revenue, 674 P.2d 260, 265 (Alaska 1983), citing, Restatement (Second) of Agency § 1(1)(1958).12/ Under Alaskan law, "the party who seeks to bind a principal with acts of a purported agent bears the burden of proving the fact of agency." Bruton, 513 P.2d at 1126 n.7, citing, State v. Neal & Sons, Inc., 489 P.2d 1016, 1019 (Alaska 1971).

The State cannot prove any agency between Sanden and Tesoro. At no time has Tesoro consented to having Sanden act on its behalf. Nor has Sanden ever assumed the responsibility of acting on behalf of Tesoro. There are no contracts or agreements between Sanden and Tesoro which set up such an agency; indeed, there are no contracts between Sanden and Tesoro at all.

12/ Accord, Bruton v. Automatic Welding & Supply Corporation, 513 P.2d 1122, 1126 (Alaska 1973) ("An agency relation exists only if there has been a manifestation of the principal to the agent that the agent may act on his account and consent by the agent so to act.")

Sanden's only connection with Tesoro is the use of signs and logo. Yet such common use of advertising and insignia cannot establish an agency relationship and numerous courts have so held. See, e.g., Manis v. Gulf Oil Corp., 124 Ga. App. 268, 185 S.E.2d 589, 590-91 (Ct. App. 1971) (station operator not agent of Gulf despite use of Gulf signs and uniforms); Greenberg v. Mobil Oil Corp., 318 F. Supp. 1025, 1028-29 (N.D. Tex. 1970) (display of Mobil signs and logo does not create agency with station dealer); Levine v. Standard Oil Co., In Ky, 249 Miss. 651, 163 So.2d 750, 751 (1964) (standard lessee-dealer not agent even though he leased station from Standard and used its signs and uniforms).13/

Nor can Tesoro's July, 1985 Distributor Agreement set up an agency with Sanden. That agreement is with Petro Products, Tesoro's distributor. All of Sanden's relations are likewise with Petro, not Tesoro. Moreover, that distribution agreement specifically disclaims any agency relationship between the contracting parties:

> [T]his Agreement is not intended and shall not be construed to create any agency, partnership, joint venture or other form of joint enterprise, and it is understood that Distributor shall conduct its business at its own risk and expense and for its own account.

13/ This is just a sampling. Over fifteen states and several federal courts have held that a service station dealer does not become a refiner's agent by means of, inter alia, common signs and logos. Each of these cases are identified and discussed by state, in Appendix I to this brief.

Agreement at ¶ 23. See Undisputed Fact No. 11.

Finally, central to any agency relationship is the principal's ability to control the operations and activities of the alleged agent. For example, in Green Construction, the Alaska Supreme Court rejected a claim of agency between pipeline contractors and Alyeska because the contractors did not establish "the degree or nature or control exercised by Alyeska over the labor, materials and equipment furnished by [contractors that] is sufficient to justify an agency relationship between them."14/ 647 P.2d at 266. Likewise, Tesoro had neither the right to control nor actual control over Sanden's Peters Creek station. It had no ownership in the station or its storage tanks and no right to share in the profits or revenue Sanden earned from his business. (Undisputed Facts Nos. 1, 5 and 7).

Tesoro's relationship with Sanden is thus even more attenuated than the contractors with Alyeska in Green. In Green, Alyeska dealt directly and continuously with the contractors and exercised control over the contractors' acquisition of materials and labor. 647 P.2d at 265. Tesoro had no such power over

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14/ In denying the claim of agency, the Green Court also noted that there was a lack of consent from the alleged principal and a contractual disclaimer between the parties. 674 P.2d at 265-266. Likewise, Tesoro has not, by act or omission, consented to an agency relationship with Sanden. In fact, Tesoro's only contract in issue, the July, 1985 Distributor Agreement, specifically disclaims any agency relationship in language almost identical to that cited by the Supreme Court in Green. Id. at 265.

Sanden. Similarly, the Alaska Supreme Court struck down a claim of agency between a parent and subsidiary in Bendix Corp. v. Adams, 610 P.2d 24 (Alaska 1980), even though the alleged agent's actions were funded by a loan from the alleged principal. Again, no loan exists between Tesoro and Sanden. (Undisputed Fact No. 7) Thus, the State's allegations of agency between Sanden and Tesoro cannot be sustained.

B. Sanden Was Not The Apparent Agent Of Tesoro.

In Alaska, Courts have adopted the Second Restatement as the rule for the creation of an apparent agency relationship among two separate entities. That standard provides:

> [A]pparent authority to do an act is created as to third persons by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

City of Delta Junction v. Mack Trucks, Inc., 670 P.2d 1128, 1130 (Alaska 1983), citing, Restatement (Second) of Agency, § 27. In applying this standard, Alaskan courts emphasize that it is the alleged principal's conduct -- not that of the alleged agent -- that controls the issue of apparent agency. As the Supreme Court of Alaska recently stressed in Jackson v. Power:

> [It] is the principal's conduct that gives rise to his liability and not the conduct of the alleged agent; "one dealing with an alleged agent must prove that the principal was responsible for the appearance of authority, by doing something or permitting the alleged agent to do something that led others, including the plaintiff, to believe

> that the agent had the authority he purported to have."

No. 3237, slip op. at 12 (October 16, 1987) (emphasis in original), citing, Delta Junction, 670 P.2d at 1130. In this case, unlike Jackson and Delta Junction, Tesoro has done nothing, by act or omission, which could lead third parties to believe Sanden had authority to act on its behalf. In fact, Tesoro's only actions confirmed that Sanden was an independent business, owned and operated without any support or assistance from Tesoro.

In Delta Junction, the Court allowed a claim of apparent authority where the local truck dealer was a licensed franchisee of the national Mack Truck chain. Unlike the truck dealer in Delta Junction, Sanden was not a licensed franchisee of Tesoro. Indeed, Tesoro had no contracts with Sanden whatsoever. Tesoro never sold or delivered one drop of gasoline to Sanden's Peters Creek station. Nor did Tesoro have any control or influence over the operation of the station or Sanden's business. Thus, the intimate franchise relationship between Mack truck and its licensed dealer does not exist here.15/

15/ Likewise, in Jackson v. Power, the Court denied summary judgment on a claim of apparent authority where the alleged agents (Emergency Room Doctors) worked in, and were an integral part of, the alleged principal's (Hospital) business. Here, Sanden does not work on Tesoro's property, nor does Tesoro own any equipment at Sanden's station. Sanden's relationship, unlike the doctors in Jackson, is with Petro, not Tesoro. Sanden is a branded dealer of, and
(Footnote Continued)

Tesoro's only conduct with Sanden reinforced that Sanden's station was independently owned and operated. Tesoro requested Sanden to place two signs on either side of the kiosk at his station which read:

> "This Station Is Independently Owned And Operated."

(Undisputed Fact No. 6) As the Delta Junction Court noted, such signs were absent from the local Mack dealer's franchise (670 P.2d at 1130-31), and remove any doubt as to Sanden's independence. Similarly, while the Delta Junction Court emphasized that the local Mack dealer had "Mack" featured prominently in its corporate name, Sanden's business name contains no reference to Tesoro; it is simply, "Sanden's Fuel Company." Again, unlike the local Mack dealer in City of Delta Junction, Sanden was not required to sell exclusively Tesoro products and in fact, carried numerous products from competing refiners. (Sanden Dep. 260, 261)16/

(Footnote Continued)
receives his product from, Petro, not Tesoro. Thus, the claim of agency identified in Jackson is drastically different from the two independent businesses at issue here.

16/ The Delta Junction Court's citation to Gizzi v. Texaco, Inc., 437 F.2d 308 (3d Cir. 1971), cert. denied, 404 U.S. 829 (U.S. 1971), highlights that it is the conduct of the alleged principal, not that of the agent, which controls the question of apparent agency. In Gizzi, the Court allowed the claim of apparent agency to go to the jury because Texaco had performed certain acts which placed the franchised dealer's apparent agency into question. Specifically, Texaco's regional headquarters were across the
(Footnote Continued)

Finally, a finding of apparent agency under Section 27 of the Restatement requires that any third party's reliance on an act of the alleged principal must be reasonable. Here, there is no allegation that State relied, or reasonably could have relied, on any act by Tesoro to create an apparent agency with Sanden. Rather, the State had actual knowledge that Sanden's Peters Creek station and its underground storage tanks were owned and operated solely by Sanden. On June 6, 1986, the Alaska Department of Natural Resources received the "Notification for Underground Storage Tank" forms from Sanden and placed the forms on file in its office. (A copy of these forms are located at Appendix II, Tab C). These forms make plain that Sanden -- not Tesoro -- is responsible for the underground storage tanks in question. The State can not now claim otherwise.

As with actual agency, the State's claim of apparent agency is reduced to the assertion that Sanden's use of Tesoro signs and logos is enough to create an agency relationship. No court in Alaska has addressed this legal question, but numerous decisions have held that, as a matter of law, an oil company's advertising, signs, and insignia alone does not constitute an

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(Footnote Continued)
street from the station in issue and Texaco owned certain equipment at the station. Most importantly, Texaco personnel knew of, and acquiesced in, the local dealer's foreign car repair operation which was the alleged cause of plaintiff's injury. Id. at 310. None of these conditions exist in this case.

agency relationship with a dealer where one does not otherwise exist.17/ For example, in Coe v. Esau, 377 P.2d 815, 817-19 (Okla. 1963), the court found no agency even though there was a dealer agreement between the station and the oil company, and the oil company leased the station to the dealer. The Court explicitly rejected the argument that the dealer's use of the oil company's signs could constitute an apparent agency:

> It is indeed a matter of common knowledge and practice that distinctive colors and trade mark signs are displayed at gasoline stations by independent dealers of petroleum product suppliers. These signs and emblems represent no more than notice to the motorist that a given company's products are being marketed at the station. [citations omitted]

17/ The law of sixteen different states which have addressed this precise issue is catalogued in Appendix I to this brief. In each of these cases, the Court rejected a claim of actual or apparent agency in situations where the oil company had substantially greater contact with the dealer than Tesoro has with Sanden. For example, several courts have found that a station operator with a franchise agreement who leases the premises from the oil company, and receives gasoline directly from the refiner and displays the oil company's signs and insignia, is not the apparent agent of the oil company. See, e.g., Apple v. Standard Oil, 301 F. Supp. 107, 109 (N.D. Cal. 1969) (lessee dealer was not agent of lessor oil company despite displaying signs, advertising, and credit cards); Drum v. Pure Oil Co., 184 So.2d 196, 198 (Fla. App. 1966) (lessee dealer not agent of oil company even though it displayed refiner's signs and executed a lease and mortgage with the refiner); Smith v. Cities Service Oil Co., 346 F.2d 349, 352 (7th Cir. 1965) (no agency between lessee dealer and oil company even though the dealer purchased its fuel from Cities Service and displayed its logo and signs) (applying Michigan law).

Id. at 818. Accord, Beckham v. Exxon Corp., 539 S.W.2d 217, 219-20 (Tex. Civ. App. 1976) (no apparent agency in spite of lease and dealer agreement between the dealer and Exxon where station displayed Exxon sign and logo); Arceneaux v. Texaco, Inc., 623 F.2d 924, 926-27 (5th Cir. 1980), cert. denied, 450 U.S. 928 (U.S. 1981) (court rejects claim of apparent agency despite station's use of Texaco's sign and insignia).

C. Sanden Was Not Engaged In Any Joint Enterprise With Tesoro.

In Nicholas v. Moore, 570 P.2d 174, 178 (Alaska 1977), the Alaska Supreme Court laid down the factors necessary to find a joint enterprise under Alaska law:

> (a) A contribution by the parties of money, property, effort, knowledge, skill, or other asset to a common undertaking;
>
> (b) A joint property interest in the subject matter of the venture;
>
> (c) A right of mutual control or management of the enterprise;
>
> (d) Expectation of profit, or the presence of 'adventure,' as it is sometimes called;
>
> (e) A right to participate in the profits;
>
> (f) Most usually, limitation of the objective to a single undertaking or ad hoc enterprise. (footnotes omitted)

See also Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, 1187, on reh'g, 563 P.2d 256 (Alaska 1977) (joint venture defined as an association of two or more persons to carry out a single

business enterprise for profit for which purposes they combine their property, money, effects, skill, and knowledge).

Here Tesoro has not contributed or combined its money, property, or other assets with Sanden to operate the Peters Creek station. (Undisputed Fact No. 7). As the testimony of Sanden, Petrovich, and Wade Rodgers, Tesoro's Marketing Manager, demonstrates, Tesoro has:

- Never pooled its money, property, or other assets with Sanden or Petro;
- Never shared in the profits or expected a share in the profits with Sanden or Petro; and
- Never owned or controlled the Peters Creek station, Sanden's business, or the gasoline in his underground tanks and lines.

(Undisputed Facts Nos. 5 and 7). Indeed, Tesoro ceased to have any property interest in the gasoline when Petro took possession of it at the Anchorage terminal. Perhaps most importantly, Tesoro had no duty to inspect, modify, or repair the underground storage tanks and lines owned by Sanden. (Undisputed Fact No. 2).

Quite simply, to hold that supplying a distributor with a product makes the supplier a joint venturer with every link in the chain of distribution would be an unprecedented and unwarranted extension of the law. In Wells v. Whitaker, 207 Va. 616, 151 S.E.2d 422, 431 (1966), the Virginia Supreme Court held that a dealer of ammonia nitrate could not be considered a joint venturer with the manufacturer since the two businesses did not

share property and profits. In so holding, the Court noted that applying joint enterprise concepts to such a relationship would stretch the concept to an absurd point:

> "Otherwise every person, firm or corporation who furnishes materials or supplies in connection with an enterprise might be termed joint venturers, whether or not they had any such intention."

Id. at 432.

The undisputed facts and controlling law establish that no genuine issue of material fact exists that could connect Tesoro with any act or omission that might have caused the contamination of the Peters Creek aquifer. Nor is Sanden the agent of, or joint venturer with, Tesoro. In the absence of any such relationship, Tesoro may not be held liable for the acts of others.

IV. The State's Common Law Counts Fail Because Tesoro Has Performed No Intentional Or Negligent Act In Connection With The Alleged Leak.

Counts VII, VIII, X and XIII allege common law claims of public nuisance, trespass, strict liability, and negligence. In addition to the lack of agency or joint venture status outlined above, each of these Counts fails because no conduct by Tesoro whether -- intentional or negligent -- has any connection with the alleged spill. Such predicate act is a necessary element to any common law liability.

A. Count X -- Strict Liability For Ultrahazardous Activity.

Count X seeks to hold Tesoro strictly liable for all damages incurred as a consequence of the leaking tanks and/or underground lines at the Peters Creek station. In Alaska, no court has yet addressed whether the storage of gasoline is an ultrahazardous or inherently dangerous activity that can support a finding of strict liability. Several other jurisdictions which have addressed this question have held, however, that the storage of gasoline is not an abnormally dangerous or ultrahazardous activity.18/ Furthermore, the Alaska Supreme Court in Martin v. Union Products, Inc., 543 P.2d 400, 405 (Alaska 1975), upheld application of a negligence standard where an oil company's transmission of heating oil into a 500-gallon tank allegedly caused a fire.

Equally important, even the doctrine of strict liability requires that the alleged tortfeasor have some connection

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18/ See, e.g., Hudson v. Peavey Oil Co., 269 Or.3, 566 P.2d 175, 178 (Or. 1977) (storage of gasoline by service station not abnormally dangerous); Bagley v. Controlled Environment Corporation, 503 A.2d 823, 826 (N.H. 1986) (same); Greene v. Spinning, 48 S.W.2d 51, 53 (Mo.App. 1931) (same); Hennigan v. Atlantic Refining Co., 282 F. Supp. 667, 680 (E.D. Pa. 1967), aff'd, 400 F.2d 857 (3d Cir. 1968), cert. denied, 395 U.S. 904 (1969) (same); Smillie v. Continental Oil Company, 127 F. Supp. 508, 510 (D. Colo. 1954) (same); Pryor v. Chambersburg Oil & Gas Co., 37 Pa. 521, 103 A.2d 425, 427-28 (1954) (same); Morrison v. Standard Oil Co. of New Jersey, 105 N.J.Eq. 104, 147 A. 161, 163 (Ct. Ch. 1929) (same); Sarno v. Gulf Refining Co., 99 N.J.L. 340, 124 A. 145, 146 (N.J. 1924) (same).

with the alleged ultrahazardous activity which resulted in damage. For Tesoro to be held strictly liable, it must have some connection with the storage of gasoline in the underground tanks and lines at the Peters Creek station. It had none. In a similar circumstance, the Court in State Department of Environmental Protection v. Exxon Corp., 151 N.J. Super 464, 376 A.2d 1339 (Super Ct. 1977) refused to impose strict liability for damages resulting from an oil discharge against the current owner of property (ICI, Inc.) when the evidence revealed that the former owner (Exxon) had caused or permitted the discharge. The Court held that the rationale for imposing strict liability could not extend to ICI, because it had no connection with the ultrahazardous activity:

> The rationale for imposing strict liability is clearly inapplicable to the present case. The rule of liability without fault has no appropriate application to ICI under the facts here because ICI did not bring the oil onto or into its property. It did not knowingly permit the oil to accumulate and did nothing to encourage or contribute to oil being stored up there.

Id. at 1344. Likewise, Tesoro is not now, nor was at the time of the alleged leak, engaged in the underground storage of petroleum at the Peters Creek station. If Sanden's tanks were indeed the source of the leak, Tesoro is not responsible for the discharge of gasoline onto and into the ground and aquifer. Tesoro should not

bear the burden of paying for the consequences of the activities of third parties.

B. Count VII -- Common Law Nuisance.

In order to impose liability on Tesoro for public nuisance, the State must demonstrate that some conduct by Tesoro was intentional or negligent. See Maier v. City of Ketchikan, 403 P.2d 34, 38 (Alaska 1965), rev'd on other grounds, Johnson v. City of Fairbanks, 583 P.2d 1818 (Alaska 1978), (claim based on public nuisance must at least show defendant's creation or maintenance of some physical condition); Snyder v. Kelter, 4 Alaska 447, 455-456 (1912) (nuisance claim must demonstrate defendant's maintenance of bawdyhouse). As Dean Prosser has stated:

> Today liability for nuisance may rest upon an intentional invasion of the plaintiff's interests, or a negligent one, or conduct which is abnormal and out of place in its surroundings, and so falls fairly within the principle of strict liability. With very rare exceptions there is no liability unless the case can be fitted into one of these familiar categories.

Prosser, Law of Torts, § 87 at 574 (4th Ed. 1971).

Tesoro committed no negligent or intentional acts with regard to the underground tanks or lines at Sanden's station. All acts or omissions were performed by others.

A person is not civilly liable for a nuisance caused or promoted by others, and such person is not bound to incur the expense to abate such a nuisance. United States v. Ira S. Bushey

& Sons, Inc., 363 F. Supp. 110, 119 (D.Vt.), cert. denied, 417 U.S. 976 (1974) (parent corporation liable for public nuisance associated with alter-ego subsidiaries' oil discharges only where parent controlled, managed, operated, and "in all ways" supervised the operations of its subsidiaries); State v. Cardon, 530 P.2d 1115, 1118 (Ariz. App. 1975), vacated on other grounds, 112 Ariz. 548, 544 P.2d 657 (1976) ("nuisance" is activity which emanates from "unreasonable, unwarranted or unlawful use by a person of his own property"); Monroe City v. Arnold, 22 Utah 2d 291, 452 P.2d 321, 322 (1969) (liability for public nuisance only where defendant, who conveyed property away, continued to operate and control property). Sanden's or Petro's acts are the proximate causes, if any, of the pollution, and hence it would be inconsistent with justice or propriety that Tesoro should be held to responsibility. See Rabin, Nuisance Law: Rethinking Fundamental Assumptions, 63 Va. L. Rev. 1299, 1319 (1977).

V. Count VIII -- Common Law Trespass And Conversion.

Count VIII seeks damages assertedly resulting from trespass upon and conversion of groundwaters. Under Alaskan law, trespass requires plaintiff to prove an invasion of possessory rights (or right to possession) the actual entry, and the damages resulting. Alaska Placer Co. v. Lee, 553 P.2d 54, 57 (Alaska 1976) (in case of intentional trespasser removing minerals from land of another, mineral owner may recover market value of converted minerals). Conversion is an exercise of dominion or

control over property which seriously interferes with the right of another to control it. See Weaver v. O'Meara Motor Co., 452 P.2d 87, 92 (Alaska 1969) (no conversion where defendant had right to repossess trucks under terms of retail installment contract). Tesoro has performed no intentional -- or accidental -- acts which in any way caused or permit a trespass in this case.

Moreover, trespass causes of action are founded on intentional acts which invade possessory rights. Andersen v. Edwards, 625 P.2d 282, 287 (Alaska 1981) (claimant has burden in showing defendant's share in causing harm); Phillips v. Sun Oil Co., 307 N.Y. 328, 121 N.E. 2d 249, 250-51 (1954) (no trespass where leakage of gasoline from tank not an intentional or volitional act of defendant).19/ As Dean Prosser has stated:

> The distinction to be made is between accidental and intentional entries. Accidental entries are often actionable when produced negligently or as a consequence of abnormally dangerous activities but not as trespasses.

19/ See also First City National Bank v. Japhet, 390 S.W. 2d 70, 74 (Tex. Civ. App. 1965) (no trespass where motorist suffered heart attack, veered onto land); Chartrand v. State of New York, 46 A.D.2d 942, 362 N.Y.S.2d 237, 239 (App. Div. 1974) (no trespass where defendant did not intend the act which produced the invasion, in this case, gas seepage from police station to plaintiff's restaurant); Murchison, Interstate Pollution: The Need for Federal Common Law, 6 Va. J. Nat. Res. L. 1, 6-7 (1986); Restatement (Second) of Torts § 8A (1965).

W. Keeton, C. Dobbs, R. Keeten & D. Owen, Prosser and Keeton on Torts, § 13 at 73 (5th Ed. 1984). Since the State does not contend that Tesoro has committed any intentional wrong, the State's trespass and conversion theories must fail.

VI. Count XIII -- Common Law Negligence.

To establish a claim of negligence against Tesoro, the State must demonstrate that:

(1) Tesoro had a duty of care to prevent the alleged negligent conduct;

(2) Tesoro performed an act or omission which breached that duty of care;

(3) Tesoro's breach of duty was the proximate cause of the injury allegedly suffered; and

(4) Tesoro's conduct caused damage to the plaintiff.

See Leigh v. Lundquist, 540 P.2d 492, 494 (Alaska 1975).

Under common law, a party has no obligation to control the actions of another, absent some special (e.g., parent-child) relationship between them. See Restatement (Second) of Torts § 315.1 (1965). Here, Tesoro has no relationship, contractual or otherwise, with Sanden by which the State can impose a duty to prevent Sanden's negligent conduct. Were the law otherwise, any business contact between two parties could create tort liability. See, e.g., Mid-Cal National Bank v. Federal Reserve Bank of San Francisco, 590 F.2d 761, 763 (9th Cir. 1979) ("one who merely fails to act to protect another is generally not liable for breaching a duty") (citing Restatement (Second) of Torts § 314

(1965); McKeithen v. S.S. Frosta, 441 F. Supp. 1213, 1216 (E.D. La. 1977) (Steamship Pilots Ass'n not liable for the allegedly negligent conduct of its members based on claims of negligent supervision and screening of members) (citing Restatement (Second) of Torts § 315.1 (1965)).

Likewise, the State's allegations that Tesoro negligently selected and supervised Sanden in the operation of the Peters Creek Station (Complaint at ¶ 39-42), rests on a fundamental misreading of the July, 1985 Distributor Agreement with Petro. Section 3 of that Agreement states that Petro, not Tesoro, selects all service station dealers, such as Sanden. Moreover, the Agreement states specifically that Petro will assure such dealers' compliance with all environmental laws and regulations. See July, 1985 Distributor Agreement, at ¶ 3(c). Thus, the State's allegation of negligent supervision and instruction falsely assumes that Tesoro was in some way involved with the selection or supervision of such dealers. It was not. See Undisputed Facts Nos. 2, 5 and 6.

Nor can liability be extended to Tesoro simply because it retained the right to approve Petro's selection of dealers and to inspect such operations. It is well established in Alaska that a party's reservation of its right to approve or inspect the operations of another does not create liability for the negligence of that third party. For example, in the construction context, an owner is not liable for the negligent acts of a contractor simply because the owner reserves the right to approve and

inspect the job site. As the Court in State v. Morris, 555 P.2d 1216, 1218 (Alaska 1976) held:

> It has been repeatedly held in our Courts that even though the owner reserves the right to exercise that degree of supervision and control to assure himself that the contract specifications are being met, yet he will not be held liable for the negligent methods of the contractor or subcontractor. Nor does the contracting owner incur a duty to the employees of an independent contractor merely by reserving the right to conduct safety inspections or to prescribe safety requirements. (citations omitted)

Cf. Restatement (Second) of Torts § 414 (1965) (Comment c) ("There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.") Accord, Molosco v. State, 644 P.2d 205, 211 (Alaska 1982) (same); Everette v. Alveska Pipeline Service Co., 614 P.2d 1341, 1347 (Alaska 1980) (same).

Equally fatal to the State's negligent claims, Tesoro did not proximately cause any release or discharge of petroleum products at Peters Creek. (see discussion of "cause" at pages 12-15 supra.) Any such substances were in the exclusive possession and control of Sanden at the Peters Creek station. As such, there is simply no nexus, causal or legal, between any conduct of Tesoro and the alleged leak at the Peters Creek station. See generally Alvey v. Pioneer Oilfield Services, 648 P.2d 599, 601 (Alaska 1982) (contractor's employee cannot recover for injuries absent a showing they were a proximate result of defendant's conduct). Because Tesoro has no duty to prevent the

negligent conduct of Sanden nor could any of its actions have proximately caused the alleged spill, the State's negligence claims must fail.

CONCLUSION

For the foregoing reasons, Tesoro requests entry of judgment in its favor and against the State on all counts of the State's complaint.

DATED this 27th day of January, 1988, at Anchorage, Alaska.

Respectfully submitted.

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for defendant Tesoro Alaska Petroleum Company, hereby certifies that a true and correct copy of the above and foregoing TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT was mailed, postage prepaid and properly addressed to the following counsel of record this 27th day of January, 1988.

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APPENDIX I

In each of the cases below, there was found to be no actual or apparent agency, despite the existence of numerous contacts between the oil company and the dealer, including supply contracts, lease agreements, dealer contracts and franchise agreements. None of these contracts and dealings are present between Tesoro and Sanden.

ALABAMA Union Oil Co. v. Crane, 288 Ala. 173, 258 So.2d 882, 887-89 (1972)

In Union Oil, a service station customer sued the station operator and the supplying oil company for injuries sustained when customer was struck by a car being driven by the operator. The Alabama Supreme Court reversed and remanded the trial court decision against the oil company, finding no evidence of apparent authority or agency by estoppel in view of the customer's lack of reliance. The fact that the oil company leased the premises to the operator did not create an agency relationship.

ARKANSAS Arkansas Fuel Oil Co. v. Scaletta, 200 Ark. 645, 140 S.W.2d 684, 689 (Ark. 1940)

In Arkansas Fuel Oil Co., a passerby sued both the station operator and the owner-oil company for injuries sustained in an automobile collision with service station attendant. The Arkansas Supreme Court found no agency or master-servant relation between the oil company and the station operator notwithstanding that the oil company owned the station, issued credit cards and executed a comprehensive dealer contract with its lessee.

CALIFORNIA Apple v. Standard Oil, 307 F. Supp. 107, 111-115 (N.D. Cal. 1969) (interpreting California law)

In Apple, a service station customer sued both the station operator and the oil company for injuries sustained on the premises. The Court held there was no agency, either actual or ostensible, between the station operator and the oil company, despite the display of the oil company's signs, the execution of a lease agreement, and the issuance of credit cards.

DELAWARE White v. Gulf Oil Corp., 406 A.2d 48, 52-53 (Del. Sup. Ct. 1979)

In White, a service station attendant sued both the station operator and the oil company for injuries sustained on the premises. The Delaware Supreme Court held there was no agency or master-servant relation between oil company and station operator even though the oil company leased the premises to the operator, and equipped the premises with underground gasoline storage tanks, pumps, signs and other equipment necessary for the operation of a Gulf station.

FLORIDA Drum v. Pure Oil Co., 184 So.2d 196, 198 (Fla. App. 1966)

In Drum, a service station customer sued both the station operator and the oil company for injuries sustained from a slip-and-fall incident on the premises. The Florida District Court of Appeal held there was no actual or apparent agency between station operator and oil company, despite the execution of a lease and mortgage agreement and the display of oil company signs.

Cawthon v. Phillips Petroleum Co., 124 So.2d 517, 520 (Fla. App. 1960)

In Cawthon, the service station customer sued both station operator and oil company for injuries sustained as a result of improper brake repairs. The Florida District Court of Appeal held there was no actual or apparent agency between station operator and oil company, despite the display of oil company's signs at the station. The Court found that the relation between the oil company and station operator was that of seller and purchaser.

GEORGIA Manis v. Gulf Oil Corp., 124 Ga. App. 638, 185 S.E.2d 589, 590-91 (Ct. App. 1971)

In Manis, a service station customer counterclaimed against the oil company for negligence of the station operator in its truck repairs. The Georgia Court of Appeals held there was no actual or apparent agency between oil company and station operator, despite the execution of a sales agreement and operator's use of oil company signs and uniforms.

ILLINOIS Crittendon v. State Oil Co., 78 Ill.App.2d 112, 222 N.E.2d 563, 565-66 (Ct. App. 1966)

In Crittendon, a service station customer sued the oil company-supplier for automobile damages resulting from an inadequate brake repair job. The Illinois Appeals Court found no actual or apparent agency between the station operator and the oil company-supplier despite the display of oil company's signs and the execution of a dealer agreement.

MARYLAND B.P. Oil Corp. v. Mabe, 279 Md. 632, 370 A.2d 554, 557-63 (1977)

In B.P. Oil Corp., a service station customer sued for injuries sustained in a grease fire on the premises. The Maryland Court of Appeals held there was no actual or apparent agency between station operator and lessor-oil company despite the execution of a dealer agreement and the display of oil company insignia on pumps, signs, trucks and uniforms.

MISSISSIPPI Levine v. Standard Oil Co., In Ky., 249 Miss. 651, 163 So.2d 750, 751 (1964)

In Levine, a service station customer sued the oil company for injuries sustained on the premises. The Mississippi Supreme Court held there was no actual or apparent agency between the operator and the oil company notwithstanding the execution of a lease agreement and display of oil company's insignia on station signs and uniforms.

MONTANA Elkins v. Husky Oil Co., 153 Mont. 159, 455 P.2d 329, 331-33 (1969)

In Elkins, an administratrix sued the oil company to recover for wrongful death. The Montana Supreme Court held there was no actual or apparent agency between the station operator and oil company despite the execution of an equipment lease agreement and truck rental agreement between the parties, and the oil company's ownership of certain equipment at the station.

NEW MEXICO Shaver v. Bell, 74 N.M. 700, 397 P.2d 723, 726-28 (1964)

In Shaver, a service station customer sued the station operator and the oil company for injuries sustained in a slip-and-fall incident on the premises. The New Mexico Supreme Court held there was no actual or apparent agency between the operator and the oil company despite the operator's use of the oil company's credit card, the existence of a lease and the display of oil company's sign and colors.

OKLAHOMA Cities Service Oil Co. v. Kindt, 200 Okla. 64, 190 P.2d 1007, 1012 (1948)

In Cities Service Oil Co., a service station customer sued the station operator and the oil company for injuries sustained in a slip-and-fall incident. The Oklahoma Supreme Court held there was no agency or master-servant relation between the operator and the oil company despite the oil company's processing of credit card charges, and a lease of station equipment to the operator.

Coe v. Esau, 377 P.2d 815, 817-19 (Okla. 1963)

In Coe, a service station customer sued the station operator and the oil company for damages sustained in the improper repair of an automobile. The Oklahoma Supreme Court held there was no agency or master-servant relation between the operator and the oil company, despite the existence of a dealer agreement, a lease, and the dealer's practice of honoring the credit cards of oil company.

PENNSYLVANIA Green v. Independent Oil Co., 414 Pa. 477, 201 A.2d 207, 211 (1964)

In Green, personal representatives of two service station customers sued the station operator and the oil company for trespass. The Pennsylvania Supreme Court held there was no agency or master-servant relation between the operator and the oil company despite the execution of a lease and a dealer agreement.

SOUTH DAKOTA Westre v. De Buhr, 82 S.D. 276, 144 N.W.2d 734, 735-36 (1966)

In Westre, a service station customer sued the station operator and the oil company for injuries sustained on the premises. The South Dakota Supreme Court held there was no actual or apparent agency between the operator and the oil company despite a lease and a sales agreement between dealer and owner, and notwithstanding the dealer's practice of honoring the oil company's credit cards.

TEXAS Beckham v. Exxon Corp., 539 S.W.2d 217, 219-20 (Tex. Civ. App. 1976)

In Beckham, a passerby sued the service station's oil company for injuries sustained in an automobile collision adjacent to the premises. The Texas Court of Civil Appeals held there was no agency or master-servant relation between the station dealer and the oil company despite the execution of a lease and sales/dealership agreement between them and notwithstanding the dealer instruction manual and periodic inspections of station.

McGee v. Phillips Petroleum Co., 373 S.W.2d 773, 777 (Tex. Civ. App. 1963), writ of error refused (1964).

In McGee, a driver sued the oil company for injuries sustained in an automobile collision with oil company's jobber. The Texas Court of Civil Appeals found no agency or subagency between oil company and jobber, despite the execution of a jobber's sales contract between the parties, and the use of oil company's name on jobber's truck.

Greenberg v. Mobil Oil Corp., 318 F. Supp. 1025, 1028-29 (N. D. Tex 1970)

In Greenberg, a service station customer sued the station operator and the oil company for injuries sustained in a shooting incident on the premises. The Court held there was no actual or apparent agency between the operator and the oil company notwithstanding the execution of a lease agreement and supply contract, and the display of oil company signs.

UTAH Foster v. Steed, 19 Utah 2d 435, 432 P.2d 60, 63 (1967)

In Foster, a service station customer sued the station operator and the oil company for injuries sustained on the premises. The Utah Supreme Court held there was no agency or master-servant relation between the parties despite the execution of a lease contract and dealer's agreement between the operator and the oil company.

FIFTH CIRCUIT Arceneaux v. Texaco, Inc., 623 F.2d 924, 926-27 (5th Cir. 1980)

In Arceneaux, service station customers sued the oil company for injuries sustained on the premises. The Fifth Circuit, interpreting Louisiana law, held there was no apparent agency or master-servant relation between the oil company and the operator, despite the operator's apparent use of oil company signs and insignia.

Miller v. Sinclair Refining Co., 268 F.2d 114, 117-18 (5th Cir. 1959)

In Miller, a service station customer sued the oil company for injuries sustained on the premises. The Fifth Circuit, interpreting Florida law, held there was no actual or apparent agency between oil company and the station operator despite the (1) oil company's financing of station construction, (2) oil company's ownership of underground storage tanks, etc., (3) dealer-operator's practice of honoring oil company credit cards and (4) a lease between them.

SEVENTH CIRCUIT Smith v. Cities Service Oil Co., 346 F.2d 349, 352 (7th Cir. 1965)

In Smith, a service station customer sued the oil company for injuries sustained on the premises. The Seventh Circuit, interpreting Michigan law, held there was no agency relation between the oil company and the station operator, despite the existence of a station lease between them, and the operator's purchase of petroleum and other products from oil company.

(7)

retroactivity

WRAP UP -

RECEIVED
FEB 4 1988
DEPARTMENT OF
ENVIRONMENTAL CONS N

U.S. EPA SUPERFUND PROGRAM

°° C E R C L I S °°

LIST-H: SITE/EVENT LISTING

INVENTORY

REPORT OPTIONS: EXTERNAL REPORT
LEVEL: STATE AK
SELECTION:
SEQUENCE: STATE, SITE NAME
EVENTS: ALL

RECEIVED
FEB 29 1988
DEPT. OF ENVIRONMENTAL
CONSERVATION
NRO

EPA_ID_NO.	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST.	NFA. FLAG	OPROLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980978902	ALASKA AUTO CARRIERS		NFA	00	DSI		04/11/85	STATE(FUND)
	1600 SHIP AV				PAI	09/30/87	09/30/87	STATE(FUND)
	ANCHORAGE	AK 99501						
	020 ANCHORAGE							
AK0004904215	ALASKA BATTERY ENTERPRISES			00	DSI		06/01/80	EPA (FUND)
	157 OLD RICHARDSON HWY				PAI	09/07/84	09/28/84	STATE(FUND)
	FAIRBANKS	AK 99701			HRI		07/16/87	EPA (FUND)
	090 FAIRBANKS NORTH STAR							
AKD037995404	ALASKA ELECTROPLATING & BUMPER REPAIR			00	DSI		07/01/80	EPA (FUND)
	828 E 15TH AVE				PAI	09/07/84	09/24/84	STATE(FUND)
	ANCHORAGE	AK 99504						
	020 ANCHORAGE							
AKD038526620	ALASKA GOLD			00	DSI		08/01/81	EPA (FUND)
	DRY CR - 1.5 MI N OF NOME				PAI	09/07/84	09/28/84	STATE(FUND)
	NOME	AK 99762			SII	09/24/86	09/24/86	EPA (FUND)
	100 NOME							
AK0007246497	ALASKA HUSKY BATTERY INC.			00	DSI		06/01/80	EPA (FUND)
	4540 MOUNTAIN VIEW DR				PAI	09/07/84	09/01/84	STATE(FUND)
	ANCHORAGE	AK 99502			SII	12/01/84	02/01/85	STATE(FUND)
	020 ANCHORAGE							
AKD981767262	ALASKA JUNEAU DUMP			00	DSI		03/01/87	EPA (FUND)
	THANE ROAD, MILE 1							
	JUNEAU	AK 99801						
	110 JUNEAU							
AK0061673430	ALASKA POLLUTION CONTROL			00	DSI		10/01/80	EPA (FUND)
	11620 OLD SEWARD HWY				PAI	09/07/84	09/18/84	STATE(FUND)
	ANCHORAGE	AK 99510						
	020 ANCHORAGE							
AK0009252481	ALASKA PULP CORP			00	DSI		06/01/80	EPA (FUND)
	SAWMILL CR RD				PAI	08/21/84	08/27/84	EPA (FUND)
	SITKA	AK 99835			SII	08/21/84	09/27/84	EPA (FUND)
	220 SITKA							

EPA_ID_NO	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST	NFA FLAG	OPRBLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980983241	ALASKA RAILROAD - ANCHORAGE YARD OCEAN DOCK RD, E SIDE ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI PAI SII	 09/07/84 12/16/85	06/01/80 09/27/84 12/30/85	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980983183	ALASKA RAILROAD - FAIRBANKS YARD PHILLIPS FLD RD & THURMON RD FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99201	NFA	00	DSI PAI SII	 01/02/85 01/29/86	06/01/80 03/05/85 06/16/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981770076	ALASKA STATE OF, DUTCH HARBOR AIRFIELD DUTCH HARBOR AIRFIELD DUTCH HARBOR 010 ALEUTIAN ISLANDS	AK 99692		00	DSI		02/06/87	EPA (FUND)
AKD981769847	ALASKA-DNR BIG LAKE BIG LAKE BIG LAKE 170 MATANUSKA SUSITNA	AK 99687		00	DSI		02/06/87	EPA (FUND)
AKD981770019	ALASKA, ST OF - YAKUTAT ARPT YAKUTAT ARPT YAKUTAT 231 SKAGWAY-YAKUTAT-ANGOON	AK 99689		00	DSI		02/08/87	EPA (FUND)
AKD981769961	ALASKA, ST OF-SUMMIT AIR NAV SITE CANTWELL, 5 MI SOUTH SUMMIT 290 YUKON-KOYUKUK	AK 99729		00	DSI		02/06/87	EPA (FUND)
AKD981769722	ALASKA,ST OF TANANA AIRFIELD TANANA ARPT TANANA 290 YUKON-KOYUKUK	AK 99777		00	DSI		02/06/87	EPA (FUND)
AKD981769904	ALASKA,ST OF,DOT-PF GULKANA AIR NAV SITE GULKANA ARPT GULKANA 261 VALDEZ-CORDOVA	AK 99586		00	DSI		02/06/87	EPA (FUND)

EPA ID NO.	SITE NAME / STREET / CITY / COUNTY CODE AND NAME	STATE / CONG DIST	NFA FLAG	OPRULE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD076664986	ANCHORAGE COMMUNITY COLLEGE 2533 PROVIDENCE DRIVE ANCHORAGE 020 ANCHORAGE	AK 99508	NFA	00	DSI PAI	 12/10/87	03/28/86 12/22/87	OTHER EPA (FUND)
AKD021317506	ANDY'S AUTO WRECKING 30TH AVE AND LATHROP FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK 99701	NFA	00	DSI PAI	 09/30/87	08/05/86 09/30/87	OTHER STATE(FUND)
AKD980495519	ARCO PRUDHOE BAY SITE NORTH SLOPE PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DSI PAI	 01/02/85	06/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD991281262	ARCO SAND DUNES LANDFILL - STAGING AREA TEEN RISE SEC 26 PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DSI PAI SII	 01/02/85 08/27/86	07/01/81 02/21/85 09/12/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980901930	ARNESS PROPERTY KENAI SPUR RD, MI 29 NORTH KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	 11/30/87	09/19/85 12/30/87	STATE(FUND)
AKD980724702	BELLS FLATS & RUSSIAN CR SUBDIVISIONS WOMAN'S BAY COMMUNITY KODIAK 150 KODIAK	AK 99615		00	DSI PAI	 09/07/84	01/01/83 09/28/84	EPA (FUND) STATE(FUND)
AKD980975932	BENDLE'S ROAD OILING FACILITY NUNBERRY RD - END OF RD CHUGIAK 020 ANCHORAGE	AK 99567		00	DSI PAI	 09/14/87	04/01/84 09/19/87	EPA (FUND) EPA (FUND)
AKD981761927	BETTLES AIRPORT 2000 FT SW OF AIRPORT BETTLES 290 YUKON-KOYUKUK	AK 99726	NFA	00	DSI PAI	 10/23/87	09/05/85 11/12/87	OTHER EPA (FUND)

EPA_ID_NO	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE ZIP / CONG_DIST	NFA_ FLAG	OPRABLE UNIT	EVENT_TYPE	ACTUAL START _DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980665095	BIG HURRAH GOLD MINE 7 MI NE OF CY, 2 MI E OF RIVER SOLOMON 130 NOME	AK 99790		00	DS1 PA1 SI1	 09/07/84 06/16/86	10/01/80 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981761984	CAPE SIMPSON DEW STATION BARROW AK, 50 MI SE OF BARROW 185 NORTH SLOPE BOROUGH	AK 99723		00	DS1		08/29/85	OTHER
AKD981765712	CATHEDRAL BLUFF ACS REPEATER MILEPOST 102 AK HWY FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK 99701		00	DS1		09/08/85	OTHER
AKD009266149	CHEVRON USA ALASKA REF KENAI SPUR RD, MI 22 1/2 KENAI 122 KENAI PENINSULA	AK 99611		00	DS1 PA1	 01/02/85	07/01/79 02/13/85	EPA (FUND) STATE(FUND)
AKD980980273	COASTAL DRILLING 3533 B-A SPUR HWY SOLDOTNA 122 KENAI PENINSULA	AK 99669		00	DS1 PA1	 09/30/87	07/28/86 09/30/87	OTHER STATE(FUND)
AKD020244943	COMMERCIAL PRINTING COMPANY 200 N CUSHMAN ST FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701	NFA	00	DS1 PA1	 09/07/84	06/01/80 09/17/84	EPA (FUND) STATE(FUND)
AKD084611219	CROWLEY ENVIRONMENTAL SERV 111 W ROY RD ANCHORAGE 020 ANCHORAGE	AK 99503		00	DS1 PA1	 01/02/85	09/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD980986955	DERA-KODIAK TRACKING STATION CAPE CHINIAK RD, END OF KODIAK 150 KODIAK ISLAND	AK 99615		00	DS1		07/18/86	OTHER

EPA_ID_NO.	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST.	NFA. FLAG	UNRULE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980986770	OPRA-LITTLE NAVY CAPE CHINIAK KODIAK 150 KODIAK ISLAND	AK 99615		00	DS1		07/18/86	OTHER
AKD980495535	DIESEL FUEL DUMP ENTIRE CITY - UNDER GROUND KOTZEBUE 140 KOBUK	AK 99752		00	DS1 PA1 SI1 SI2	 01/02/85 11/01/80 11/01/80	10/01/80 02/06/85 11/01/80 11/01/80	EPA (FUND) STATE(FUND) EPA (FUND) STATE(FUND)
AKD049983273	EARTH MOVERS OF FAIRBANKS 925 AURORA ST FAIRBANKS 090 FAIRBANKS	AK 99701		00	DS1 PA1	 09/07/84	06/01/80 09/28/84	EPA (FUND) STATE(FUND)
AKD981766314	ELEMENTARY SCHOOL BUILDING SITE SEC 21,22,26,27 NEAR GEORGESON SITKA 220 SITKA	AK 99835		00	DS1		03/18/87	OTHER
AK8690590072	FAA-LAKE MINCHUMINA ARPT RAMP AT LK MINCHUMINA ARPT LAKE MINCHUMINA 290 YUKON-KUYUKUK	AK 99757		00	DS1 PA1	 01/05/87	08/02/85 01/05/87	STATE(FUND) EPA (FUND)
AKD980495541	FAIRBANKS CITY DUMP LOWER 2ND AV FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1	 09/07/84	06/01/80 09/27/84	EPA (FUND) STATE(FUND)
AKD010196277	FAIRBANKS DAILY NEWS MINER 200 N CUSHMAN FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701	NFA	00	DS1 PA1	 09/07/84	06/01/80 09/17/84	EPA (FUND) STATE(FUND)
AKD980495600	FAIRBANKS MUNICIPAL UTIL SYST 2ND AV FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1 SI1	 09/07/84 06/16/86	09/01/80 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)

EPA ID NO	SITE NAME / STREET / CITY / COUNTY CODE AND NAME	STATE ZIP / CONG DIST	NFA FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK0045771235	FAIRBANKS NORTH STAR BOROUGH SLF 5 CUSHMAN ST EXTENSN FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99707		00	DS1 PA1 SI1	 09/07/84 09/01/80	08/01/80 09/25/84 09/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK0004477464	FAIRBANKS SAND & GRAVEL INC RICHARDSON HWY, MI 25 FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1 SI1	 09/07/84 06/01/80	06/01/80 09/28/84 06/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK0980664882	FIN CREEK FUEL DUMP 12N R1?E SEC 9 JUNIPER CR 185 NORTH SLOPE	AK 99700		00	DS1 PA1 SI1	 02/04/81 07/01/81	01/01/81 02/04/81 07/01/81	EPA (FUND) EPA (FUND) EPA (FUND)
AK0980639751	FORT YUKON CITY DUMP FORT YUKON FORT YUKON 290 YUKON KOYUKUK	AK 99740		00	DS1 PA1	 01/02/85	06/01/81 02/06/85	EPA (FUND) STATE(FUND)
AK0007276619	FRONTIER TANNING KLATT RD & JOHNS RD ANCHORAGE 020 ANCHORAGE	AK 99502		00	DS1 PA1 SI1	 09/07/84 09/24/86	07/01/80 09/26/84 09/24/86	EPA (FUND) STATE(FUND) EPA (FUND)
AK0980665046	INTERNATIONAL AIRPORT ROAD LDFL W INTL ARPT RD & MINNESOTA RD ANCHORAGE 020 ANCHORAGE	AK 99502		00	DS1 PA1 SI1	 09/07/84 07/01/80	06/01/80 09/28/84 07/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK[illegible]340	IRON SUBDIVISION OLD DUMP SITE RIDGEWAY AREA SOLDOTNA 122 KENAI PENINSULA	AK 99611		00	DS1 PA1	 09/17/87	06/16/86 09/18/87	OTHER EPA (FUND)
AK0981[illegible]270	JUALAPA TUNNEL BASIN RD & CUPE PARK JUNEAU 110 JUNEAU	AK 99801		00	DS1		04/15/87	OTHER

EPA_ID_NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA. FLAG	UPROLE NUM	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD980495568	JUNEAU LDFL GLACIER HWY, MI 5.5 JUNEAU 110 JUNEAU	AK 99801		00	DSI PAI	09/07/84	06/01/80 09/27/84	EPA (FUND) STATE(FUND)
AKD980664924	KENAI LDFL REDOUBT AV KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	01/02/85	08/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD980664966	KENAI, CY OF, OLD CITY DUMP KENAI SPUR RD KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAS SII	01/02/85 08/01/80	11/01/79 02/14/85 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981767023	KLAWOCK TRAILOR COURT KLAWOCK-HOLLIS ROAD KLAWOCK 201 PRINCE WALLS KETCHIKAN	AK 99925		00	DSI		01/21/87	OTHER
AKD009243718	LIQUID AIR INC 6510 ARCTIC SPUR ROAD ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI PAI SII	01/02/85 08/01/80	06/01/80 02/06/85 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981762289	LUNG ISLAND KODIAK ISL., 8 MI E OF KODIAK 150 KODIAK ISLAND	AK 99615		00	DSI PAI	06/30/87	08/01/85 06/30/87	OTHER EPA (FUND)
AKD981762347	LOT 1, U.SS 1334 AK TRACT C, U.SS 2367 GRAVINA ISLAND 130 KETCHIKAN GATEWAY	AK 99901	NFA	00	DSI PAI	09/30/87	05/12/86 09/30/87	OTHER STATE(FUND)
AKD009252230	LOUISIANA PACIFIC - KETCHIKAN DIV N TONGASS HWY, MI 7.5 KETCHIKAN 130 KETCHIKAN	AK 99901		00	DSI PAI SII	08/21/84 08/21/84	06/01/80 09/27/84 09/27/84	EPA (FUND) EPA (FUND) EPA (FUND)

EPA_ID_NO.	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE	ZIP / CONG_DIST.	NFA. FLAG	OPABLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980664901	M & M ENTERPRISES WYOMING DR ANCHORAGE 020 ANCHORAGE	AK	99503		00	DS1 PA1	09/07/84	07/01/80 09/28/84	EPA (FUND) STATE(FUND)
AKD980664791	MANNING PT BARREL DUMP T9N R34E SEC 21 BARTER ISLAND 185 NORTH SLOPE	AK	99790		00	DS1 PA1	08/21/84	07/01/81 09/27/84	EPA (FUND) EPA (FUND)
AKD981766009	MARENCO INC. KLATT RD & TURNAGAIN ST INT ANCHORAGE 020 ANCHORAGE	AK	99502	NFA	00	DS1 PA1	12/24/86	01/17/86 01/23/87	EPA (FUND) EPA (FUND)
AKD981767080	MCCALL PROPERTY BETHANY AND FRONTAGE FAIRBANKS 090 NORTH STAR BOROUGH	AK	99701		00	DS1		10/28/86	STATE(FUND)
AKD980930150	MCPEAK SALVAGE YARD BADGER AND OLD RICHARDSON WAY FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK	99701		00	DS1 PA1	09/30/87	08/05/86 09/30/87	STATE(FUND) STATE(FUND)
AKD980495584	MERRILL FIELD SANITARY LDFL 15TH & DEBARR RD. ANCHORAGE 020 ANCHORAGE	AK	99502		00	DS1 PA1 SI1	08/21/84 08/21/84	07/01/80 01/02/85 01/02/85	EPA (FUND) EPA (FUND) EPA (FUND)
AKD103386744	MILLER SALVAGE 1485 30TH ST FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK	99701	NFA	00	DS1 PA1	09/30/87	08/05/86 09/30/87	STATE(FUND) STATE(FUND)
AKD980495592	MUKLUK DUMP PRUDHOE BAY MUKLUK 185 NORTH SLOPE	AK	99740		00	DS1 PA1 SI1	01/02/85 07/01/81	04/01/80 02/13/85 07/01/81	EPA (FUND) STATE(FUND) EPA (FUND)

EPA ID NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD063374227	NUKLUK FREIGHT LINES PRUDHOE BAY NUKLUK 185 NORTH SLOPE	AK 99740		00	DS1 PA1	01/02/85	09/01/80 02/14/85	EPA (FUND) STATE(FUND)
AKD981767140	NANKU ORE FACILITY NANKU HARBOR SKAGWAY 231 SKAGWAY-YAKUTAT-ANGOON	AK 99840		00	DS1		03/01/87	EPA (FUND)
AKD980664692	NOME BARREL DUMP LEE'S CAMP-NOME SOLOMON RD NOME 180 NOME	AK 99762		00	DS1 PA1 SI1	09/07/84 06/16/86	06/01/81 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980722540	NOME, CY OF, DUMP 3 MI N OF NOME NOME 180 NOME	AK 99762	NFA	00	DS1 PA1 SI1	09/07/84 06/16/86	08/01/81 09/28/84 09/19/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD000850701	NORTH POLE REFINING .25 RICHARDSON HWY NORTH POLE 090 FAIRBANKS NORTH STAR	AK 99705		00	DS1 PA1 SI1	09/07/84 08/01/80	11/01/79 09/28/84 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981762164	NORTH RIVER WHITE ALICE SITE 8 MI E OF UNALAKLEET UNALAKLEET 180 NOME	AK 99684		00	DS1		09/09/85	OTHER
AKD980664734	NORTH SLOPE BOROUGH LDFL T11N R14E SEC27 PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DS1 PA1	01/02/85	07/01/81 02/14/85	EPA (FUND) STATE(FUND)
AKD981762107	NORTHWAY ACS RADIO RELAY TOK JUNCTION, 50 MI E OF NORTHWAY 240 SOUTHEAST FAIRBANKS	AK 99764		00	DS1		09/09/85	EPA (FUND)