ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672 435
6031 HOUSE RESOURCES

CARGO AND REFINED PRODUCT VESSELS SUNK, WORLDWIDE, WITH A TOTAL LOSS OF CARGO (1979 TO PRESENT)

Record#	DATE	NAME	SIZE	COUNTRY	SPILL	CARGO	CAUSE
1	1/79	Betelgeuse	121,000 tons	French	40,000 tons	Crude	Exploded at dock
2	4/79	Gino	49,000 tons	Liberia	32,000 tons	Carbon Blk.	Collision
3	7/79	Atlantic Empress	293,000 tons	Greek	275,00 tons	Crude	Collision
4	9/79	Chevron Hawaii	71,000 tons	U.S.A.	3,000 tons	Crude	Exploded at dock
5	2/80	Irenes Serenade	150,000 tons	Cyriot	40,000 tons	Crude	Exploded at anchor
6	3/80	Tanio	29,000 tons	Malagasy	13,000 tons	Fuel Oil	Broke up
7	1/83	Assimi	59,000 tons	Greek	55,000 tons	Crude	Fire, explosion
8	8/83	Castillo De Bellver	267,000 tons	Spanish	260,000 tons	Crude	Fire, broke up
9	11/83	Proc Basilan	16,000 tons	Phillipines	13,000 tons	Gasoline	Fire, sunk
10	10/84	Puerto Rican	35,000 tons	U.S.A	5,000 tons	Fuel Oil	Fire & explosion at port
11	3/85	Lyudrik Svobode	16,000 tons	Russia	1,000 tons	Crude	Explosion while loading
12	5/85	Petragen I	30,000 tons	Panama	5,000 tons	Refined oil	Explosion and sunk in port
13	4/88	Athenim Venture	31,000 tons	Cypriot	30,000 tons	Crude	Explosion
14	11/88	Odyssey	140,000 tons	Liberia	131,000 tons	Crude	Sunk
15	3/89	Haasgusar	39,000 tons	Liberia	30,000 tons	Chemicals	Explosion and fire

933,000 tons
90,000 tons*

1,023,000
x 7.4

=7,570,200 barrels

x310

=317,130,000 gallons

* Vessels can reasonably be expected to be carrying 2,000-10,000 tons of fuel, (mean 6,000).

Source = Phone conversation with Mr. Arthur McKinzie, Tanker Advisory Center, Inc. NY, NY 3-6-90.

HB 567

713.90.0053

SECTIONAL ANALYSIS

The following is a sectional analysis of a bill that strengthens the Department of environmental Conservation's ("DEC") oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04.

Section 1 strengthens DEC's authority to require and enforce oil discharge contingency plans. Section 1 requires that contingency plans be properly implemented; clarifies and strengthens DEC's authority to approve, modify, or revoke contingency plans; requires contingency plan applicants to maintain in their areas of operation sufficient resources to contain and remove a realistic maximum oil discharge within the shortest possible time; provides the Department of Fish and Game and the Department of Natural Resources an opportunity to comment on contingency plans; and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented.

Section 2 strengthens the financial responsibility requirements of AS 46.04.040. Section 2 establishes a $50,000,000 financial responsibility requirement for crude oil terminal facilities; establishes a $1,000,000 financial responsibility limit for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels; establishes a $50,000,000 financial responsibility limit for non-crude terminal facilities with a storage capacity of more than 10,000 barrels; establishes a $50,000,000 financial responsibility requirement for offshore exploration and production facilities; establishes a $500,000,000 financial responsibility requirement for crude oil tank vessels and barges; establishes a $20,000,000 financial responsibility requirement for large (greater than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances; establishes a $1,000,000 financial responsibility requirement for smaller (less than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances.

Section 3 lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Section 4 authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels, and oil barges to ensure compliance with AS 46.04 and to examine the structural integrity of tank vessels and oil barges.

Section 5 defines "realistic maximum oil discharge," as used in sec. 1.

Section 6 provides that the Act takes effect immediately.

4/2/90
Rep. Curt Menard

CS HB 567 (RESOURCES)

SECTION 1 - Allows a municipality to enter into agreements with the U.S. Coast Guard to develop and enforce a vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 2 - Increases the fine for a discharge which was grossly negligent and adds language to include prevention requirements in contingency plans.

SECTION 3 - Allows DEC to enter into agreements with the U.S. Coast Guard to prevent oil discharges and develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 4 - Requires that persons may not operate a tank vessel or oil barge without having a prevention and contingency plan and that contingency plans be properly implemented. Failure to respond to a spill in the shortest possible time is a violation of the chapter.

SECTION 5 - Authorizes DEC to revoke, modify or approve contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires an applicant for a contingency plan to plan for the removal of a discharge within 72 hours. Requires that an exploration or production facility contingency plan provide for response to the realistic maximum discharge, an oil terminal facility plan provide for response to a discharge from the largest tank at the facility, and a tanker or barge contingency plan provide for response to a discharge equal to the capacity of the vessel. Defines "properly implement" and "maximum realistic discharge."

SECTION 6-8 - Strengthens financial responsibility requirements and establishes:

1. $50 million minimum for crude oil terminal facilities
2. $25/barrel for non-crude oil terminal facilities with a minimum of $1 million and a maximum of $ 50 million
3. $500 million for crude oil tankers and barges
4. $100/barrel for non crude tankers and barges with a minimum of $1 million and a maximum of $35 million

HB 567/SB 504 Contingency Planning, Financial Responsibility, Tanker Inspections

1. Strengthen DEC's authority to require and enforce contingency plans and approve, modify and revoke plans

2. Require that plans be properly implemented

3. Requires response capability to remove a spill the quantity of the capacity of a tanker or the quantity of the largest tank at a tank farm or more if the facility is in a high risk area, require response capability to contain a spill within 72 hours

4. insert the words "prevention and" before the words "contingency plans" in all locations

5. delete the words "off shore"

6. Give DEC authority to use 470 funds for review of industry contingency plans

7. Financial responsibility for non-crude facilities ???

8. $50 million for crude oil terminal facilities

9. $50 million for offshore exploration

10. $500 million for crude oil tank vessels and barges

11. Authorize inspections of tankers for structural integrity

12. Authority to require escort vessels

13. Authority to require direct radio contact between vessel and terminal and record transmissions

14. Authority to require navigational enhancements or vessel traffic system in areas at risk

15. Require terminal to report to DEC as soon as a vessel is in distress

No admin position on offshore/onshore

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

4/2/90
Rep. Curt Menard

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5. $50 million for offshore exploration and prodt facilities $20 million for onshore exploration and production cilities.

SECTION 9 - It is not a defense from the financial responsibility requirement to argue that the person believed they had satisfied the financial responsiblity requirements.

SECTION 10-12 - Describes methods for establishing financial responsibility and adds "security approved by the Department" as a method.

SECTION 13 - Adjusts the financial responsibility requirement with the consumer price index every three years.

SECTION 14 - Exempts crude oil terminal facilities smaller than 5000 barrels and non-crude oil terminal facilities smaller than 10,000 barrels.

SECTION 15 - Authorizes DEC the authority to inspect oil terminal facilities, exploration and production facilities, tank vessels and barges to ensure compliance and examine structural integrity of these facilities.

SECTION 16 & 17 - Includes prevention planning in the state's master and regional contingency plans.

SECTION 18 - Defines an exploration and production facility.

SECTION 19 - Allows DEC to use money from the 470 fund to review industry contingency plans and to conduct training, response exercises, inspections and tests in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies.

SECTION 20 - Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for non-crude oil terminal facilities.

HB 567/SB 504 Contingency Planning, Financial Responsibility, Tanker Inspections

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TESTIMONY - HB 567

MY NAME IS DAVE BOUKER. I AM THE GENERAL MANAGER OF NUSHAGAK ELECTRIC COOPERATIVE, A SMALL RURAL NON-PROFIT ELECTRIC UTILITY WHICH PROVIDES POWER TO THE COMMUNITIES OF DILLINGHAM AND ALEKNAGIK.

I AM HERE TO TESTIFY ON HB 567 AND MORE SPECIFICALLY ON THAT SECTION WHICH MODIFIES AS 46.04.040 TITLED, "PROOF OF FINANCIAL RESPONSIBILITY."

AT THIS TIME, AN OIL TERMINAL OPERATOR OF A FACILITY WITH 10,000 BARRELS (BBLS) OF STORAGE, OR GREATER, IS REQUIRED TO SHOW ABILITY TO SELF-INSURE OR TO HAVE AN INSURANCE POLICY OF $1 MILLION TO INDICATE PROOF OF FINANCIAL RESPONSIBILITY FOR A SPILL DURING TRANSFER OPERATIONS. THE POLICY WHICH WE CURRENTLY HAVE IN FORCE IS WRITTEN BY LLOYDS OF LONDON AND COSTS US IN EXCESS OF $21,000 PER YEAR.

THE PROPOSED HB 567 WOULD INCREASE THE REQUIRED COVERAGE FROM $1 MILLION TO $50 MILLION. AN INCREASE OF 50 FOLD. WE HAD EXTREME DIFFICULTY IN OBTAINING THE EXISTING POLICY BECAUSE NO U.S. CARRIER WOULD TOUCH IT. OUR NET WORTH IS LESS THAN $2 MILLION AND I DO NOT BELIEVE THAT WE ARE INSURABLE FOR ANYTHING OVER THAT AMOUNT.

WE ARE LOCATED NORTH OF DUTCH HARBOR AND THIS MEANS THAT WE CAN ONLY RECEIVE FUEL DELIVERY DURING THE SUMMER MONTHS. THEREFORE, WE

HAVE TO HAVE THE STORAGE CAPACITY TO CARRY US THROUGH FROM SEPTEMBER TO MAY OR JUNE. THE LOCAL WHOLESALE DISTRIBUTOR IS IN MUCH THE SAME POSITION. IF THE INSURANCE COVERAGE REQUIREMENTS INCREASE 50 FOLD, YOU CAN BE ASSURED THAT THE ATTENDANT COSTS OF THAT INSURANCE WILL MEAN SUBSTANTIAL INCREASE IN COST OF POWER, HEATING FUEL, AND GASOLINE TO RURAL COMMUNITIES LEAST ABLE TO PAY.

ONE POSSIBLE ALTERNATIVE TO THIS ISSUE MIGHT BE TO INCREASE THE EXEMPTION IN AS 46.04.050 TO 50,000 BBLS OF REFINED PRODUCTS, BECAUSE THEY ARE FAR LESS DANGEROUS THAN CRUDE AND RAPIDLY DISSIPATE IN THE ATMOSPHERE IN THE EVENT OF A SPILL. IN ADDITION, AN EXEMPTION AT THIS LEVEL WOULD PROBABLY ACCOMMODATE MOST FUEL INVENTORIES IN WESTERN ALASKA. HOWEVER, THIS ASPECT SHOULD BE LOOKED INTO BEFORE ANY FINAL DECISION IS MADE.

WE BELIEVE THAT THE CATASTROPHE OF THE OIL SPILL IN PRINCE WILLIAM SOUND GENERATED THIS BILL. HOWEVER, IT SHOULD BE NOTED THAT THE OIL COMPANIES ARE NOT AS FINANCIALLY IMPACTED BY THE BILL AS THE SMALL RURAL COMMUNITIES BECAUSE MOST OF THE OIL COMPANIES ARE FINANCIALLY SOUND ENOUGH TO SELF-INSURE WHILE WE HAVE TO IMMEDIATELY PUT UP THE CASH TO BUY INSURANCE FROM SOME FOREIGN ENTITY OR PURCHASE A LETTER OF CREDIT AND, OBVIOUSLY, WE WILL HAVE DIFFICULTY IN PURCHASING A ~~$~~50 MILLION LETTER OF CREDIT. I WOULD URGENTLY RECOMMEND THE COMMITTEE TO REVIEW THESE PROPOSED REQUIREMENTS AND THEIR ECONOMIC IMPACT BECAUSE THEY APPEAR TO PRESENT IMPOSSIBLE CONDITIONS TO US. (3/9/90:lwb\rptdb)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

December 30, 1981

William Lawrence
Transportation Institute
Norton Bldg., Rm. 1502
801 Second Avenue
Seattle, Washington 98104

Dear Bill:

Thank you for setting up the meeting with the tug and tank barge operators on December 17. I believe the opening of these lines of communication will help to resolve the problems we face. We have already discussed these matters with the Department of Environmental Conservation.

As I promised at the meeting, I'm writing to confirm my oral statements regarding the operators' current legal status under our oil spill laws. Alaska Statute 46.03.040 does require proof of financial responsibility to respond to damages for oil spills, and as was pointed out at the meeting, operators covered by the statute who have not shown financial responsibility by one of the methods acceptable under the statute are indeed in technical violation. However, the current difficulty in obtaining insurance puts the matter in a different light.

First, if an operator is truly unable to comply with the statute, because neither the insurance nor the other forms of proof of financial responsibility are available, and the firm is unable to self-insure, then I believe it would have a valid defense to an action brought because of the technical failure to comply. And secondly, we can assure you that as long as we are convinced that an operator is making a diligent good faith effort to comply with the requirements, but is unable to do so despite its best efforts, we will not bring any such action because of the failure to comply. Naturally I consider meetings such as ours, with continuing efforts to make insurance available, to be important evidence of such good faith efforts.

Of course, the opposite side of the coin is that if insurance, or another acceptable form of proof of financial responsibility, becomes available, the operators could not claim that compliance is impossible; and we would not consider an operator to be pursuing compliance with good faith if he made no real efforts to find or arrange that coverage. And I'm sure the operators realize that if an actual spill occurs, inability to secure insurance would not relieve them from liability for damages caused by the spill.

I hope this clarifies our position. Let me know if you have further questions. Meantime I trust you will distribute this letter to those present at the meeting, and to any other persons you believe would be interested..

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Douglas K. Mertz
Assistant Attorney General

DKM:dlm

cc: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

TRANSPORTATION INSTITUTE
PACIFIC COAST OFFICE
801 SECOND AVENUE, SUITE 1502
SEATTLE, WASHINGTON 98104
(206) 624-9824

January 25, 1982

Mr. Andrew M. Spear, Manager
Oil Pollution Control
State of Alaska
Department of Environmental
Conservation
Pouch O
Juneau, Alaska 99811

Re: Proof of Financial Responsibility for Oil Spills
Alaska Statute 46.04.040

Dear Mr. Spear:

As West Coast Manager of the Transportation Institute, representing tug and barge owners/operators trading between and/or amongst the states of Alaska, Washington, Oregon and California, I would like to thank you and Mr. Douglas Mertz for your attendance at the meeting of December 17, 1981, in our offices, to listen to comments and suggestions from members of the Institute and insurance industry representatives in connection with the subject matter.

This letter will also acknowledge receipt of Mr. Douglas Mertz's letter of December 30, 1981, copies of which have been distributed to the membership.

As you know, the purpose of our meeting of December 17, 1981, was to allow our members, together with insurance industry representatives, to discuss with you the concerns they are having in attempting to comply with Alaska Statute 46.04.040 (Proof of Financial Responsibility) insofar as this law relates to oil barges, other than inland oil barges, carrying oil as cargo (except those transporting pipeline oil). These concerns have led to considerable frustration on the part of our member vessel operators, in view of the substantial penalties, which could be imposed on them and other nonmember operators, for failure to meet the requirements of the current Alaska law.

From the standpoint of our members, the only practical avenue available to them to attempt to meet the "Proof of Financial Responsibility" requirement is through certification by their insurers.

Our members have, over the past year, discussed the matter of Certification at length with the insurance markets in both the United States and overseas. These markets are centered in New York and London, respectively, and, between them, insure virtually the world's entire oil pollution liabilities.

The United States market, headquartered in New York, is made up of first class stock and mutual companies, who as members of the American Institute of Marine Underwriters formed the Water Quality Insurance Syndicate (WQIS) at the time of the Federal Water Pollution Control Act of 1970 to provide insurance for its clients, as a result of the liabilities that could be imposed upon them by the Act.

The London market is made up of a number of international Protection and Indemnity Clubs referred to as the "International Group of P&I Clubs." These clubs, between them, insure the oil pollution liabilities of nearly all the ocean going tanker tonnage.

As mentioned earlier, responses from the insurance industry to requests by our member operators for certification of Proof of Financial Responsibility under the Alaska law have been met with a polite but firm "no".

The specific areas that create problems for the insurers are listed as follows:

I. Of foremost concern is the requirement for financial responsibility through insurance that (18 AAC 20.065) (2) the insurer agrees that any final judgement against the insured for damages under AS46.04.040(i) resulting from an unlawful discharge of oil from or by any vessel or facility named in the policy may be enforced or executed directly against the insurer to the amount of coverage of this policy;. . . . .)." It is felt by the insurers that this provision allowing direct access, strips the insurers of their right to defenses that are allowed their insured, such as the limitation of liability provision under maritime law. Without recourse to defenses normally available to the company they are insuring, the insurance companies feel extremely vulnerable. A clarification of the rights of the insurers under direct access is needed.

II. Another area of concern to insurers is the requirement to certify coverage to different entities such as states and countries, based on varying laws provided by these individual entities.

III. Civil penalties are allowed by the state of Alaska from $500 - $100,000 for the initial violation and then $5,000 per day for each day the violation continues up to a maximum overall limit of $100,000,000. These civil penalties can be assessed to a person who violates or causes or permits to be violated a provision of the Act or a regulation, a lawful order of the department, or a permit, or a term or cancellation of a permit issued under the Act. These penalties are excessive and the insurers also feel there is danger of making payments under the law that will amount to windfall gains for the state of Alaska.

... Under AS46.04.020 (c), the department can require clean-up beyond that required by the U.S. Coast Guard.

> "If the department determined that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources or both."

This could lead to unlimited costs for cleanup far beyond that provided by insurers of the Federal Clean Water Act ($150 per GRT) and perhaps beyond the minimum limit required for financial responsibility of $1,000,000 since there is no check on type or nature of expense, or a lid on total expense. This is unlike a restoration for damages since 1) the determination of proper cleanup can be arbitrarily determined and, 2) there is no independent review in determining reasonable cost.

Distributed at our recent meeting was a letter addressed to me care of Christopher Arundell of Pettit-Morry Company, from Mr. Robert S. Lagattolla, President, of the Water Quality Insurance Syndicate (WQIS) dated December 15, 1981, stating the WQIS's position on oil spill statutes, including reasons for not issuing the "Alaska Endorsement" proscribed under the Alaska law. A copy of that letter is enclosed for reference. Similarly, I am also enclosing a copy of a letter from the American Institute of Marine Underwriters (AIMU) to Chris Arundell of Pettit-Morry Company dated January 14, 1982, expressing its views and the views of the American Marine Insurance Market on this subject.

As you know, it has been stated by P&I Club representatives that the London Market's reasons for being unable to comply with Alaska law are similar to those advocated by the U.S. Market. Representatives of the "International Group of P&I Clubs" met with you early last year to express their group's position on oil pollution law, including their concerns over the Alaska law.

The above comments and enclosures clearly indicate that certification under the Alaska Oil Pollution Control Law will not be provided by the world insurance markets. Both the United States and London markets have a commitment to Federal pre-emption in the area of pollution laws.

It is clear that the Alaska law imposes considerable additional requirements over and above the existing Federal Pollution laws and that the oil carrying barge operators are unable to meet these additional requirements.

While we do appreciate the assurances given in Mr. Mertz's letter of December 30, 1981, we request your assistance in obtaining meaningful and satisfactory responses to insurers' concerns noted above (Items I through IV), including possible changes in the law as it presently exists in order that the carriers can achieve compliance with financial responsibility provisions.

Your prompt attention to this letter will be greatly appreciated.

Very truly yours,

William D. Lawrence

William D. Lawrence
West Coast Manager
TRANSPORTATION INSTITUTE

WDL:lb
Enclosures

cc: Douglas Mertz
Members of Committee

MEMORANDUM State of Alaska

TO Ernst W. Mueller, Commissioner
Department of Environmental
Conservation

DATE May 13, 1982

FILE NO J-66-462-82

TELEPHONE NO 465-3600 x 54

FROM WILSON L. CONDON
ATTORNEY GENERAL

By:
Douglas K. Mertz
Assistant Attorney General

SUBJECT Financial Responsibility and the Insurance Industry (AS 46.04.040)

You have asked this office for an opinion on several questions concerning Alaska's oil spill laws, specifically the provisions dealing with proof of financial responsibility, AS 46.40.040 (§ 2, ch 116 SLA 1980). In conversations with representatives of various tank vessel and oil barge owners, it has become apparent that a good deal of confusion exists regarding the effect of AS 46.04.040. This opinion is intended to convey our interpretation of that statute as well as this department's policy regarding enforcement of it.

First, we want to make clear what the statute does not do: It does not create any new or increased liabilities whatsoever. Its role is limited to requiring proof that an owner or operator has the financial ability to compensate damages for which that person is liable under other state statutes. 1/ While those other statutes may expose an owner or operator to varying degrees of liability (see infra), AS 46.04.040 neither increases nor decreases the potential liability derived from those preexisting statutes.

Some concern has been expressed by the insurance industry as to the effect of the "direct action" provision of subsection (e) (. . . An action brought under AS 46.03.-758, 64.03.760(a) or (e), or 46.04.822 may be brought in a state court directly against the insurer . . ."). Specifically, their question has been whether this provision may subject insurers to even greater liabilities than their insureds because the insurer could not assert defenses personal to the insured. Of most immediate concern is whether the insurer could take advantage of the federal Limitation of Liability Act of 1851, 46 U.S.C. § 181, et. seq., which

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1/ Specifically, AS 46.03.758, 46.03.760(a) and (e), and 46.03.822.

on its face is limited to vessel owners and demise charterers. The law on whether a direct action statute can deprive an insurer of the benefit of such defenses has never been settled 2/ Several jurisdictions besides Alaska allow direct actions against insurers in some circumstances. 3/

Of most direct relevance is the Louisiana statute, La. Rev. Stat. 22:655, which is a detailed provision clearly intending to work a fundamental change in the relationship between insurer, insured, and third-party claimant. At present, it appears that under the Louisiana statute an insurer may be successfully prevented from involving the insured's personal defenses. See Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969). In contrast is the federal Clean Water Act provision on financial responsibility, 33 U.S.C. § 1321(p), after which the Alaskan act is in part modeled, which allows direct actions against the insurer, but explicitly permits the insurer to invoke the insured's defenses.

The Alaska statute contains no detailed indicia of intent to deny the insured's defenses, as in the Louisiana statute, nor an explicit provision retaining the insured's defenses, as in the Clean Water Act. The legislative history contains little evidence, except for the testimony on behalf of the Department of Environmental Conservation, as prime sponser of the bill. William A. Publicover, Deputy Director of Environmental Quality Operations, testified that the bill's intent was

> . . . to provide an easy way for an individual Alaskan to collect for damages to his property or for loss of income due to an oil spill. . . We want the injured party to be able to go to state court, even small claims court, file his claim against someone who is

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2/ See Maryland Casualty Co. v. Cushing, 347 U.S. 409 (1954); Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969).

3/ See, e.g., N.Y. INS. LAW, (McKinney) Section 167; Louisiana Revised Statutes 22:655; California Insurance Code, Section 11580 (West 1977); Shingleton v. Bussey, 223 So.2d 713 (Fla. 19-69); Third Parties (Rights against Insurers) Act 1930 (United Kingdom).

attachable, someone who does business in Alaska, or who has an agent in Alaska, and we seek timely satisfaction of his claim.

Publicover went on to describe the costly and time-consuming process of identifying the responsible party and pursuing an action in a distant forum. The direct access provision, he said, was designed to provide a speedy remedy which as a practical matter could be secured by an Alaskan fisherman, for example, with a minor claim. Publicover did not mention any intent whatsoever to deny the insurer the insured's defenses.

Against this background, we believe the courts would read AS 46.04.040(e) as intended only to provide a local forum in which to proceed against a solvent fund, and would not read into it the much more far-reaching result intended by Louisiana's statute. In short, as we read AS 46.04.040(e), although a claimant may proceed directly against the insurer under this statute, the insurer would "step into the shoes" of the insured by being able to assert any substantive defense available to the insured.

At the same time, the insurer would always retains an absolute limit to its liability, namely the policy limits. Since the insurer's liability is derivative, through the insured's policy, even with "direct access" we believe the courts would not hold the insurer liable for more than the amount contracted for in the policy. (This interpretation is confirmed in the implementing regulations, at 18 AAC 20.065: ". . . the insurer's liability does not exceed the limits of coverage . . . ").

In conversation with insurers it has also appeared that there is concern about multiple "certification" requirements, that is, about the insurers having to undertake the bureaucratic burden of supplying Alaska with a separate certificate of insurance, in addition to furnishing the federal government with a Federal Maritime Commission certificate to comply with federal requirements. We would point out, however, that AS 46.04.040 contains no technical "certification" requirement; instead, it and the related regula-

tions (18 AAC 20.005 -- 18 AAC 20.900) are quite flexible as to how a party may demonstrate the existence of requisite financial responsibility. As to insurance, for example, the party need only submit a suitable binder along with a copy of the underlying policy, or a certificate of entry. If financial responsibility is shown through a surety bond or guaranty sample forms are included in the regulations. If self-insurance is used, the regulations merely call for a set of financial statements and affidavits, in place of which a party may substitute forms already prepared for submission to the Securities and Exchange Commission or the Federal Energy Regulatory Commission (see 18 AAC 20.055). Thus, the regulations, far from imposing a rigid and extensive set of bureaucratic requirements, are quite flexible and easy to satisfy once the required financial responsibility is acquired.

Finally, we address the question of whether AS 46.04.040, or its related statutes, could ever result in a windfall recovery for the state (a recovery greater than actual damages) or subject an insurer to liability for a punitive penalty assessed against the insured. To answer the question it is necessary to review the four statutes to which the financial responsibility requirements of AS 46.04.040 apply:

AS 46.03.760(a) is a standard civil penalty provision providing for an assessment to the state of $500 to $100,000 for violations of various state pollution statute; the assessment is required to reflect "reasonable compensation in the nature of liquidated damages for any adverse environmental effects . . .," as well as state costs in investigating and correcting the violation. Subsection (b) states: "Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature."

AS 46.03.760(e) provides for recovery by the state, in a civil action, of actual measurable damages caused by unlawful oil discharges, including cleanup and restoration costs. The prohibition in subsection (b) of punitive sanctions also applies to actions under subsection (e). We read subsections (a), (b), and (e) together to provide a scheme of alternative methods for securing compensation from oil spills, through either liquidated damages (subsection (a)) or actual damages (subsection (e)); in neither case could punitive sanctions be applied. Since both subsections have the same

purpose -- to provide full compensation -- we believe that a recovery under either one would be credited toward a recovery under the other, thus eliminating the possiblity of a double recovery.

AS 46.03.758 is yet another provision for securing compensation to the state for damages from oil spills. Specifically, amounts assessed under this provision are intended to compensate for those elements of damage which are not able to be measured or valuated directly. Under this method, a formula is used, taking into account the amount spilled, amount recovered, the toxicity, dispersibility, and degradability of the oil, and the sensitivity of the receiving environment, to generate a final figure which would compensate for the actual damage to the environment not directly measurable. The civil penalty is explicitly not to be punitive (AS 46.03.758(a)(3)), and a person may not be subjected to civil penalty assessments under both AS 46.03.758 and AS 46.03.760(a) (see AS 46.03.758(i)).

AS 46.03.822 is the general strict liability statute for damages caused by hazardous substances, including oil; it also provides for a number of defenses. This is the statute upon which private parties may rely to secure damages.

These are the only statutes for which financial responsibility must be shown, and to which AS 46.04.040 applies; we note particularly that it does not require proof of financial responsibility for sanctions under AS 46.03.790, the parallel criminal penalty provision. From the details of the four provisions to which the financial responsibility requirements apply, we conclude that (1) in no case would an insurer, providing coverage only under the four listed statutes, be liable for a punitive or criminal assessment; and (2) since all four of the listed provisons are basically compensatory in intent, amounts assessed under any one of them which were intended to compensate for a particular set of damages would necessarily be credited toward recoveries for the same damages under any of the other statutes, so there is no possibility of multiple recoveries for the same damages.

This discussion reflects our Department's view of the statutes and regulations in question and is the basis for any enforcement action to be taken under the law. It thus appears to us that the concerns expressed by the industry on these points are without foundation, and we are

pleased to be able to give our assurances that the State of Alaska's Department of Law intends to enforce these laws in a manner which should satisfy the industry as to its fairness.

Please let me know if you have any other questions.

DKM/jb

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH O -- JUNEAU 99811

465-2653

May 21, 1982

Mr. William D. Lawrence
Manager, Pacific Coast Office
Transportation Institute
801 Second Ave, Room 1502
Seattle, Washington 98104

Dear Mr. Lawrence:

Thank you and Steve Scalzo for visiting with us and discussing the various issues involved in securing proof of financial responsibility for the Alaskan tank barge operators. This letter will serve to memorialize some of our discussion and inform you of the Attorney General's opinion regarding certain sections of Alaska's pollution laws.

As you know we have been actively seeking a resolution to the problem that certain barge owners have had in securing insurance to cover the Alaska proof of financial responsibility requirements (AS 46.04.040). During the past year, discussions with you, the barge owners and the insurance brokers have resulted in the issuance of at least one insurance policy covering five vessels, a surety bond for another three, and self-insurance by one large company. In the meantime, pressure has been brought to bear on some insurance underwriters not to issue policies by certain segments of the insurance industry.

It should be noted that we are not completely satisfied that all other avenues for proof of financial responsibility have been fully employed, namely self insurance surety bond, and guarantee. Some companies claim that it is against their policy to use self-insurance and it has been pointed out that certain small operators may not have sufficient assests to self-insure or use surety bonds. Of course, you understand that company policy is not a valid excuse for noncompliance with Alaska's requirements; only legal or physical impossibility in obtaining proof of financial responsibility would provide such a defense. In order to fully evaluate this situation we request a detailed explanation of why it is not possible for tank barge operators to obtain self-insurance, insurance, surety bonds and guarantees which will satisfy the State's financial responsibility requirements under AS 46.04.040 and subsequent regulations. We would appreciate this information from each firm which is represented by your organization. As we discussed, this justification should include sufficient factual information which the Alaska Department of Environmental Conservation can evaluate and satisfy itself as to the validity of the company's position. We also request that you furnish us with any correspondence or other material you may have concerning the inability of tank barge operators to obtain pollution insurance.

In the meantime we will open direct communications with the various marine insurance concerns, offer them our opinion as to the interpretation of the law and secure a definite answer as to their intentions in this matter.

Because it is important to conclude this matter as quickly as possible we will hold to the following schedule:

May - June	1. Issue Department of Law legal opinion. May 13. 2. Open communications with marine insurance underwriters. 3. Establish marine underwriter's position and intentions. 4. Receive information from tank barge operators (as above).
July - August	1. Make evaluations of various methods of showing proof of financial responsibility and/or 2. Secure and evaluate any additional information necessary.
September	Issue official findings on the ability of certain operators to comply with the provisions of AS 46.04.040. Proof of Financial Responsibility.

Depending on meetings with the different parties concerned, availability of information and other unknown factors, this schedule will be flexible. However, we intend to make findings on these matters at the earliest possible time. Until we issue those findings, we will not refer any cases of non-compliance with AS 46.04.040 and subsequent regulations to the Attorney General's office for prosecution. Again, it should be clear that this does not relieve anyone from the responsibility for compensating those damaged from oil spills or from the requirement to clean up any spilled oil.

Sincerely,

Ernst W. Mueller
Commissioner

cc: Doug Mertz, Department of Law
Distribution List -- Tank Barge Operators

office copy

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600 POUCH O – JUNEAU 99811

August 11, 1982

Mr. William D. Lawrence
Manager, Pacific Coast Office
Transportation Institute
801 Second Avenue, Room 1502
Seattle, Washington 98104

Dear Mr. Lawrence:

This is a follow up of our May 21, 1982 letter to the Transportation Institute regarding the problem of non-compliance with AS 46.04.040.

We are gravely concerned that both the citizens and the resources of the State of Alaska are not receiving the protection that was to have been afforded them by AS 46.04.040. Since January 1, 1981, many oil barges have been operating in State waters without furnishing proof of financial ability to respond to damages caused by the accidental discharge of oil.

After several discussions and meetings over the past months, we concluded that positive and definitive steps would have to be taken by both the barge operators and the State to resolve this problem. These were presented to you in my May letter. The State has now accomplished several of these tasks and has gone one important step further. This was to hire a contractor who soon will investigate the entire set of circumstances associated with the financial responsibility statute, including reasons for non-compliance.

In my letter I requested that barge owners and operators individually furnish this department with detailed explanations of why it is not possible for them to obtain insurance, self-insurance, surety bonds or guarantees. To this date we have not received a single response, even though we asked to receive this information in the months of May and June. I was concerned to hear that the Transportation Institute has done very little to urge the barge owners and operators to respond to our request for information.

Please recall that the commitment we gave the operators was conditional upon their taking measures to obtain liability coverage. We expect firm and tangible evidence of these measures in the form of correspondence, as an example. A mere verbal communique is entirely inadequate and will not be acceptable. Also, we expect that all four provisions for demonstrating financial responsibility be investigated by the operator and evidence of that investigation be sent to us for evaluation. For example, this might take the form of audited balance sheets to manifest the self-insurance option.

As I mentioned previously, the contractor will start his investigation very shortly and one of his tasks involves review of evidence of efforts to obtain liability coverage. Failure to obtain adequate evidence from this review could result in our reevaluating our current agreement to withhold referring cases to the office of the Attorney General.

Once again, we urge your cooperation in resolving this difficult issue.

Sincerely,

Ernst W. Mueller
Commissioner

cc Doug Mertz
Barge Operators

Oil Reform Alliance

TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all pollutors.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

700 H Street, #4 Anchorage, Alaska 99501 • (907) 274-3621

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No.1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum. oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenonema specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state ($500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska prctesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "Maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.

REGIONAL CITIZEN ADVISORY COMMITTEE

March 12, 1990

Representative Curt Menard
P.O. Box V
Juneau, AK. 99811

Dear Mr. Menard:

Attached is some information about the Regional Citizen's Advisory Committee (RCAC) and a memorandum with regards to our positions on pending State Legislation. Our Legislative Sub-Committee will be working to develope position papers, testimony, and in some cases specific language for oil spill related bills. The fifteen directors of RCAC look forward to working with the legislature as well as the oil industry to put in place the best laws possible to prevent, respond to, and mitigate the impacts from future oil spills.

Thank You.

T. Robertson

Tim Robertson
V.P. Oil Spill Prevention & Response

TR/ph
cc: Marilyn Hyman

THE FOLLOWING REPORT, AS CORRECTED, WAS APPROVED BY THE RCAC ON MARCH 9, 1990

Memorandum -- 9 March 1990

To: RCAC

From: Legislative Subcommittee

Your legislative subcommittee recommends RCAC take a supporting position on the following legislation:

1. SB359/Comparable House Measure

Establishes $10 million within the Sec. 470 funds to support social and economic needs of a municipal response to a spill, through DCRA.

RCAC would support the efforts of the Oiled Mayors. In our statements, we would remind people of our stand that we feel the Alyeska plan, as submitted, is inadequate because it does not address social and economic impact of a spill.

2. SB 497/HB 409

Part of the Governor's oil spill package, the bill strengthens DEC access to terminal facilities, allows for administrative penalties, changes methods for compliance orders and provides for environmental audits.

The bill has passed committees of referral in the House and awaits floor action.

RCAC should support the legislation, as it brings Alaska environmental law in step with the rest of the country and strengthens RCAC's access.

In doing so, we should support proper funding and staffing of DEC for enforcement of this law and laws they already have.

3. SB504/HB567

The bill, submitted by Gov. Cowper and the Oil Spill Commission, would raise the standard for mandatory response plans. RCAC should support the bill with the following additions or caveats:

a. The bill should mandate prevention as well as response in contingency plans.

b. RCAC's should be recognized as a part of both the review of a

RCAC Legislative Subcommittee Report -- page two

plan and as essential to the operation of any plan. This is a good place to further mandate agency cooperation with citizen's advisory committees. We feel this legislation, if sufficiently modified, is the best way to tackle the concerns behind the Resources Committee bill draft that would create RCAC's on the state level.

c. On the bill's most controversial provision, we suggest the RCAC support language which would have a spill contained within 72 hours and picked up within the shortest possible time. Language also implies that immediate response is not required under the law, and we should clarify that language. Finally, on the issue of "realistic maximum discharge" vs. "most probable discharge" we support the former in concept, but believe RCAC should review this specific language further until we better understand the effect it would have on the current plan.

d. We would like to see the bill mandate legal and social and economic provisions of a prevention/response plan, and to see the DEC-Alyeska agreement on handoff of a response to a spiller recognized and clarified in the law.

e. We should note in testimony that several parts of the current law seem not to have been enforced by DEC, and use that to support a strong fiscal note for this provision, including funding of community review of response plans.

4. The RCAC will follow HB 565, SB 502, SB 503, HB 566, HB 315, HB 316 and legislation concerning citizens advisory committees and citizens suits. We will gain committee concurrence before taking a position.

5. Resources required: For the amendments we propose to SB 504/HB 567 we will attempt to have an amendment written by legislative staff but may wish to hire drafting counsel and to bill back some secretarial time. We wish to have the ability for a member of the committee to be in Juneau at immediate notice. We will teleconference with the RCAC as a whole if any change from these positions is required. We do not believe a retained lobbyist is required. We would welcome participation from anyone on the commmittee not currently on the subcommittee.

Position papers we prepare on these issues will be distributed to RCAC members in advance of use in order to involve our constituents in the process and to keep them up to speed.

Pending approval of Messers. Walker and Butler, Tim Robertson will serve as co-chair for state legislation. Mead Treadwell will serve as co-chair for federal legislation. RCAC will plan to have someone in Juneau during the session's last week.

REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee (RCAC) offers the best chance for the public to influence oil industry operations in this state. The RCAC is The Alaskan version of the successful system of citizen participation in the formulation of oil storage and transportation policy in the remote Shetland Islands of Scotland.

The formation of an interim RCAC, originally named the Alyeska Citizens Advisory Committee (ACAC), was initiated by the Alyeska Pipeline Service Company in June, 1989. Alyeska was responding to the need for citizens' participation in the process of formulating an effective oil spill prevention and response plan for Prince William Sound, as required by Alaska Department of Environmental Conservation in aftermath of the Exxon Valdez grounding.

The 15 committee members represent the communities of Prince William sound, the Kenai Peninsula and Kodiak Island, as well as fishing, conservation, aquaculture and native groups. No member of the committee represents Alyeska or the owner corporations.

As a fully independent entity, this interim committee has vigorously pursued its goals. The RCAC has begun its review of the Alyeska Oil Spill Response and Contingency Plan, and has taken on the additional responsibilities of monitoring the Alyeska Pipeline Terminal in order to help ensure its environmentally correct operation and the safe shipping of North slope Crude through Prince William Sound.

To guarantee the continued existence of a citizens advisory group, the committee is now in the process of developing bylaws and articles of incorporation as a nonprofit corporation, as well as negotiating a contract between RCAC and Alyeska for the permanent committee.

The interim committee has also involved itself in federal oil spill legislation. Most recently, RCAC modified Senate legislative language mandating a citizens advisory committee system, and in November sent a three-member subcommittee to Washington, D.C., to support the inclusion of this language in oil spill legislation before the House of Representatives. The concept of the advisory committee was introduced in the Senate by Senator Murkowski as a section of the oil spill liability bill passed in August.

The advisory committee language supported by RCAC was attached by Representative Young to the Coast Guard appropriations bill passed in October, rather than to the House version of the oil spill liability bill. The advisory committee language was later dropped from the legislation in conference, but Rep. Young's action succeeded in bringing the issue to the fore in the House, which is now on record as strongly supporting the concept. Senate and House members are expected to conference in March on the oil spill bill, chances are good that the Citizen Advisory Legislation will be part of the final bill.

The RCAC legislative subcommittee is planning to work towards better State Legislation related to Oil Spill Prevention and Response as well as Oil Spill Impact Mitigation. With its regional representation and independent status, the RCAC can add legislative refinements based on knowledge gained through real involvement.

The RCAC can act as an effective watchdog to the oil industry in Alaska. The first line of defense against oil spill or oil-related impacts is prevention. This is the field of endeavor which will be actively pursued by the environmental and technical subcommittees to be appointed by the RCAC. In addition, the RCAC will interact with federal and state regulatory agencies on an ex-officio basis.

3/8

ACAC MEMBERS **March 1, 1990**

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M E M O R A N D U M

MARILYN

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Ray Gillespie

DATE: March 21, 1990

SUBJECT: HB 565 and HB 567 - Civil Penalty and Financial Responsibility for Non-Crude Oil Distributors

I represent Petro Marine, Delta Western and Crowley Maritime, which are relatively small distributors of refined products, such as marine fuel and petroleum products, rather than crude oil. This memo contains thoughts and comments on the legislation as it may affect owners and operators of distribution facilities in Alaska:

I. Appendix G to the Alaska Oil Spill Commission Report is entitled "The Role of Insurance for the Preparedness and Response to Oil Spills: Liability and Compensation Issues". This report should be carefully reviewed by the Committee and its recommendations seriously examined prior to action on HB 565 and 567. Neither the Alaska Oil Spill Commission report nor Appendix G recommends any specific changes to Alaska liability or penalty laws with respect to non-crude oil distributors.

On the contrary, Appendix G recommends that the Commission and the State Legislature review the analysis of the civil penalty scheme, oil spill liability and compensation thesis, written by W.J. Graham in 1989. This thesis was done at the University of Washington, Institute of Marine Studies and is entitled "Oil Spill Liability and Compensation: A Review of and Evaluation of Alaska's Civil Penalty Scheme." A copy of this paper has been provided to Committee staff.

II. Other Observations and comments on Appendix G:

A. The report references the U.S. Government Accounting Office, 1987 report, which states that the insurance industry has maintained that the basic concerns of underwriting, risk the process of identifying and evaluating risks and setting the premiums to be charged cannot be satisfied when assessing a pollution risk, making them sometimes uninsurable.

B. It suggests that insurance requirements of this nature have historically been addressed through national programs, such as the National Flood Insurance Program, the Flood Disaster Protection Act, the Federal Emergency Management Act and Earthquake Insurance Programs.

C. The House Resources Committee may wish to examine the pertinent provisions of Federal legislation to ensure that HB 567 is coordinated with pending Federal legislation, which may also contain liability provisions according to the report.

D. It may be advisable for the Resources Committee to hear from the author of Appendix G, Mr. Clancy Phillpsborn of Boulder, Colorado.

III. With specific reference to HB 565 and 567, Delta Western, Petro Marine and Crowley Maritime offer the following general comments:

A. Tank facilities owned and operated by these entities are located in the following communities: Unalaska, Nome, Kotzebue, Seward, Dutch Harbor, Kodiak, Nikiski, Anchorage and Juneau. With the exception of one small Anchorage lube plant and a small facility in Juneau, each of these facilities would be subject to the $50 million financial responsibility requirement of HB 567.

B. Earlier testimony before the House Resources Committee by insurance representatives from Lloyds of London and an Anchorage marine insurance broker indicate that $50 million is not available for many small companies operating these size facilities.

The testimony indicated that $10 million might be available, depending upon the particular owner and operator, the size and age of the tanks and the type and nature of mitigation and prevention practices and policies in place at the specific location.

C. The term "realistic maximum oil discharge" as the standard for demonstrating contingency spill plan cleanup capability needs further refinement. The tank farms referenced above range from a single tank to up to 18 tanks. Must these operators be prepared to cleanup a spill that presupposes full loss of the entire capacity of all the tanks, such as resulting from a catastrophic earthquake? If so, what manpower and equipment will be required and are the costs realistic for small operators of tank farms?

D. It is apparent that some kind of transition mechanism should be in place while the new contingency plans are written and approved and the necessary manpower and equipment put on site after the effective date of the legislation and before final approval of the plans.

E. With respect to tanks vessels or barges in excess of 300 gross tons, HB 567 would require $20 million of coverage. This requirement does not necessarily reflect the risk of harm posed by tank vessels or barges nor does it necessarily reflect insurance which may be available in the market place. Much of the refined petroleum products sold in the state are transported by independent barge owners under charter to the distributors, such as Petro Marine, Crowley and Delta Western.

F. There are several other issues that should be addressed by the committee such as:

1. Must operators with multiple farms meet the financial responsibility requirement for each facility or will blanket coverage meet the requirements of HB 567?

2. Will small operators be able to fairly compete with large operators if both must meet the same financial responsibility requirements?

3. Will it be necessary to insure against the civil penalties contained in HB 565 in addition to the financial responsibility requirements of HB 567? See Section 2(j) of HB 567 which indicates that <u>both</u> types of coverage or responsibility must be demonstrated prior to contingency plan approval. If this is true, then the financial responsibility requirements are placed further out of reach for small operators.

4. For tank vessels and barges does the financial responsibility refer to each vessel or is blanket coverage sufficient?

We believe the Committee should seriously consider deleting non-crude from the bills at this time, to allow further examination of the serious and complicated issues surrounding small operators.

Thank you for the opportunity to address these bills. The companies I represent are willing and anxious to work further with the Committee on these bills. We suggest that sufficient time and study be devoted to HB 565 and 567 so that the small operators and distributors of refined products can serve the Alaskan consumer in a safe and efficient manner at reasonable prices.

Alaska Rural Electric Cooperative Association
Comments Regarding
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain $50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association
Nome Joint Utilities
Nushagak Electric Cooperation (Dillingham)
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, $50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for $1 million. Quotations for pollution liability insurance policies with very restricted coverage* have ranged from $23,000 to $45,000 per year each.

Nushagak Electric presently maintains a $1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of $23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

*Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.

To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than $2 million, and its annual revenues are about $2.4 million. Approximately $2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require $1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The $1,000,000 requirement for these very small utilities would be as impossible as the $50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.

FAX TRANSMITTAL RECORD

Chevron
SAUPE ENTERPRISES, INC.
P.O. BOX 70510
FAIRBANKS, AK 99707

FAX NUMBER - (907) 452-1033
Telephone - (907) 452-1238
Date Mar. 8 1990

TO: House Resources Committee ATTN: _____

FAX# c/o Rep. Sharp (Gloria) SUBJECT: H.B.-567
1-465-2294

(#Pages Sent: This plus one)

Message: Testimony offered to members of the House Resource Comm. relative to H.B.-567:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years.

I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It *is* heartening to me, *and to others like me,* to *know* that you all share the concern, confusion, and uncertainty that we feel regarding *H.B.-567.* I applaud *any* attempts to identify exactly what the Bill will require, and I share your fear that the regulations *may* not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "*567*" include little operations like my Fairbanks bulk plant! In fact, plants as small as ¼ our size, along with many river barges, would also be put out of business by "*567*" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically <u>use</u> only about 5,000 Bbls. at any given time.)

The DEC *has* indicated an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "*567*" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to <u>spill</u> that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as <u>unlikely</u> a scenario as our being able to meet "*567*"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone <u>our</u> size to even <u>suggest</u> we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "*567*" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!

Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "567". It would be sheer hysteria for me to even anticipate $50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The $50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the $1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of $500,000 but the additional premium for just the ½ million extra was $53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received Monday from my insurance broker: Quote:

"The limit of $50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!

Bernie Saupé

PETRO STAR INC.

Telephone (907) 488-0730
Telecopier (907) 488-9057
TELEX 36-686

P.O. Box 56239
North Pole, Alaska 99705
Walt Schlotfeldt
President

March 7, 1990

Mr. Curt Menard
Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V (M-3100)
Juneau, Alaska 99811

RE: HB 567

Dear Chairman Menard:

I would like to preface my comments on HB 567 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with HB 567. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from $2,500 to $100,000 per day may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific

recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...") appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring <u>applicants</u> for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its <u>area of operation</u> (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in

committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area. What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and <u>equipment</u> as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would

probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have $50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a $50 million risk. We currently have $1 million insurance.

I have highlighted the many concerns I have with HB 567. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under HB 567. Lastly, and most significantly,

please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide these comments, and would be happy to answer any questions that you may have.

Sincerely,

Walt Schlotfeldt

Walt Schlotfeldt
President

WPS:pm:W.00307-2

STEVE COWPER, GOVERNOR

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

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Walter B. Parker, Chairman
Esther Wunnicke, Vice Chairman
Margaret J. Hayes
Michael J. Herz
John Sund
Timothy M. Wallis
Edward Wenk, Jr.

March 6, 1990

MEMORANDUM

TO: Chairperson Drue Pearce, Special Committee on Oil & Gas
Committee Members

FROM: Walter B. Parker WBP
Chairman

I appreciate the offer to testify at length on the Governor's bills and our recommendations at some future date. After listening to the testimony offered on Monday, March 5, by Alyeska, ARCO and the State, I have the following specific comments:

Ability to Respond to Worse Case Scenarios

Mr. Asplund of ARCO stated a worst case would be 1.8 million barrels for Prince William Sound, exactly the figure I would use. What was not offered by industry was how do we achieve this figure. It can only be done by a regional response plan which brings in the capabilities of all concerned--industry, state, and federal.

The following have been offered:

Alyeska 10K barrels per hour name plate capacity. Allowing for 35% best case recovery in 72 hours	252,000
ARCO, per testimony, with a 24-hour lag to allow for mobilization from West Coast	250,000
Other five Alyeska owners	(unknown)
Barrels	502,000

The above figures are for containment and best case recovery situations, ie. less than six foot sea state and no more than 1 knot currents.

Memo
Senator Pearce
Mar 6, 1990

ARCO's proposed 70,000 ton skimmer could be built to recover 25,000 barrels per hour based on it having half the capacity to pump oil out of the water that is common at the Valdez terminal for pumping oil into tankers. This would have a capacity of 600,000 barrels per day and allowing for a 35% best case recovery rate, it would recover 630,000 barrels in 72 hours. Out total best 72-hour case recovery is now 1,132,000. Thus the remaining question is how to make up the 670,000 barrel difference. Allowing for 20% evaporation of the light ends during this period, or 360,000 barrels, we can see that we are approaching our goal and have 310,000 barrels remaining for which capability must be demonstrated. Here is where the API/PIRO response may come in, also federal response from the Navy, the Corp of Engineers, the Coast Guard, and if necessary further Alyeska response. In any case, by a combination of new technology already being proposed by ARCO and by accumulation of other sources into a regional response plan, we have come close to a creditable "worst case response" capability.

The next question is why must this response be mounted in 72 hours. If you examine the oil spill simulations in our report, you will note that it is after 72 hours that the greatest impact on the beaches occurs. Once the oil is on the beach, the Commission considers the battle lost. Therefore, our strong recommendations are on the immediacy of the response efforts.

As our report shows, Exxon Valdez is only 34th on the list of 65 great oil spills. Thus, the possibility of spills where the entire tanker load is lost, 1,800,000 barrels for Prince William Sound or 500,000 barrels for Cook Inlet, is still a very real worst case situation.

There are presently 94 tankers licensed for operation into Alaskan ports. Only 10 are covered by Alyeska's present plan for a "worst case" loss; 43 are covered by combining the Alyeska and ARCO plans, adding the large skimmer as described covers 70 tankers leaving only 24 uncovered.

What are the costs of achieving this level of protection, remembering we are only achieving worst case protection by mechanical containment and recovery in good weather conditions? The costs included here are estimated by me based on our contractors estimates for similar equipment.

One Time Costs

Alyeska Costs (already committed but no cost breakdown yet provided, so this is my estimate	$60,000,000

Memo
Senator Pearce
March 6, 1990

ARCO Costs (less 4 ERV and 4 other vessels in Alyeska Costs, note that this system serves entire West Coast	$ 32,000,000
70,000 Ton Skimmer Costs ($93 million for new ship by Commission estimate plus $20 million for skimmer conversion by ARCO estimates	$ 113,000,000
1.132.000 barrels in 72 hours recovery	$ 205,000,000
Full Worst Case, another 310,000 barrels	80,000,000
Full Worst Case Recovery System in good weather	$ 285,000,000

Annual Costs

Alyeska	$10,000,000
ARCO	5,000,000
70,000 Ton Skimmer	10,000,000
Additional Recovery	5,000,000
TOTAL	$30,000,000

Operating costs as above should cover 72 hour initial period but do not cover beach cleanup costs.

Assuming a 10-year depreciation on one time costs, the annual costs for "worst case" mechanical recovery in Prince William Sound are $58,000,000 or the profits on 5 days throughput at the Valdez terminal.

*$6 X 9,750,000 barrels

*From Deakins Report

Now the question is, what is the cost of "worst case recovery" in bad weather. The present options are burning or dispersants. Future options may include gelling agents as described in our report. The costs of bad weather treatment are:

Burning, the loss of the ship and cargo	
250,000 T Tankers, new	$192,000,000
cargo 1.8 million barrels @ $20	36,000,000
Total	$218,000,000
70,000 T Tanker, new	$ 93,000,000
cargo, 500,000 barrels @ $20	10,000,000
Total	$103,000,000

The costs of the flights and igniting agents plus recovery of crew	$ 250,000
Dispersants: Following the British method of aerial application and the most favorable 1 to 20 crude to dispersant ratio, we require for the worst case 1,800,000 barrels, some 90,000 barrels of dispersant or 3,780,000 gallons @ $3/gal	$ 11,340,000
Costs of 700 C130 flights of 5 hour duration or 3,500 flight hours @ $3500 per hour*	$ 12,250,000
Worst Case by dispersant	$ 23,590,000

Gelling agents: This method is untried, untested, and wholly hypothetical. The ratio of 40 to 1, agent to oil, is the best known and the costs are in the ballpark of what is being paid by the US Navy for gelling agents.

Gelling agents 45,000 barrels, 6,250 tons or 1,890,000 gal @ $12/gal	$ 22,680,000
Costs of 350 C130 flights of 5 hours duration @ $3500 per hour*	6,125,000
Total	$ 28,805,000

* Assumes dispersants or gelling agents are located at Anchorage or Kenai.

Thus, it is true that the costs of a worst case response are large, whatever method is used. The alternative of avoiding it is equally costly in the long run. The size of the worst case scenario for each region will be governed by how much risks the industry places on the region. Exxon Valdez has shown us that the area at risk can be very large if response is not immediate enough to keep the oil from migrating to near and distance beaches.

Need for State Tanker Inspections

Regarding the need for state inspection on board tankers, our report details the sorry history of how the Coast Guard backed off after 1979 when the Alyeska owners' law suit and later legislative action eliminated the state presence on tankers. The Coast Guard budget on marine safety, wherein ship inspections lie, was cut 28% between 1982 and 1989. Allowing for inflation this was a real cut

of 40%. The fleet, meanwhile, aged another 7 years, with only two new additions Exxon Valdez and Exxon Long Beach being added in this period. Thus, inspections dropped as the ships got older. The Coast Guard testified at length about its concerns with increasing hull fatigue before House Resources on January 24. Despite this concern of the Coast Guard, I view the chances of major budget increases in marine safety as small unless the initiatives come Congress.

REVIEW AND COMMENTS
ON
ALYESKA PIPELINE SERVICE COMPANY
PRINCE WILLIAM SOUND
TANKER SPILL PREVENTION AND RESPONSE PLAN

BY
THE REGIONAL CITIZENS ADVISORY COMMITTEE

MARCH 24, 1990

The "ALYESKA PIPELINE SERVICE COMPANY PRINCE WILLIAM SOUND TANKER SPILL PREVENTION AND RESPONSE PLAN FOR PRINCE WILLIAM SOUND", published January 30, 1990, will be referred to hereinafter as the Plan. The comments contained in this document relate only to the main body of the plan. A review of the appendices and resource documents will be submitted under separate cover.

The Regional Citizens Advisory Committee (RCAC) is a non-profit corporation of 15 members. The members represent the communities of Prince William Sound, the Kenai Peninsula and Kodiak Island area as well as fishing, aquaculture, environmental and native groups of the region (membership list attached). No member of the committee represents Alyeska or the owner companies. This Committee represents various communities, governing bodies and both statewide and national organizations. The comments made by RCAC in this document are made on behalf of the Committee as a whole and not as a specific statement of the individual organizations represented. Lack of comment on sections of the Plan by this Committee should not be viewed as an acceptance of those sections by each represented community, governing body or organization.

The tragedy of the EXXON VALDEZ has made us aware of the risks of oil transportation across our sounds and along our coasts. We, the citizens of the region, have the most at stake if this Plan fails. Therefore we have the most cause for vigilance in the process that protects our communities, fishing grounds, subsistence use area, air, water and playgrounds. We are committed to working with the oil industry, the state and federal agencies and the legislative bodies to make the transportation of oil through Prince William Sound the safest and most environmentally sound system of its kind in the world. The members of the RCAC feel strongly that the citizens of the region directly impacted by the EXXON VALDEZ must have a role in the prevention of, planning for and response to future oil spills and other environmental impacts from the oil industry.

Since the RCAC was formed in June 1989 we have devoted over 5,000 volunteer hours to deal with organization, acquainting ourselves with Alyeska's operations and reviewing its Plan. It became very

apparent to us is that the task of preventing and responding to tanker oil spills must be a team effort which required active cooperation of and participation by Alyeska, the owner companies, the shippers, the marine pilots, the United States Coast Guard (USCG), the Alaska Department of Environmental Conservation (ADEC), legislators and the citizens of the region, among others. To this end our comments are not directed exclusively to Alyeska, but also to the team that must work towards prevention and response.

This review begins with some general comments and an overview of issues about which the RCAC feels strongly and progresses into a section-by-section review of the Plan. We hope Alyeska and the regulatory agencies will find our review useful. The Committee is dedicated to being a continuing part of development and implementation of this Plan.

OVERVIEW

The final report of the Alaska Oil Spill Commission on The Wreck of the Exxon Valdez has the following to say about contingency plans:

> "A contingency plan bridges idea and action to be taken in the event of an oil spill. As will become apparent, a plan exists on paper that can be evaluated intellectually. Personnel and equipment to implement it are real and can be examined and evaluated together only through spill drills or with actual spills. Then is when the bridge between idea and action is supposed to be crossed. Both preparation and execution contribute to the result."

In order to cross the bridge from idea to action successfully, Alyeska and the rest of the team must prepare for and practice responding to spills. This must be a process which is removed from corporate concerns over profits and future liabilities for oil spills. A contingency plan should represent the best efforts of oil spill prevention and response experts to plan for spills.

The RCAC would like to compliment Alyeska for adopting the Incident Command System (ICS) for management of future oil spills. We feel that, if the ICS system is properly implemented, it will provide the best chance for a integrated response to oil spills. The RCAC also acknowledges Alyeska's use of Escort Response Vessels and Tugs. These vessels provide a good measure of prevention and the most immediate response possible. Alyeska's initial response system may very well be the best in the world.

Alyeska has assembled some of the world's leading experts in oil spill prevention and response to draft their Plan and implement it. The RCAC acknowledges these experts and respects their opinions on these technical subjects. However, it is apparent this Plan has

been treated as a legal document, not a technical document; and, therefore, it fails to provide the bridge from the oil spill experts to the action which is required. RCAC recognizes that Alyeska and its owner companies are currently in litigation for alleged non-performance relating to the March 24, 1989 oil spill. It appears certain portions of the Plan are missing because they may impact current litigation. We believe it is incumbent upon ADEC and other regulatory agencies to insure that all pertinent information and actions are included. The Committee feels strongly that oil spill prevention, response and clean-up should remain paramount to any legal aspects and impacts of the Plan.

When Alyeska first started assembling the Plan, it indicated to the RCAC that the Plan would cover all aspects of spill response: from the first drop of oil hitting the water, through the entire cleanup, to the response to community socio economic impacts, and environmental mitigation. The Plan has evolved to a three day plan of initial response, which will then be handed off to the spiller which may function under an entirely different plan. The Committee foresees that a vacuum of clean-up responsibility will likely develop after the initial 72 hours of response. The RCAC strongly opposes this evolution. We feel there should be only one plan which will cover all aspects of spill prevention and response. This one Plan would be followed no matter which member controls the team.

It is incumbent upon this Committee to point out to the public and our constituency that this Plan is limited in geographic area and time. It does not provide a plan which covers the gamut of risk that oil transport puts on the State of Alaska. It is the recommendation of this Committee that a larger, all encompassing plan be drafted which includes the areas excluded in this Plan. The larger Plan should include tanker owner plans, PIRO, and state and federal agencies. ADEC should be responsible for overseeing the development of a comprehensive statewide "umbrella plan" into which the Alyeska Plan should be integrated with other contingency plans covering areas outside of Prince William Sound and beyond Alyeska's 72-hour response.

When Alyeska began to assemble this Plan, it said the areas outside Prince William Sound that were impacted by the EXXON VALDEZ oil spill would be covered by the Plan. The Plan as submitted has no provisions for protective booming or skimming systems outside Prince William Sound. The Plan does not address any critical habitat or communication systems outside the Sound. Yet, the Plan states "there will be few circumstances in which a catastrophic spill can be substantially contained and removed". We already know where a spill not contained or removed will go. RCAC feels strongly that the Plan must address and prepare a response to spills from within the Sound which migrate out of the Sound. Likewise, we feel the Plan should cover TAPS trade spills that occur outside Prince William Sound which may impact any of the coasts of Alaska.

In order to cross the bridge from idea to action successfully, Alyeska and the rest of the team must prepare for and practice responding to spills. This must be a process which is removed from corporate concerns over profits and future liabilities for oil spills. A contingency plan should represent the best efforts of oil spill prevention and response experts to plan for spills.

The RCAC would like to compliment Alyeska for adopting the Incident Command System (ICS) for management of future oil spills. We feel that, if the ICS system is properly implemented, it will provide the best chance for a integrated response to oil spills. The RCAC also acknowledges Alyeska's use of Escort Response Vessels and Tugs. These vessels provide a good measure of prevention and the most immediate response possible. Alyeska's initial response system may very well be the best in the world.

Alyeska has assembled some of the world's leading experts in oil spill prevention and response to draft their Plan and implement it. The RCAC acknowledges these experts and respects their opinions on these technical subjects. However, it is apparent this Plan has been treated as a legal document, not a technical document; and, therefore, it fails to provide the bridge from the oil spill experts to the action which is required. RCAC recognizes that Alyeska and its owner companies are currently in litigation for alleged non-performance relating to the March 24, 1989 oil spill. It appears certain portions of the Plan are missing because they may impact current litigation. We believe it is incumbent upon ADEC and other regulatory agencies to insure that all pertinent information and actions are included. The Committee feels strongly that oil spill prevention, response and clean-up should remain paramount to any legal aspects and impacts of the Plan.

When Alyeska first started assembling the Plan, it indicated to the RCAC that the Plan would cover all aspects of spill response: from the first drop of oil hitting the water, through the entire cleanup, to the response to community socio economic impacts, and environmental mitigation. The Plan has evolved to a three day plan of initial response, which will then be handed off to the spiller which may function under an entirely different plan. The Committee foresees that a vacuum of clean-up responsibility will likely develop after the initial 72 hours of response. The RCAC strongly opposes this evolution. We feel there should be only one plan which will cover all aspects of spill prevention and response. This one Plan would be followed no matter which member controls the team.

It is incumbent upon this Committee to point out to the public and our constituency that this Plan is limited in geographic area and time. It does not provide a plan which covers the gamut of risk that oil transport puts on the State of Alaska. It is the recommendation of this Committee that a larger, all encompassing plan be drafted which includes the areas excluded in this Plan.

The larger Plan should include tanker owner plans, PIRO, and state and federal agencies. ADEC should be responsible for overseeing the development of a comprehensive statewide "umbrella plan" into which the Alyeska Plan should be integrated with other contingency plans covering areas outside of Prince William Sound and beyond Alyeska's 72-hour response.

When Alyeska began to assemble this Plan, it said the areas outside Prince William Sound that were impacted by the EXXON VALDEZ oil spill would be covered by the Plan. The Plan as submitted has no provisions for protective booming or skimming systems outside Prince William Sound. The Plan does not address any critical habitat or communication systems outside the Sound. Yet, the Plan states "there will be few circumstances in which a catastrophic spill can be substantially contained and removed". We already know where a spill not contained or removed will go. RCAC feels strongly that the Plan must address and prepare a response to spills from within the Sound which migrate out of the Sound. Likewise, we feel the Plan should cover TAPS trade spills that occur outside Prince William Sound which may impact any of the coasts of Alaska.

The Committee feels the premise contained in the Plan that "there will be very few circumstances in which a catastrophic spill can be substantially contained and removed" unacceptable. We believe Alyeska must adequately prepare for the catastrophic loss of an entire cargo of the largest tanker calling at the terminal. It is our intention to provide Alyeska with recommendations for incremental increases in response capacity until such a contingency can be adequately managed. This response capacity must include not only nameplate containment and skimming capacity, but must include strategies for effectively utilizing that capacity.

The RCAC believes it is more important to be able to manage and deploy 30,000 feet of boom and 10,000 bbl/hr. of skimming capacity than to own 50,000 feet of boom and 200,000 bbl/hr. of skimming capacity that is ineffectively utilized.

The RCAC feels the Plan must clearly state that the first response priority is to remove spilled oil from the water. This takes precedence over removing oil from the beaches or dispersing it with chemicals. It should also be make clear that economics are not the criteria by which spill response decisions are made.

PREVENTION is the most important section of the Plan. Yet many of the most important preventative measures are outside Alyeska's control or are not addressed. The RCAC feels crude oil should not be shipped when there is no possibility for mechanical recovery from the water. The ability to respond to oil spills in various seasons and conditions of wind, sea state, ice and darkness needs to be evaluated and quantified. Restrictions to shipment of crude oil need to be implemented based on this data. Other preventative measures, such as restrictions of vessels with a pollution history,

In addition, the RCAC feels the public review process has been shortchanged. Meetings were held in communities at a time when few people had an opportunity to review the Plan upon which they were being called to comment. Tape recordings were being made of the meetings, but there were not plans to transcribe the comments and no one appeared to be taking notes. The Committee is concerned that although many local citizens took the time to make their comments, those comments cannot be considered by ADEC because of a lack of a record.

Once the Plan is approved, ADEC and the USCG must be adequately funded, staffed and directed to monitor implementation and results of the Plan. Safeguards must be installed to prevent complacency and cost cutting measures from removing or weakening the Plan.

TEAM WORK

RCAC is very concerned about the current relationship between the parties which must work together to effectively prevent and respond to oil spills. At present, the members are fragmented and in adversarial roles. The tanker owners, the marine pilots, the Coast Guard and the ADEC have to become part of the planning process. Let us all commit to working together to provide the best system of protection for the Alaska coastal environment and communities.

Statement of
Jerry A. Aspland
President, ARCO Marine, Inc.
Before the Alaska House Resources Committee
House Bill 567
Juneau, Alaska
March 20, 1990

Dear Chairmen Davidson and Menard:

I appreciate the opportunity to express the views of ARCO Marine, Inc. on House Bill 567, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, is concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills, and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The first is sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying

environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management, all the contingency plans and equipment can not be utilized most effectively.

While ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of HB 567 with which we believe compliance is impossible. Section 1 of HB 567, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish

much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with proposed HB 567, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity to submit comments. ARCO Marine, Inc. stands ready to assist your committee. If you have any questions, I would be pleased to hear from you regarding this statement or any other related subjects.

Jerry Aspland
President
ARCO Marine, Inc.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 29, 1990

Representative Cliff Davidson
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RE: House Bill 567

Dear Representative Davidson:

This letter is in response to your request that I put in writing the essence of the remarks I made to the House Resources Committee yesterday.

My basic point is that increasing the rate of financial responsibility on refined petroleum storage tanks from $25 to $35 per barrel may seem like a small change, but it is devastating to some of the rural utilities I represent.

Kotzebue Electric Association

One Example is Kotzebue Electric Association, which has 51,190 barrels of tank capacity. Under present law, they must demonstrate financial responsibility of $1 million. Under the draft CS for HB 567 considered on March 27, their requirement would increase to $1,279,750 ($25 per barrel). Under the draft CS considered yesterday, their requirement would be $1,791,650 ($35 per barrel). We swallowed hard and decided not to object to this feature of the March 27 draft, but the increase in the March 28 draft is more than they can reasonably do.

To satisfy the $35 per barrel requirement, with an insurance policy, Kotzebue Electric would have to buy a $2 million policy. I estimated the cost of such policy based on the assumption that they would have a peak of 2.1 million gallons of fuel in storage. The current rate on the first $1 million of coverage is 2.1 cents per gallon. I estimated the rate on the second $1 million at 50% of the rate for the first $1 million. This calculation produces an annual premium of $66,150.

As I explained to the committee, this policy would cover third party liability only. It would not pay a nickel for cleanup costs for the portion of an oil spill remaining on the utility's own property.

Kotzebue Electric would have difficulty maintaining their present arrangement with the ARECA Insurance Exchange to demonstrate financial responsibility because their net assets are only a little more than $2 million, and they would have to commit essentially all of their credit to guarantee their ability to pay this one obligation. It would leave no credit for things like buying fuel.

Nome Joint Utilities

Nome Joint Utilities is a second example. Their storage capacity is 80,952 barrels. They presently self-insure their $1 million financial responsibility.

Under the March 27 draft, Nome's requirement would increase to $2,047,600. Under the March 28 draft, their requirement would be $2,8733,320. To satisfy this requirement with insurance, they would have to buy a $3 million policy. I estimated the cost of such a policy based on the assumption that their peak fuel storage would be 3.2 million gallons. The rate on the first $1 million is currently 2.1 cents per gallon. I estimated the rates for the second and third $1 million layers at 50% and 25% respectively of the rate for the primary layer. This calculates out to $117,600 in premiums.

The average cost per consumer per year for these insurance policies would be about $67 in Kotzebue and $101 in Nome. Another witness suggested that this doesn't really matter because the state would pay most of the cost through the PCE program. The fact is, PCE pays much less of utility costs than is generally supposed. The portion of the KWH sales which are subject to PCE assistance is 46% in Kotzebue and 43% in Nome. The full cost of the rest of the sales are paid by the consumers.

Cliff, we want to be reasonable, but we urgently ask you and the committee to get the rate for financial responsibility back to $25 per barrel. After all, that is an increase of 150% from the current rate of $10 per barrel.

Sincerely,

Dave

David Hutchens
Executive Director

Testimony by Annie McKenzie
House Resources Committee
March 9, 1990 HB 567

Mr. Chairman and committee members: My name is Annie McKenzie. I am a small business owner from Seldovia and am currently serving as a volunteer for the Alaska Environmental Lobby. I served as volunteer coordinator for the Seldovia response team during the Exxon-Valdez spill. From that perspective, I'd like to comment on contingency plans in house bills 567.

Contingency plans must prepare for cleanup of total discharge of contents within 72 hours. If this is impossible to achieve, as stated by Jerry Asplund of ARCO Marine (Senate Special Subcommittee on Oil & Gas hearing, March 5, 1990), then the amount of product being transported should be decreased to a level than can be adequately dealt with. The bill must also include language for immediate implementation of contingency plans.

Contingency plans must call for adequate equipment to be stockpiled in strategic locations. Industry testimony earlier this week at Senate Oil & Gas indicated they plan only to list equipment availability. Stockpiling of emergency materials for a worst case scenario became evident in Seldovia & other coastal communities outside PWS during the Exxon-Valdez spill. We built cumbersome home-designed log and seine boom to protect our bays since all available commercial boom was used initially in Prince William Sound.

The industry was also unable to provide sufficient tankerage for waste oil. A modified fleet of Seldovia fishing boats collecting oil off the water was shut down a number of times because barges, we were told, were all being used in Prince William Sound. These are a couple of examples of the lack of preparation by the oil industry for a large spill and the need for stockpiling of materials.

The contingency plan for the area south of Seal Rock calls only for use of dispersants. This is inadequate since weather does not always allow for their use. We should have well-placed stockpiles of equipment and materials along with coast with plans for utilization.

All oil-spill contingency plans should have well-developed

methods for disposing of all collected waste materials. Exxon-Valdez waste was disposed of in landfills outside the state, a method which threatens purity of groundwater, and by incineration, a method which releases dioxins and furans into the environment. Dioxins and furans are some of the most powerful and deadly toxins known. Minute amounts of these chemicals are known to cause cancer, birth defects, and immune deficiency responses. They are fat soluble, remaining in the food chain from the smallest organisms up through fish and mammals to humans. Incinerating away from populated areas does not protect humans from their damage, since contaminated fish may travel long distances before being caught and consumed. The purity of Alaskan fish and the health of consumers should not be placed at risk by incineration of oily waste.

Ray Gillespie
Gillespie & Associates
Lobbying & Governmental Affairs

Please reply to: ☒ *10390 Mendenhall Loop Road*
Juneau, Alaska 99801
(907) 463-3375

☐ *215 Hidalgo Ave., Suite 201*
Kenai, Alaska 99611
(907) 283-5405

M E M O R A N D U M

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Raymond A. Gillespie

DATE: March 29, 1990

SUBJECT: House Bill 567

At your request, this will supplement my memo of March 21, 1990.

Petro Marine, Crowley Maritime and Delta Western have all provided written testimony to the Committee. Petro Marine has also offered oral testimony. Those comments have identified the following concerns:

1. Financial responsibility requirements need to be realistic so that operators are able to obtain coverage in the marketplace.

2. There is a need for a transition mechanism as the companies move to meet the more stringent requirements of the new contingency plans required by HB 567.

3. The latest committee substitute requires that a contingency plan for an oil storage facility provide for removal of an amount equal to the capacity of the largest storage tank at the facility within 72 hours. In nearly all cases our facilities exceed 10,000 barrels. Federal EPA regulation require a secondary containment mechanism, usually a dike, that will contain not less than the greatest amount of liquid that would be released from the largest tank, assuming the tank was full <u>plus a free board of at least twelve (12) inches</u>. In addition, walls of the dike area are required to be of earth, steel, concrete or solid masonry, designed to be liquid tight and to withstand full hydrostatic head. Therefore the question is, will the secondary containment system such as a dike, that complies with Federal law, meet the requirement of the 72 hour cleanup requirement?

Containment of a spill within the dike area prevents spread and further harm from a spill, however, in remote areas of the state it may not be reasonably possible to secure enough equipment and manpower to remove that spill from the dike area within 72 hours. What will HB 567 require?

4. The latest committee substitute requires that a barge have sufficient equipment to cleanup a spill equal to the maximum capacity of the vessel or barge within 72 hours. Is it realistically possible to carry sufficient equipment and manpower on a barge to accomplish this? Delta Western has two million gallon barges which ply the Alaska waters. We are attempting to find out exactly with more precision what this requirement will mean in terms of manpower and equipment.

5. The committee substitute of 3/27/90 stated a financial responsibility requirement of a storage tank facility in excess of 5,000 barrels of $25.00 per barrel for the first 80,000 barrels and $50.00 per barrel for each barrel in excess of 80,000 barrels. The companies are currently attempting to work with their insurance companies to find out if such coverage is available.

   However, the 3/28/90 committee substitute has changed that to $35.00 per barrel financial responsibility requirement for non-crude oil storage terminal. We have not yet had the opportunity to work with the insurance industry yet on the latest CS.

6. The term "properly implemented" should be further defined so that companies know with more precision what equipment and manpower will be required to meet the contingency plan approval requirements.

Attached is a copy of the recommendations made by Mr. Clancy Phillipsborn, the author of Appendix G. Appendix G to the Alaska Oil Spill Commission Report recommends, among other things, that the Legislature review the analysis of the civil penalty scheme for oil spill liability and compensation in Alaska which was done as a master thesis at the University of Washington, Institute of Marine Studies. In addition, it recommends a review of pending Federal Legislation which may accomplish similar goals, those of the Alaska Legislature in defining a liability and compensation system.

Again, my clients are prepared to work with the Committee to draft a reasonable bill. These operators share the concern for implementing the highest level of safety procedures and prevention techniques, however, they must register objection to hastily conceived legislation.

Attachment

MEMORANDUM State of Alaska

TO: Bob Evans
Deputy Chief of Staff
Office of the Governor

DATE: March 16, 1990

FILE NO.:

THRU:

TELEPHONE NO.: 465-2600

SUBJECT: Oil Spill Legislation

FROM: Amy D. Kyle ADKyle
Deputy Commissioner
Department of Environmental Conservation

We have further analyzed two issues related to the oil spill legislation that we discussed briefly at our session with the Governor last week. (We have also prepared a more detailed briefing memo on issues related to financial responsibility and contingency plans for the governor) A separate memo on the issue of onshore facilities is being prepared for Denby Lloyd.

The two issues addressed herein are the "72 hour" requirements for contingency plans and an issue related to dollars per gallon penalties that has arisen during hearings on these bills.

1. 72 hours - As you will recall, the original proposal for oil spill contingency plan legislation included a requirement that the plans address a "worst case" spill in 72 hours. The provision for "worst case" was changed to "maximum realistic discharge." The provision for a timeframe for planning was dropped.

During the discussion last week, it appeared that the reason for dropping the 72 hour provision was a concern that the language, as written, did not appear to be a design standard but rather a performance standard. There was a concern about whether a spill could be always be cleaned up in 72 hours.

To address this, we have, with the assistance of the Department of Law, drafted language that would rectify this issue and make it clear that the 72 hour requirement is a design standard for contingency plans. This language is attached as item 1. We are seeking your concurrence to go forward with this language.

2. Dollars per gallon penalties - During the hearings on the oil spill legislation package, concerns about the "dollars per gallon" penalties for non-crude oil spills have been raised. To respond to these concerns, we would propose

to reduce the dollar amount of the penalties for non-crude oil spills from what has been proposed in the current legislation to levels that are close to what was adopted last year for crude oil. This language is attached as item 2. We are seeking your concurrence to go forward with this language.

The House Resources Committee is planning to mark up this legislation this weekend and move it next Tuesday. For our thoughts to be of help to them, we need to decide how to proceed today. We appreciate your assistance.

cc: Denby Lloyd, Special Staff Assistant
Jeff Bush, Department of Law
Rod Swope, Department of Natural Resources

Proposed Amendments to HB 567
Regarding the "72 Hour" Provisions

1. Revise proposed AS 46.04.030(f) (pg. 2, ln. 17--23) to read as follows:

An applicant for an oil discharge contingency plan required by this section shall maintain in its area of operation, singly or in conjunction with other operators in its area of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to immediately contain a realistic maximum oil discharge and to remove that discharge within 72 hours after the discharge. The requirements of this subsection apply for planning and equipping purposes only.

2. Revise proposed AS 46.04.030(h) (pg. 2, ln. 26--pg. 3, ln. 14) to read as follows:

The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which the department [IT] determines are necessary to insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive areas, [AND] to immediately contain a realistic maximum oil discharge, and to [,] cleanup [,] and mitigate the oil discharge from the facility or vessel within 72 hours after the discharge [THE SHORTEST FEASIBLE TIME]. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;
(2) response team exercises; and
(3) verifying access to inventories of available equipment, supplies, and personnel.

3. Revise proposed AS 46.04.030(j) (pg. 3, ln. 29--pg. 4, ln. 13) to read as follows:

Failure of a holder of an approved or modified oil discharge contingency plan to properly implement the plan, or to have access to the quality or quantity of resources identified in the plan or [AND, IN THE EVENT OF A SPILL] to respond with those resources within the shortest possible [FEASIBLE] time in the event of a spill, is a violation of this chapter for

purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified oil discharge contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

Proposed Amendments to HB 565
Regarding Dollars Per Gallon Penalties

1. Revise proposed AS 46.04.758(b) (1) (pg. 2, ln. 24--pg. 3, ln. 3) to read as follows:

> Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed
>
> > (A) $12.50 per gallon of oil that enters any surface or subsurface freshwater environment;
> >
> > (B) $8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;
> >
> > (C) $6.00 per gallon of oil that enters an unconfined saltwater environment or onto the land or subsurface land of the state.

2. Revise proposed AS 46.04.758(f) (pg. 4, ln. 27--pg. 5, ln. 6) to read as follows:

> For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged onto a surface freshwater or saltwater environment or onto the surface land of the state, the court shall deduct the number of discharged gallons of oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, sinking agents, or other means is not considered removal for purposes of this subsection. This subsection does not apply to oil discharged into subsurface water or land of the state.

NORTH PACIFIC FUEL
P.O. BOX 1487
KODIAK, ALASKA 99615

Rep. Cliff Davidson
Juneau Alaska

March 21, 1989

Dear Cliff:

Re:HB 565 and HB 567

I have reviewed the contents of the above mention bills and have a couple of concerns about them.

The areas that concern me the most are Financial Responsibility and Penalties, in regards to refined oil terminals.

BACKGROUND
In Alaska, everything runs on Petroleum Products, fishing, timber, heating homes, airplanes, and automobiles. The fuel distributor (and his oil terminal) play a vital link in basic survival in Alaska.

If laws are passed that make it more expensive for a fuel distributor to operate, the Alaskan consumer is the only one who will pay the bill.

If laws are passed that force the fuel distributor out of business then the Alaskan consumer has no place to purchase the vital products he needs to run industry, heat his home, just basicly survive.

When you get away from the parts of Alaska linked to the Oil Refineries on the Kenai Peninsula (or Fairbanks) by road, Oil Terminals have to be able to be able to supply the city, village or cannery for extended periods of time. So the size of the storage needs to be large.

Costs of ocean transportation increase as the quantity of fuel delivered decrease. Weather conditions can keep a fuel barge from reaching its destination for days, weeks or in some situations all winter. Because of conditions like this the fuel distributor needs to have adequate storage to take a large quantity of fuel and still not be in a "run out" situation.

FINANCIAL RESPONSIBILITY

There should be a sliding scale attached to financial responsibility. To classify all terminals over a 10,000 bbls the same is grossly unfair. An amount per barrel stored would be more fair, so a facility storing 15,000 barrels would not have the same responsibility as one storing 150,000 barrels.

The legislature needs to consider what is available for Terminals Operators to cover the financial responsibility requirement. We are not all Exon or Arco with unlimited resources to pledge. To those of us that are Alaskan owned business, this means buying insurance. The coverage may not be available or the price may be out of sight.

At one point a few years ago many dealers were not covered because the coverage was simply not available.

More thought needs to go into the regulations covering Refined Oil Terminals in the State. It is not good government to pass laws that cause extreme hardship and have no solution.

PENALTIES

The emphasis on penalitys is obviously designed to catch companies like Exon that do major damage and have lots of money. The net effect of these penalitys on a smaller company (fishing boat, freighter, independent oil company etc) could be devistaitng. A person may not be able to clean up the spill, fix the problem that caused the spill and still pay the penalitys.

PREVENTION

It is important that Oil Terminal Owners keep upgrading their facilities, if we have to put all our resources into paying insurance and saving accounts to pay fines in case we have a problem. There is that much less money to us to make our Facilities more enviromentaly safe.

CLOSING

We need to keep our environment safe and clean for ourselves and our children, but we need to do it in a manner that is reasonable and not destructive to business and consumers. There are only two types of individuals to pay these costs, taxpayers and consumers.

As you make you laws please consult with the industry which will be affected by the laws, the insurance companies which will need to provide the coverage. This will result in a system that works. To many times the legislature will pass a bill that creates an unworkable law.

Sincerely,

Jim Ramaglia

Jim Ramaglia
Vice President

MEMORANDUM State of Alaska

TO: ADEC Staff

DATE: November, 29, 1989

FILE NO:

TELEPHONE NO: (907)465-2630

THRU:

SUBJECT: Offshore & Productions Facilities with Approved Proof of Financial Responsibility

FROM: Glenn Adams Glenn Adams

The following offshore and production facilities have approved proof of financial responsibility through June 30, 1990.

Owner/Operator Name	Facility Name	Location
Amerada Hess Corp. 1185 Ave. of the Americas New York, NY 10036	Northstar "A" Gravel Island	Beaufort Sea
	Seal Gravel Island	Beaufort Sea
Arco Alaska, Inc. P.O. Box 100360 Anchorage, AK 99510	Prudhoe Bay Topping Plant	North Slope
	Prudhoe Bay Oilfield	North Slope
	Kuparuk River Oilfield	North Slope
	Lisburne Participating Area	North Slope
	Swanson River Oilfield	Kenai
	Beluga River Oilfield	Kenai
	King Salmon Platform	Cook Inlet
	Stinsen Exploratory Program	Beaufort Sea
Amoco Production Co. P.O. Box 800 Denver, CO 80201	Platforms: Anna, Bruce, Baker and Dillon	Cook Inlet
	East Foreland Delivery System	Kenai
Marathon Oil Co. P.O. Box 190168 Anchorage, AK 99519	Platforms: Dolly Varden and Spark	Cook Inlet
	Trading Bay Onshore Production-Facility	Cook Inlet
	Granite Point Production Facility	Cook Inlet
	Resolution Island	Beaufort Sea
	Steelhead Platform	Cook Inlet
	Spurr Platform	Cook Inlet
Phillips Petroleum P.O. Drawer 66 Kenai, AK 99611	NCIU Platform "A"	Cook Inlet

02-001 (Rev. 8/85)

Owner/Operator Name	Facility Name	Location
Shell Oil Company P.O. Box 2463 Houston, TX 77252	Onshore Gathering System at Middle Ground Shoal Field	Cook Inlet
	Platforms: Shell "A" and Shell "C"	Cook Inlet
	Goose Island	Beaufort Sea
	Tern Island	Beaufort Sea
B.P. America, Inc. 200 Public Square Cleveland, OH 44114	Niakuk Island (Manmade) Well #4	North Slope
	Endicott Development, Main Production Island, Satellite Drilling Island	North Slope
	Endeavor Island, SAG Delta #9	North Slope
	Niakuk Island (Natural), Wells 1, 1A, 2, and 2A	North Slope
Union Oil Co. of Calif. 909 West Ninth Anchorage, AK 99501	Grayling Platform	Cook Inlet
	Monopod Platform	Cook Inlet
	Granite Point Platform	Cook Inlet
Union Pacific Resources Company c/o Nortec 750 W. Second Avenue, Suite 100 Anchorage, AK 99501	"Diamond M. Falcon" Jackup Rig at No. 1 WECO-UPRC Cannery Creek 42-36 Exploratory Well	Cook Inlet

567

FACSIMILE TRANSMITTAL

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OIL & HAZARDOUS SUBSTANCE SPILL RESPONSE
9000 OLD GLACIER HIGHWAY, SUITE 200
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Anchorage: 562-4026
Soldotna : 262-2294

FCO and EH, Juneau: 463-3566
Fairbanks: 451-6130
Valdez: 835-8103

To: Marilyn Heinman

Attn: _____

Fax number: 465-4565

From: Glenn Adams
ADEC

Number of pages including cover sheet: 15

Comments:

per request - All tankers, barges, terminals and off-shore facilities that have approved proof of financial responsibility for FY 90

MEMORANDUM State of Alaska

TO: ADEC Staff

DATE: September 19, 1989

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: 465-2630

Vessels w/Approved Proof of Financial Responsibility

FROM: Glenn Adams
Oil Pollution Control

The following tank vessels have approved proof of financial responsibility through June 30, 1990 except as noted:

Vessel Owner/Operator MANAGER	Vessel Name	Comments	Financial Responsibility
Amerada Hess Corp. 1185 Ave. of the Americas New York, NY 10036	St. Lucia Mt. Cabrite Seal Island	Taps only Taps only Taps only	Guaranty Amerada Hess
Arco Marine Inc. 300 Oceangate Long Beach, CA 90802-5617	Arco Alaska Arco Anchorage Arco Juneau Arco Prudhoe Bay Arco California Arco Fairbanks Arco Independence Arco Sag River Arco Spirit Arco Texas		Self-insured Arco
Bay Tankers 270 Sylvan Ave. Suite 100 Englewood Cliffs, NJ 07632	Bay Ridge	Taps only	Guaranty B.P. America
America Trading Transportation Co. 555 Fifth Avenue New York, NY 10017	American Trader		Guaranty B.P. America

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Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Chevron Shipping Co. 225 Bush St., Rm 1015 San Francisco, CA 94104	Chev. California Chev. Mississippi Chev. Oregon Chev. Washington Chev. Colorado Chev. Louisiana Chev. Arizona	Taps only	Self-insurance Chevron Corp.
Exxon Shipping Co. P.O. Box 1512 Houston, TX 77251-1512	Exxon Benicia " " New Orleans " " North Slope " " Philadelphia " " San Francisco " " Baton Rouge " " Baltimore " " Baytown " " Galveston " " Jamestown " " Lexington " " Long Beach " " Princeton " " Washington " " Valdez " " Yorktown	Taps only "	Guaranty Exxon Corporation
Interocean Management Corporation Three Parkway Suite 1300 Philadelphia, PA 19102	Brooks Range Thompson Pass	Taps only Taps only	Guaranty B.P. America
Keystone Shipping Co. 313 Chestnut Street Philadelphia, Pa. 19106	Antigun Pass Kenai Keystone Canyon Tonsina Chestnut Hill Golden Gate Kittanning	Taps only Taps only Taps only Taps only "	Guaranty B.P. America Chas Kurtz Co. Inc
Marithon Oil Co. Natural Gas Division P.O. Box 3128 77253 Houston Texas	Polar Alaska Arctic Tokyo	LNG LNG	Guaranty Marithon Oil

Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Maritime Overseas Corporation 43 West 42nd Street New York, N.Y. 10036	Eastern Lion Northern Lion Southern Lion Western Lion Overseas New York Overseas Washington Overseas Boston Overseas Ohio Overseas Juneau	Taps only Taps only Taps only Taps only Taps only Taps only Taps only Taps only Taps only	Guaranty Amerada Hess Guaranty Guaranty/Overseas Shipholding Group
Mobil Oil Corp. 150 East 42nd Street New York, N.Y. 10017-5666	Mobil Arctic Mobil Meridian Syosset		Self-insurance Mobil Oil Corp.
OMI Corp. 280 Park Avenue New York, NY 10017-1282	OMI Columbia	Taps only	Guaranty B.P. America
Shell Oil Company P.O. Box 2463 Houston, TX 77252	B.T. San Diego B.T. Alaska		Guaranty Shell Oil
Sun Transport, Inc. P.O. Box 2224 Aston, PA 19014-2224	Texas Sun New York Sun Philadelphia Sun Tropic Sun Prince William Sound	Taps only " " " " " " " "	Self-insurance Sun Co., Inc.
Texaco Marine Ser., Inc. 2000 Westchester Ave. White Plains, NY 10650	Texaco California " " Connecticutt " " Florida " " Georgia " " Massachusett " " Minnesota " " Mississippi " " Montana " " New York " " Rhode Island " " Brooklyn	 Taps only	Self-insurance Texaco Inc.

Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Trinidad Corporation P.O. Box 11787 St. Louis, MO 63105-3721	Admiralty Bay Aspen Glacier Bay	Taps only " " " "	Guaranty B.P. America
West Coast Shipping Company P.O. Box 4258 Los Angeles, CA 90051-2258	Coast Range Sansinena II Sierra Madre		Guaranty Union Oil
Flyum's Barge Ser., Inc. P.O. Box 2838 Homer, AK 99603	Bradley River	Self-propelled barge	Insurance
Western Hemisphere P.O. Box 2401 Santa Monica, CA 90406-2401	Lion of Calif.		Self-insurance Tosco Corporation
White Pass Transportation, Ltd. P.O. Box 4070 Whitehorse, Yukon YIA 3TI	Frank H. Brown	Cargo/ Tanker	Insurance
Marine Transport Lines, Inc. 150 Meadowland Pky. Secaucus, NJ 07096-1550	Various vessels		Military Sealift Command - U.S.N.S.
BP America 200 Public Square Cleveland, Ohio 44114-2375	Various vessels		Guaranty
W.S. Oil & Refining Co. P.O. Box 21913 L.A., Cal. 90063	Crew Leader		Insurance

Companies providing guarantees or insurance coverage for spot charters.

COMPANY		Financial Responsibility
Tesoro Alaska Petroleum Company 8700 Tesoro Drive San Antonio, TX 78217	20 M	Guaranty
Petro-Diamond, Inc. P.O. Box 92713-9617 Irvine, CA 92713-9617	20 M	Surety bond
Pacific Resources, Inc. P.O. Box 3379 Honolulu, HI 96842	20 M	Insurance
Petro-Marine Services 1600 A Street, Suite 307 Anchorage, AK 99501	20 M	Insurance
Mapco-Alaska Petroleum Inc. 1800 South Baltimore Avenue Tulsa, OK 74101-0645	20 M	Guaranty
Pacific Fuel Trading Corporation (Japan Air Lines) c/o Alexander & Alexander of Washington 2800 Columbia Center 701 Fifth Avenue Seattle, WA 98104-7074	20 M	Insurance
Astra Oil Company, Inc. 100 Oceangate, Suite 940 Long Beach, CA 90802	20 M	Insurance
Chinese Petroleum Corporation c/o Unical International Supply & Trading Co. 1201 West Fifth Street Los Angeles, CA 90017	20 M	Insurance
Wickland Oil Company 2 Embarcadero Center, Suite 610 San Francisco, CA 94111	20 M	Insurance
Cove Shipping Incorporated 200 Virginia Street Mobil, AL 36603		

U.S. Oil and Refining Co.
P.O. Box 36913
L.A., Ca. 90036

20M Insurance

MEMORANDUM State of Alaska

TO: ADEC Staff

DATE: November 1, 1989

FILE NO:

TELEPHONE NO: (907)465-2630

THRU:

SUBJECT: Barges with Approved Proof of Financial Responsibility

FROM

Glenn Adams
Oil Pollution Control

The following barges have approved proof of financial responsibility through June 30, 1990:

OWNER/OPERATOR	BARGE NAME OR NUMBER		PROOF FOR FINANCIAL RESPONSIBILITY
Crowley Maritime Corporation 101 California St. San Francisco, CA 94111-5875	Satco 10	Satco 20	Surety Bond
	Satco 21	S.T. 22	
	S.T. 23	Napamute	
	Kodiak #1	EEK	
	Orca #2	Oil #1	
	14	17	
	450-10	500-2	
	16	18	
	254	DB 300	
	B&R 5	B&R 80-1	
	B&R 80-2	B&R 80-3	
	120-1	120-2	
	160-1	160-4	
	BC 151	BC 152	
	BC 154	210	
	211	212	
	213	218	
	251	255	
	312-3	Artic Challenger	
	CINNABAR	PAC 570	
	Cordova	Nikiski	
	McKinley	Ketchikan	
	Palmer	Kodiak	
	Juneau	101	
	102	450-2	
	450-3	450-4	
	450-6	450-7	

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WNER/OPERATOR	BARGE NAME OR NUMBER		PROOF FOR FINANCIAL RESPONSIBILITY
	450-8	450-9	
	✓450-11	UT-10	
	✓250-10		
Foss Maritime Co. 660 West Ewing Street Seattle, WA 98119-1587	✓Foss 256 Foss 248-P1 Tesoro Energizer Foss 255	Foss Tongass Foss 248-P2 SEA 76 Phoenix 121 HANDLER (2/1/90)	Insurance
Boyer Towing Inc. 7318 4th Ave. So. Seattle, WA 98108	Callapooya	Kootznahoo	Insurance
Delta Western P.O. Box 102916 Anchorage, AK 99501-2916	D.W. 282		Self-insured
United Marine Tug & Barge, Inc. 1441 N. Northlake Way Seattle, WA 98103	KRS 180-1 UMTB 180-2 MLC 260 MLC 165	MLC 332 MLC 333 ✓MLC 340-1 MLC 344	Insurance
Seaspan International, Limited 10 Pemberton Avenue North Vancouver, B.C. V7P 2R1	Seaspan 822 Seaspan 824 Seaspan 870		Insurance
Yutana Barge Lines, Inc. P.O. Box 220 Nenana, AK 99760	Riverways7 Riverways8 Riverways9 Riverways10 Riverways11 Riverways12 Frank Turner #1 Stewart Lucky	Oil Barge 1 Oil Barge 2 Oil Barge 3 Oil Barge 4 Oil Barge 5 Oil Barge 6 Polaris #6 Barge 17	Insurance
Trident Seafoods Corp. 5303 Shilshole Ave., N.W. Seattle, WA 98107	NC-S-1	J-S-1	Insurance
Knappton Corporation P.O. Box 83018 Portland, OR 97203	Palmer	Sitka	Insurance