

ALASKA
7185

LEGISLATURE
HOUSE

COMMITTEE
RESOURCES

FILES

1991-1992

8672

v. Standard Oil Co. of New Jersey, 294 U.S. 87, 96, 294 S.Ct. 333, 337 (1934); Fleming v. Hawkeye Pearl Button Co., 113 F.2d 52, 58 (8th Cir. 1940).

LDW44/cas

January 30, 1992

¹ As successors to the original holders of the federal right-of-way for TAPS, Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska), Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, are the present holders of the right-of-way grant. These common carrier pipeline companies own the pipeline and have chosen Alyeska to be their common operating agent.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 25, 1992

Hon. Bill Hudson
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

This letter is in response to your inquiry of February 25, 1992 regarding Alyeska's cleanup responsibilities.

We do not believe that legislation "clarifying and reaffirming" Alyeska's cleanup obligations under the existing right-of-way agreement and the TAPAA would improve the state's litigation position in the Exxon Valdez litigation with respect to those obligations.

If you have any further questions on this matter, please do not hesitate to contact me at your convenience.

Sincerely yours,

CHARLES R. COLE
ATTORNEY GENERAL

By: *Craig J. Tillary*
Craig J. Tillary
Assistant Attorney General

CJT:tq

REPLY TO:

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for additional monetary damages for serious and repeated intimidation and harassment of whistleblowers.

Section 501(h) adds a new subsection (k) to section 210 of the Energy Reorganization Act which provides that the Nuclear Regulatory Commission may not delay any investigation of an alleged violation on the basis of a whistleblower complaint being filed or an investigation by the Secretary being initiated. A determination that a violation has not occurred shall not be considered by the Commission in its determination of whether any violation of the Act or the Atomic Energy Act of 1954 has occurred.

Section 501(i) redefines "Secretary" and corrects a mistaken section designation in the Energy Reorganization Act.

Section 501(j) provides that the amendments enacted by this section will apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 on or after the date of enactment.

Title VI—Outer Continental Shelf

Subtitle A—Prohibition of Leasing and Preleasing Activity

Section 601 bars any preleasing after January 1, 2002 in the Onondaga, North Atlantic, Mid-Atlantic, Florida and North Aleutian Plan

It also establishes environmental planning areas with responsibility to obtain additional information that might be necessary and subject it to peer review, and identify potential impacts of oil and gas activity in the region.

The secretary must certify adequacy of information before proceeding to lease in any area subject to a moratorium; in making leasing decisions in moratorium areas the Secretary must consider information developed and must give equal weight to the environment and oil and gas development.

Subtitle B—Buyback of Certain Leases

Section 602 amends section 5(2)(a) of OCSLA to require the Secretary to cancel leases upon a determination that it has resulted in or poses a serious threat of damage to wildlife, property, minerals, the national security or the environment. It also reduces from five years to one year the lease suspension period that must precede cancellation. Finally, section

602 authorizes the use of credits against future rents, royalties or bonuses as compensation to owners of canceled leases.

Title VII—Alaska

Subtitle A—Alaska Outer Continental Shelf

Section 701 provides that the Secretary of the Interior is prohibited from permitting any drilling or other exploration activity on existing leases and also prohibited from conducting additional lease sales in Bristol Bay Alaska [North Aleutian Basin Planning Area] until after January 1, 2002.

Alaska's Bristol Bay is one of the world's richest fishing grounds and productive marine environments. Accordingly, the Secretary is directed to cancel the existing leases in Bristol Bay in conformance with the new criteria set forth in section 602 of this bill.

Section 702 provides that in conducting OCS leasing and related activities in Alaska, the Secretary is required to evaluate and minimize adverse impacts on subsistence pursuant to Section 810 of the Alaska National Interest Lands Conservation Act.

Subtitle B—Trans-Alaska Pipeline

Section 711 provides that Alyeska file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior. Under existing law, Alyeska Pipeline Service Company, as agent for the seven companies which were granted the right-of-way for the Trans-Alaska pipeline, has a duty to respond to oil spills in Prince William Sound.

Section 712 provides that funds received by the United States from settlement of claims related to the Exxon Valdez oil spill be deposited in a Natural Resource Damage Assessment and Restoration Fund in the Department of the Interior. The Federal Trustees for the oil spill restoration (Interior, Forest Service and NOAA) are also required by section 207 of the FY-92 dire emergency supplemental appropriations act (P.L. 102-229) to submit their proposed use of such funds in the President's budget for Congressional review.

The President's FY 93 Budget estimates that over \$400 million will eventually be received by the United States as its share of the Exxon Valdez civil settlement. In addition, \$50 million in criminal restitutionary payments have already been deposited in the Fund. Consistent with the Committee's Views and Estimates on the President's Budget, section 712 requires that no less than 80 percent of the money received from the Exxon Valdez settlement shall be used to acquire or otherwise protect key fish and wildlife habitat in Prince Wil-

PROPOSED
FEDERAL
LEGISLATION
* →

[COMMITTEE PRINT]

MARCH 31, 1992

102D CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To establish a national program and policy for the production
of energy and the protection and preservation of the
natural environment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE VII—ALASKA RESOURCES**
2 **Subtitle A—Alaska Outer**
3 **Continental Shelf**

4 **SEC. 701. ALASKA LEASING AND DRILLING MORATORIA**
5 **AND CANCELLATION.**

6 The Outer Continental Shelf Lands Act (43 U.S.C.
7 1301 et seq.) is amended by adding at the end thereof
8 the following:

9 “SEC. 31. ALASKA LEASING AND DRILLING MORA-
10 TORIA AND LEASE CANCELLATION.—(a) The Secretary
11 shall not prepare for or conduct any preleasing or leasing
12 activity and shall not approve or permit any drilling or
13 other exploration activity under this Act on lands within
14 the North Aleutian Basin planning area in the Alaska re-
15 gion until after January 1, 2002.

16 “(b) Congress finds that the requirements pertaining
17 to cancellation of leases in section 5(a)(2) of this Act have
18 been met with regard to the North Aleutian Basin plan-
19 ning area in the Alaska region. The Secretary shall initiate
20 cancellation of such leases within 90 days after the date
21 of enactment of this section in accordance with this Act.”.

22 **SEC. 702. ALASKA OCS SUBSISTENCE REVIEW.**

23 The Outer Continental Shelf Lands Act (43 U.S.C.
24 1301 et seq.), as amended by section 701 of this Act, is

1 further amended by adding at the end thereof the fol-
2 lowing:

3 "SEC. 32. ALASKA OCS SUBSISTENCE REVIEW.—
4 Prior to issuing any five-year program under section 18
5 of this Act, conducting any lease sale, or approving any
6 plan or permit for exploration, development, or production
7 activities in the Alaska region authorized by this Act, the
8 Secretary shall comply with section 810 of the Alaska Na-
9 tional Interest Lands Conservation Act (16 U.S.C. 3120).
10 In addition to other requirements, at the lease sale stage
11 the Secretary shall fully consider the effects of exploration,
12 development, and production upon subsistence uses."

13 **Subtitle B—Trans-Alaska Pipeline**

14 **SEC. 711. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER**

15 Title II of the Trans-Alaska Pipeline Authorization
16 Act (43 U.S.C. 1651 et seq.) is amended by adding at
17 the end thereof the following:

18 "RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

19 "SEC. 208. In addition to the existing duties to re-
20 spond to, contain, and clean up oil spills within the State
21 of Alaska, including Prince William Sound, under section
22 204(b) of this Act and other laws and requirements, the
23 holder of the right-of-way shall file an Oil Spill Contingency
24 Plan for Prince William Sound with the Secretary
25 of the Interior and other appropriate authorities."

1 SEC. 712. EXXON VALDEZ SETTLEMENT FUND LAND ACQUI-
2 SITION.

3 Title II of the Trans-Alaska Pipeline Authorization
4 Act (43 U.S.C. 1651 et seq.), as amended by section 711
5 of this Act, is amended by adding at the end thereof the
6 following:

7 "PUBLIC LAND ACQUISITION

8 "SEC. 209. Notwithstanding any other provision of
9 law, no less than 80 percent of any amounts received by
10 the United States pursuant to section 207 of Public Law
11 102-229 shall be utilized to acquire land and conservation
12 easements, including timber rights, within the Chugach
13 National Forest in the Prince William Sound region and
14 in other Gulf of Alaska areas, including Kenai Fjords Na-
15 tional Park, Afognak Island, and Kodiak National Wildlife
16 Refuge."

17 SEC. 713. SUBSISTENCE CLAIMS AGAINST TRANS-ALASKA
18 PIPELINE LIABILITY FUND.

19 Section 204(c)(13) of the Trans-Alaska Pipeline Au-
20 thorization Act (43 U.S.C. 1653(c)(13)) is amended—

21 (1) by striking out "and" at the end of sub-
22 paragraph (A);

23 (2) by striking out the period at the end of sub-
24 paragraph (B) and inserting in lieu thereof "; and";
25 and

1 (3) by adding after subparagraph (B) the fol-
 2 lowing:

3 "(C) all injuries suffered by individuals or enti-
 4 ties due to the impact of a discharge on people en-
 5 gaging in subsistence.

6 "In order to expedite compensation, the Fund shall certify
 7 a class action claim with respect to subparagraph (C)."

8 TITLE VIII—COAL, OIL, AND GAS

Subtitle A—Coal Development

- Sec. 801. Coal remining.
- Sec. 802. Metallurgical coal development.
- Sec. 803. Utilization of coal wastes.
- Sec. 804. Coalbed methane development.
- Sec. 805. Surface mining act implementation.

Subtitle B—Coal, Oil, and Gas Leasing

- Sec. 811. Federal coal leasing considerations.
- Sec. 812. Federal coal royalty study.
- Sec. 813. Acquired Federal land mineral receipts management.
- Sec. 814. Reserved oil and gas.
- Sec. 815. Outstanding oil and gas.
- Sec. 816. Oil and gas leasing on oil shale lands.
- Sec. 817. Federal onshore oil and gas leasing.
- Sec. 818. Oil placer claims.
- Sec. 819. Prohibition on lease issuance.
- Sec. 820. Advanced secondary and enhanced oil recovery.

SubTitle C—ABANDONED MIN. RECLAMATION FUND

- Sec. 821. Amendments to Surface Mining Act.

SubTitle D—HEALTH, SAFETY, AND MINING TECHNOLOGY RESEARCH

- Sec. 831. Health, safety, and mining technology research program.

9 Subtitle A—Coal Development

10 SEC. 801. COAL REMINING.

11 (a) MODIFICATION OF PROHIBITION.—Section 510 of
 12 the Surface Mining Control and Reclamation Act of 1977

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSSH B 540(O&G)

Page 1, line 7, after "oil;":

Insert "relating to the duty of, and charges or financial responsibility requirements related to that duty imposed by, the common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system to control and contain oil discharges;"

Page 4, after line 5:

Insert a new bill section to read:

"* Sec. 4. AS 46.04.020 is amended by adding new subsections to read:

(g) The common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to related activities, including operation of a tank vessel while berthed at a marine terminal or while traveling within state waters to or from a marine terminal. A charge or financial responsibility requirement imposed by the common operating agent for holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441. Review of a charge or financial responsibility requirement allowed under this subsection may occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska Public Utilities Commission.

(h) The department may waive an oil discharge containment and cleanup requirement imposed under (a) or (g) of this section if

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) the cleanup or containment activities would result in greater environmental damage than the discharge itself."

Renumber the following bill sections accordingly.

Page 4, line 7:

Delete "sec. 4"

Insert "sec. 5"

Congress and the State of Alaska Impose Liability and Financial Responsibility for Tanker Discharges Upon Vessel Owners and Operators, Not Upon the TAPS Owners and Operator

* The COC recommendation that "[t]he Trans-Alaska Pipeline System ("TAPS") agent should clearly maintain the duty to control and remove pollution within state boundaries related to the transportation of TAPS crude oil" relies upon an erroneous legal opinion.

* The responsibility of the owner/operator of a vessel to respond to vessel spills, and to pay for the cleanup and damages related to such spills, is well established under federal and state law:

** AS 46.03.822 (owner/operator of vessel liable for all public and private property damaged from oil spills);

** Clean Water Act, 33 USC 1321 (owner/operator liable for cleanup of oil spills, including cleanup costs and natural resource damages); and

** Trans-Alaska Pipeline Authorization Act, 43 USC 1653(c) (owner/operator of vessel and Trans Alaska Liability Fund liable for damages caused by vessel spills).

* Under federal law, the holder of the pipeline right-of-way for TAPS is only liable to control and remove pollutants where "any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder...." This subsection is inapplicable to vessel spills absent evidence that the spill occurred as a result of activities conducted by or on behalf of the holder of the right-of-way.

* None of the seven pipeline companies that own TAPS, or Alyeska which operates it on their behalf, own, operate, or charter tankers; nor do they manage or control them. In addition to the numerous legal and constitutional challenges this recommendation invites, it makes no practical sense: Congress has already imposed liability and financial responsibility for tanker discharges upon owners/operators; so has the State of Alaska.

* Also, the state and federal Right of Way Agreements, executed in 1974, did not alter this scheme and did not impose upon the holders of the right of way the responsibility to clean up oil spills from tankers in trade with the Valdez Terminal. Rather, both the contingency planning and oil spill response provisions of those agreements impose obligations on the holders only with

respect to spills from the pipeline or from the Marine Terminal facilities.

* An internal State of Alaska memorandum written prior to pipeline start-up acknowledged that "[t]here is no legal or stipulative requirement for Alyeska to clean up oil in Prince William Sound. Their Contingency Plan for the Sound (i.e., beyond Middle Rock) has been volunteered...." Memorandum from R. Bayliss to J. Reinwand (January 13, 1977).

* The issue of whether Alyeska has a duty to contain and cleanup crude oil spills within state waters has been raised in the Exxon Valdez litigation where it will be resolved. The very fact that a request has been made to "clarify" this alleged responsibility reveals the proponents' uncertainty in their own arguments.

* In COC's public meeting on January 31, ADEC testified that there is no confusion regarding who truly bears this responsibility in Prince William Sound: "we know who the plan holders are, we know who the responsible parties are...." An attempt to inexplicably shift that responsibility to pipeline owners who neither own nor operate crude oil tankers would be unlawful and fundamentally unnecessary. Congress' and Alaska's comprehensive oil spill response laws already place responsibility for tanker spills upon vessel owners/operators.

February 20, 1992

**ALYESKA PIPELINE SERVICE COMPANY
Prevention and Initial Response Services**

● *Why are oil discharge prevention and contingency plans necessary?*

Under federal and state law, a vessel owner is responsible for the discharge of oil from its vessel. Crude oil tankers transiting Prince William Sound must have oil spill contingency plans, contract for various spill response resources, and post evidence of financial responsibility. Contingency plans allow the state to determine whether plan holders have access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil spills from tankers. The state also requires plan holders to demonstrate their ability to carry out contingency plans, including periodic training, exercises, and verification of ready access to equipment, supplies, and personnel. A tank vessel may not be operated within state waters without an approved contingency plan.

● *Who are the plan holders for crude oil tankers operating in Prince William Sound?*

As required by state law, tank vessel oil discharge prevention and contingency plans are held by tanker owners or operators. Alyeska operates the Trans Alaska Pipeline System on behalf of seven pipeline companies which own it. None of these own, operate, or charter tankers.

● *What are Alyeska's prevention and initial response services?*

Alyeska has developed an initial response plan (the Prince William Sound Tanker Spill Prevention and Response Plan or "Plan") which describes the services it offers to tanker vessels as an initial response contractor. The state has approved the Plan's incorporation into individual tanker contingency plans. Under the terms of the Plan and Oil Spill Response Services Agreements signed with tanker owners, operators, and charterers ("Contracting Vessels"), Alyeska provides response vessels, equipment, personnel, and training described in the Plan for as long as 72 hours following an oil spill. The initial response plan and the tanker contingency plans anticipate that, during the first 72 hours after a spill, the management of the response will transfer from Alyeska either to the appropriate Contracting Vessel or to the federal on-scene coordinator.

● *What resources has Alyeska developed to support these services?*

Alyeska has chartered escort response vessels, tugs, barges, and an oil spill recovery vessel. It has also purchased ocean and rapid deployment boom, seaskimmers, and related response equipment. In addition, Alyeska has developed area response centers, placed fishing vessels on contract to supplement response efforts, and prestaged equipment to protect hatcheries and other sensitive areas. Escort/response vessels are used for day-to-day escort of loaded tankers in Prince

William Sound as a prevention measure. Vessel crews are drilled in responding to large spills and in employing multi-vessel and multi-boom configurations. Storage capacity for recovered oil and water is unprecedented: five large barges, each ranging in true volume from 70,000 to 120,000 barrels, are part of the plan to receive collected oil and water. This capacity is also augmented by smaller barges. The selection of equipment has been balanced between using high-volume recovery equipment in the early stages of a spill, and to adjust response strategies and equipment as the oil becomes viscous and aged.

- *During the first 72 hours of an oil spill response, how will management of the response be transitioned from Alyeska to a Contracting Vessel?*

When Alyeska discovers or is advised that an oil spill from a covered vessel has occurred, it will provide the initial response, employing its response equipment and personnel. Alyeska will also notify the Contracting Vessel. Unless otherwise directed by the Contracting Vessel, or the U.S. Coast Guard, Alyeska may elect to manage and control the response to an oil spill of 1,000 barrels or less which can be contained and cleaned up by local Alyeska resources in accordance with the Plan. For larger spills, the company which has contracted for Alyeska's initial response services will assume management and control of the oil spill response either itself or through a third party approved by ADEC. The transfer of command and management of spill response operations from Alyeska must occur in a smooth and efficient manner satisfactory to the U.S. Coast Guard and ADEC. In addition, transition of spill response management could be from Alyeska to the U.S. Coast Guard in the event a spill response is federalized.

- *Following transition of the management of an oil spill response, will Alyeska resources exit the response?*

One of the requirements for transfer of command and management of spill response operations is agreement on present and future resources of people and equipment, including Alyeska resources. It is expected that Alyeska resources will remain fully engaged in a response following transition of management of spill response operations. As soon as reasonably practical, Alyeska's core equipment and personnel should be replaced in an orderly fashion with the Contracting Vessel's response organization and equipment so that Alyeska can resume normal operations at the Terminal, when tanker operations can be restored.

- *What will happen if a Contracting Vessel fails to assume management and control of an oil spill response within 72 hours?*

Under the terms of the response services agreement, Alyeska may tender management of the oil spill response directly to the U.S. Coast Guard, and acquire additional equipment and personnel, all at the Contracting Vessel's expense. When the spill management is federalized, Alyeska resources will be placed as directed by the U.S. Coast Guard.

To Landa (465-2299) Rep. Hudson

From Jack Brown

Sponsored by: Brown

**KENAI PENINSULA CAUCUS
RESOLUTION 92-2**

A RESOLUTION OF THE KENAI PENINSULA CAUCUS SUPPORTING HB 540 AND TESORO ALASKA.

WHEREAS, HB 540 provides Response Action Contractors (RACs) limited liability unless the RACs acts with gross negligence, willful misconduct, causes personal injury, wrongful death or acts contrary to the direction of the state or federal on-scene coordination; and,

WHEREAS, it is imperative to have uniform liability standards to attract RACs to establish in Alaska; and,

WHEREAS, the absence of limited liability for RACs will negatively affect the development of RACs to establish in Alaska. Shippers may then be prevented from shipping heating fuel, gas, diesel fuel for electrical generation and other hazardous materials, gasoline, crude and other non-crude products; and,

WHEREAS, eighteen other coastal states have passed similar limited liability RACs laws; and,

WHEREAS, Tesoro Alaska is an Alaskan shipper whose ability to operate would be greatly jeopardized without the passage of HB 540 and the sunset of HB 196 on June 30, 1992; and,

WHEREAS, Tesoro Alaska contributes substantially to the economy and tax base of the Kenai Peninsula and Alaska.

THEREFORE, BE IT RESOLVED, that,

Section 1: The Kenai Peninsula Caucus urges passage of HB 540 by the Alaska State Legislature.

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

ADOPTED BY THE KENAI PENINSULA CAUCUS, this 13th day of April, 1992.

James E. Carter, Sr., President

ATTEST


John J. Williams, Secretary

Post-It™ brand fax transmittal memo 7671 # of pages =

| | |
|-------------------------|-------------------|
| To <i>Jack Brown</i> | From <i>CE</i> |
| Co. | Co. |
| Dept. | Phone |
| Fax # | Fax # |

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 15, 1992

SUBJECT: Sectional analysis (CSSSHB 540())
TO: Representative Bill Hudson
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSSSHB 540(), dated 4/14/92:

Section 1 - Limits the liability of the state for certain registration, approval, and response activities related to oil spills.

Section 2 - Provides that the limitation on liability provided to oil spill response action contractors under AS 46.03.825 is an exception to the strict liability imposed under AS 46.03.822.

Section 3 - Provides that the actions of a response action contractor do not qualify as third party acts that would relieve liability imposed under AS 46.03.822(b)(1)(B).

Section 4 - Amends the definition of "damages" to include the meaning given in AS 46.03.824.

Section 5 - Provides limited liability for a response action contractor who responds to an oil spill and whose actions are consistent with a contingency plan or as otherwise directed by the federal or state on-scene coordinator.

Section 6 - Provides exceptions to the limited liability granted under AS 46.03.852(a).

Section 7 - Adds a definition of "registered".

Section 8 - Provides that a person liable under AS 46.03.822 may not use the defense provided in AS 46.03.822(b)(1)(B) for damages caused by a response action contractor. Provides that except as provided under subsection (e), AS 46.03.825 does not apply to the liability of a person other than a response action contractor.

Representative Bill Hudson

April 15, 1992

Page 2

Section 9 - Prohibits approval of a contingency plan that relies on an oil spill response action contractor, unless the contractor is registered under AS 46.04.035.

Section 10 - Establishes a program to register oil spill response action contractors. Specifies certain regulations that must be adopted by the department.

Section 11 - Repeals certain sunset provision enacted by ch. 92, SLA 1991.

Section 12 - Transition section.

Section 13 - Retroactive effective date for section 11.

Section 14 - Applicability section.

Section 15 - Effective date.

Section 16 - Effective date.

MFF:lmb
92-088.lmb



"The mission of the Council is to ensure the safe operation of the oil terminals, tankers, and facilities in Cook Inlet so that environmental impacts associated with the oil industry are minimized."

March 20, 1992

The Honorable Cliff Davidson
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

The Cook Inlet Regional Citizens Advisory Council (Cook Inlet RCAC) is a non-profit corporation organized exclusively for charitable, scientific, literary or educational purposes, within the meaning of *Section 501 (C)(3)* of the *Internal Revenue Code of 1986* as amended, including without limitation the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of *Section 5002* of the *Oil Pollution Act of 1990*.

On March 14, 1992, the Board of Directors voted to endorse a statutory simple negligence standard for response action contractors and expressed support for the introduction of legislation which provides for limited statutory immunity for "vessels of opportunity" that are not provided with indemnification pursuant to a contractual agreement. It is the position of Cook Inlet RCAC that the State of Alaska should do all within its powers to protect the environment and natural resources of this state, including its people. The Board believes enactment of a statutory simple negligence standard will provide the state with the necessary protection and ensure rapid response to an oil spill.

In addition to taking action on this issue the Board also took action in expressing opposition to the enactment of sponsor substitute for House Bill 540 (SSHB 540). Since the Council meeting of March 13-14, 1992 further modifications have been made to this proposed legislation. Cook Inlet RCAC respectfully requests the Council be kept informed of hearings and provided copies of any new language or legislation which are introduced and/or acted upon prior to the end of the legislative session.

In considering these issues Cook Inlet RCAC also discussed HB 196 which was enacted during the 1991 legislative session. The Board of Directors voted in favor of allowing HB 196 to sunset in June 1992.

Cook Inlet Regional Citizens Advisory Council

11355 Frontage Rd. • Suite 228 • Kenai, Alaska 99611 • (907) 283-7222 • FAX (907) 283-6102

As mentioned, Cook Inlet RCAC would appreciate being kept informed on these issues. Should you have any questions regarding the Council's position please do not hesitate to contact me either through our office (283-7222) or home (235-8252).

Sincerely,



Ken Castner
Cook Inlet RCAC
Board of Directors

cc: Cook Inlet RCAC Directors
Prince William Sound RCAC
Citizens Oversight Council on Oil
and Other Hazardous Substances



UCIDA

RECEIVED MAR 30 1992

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

March 26, 1992

Sent by telefax - hard copy to follow

Rep. Cliff Davidson
Chair, House Resources Committee

Subject: CS FOR SPONSOR SUBSTITUTE FOR HB 540 (O & G)

Dear Rep. Davidson,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

UCIDA opposed HB 196 which was passed with a one year sunset provision last year. CS for HB 540 is even a lesser standard of liability than HB 196 and, arguably, even a lesser standard than that found in Federal law. Both HB 196 and CS for HB 540 represent poor public policy. I've enclosed our comments from last year on HB 196. These comments are fully applicable to CS for HB 540.

HB 196 should be allowed to sunset and we should return to the standard of "negligence".

As an active member of the Oil Reform Alliance (ORA), UCIDA is in agreement with the stand ORA has taken on this issue. It could be inferred from some of our comments on HB 196 that UCIDA feels that Alyeska is a RAC. We feel that studies undertaken by the Citizens Oversight Council, make it clear that Alyeska is required to respond to TAPS spills and that Alyeska is NOT a "voluntary" RAC. Furthermore, UCIDA feels that if Alyeska continues to claim to be a RAC and that, therefore, it is not required to respond to all TAPS spills, then the legislature must protect the public interest and require the Pipeline operators to create a response organization that will respond.

UCIDA represents fishermen who were severely impacted by two TAPS spills in three years - Glacier Bay (1987) and Exxon Valdez (1989). The issues of response and liability, therefore, are of vital interest to our members.

As a final comment, I would like to note that the Cook Inlet Regional

Citizens Advisory Council created by OPA 90 is also opposed to this legislation.

I would appreciate it if you would distribute a copy of this letter and our comments on HB 196 to the members of your committee.

Sincerely,



Theo Matthews
Administrative Assistant

cc: House Sponsors, CS FOR HB 540
Senate Special Committee on Oil and Gas
Citizens Oversight Council
CIRCAC
Oil Reform Allianace
UFA



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

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

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

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.
2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.
3. In 1989, legislature stated that:
"To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time their response action services were performed.
4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities. Ucida feels that no change is needed.

UCIDA would, however, like to comment on the actual issue that appears to us to be driving this legislation. Alyeska has imposed on Tesoro financial requirements in a format that is directly actionable. To the best of our knowledge such coverage that exceeds the \$20 million ball park is impossible to get. Alyeska then requires \$1 billion of such coverage of Tesoro. Tesoro then feels obliged out of self preservation to promote

legislation that will reduce Alyeska's liability exposure to incidents of gross negligence in the hope that, if successful, Alyeska will impose requirements that Tesoro can meet.

UCIDA regards the above scenario as little less than blackmail on the part of Alyeska. What will prevent them from requiring \$5 billion in directly actionable insurance next year? UCIDA does recognize, however, that Tesoro has a legitimate problem with this bonding requirement - it literally has been placed by Alyeska between the proverbial rock and a hard spot. UCIDA has expressed both of these sentiments to our local Borough Assembly and to Tesoro representatives.

UCIDA respectfully requests that the legislature consider replacing this legislation - which is not needed- with language that addresses the real issue - bonding requirements that are reasonable but that can be capped in some manner to prevent industry from using them as a lever to undermine good public policy.

We would like to suggest two possible options:

1) Legislation that would limit a RAC's ability to require proof of financial responsibility to a level no greater than that required by the state in AS 46.04.040. UCIDA understands that the level set in AS 46.04.040 should not be static - it clearly will be adjusted from time to time by the legislature to conform to good public policy.

2) If an RAC requires bonding requirements above those set in AS 46.04.040, then the RAC should be required to accept oil pollution insurance syndicate coverage.

In conclusion, UCIDA does not support changing current state liability statutes. Even the concept of a sunset provision and a 30 day window is poor public policy. Alyeska and other similarly situated RACs will turn over spill response to any spiller well within the 30 day window. Legislation is needed to address Tesoro's immediate dilemma and the general issue of bonding requirements in the future.

Sincerely,



Theo Matthews, Administrative Assistant
UCIDA

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

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(907) 283-3600 • FAX (907) 283-3306

April 16, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

UCIDA would like to follow-up on our comments of April 10, 1991 on CS for HB No. 196. UCIDA continues to oppose this legislation since we feel it represents bad public policy and does not address or resolve the very issue that appears to be driving it - bonding requirements imposed by one sector of private industry (Alyeska) on another sector of private industry (Tesoro).

UCIDA doubts that public legislation will ever be able to resolve disputes between members of the private sector. To attempt to help one - in this case Tesoro - merely leaves the state vulnerable to open ended demands by the other - in this case Alyeska.

As we remarked on April 10, 1991, even if this legislation were to pass, what would prevent Alyeska from requiring \$5 billion in directly actionable insurance next year?

Even though UCIDA does not support this legislation, we feel compelled to comment on a few points:

1) Sec 46.03.825 (a)

Speaks to an act or omission "not contrary to an order of the federal or state on-scene coordinator". The obvious defense in court of a RAC will be that if "we weren't told not to do it, we are not liable".

The point should be that when a RAC is acting under the direction of the federal or state coordinator, then some changes in liability rules might be expected.

2) Sec. 46.03.825 (a)(2)

Gross negligence is not defined by AS 46.03.823(a). However, "negligence" is defined by AS 46.09.823(a), therefore, whatever the definition of "gross negligence" may come to be, we know that the result of this section will be that a RAC whose acts or omissions under the response action contract was not in accordance with generally accepted professional standards and practices at the time their response action services were performed, will not be liable in many instances.

3) Sec. 46.03.825(a)(3)

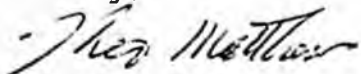
Two points should be made:

a) "Substantially deviated" is not defined and we believe the standard should in any event be "deviated". We understand that industry would like a definition agreed to for the phrase "substantially deviated" and would propose that if industry would give us their definition of "gross negligence" then perhaps an agreed definition of "substantially deviated" would be appropriate.

b) The and portion of 46.03.825(a)(3) seems clearly designed as another loophole designed for the use of 2nd and 3rd party RAC's who have not "previously agreed to comply with the terms of that plan". Further, it is often the case that a RAC will not be working for the parties responsible for the release. In this event, it appears you revert back to the "gross negligence" standards as a claimants' only grounds for action. If a RAC does not agree to comply with the oil contingency plan, they clearly should be afforded no relaxation in liability standards. The and portion of AS 46.03.825(a)(3) should be deleted.

In conclusion, UCIDA will continue to oppose the relaxation of liability standards for RACs as a means of trying to resolve a dispute between members of private industry. If, however, the committee passes out this bill, a 1 year "sunset provision" would be appropriate. With such a provision, the committee could at least determine if the goal of affording Tesoro some relief was met and perhaps by then the legislature will be prepared to address the issue of bonding requirements.

Sincerely,



Theo Matthews
Administrative Assistant

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

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April 23, 1991

Representative Dave Donley
House Judiciary Chair

Dear Rep. Donley,

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

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

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

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

3) **CS for HB 196 does not address the issue that is driving this legislation - bonding requirements by Alyeska - the "Seven Sisters" (B.P., Exxon, ARCO, Unocal, Mobil, Amarada, Hess, & Phillips) - that Tesoro cannot meet.** No one should be under any illusion that this is anything other than strong arm tactics by Alyeska aimed at lowering its own liability standards.

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

the Exxon Valdez spill. Finally, in this regard, to the best of our knowledge the only RAC alleged to have acted negligently during the Exxon Valdez was Alyeska.

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

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

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

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

UCIDA has some doubt about the responsible party being forced to assume liability for damages caused by a RAC not directly under its control, let alone the actions of 2nd & 3rd party RACs or volunteers. Indeed, it is somewhat surprising that attorneys for those owners who might be held strictly liable for the release are not very actively opposing this shift of liability on to their clients.

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

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

Finally, UCIDA understands the provisions found in the Federal Oil

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

In conclusion:

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

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

3) Current liability standards represent good public policy and does not cover damages for all instances.

4) By using the gross negligence standard, the State will greatly increase the instances where damages from negligence cannot be recovered. Further, 2nd and 3rd party RACs subject only to a gross negligence standard pose a great risk to the public.

5) CS for HB 196 will add another layer of legal protection for RACS and responsible parties and added expense for victims. Even if liability can be legally shifted from RACs, victims will first have to go to court to attempt to show that the RAC was grossly negligent. Failing this, no responsible party would accept that liability.

UCIDA appreciates this opportunity to address your committee.

Sincerely,



Theo Matthews, Administrative Assistant

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA



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Vol. 21, Issue 142

THURSDAY, APRIL 18, 1991, Kenai, Alaska

50 Cents



Kenai's Merit Inn
scheduled to reopen.
Page 8

Alyeska blasted for billion-dollar bond

ATHY BROWN
Island Clarion

Kenai Mayor Don Gilman Wednesday blasted Alyeska Pipeline Service Co. for what he calls an "unreasonable" demand that threatens to shut down Tesoro-Alaska Petroleum Corp.'s Nikiski refinery. Alyeska is requiring Tesoro to come up with a \$1 billion bond to continue shipping oil from the Alyeska pipeline terminal in Valdez to Cook Inlet.

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

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

bility in the event of a spill.

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

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

"Alyeska serves as the initial response action contractor for those vessels calling at the terminal in Valdez," she said. "Because

of the state's liability requirements, Alyeska ... asked the owner-operator or charter of the vessels to pledge a billion dollar bond, which, simply put, indicates they would have access to funds to manage the claims arising from a spill."

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

See ALYESKA, back page

Alyeska: Company says state's liability laws are to blame

Continued from page 1

corporate assets.

But Tesoro can't do that, Burden said.

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

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

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

Alyeska says it may lower its requirements if the Legislature

passes a bill limiting Alyeska's liability in case problems occur when it responds to a spill.

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

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

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

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

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

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

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

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

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

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

He believes Alyeska is being inflexible about the bill.

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

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

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

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

Some of Tesoro's supporters in borough and state government have suggested the Alyeska owner companies are trying to put Tesoro out of business, but Isaacs denies that and Gilman says he

does not believe that's the case, either.

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

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

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

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

Burden says if Tesoro and Alyeska can't come to an agreement, Tesoro will file suit against the pipeline company, which would include seeking an injunction to allow the company to continue shipping out of Prince William Sound after June 1.



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

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November 14, 1991

Mr. Larry Smith, Chair
CIRCAC PROPS Committee
Kenai, Alaska 99611

Dear Mr. Smith,

I have reviewed the 10/28/91 DRAFT Report prepared for your committee by Mr. Mertz.

This report and others currently underway are a result of the passage last legislative session of HB 196 which effectively reduced the standard of liability from simple to gross negligence for RACs. UCIDA continues to oppose this reduced standard as bad public policy. Rather than detail our concerns in this letter, I have attached our comments to the 1990-91 Legislature for your Committee's information.

As noted in our letter of April 10, 1991, to Rep. Davidson, UCIDA feels that the passage of HB 196 relates not to good public policy but to what we feel was a temporarily successful attempt by Alyeska to blackmail Tesoro into spearheading a drive to reduce Alyeska's liability exposure as a RAC. Further, UCIDA recognizes the economic importance of Tesoro to the residents of Kenai Peninsula.

Two major issues drove and continue to drive the Alyeska/Tesoro issue:

- 1) The "direct action" bond originally demanded, i.e. the type of bond required, and the dollar amount of the bond required by Alyeska, and
- 2) Tesoro's natural desire to continue operations and the hope that passage of HB 196 would lead Alyeska to change its demands.

In the Specific Proposal Analysis of the RFP for the Mertz study:

- #1(b) addresses bonding requirements.
- #4 asks for an analysis of the effect of granting limited or complete immunity to RAC's.

It is with respect of these two requests that I would like to address the majority of my comments.

Bonding Requirements: Type and Amount

Type

The Draft discusses the amount of "financial responsibility" requirements in several places but does not mention the various "forms or types" these requirements may take. Given the importance of this issue to Tesoro and Kenai Peninsula residents, I recommend that Mr. Mertz:

- 1) Analyze the difference between a "direct action bond" and "a combination of general business liability coverage" found in the Draft on p. 19.
- 2) Analyze whether or not a "direct action" demand by an RAC is even "reasonable" in light of the fact that all claims must be adjudicated and no insurance monies will be distributed to anyone prior to some final judgement.
- 3) Investigate the maximum amount of "direct action" coverage that is currently available.
- 4) Analyze what, if any, options are available for the State to require in statute that RAC's accept "a combination of general business liability coverage, ..." as noted in the Draft on p. 19.
- 5) Analyze whether or not a demand for a "direct action" bond in amounts that a RAC is aware are not available would constitute a criminal or civil offense - e.g. anti-trust or similar statutes.

Amount

As noted above, we feel that Tesoro clearly hoped that the passage of HB 196 would lead to Alyeska changing both the type - direct action- and amount - \$1 billion - of financial responsibility required of Tesoro. Apparently, Alyeska did drop the direct action requirement but, as noted by Mr. Mertz on p. 19, **Alyeska raised rather than lowered its financial responsibility requirements for Tesoro.**

In his Summary of Insurance Requirements on p. 19, Mr. Mertz merely notes that "**the amount of financial responsibility required by Alyeska, however, appears unique.**" Mr. Mertz noted on p. 19 that "this requirement has caused a considerable amount of difficulty... and was the prime motivating factor behind passage of the bill which became AS 46.03.825, limiting RAC liability". Therefore, I feel that the public - whose interests CIRCAC should represent - should expect an in depth analysis of this requirement.

As noted in our correspondence with the legislature, given the current state of affairs, UCIDA can see nothing to theoretically prevent Alyeska next year from raising its financial responsibility requirements for Tesoro to \$10

billion unless the legislature passes a bill exempting Alyeska from liability even in cases of gross negligence.

I would suggest the following be investigated by Mr. Mertz:

1) Can the state legally limit the demands place by one sector of private industry on another sector of private industry. If so, for what reasons?

2) Can the State require that an RAC adjust its financial responsibility requirements based on the capacity of a tanker - e.g. If Exxon must provide \$1 billion for a super-tanker could the maximum demand for "1/2 a super-tanker" be limited to \$500 million?

3) How have other states addressed this issue?

4) Are anti-trust or other civil offenses issues potentially at play?

The Draft by Mr. Mertz, covers a wide range of issues very well - but in broad strokes. UCIDA hopes there is time and adequate funding available for Mr. Mertz to provide a more in depth analysis of the two bonding issues we have raised. Further, UCIDA is aware of Mr. Mertz's past work in this field as Assistant Attorney General and would therefore hope that recommendations accompany his analysis.

Effects of Granting Limited Immunity to RACs

As noted in my introduction, UCIDA feels that the current statute AS 46.03.825 was not necessary and represents a bad public policy that resulted from the demands of one sector of private industry on another sector of private industry. The ultimate irony of the situation is that this further limitation of RAC liability did not even really produce the desired results for Tesoro.

Section #4 of the Specific Proposal Analysis ask "What is or would be the effect of granting limited or complete immunity to response action contractors?" Throughout the Draft Mr. Mertz makes references to concerns the public should note. I would recommend:

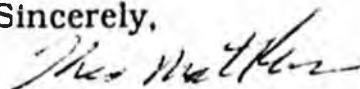
1) A more detailed analysis of the changes made by the legislature in 1989 and 1990 and the resulting status of RAC liability prior to the passage of AS 46.03.825 in 1991.

2) The "upside" benefits from the passage of AS 46.03.825 from the perspective of a RAC is clear in the DRAFT. Mr. Mertz lists some questions which clearly require answers on p. 11 and also discusses the concerns the public should have IN THE ABSENCE OF A RESPONSIBLE PARTY, p.22-23. I would suggest the FINAL MANUSCRIPT should include a section listing all

of the identified "downside effects" for the public that have resulted from the passage of AS 46.03.825 as it is currently worded and any recommendations that Mr. Mertz has to offer. In this regard, I hope our comments to the legislature in 1991 may be of some service.

UCIDA appreciates the opportunity to comment. The DRAF represents a good initial effort and I hope my comments can be of some use to your Committee.

Sincerely,



Theo Matthews
Administrative Assistant

cjd

cc: Senator Lloyd Jones, Chair, Senate Resource Committee
Senator Paul Fischer
Rep. Cliff Davidson, Chair, House Resource Committee
Rep. Mike Navarre, Co-chair, House Finance Committee
Rep. Gail Phillips
Rep. Jim Zawacki
Kenai Borough Assembly
Gene Burden, Tesoro
Oil Reform Alliance
UFA

*Work
Draft
2.*

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for release or threatened release of a hazardous substance;
2 relating to the liability of an oil spill response action contractor; relating to oil discharge
3 and contingency plans; relating to registration of an oil spill response action contractor;
4 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
5 date."

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

7 * Section 1. AS 46.03.822(a) is amended to read:

8 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
9 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
10 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
11 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
12 action incurred by the state, a municipality, or a village, and for the additional costs of a function
13 or service, including administrative expenses for the incremental costs of providing the function

1 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
2 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
3 village, resulting from an unpermitted release of a hazardous substance or, with respect to
4 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

25 * Sec. 2. AS 46.03.822(b) is amended to read:

26 (b) In an action to recover damages or costs, a person otherwise liable under this section
27 is relieved from liability under this section if the person proves

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

30 (A) an act of war,

31 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an

1 intentional or negligent act or omission of a third party, other than a party or its agents
2 in privity of contract with, or employed by, the person, and that the person

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

4 (ii) took reasonable precautions against the act or omission of the

5 third party and against the consequences of the act or omission; or

6 (C) an act of God; and

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

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

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

12 * Sec. 3. AS 46.03.825(a) is repealed and reenacted to read:

13 (a) A response action contractor who responds to a release or threatened release of oil
14 is not civilly liable for removal costs or damages that result from an act or omission in the course
15 of providing care, assistance, or advice

16 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
17 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d); or

18 (2) as otherwise directed by the federal or state on-scene coordinator.

19 * Sec. 4. AS 46.03.825(b) is amended to read:

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

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

22 (2) a response action contractor who

23 (A) would otherwise have been liable for the release or threatened
24 release under AS 46.03.822;

25 (B) acts with gross negligence or intentional misconduct;

26 (C) is not registered with the department under AS 46.04.035, and
27 who agrees in writing to be listed and who is listed as a response action contractor

28 in a contingency plan approved under AS 46.04.030. that is being implemented to
29 respond to a release or threatened release of oil; or

30 (D) has agreed in writing to be listed and who is listed in a
31 contingency plan approved under AS 46.04.030 who fails to respond to a release or

1 threatened release of oil that the response action contractor was required to respond
2 to under its contract with the applicable contingency plan holder; this subparagraph
3 does not apply to a response action contractor if the failure to respond to a release
4 or threatened release of oil results from a concurrent response under another
5 contingency plan approved under AS 46.04.030 in which the response action
6 contractor has the primary duty to respond [AN ACTION FOR DAMAGES TO
7 TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL; OR

8 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
9 THE RELEASE].

10 * Sec. 5. AS 46.03.825(d) is amended to read:

11 (d) In this section,

12 (1) "registered" means registered under AS 46.04.035;

13 (2) "response action" means an action taken to respond to a release or threatened
14 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release
15 or threatened release of oil.

16 * Sec. 6. AS 46.03.825 is amended by adding new subsections to read:

17 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable
18 person with respect to costs or damages caused by an act or omission of a response action
19 contractor.

20 (f) Except as provided in (e) of this section, this section does not affect the liability under
21 this chapter or under any other state law of a person other than a response action contractor.

22 * Sec. 7. AS 46.04.030(e) is amended to read:

23 (e) The department may attach reasonable terms and conditions to its approval or
24 modification of a contingency plan that the department determines are necessary to ensure that
25 the applicant for a contingency plan has access to sufficient resources to protect environmentally
26 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
27 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
28 contingency plan. If a contingency plan submitted to the department for approval relies on
29 the services of an oil spill response action contractor, the department may not approve the
30 contingency plan unless the response action contractor is registered and approved under
31 AS 46.04.035. The contingency plan must provide for the use by the applicant of the best

1 technology that was available at the time the contingency plan was submitted or renewed. The
2 department may require an applicant or holder of an approved contingency plan to take steps
3 necessary to demonstrate its ability to carry out the contingency plan, including

- 4 (1) periodic training;
- 5 (2) response team exercises; and
- 6 (3) verifying access to inventories of equipment, supplies, and personnel identified
7 as available in the approved contingency plan.

8 * Sec. 8. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION
10 CONTRACTORS. (a) A person may apply to the department for registration as an oil spill
11 response action contractor. The department shall adopt regulations governing the registration and
12 approval of oil spill response action contractors. Regulations adopted by the department under
13 this section must include

- 14 (1) minimum training standards for personnel;
- 15 (2) verification requirements that ensure the existence of resources, including
16 personnel, equipment, services, and an adequate deployment plan necessary to a response action
17 or as required by a contingency plan in which the contractor has agreed in writing to be listed
18 and is listed; and

19 (3) minimum professional response action contractor standards and practices.

20 (b) Notwithstanding (a) of this section, the department may substitute a response action
21 contractor approval program, and a subsequent process to approve response action contractors
22 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
23 required under (a)(1) - (3) of this section if the approval program and subsequent process are
24 developed by the United States Coast Guard.

25 (c) The department shall establish fees applicable to registration under this section in an
26 amount reasonably necessary to cover the costs of the registration program. The fees shall be
27 collected by the department.

28 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations
29 under this section.

30 (e) The department shall develop and maintain a list of oil spill response action
31 contractors registered under this section. The department shall provide the list on request to

1 interested persons.

2 (f) A response action contractor registered under this section shall annually provide to
3 the department a list of all contingency plans approved under AS 46.04.030 in which the response
4 action contractor has agreed in writing to be listed as a responder.

5 (g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup
6 or performance standard that must be met by a holder of a contingency plan or by a response
7 action contractor.

8 (h) In this section,

9 (1) "oil" has the meaning given in AS 46.03.826;

10 (2) "response action" has the meaning given in AS 46.03.825;

11 (3) "response action contractor" means

12 (A) a person who enters into a response action contract with respect to a
13 release or threatened release of oil and who is carrying out the contract, including a
14 cooperative organization formed to maintain and supply response equipment and materials
15 that enters into a response action contract relating to a release or threatened release of oil;

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

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

20 * Sec. 9. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

21 * Sec. 10. TRANSITION. The Department of Environmental Conservation shall adopt regulations
22 to implement AS 46.04.035(a), enacted in sec. 8 of this Act, on or before January 1, 1993.

23 * Sec. 11. If this Act takes effect after June 30, 1992, sec. 9 of this Act is retroactive to June 30,
24 1992.

25 * Sec. 12. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
26 AS 46.03.822 and 46.03.825, made by secs. 1 - 6 of this Act, apply only to causes of action accruing
27 on or after the effective date of secs. 1 - 6 of this Act.

28 (b) The provisions of AS 46.03.825(b)(2)(C) apply only to causes of action accruing on or after
29 the effective date of that paragraph under sec. 13 of this Act.

30 * Sec. 13. AS 46.03.825(b)(2)(C), added by sec. 4 of this Act, and sec. 7 of this Act take effect
31 July 1, 1993.

1 * Sec. 14. Except as provided in sec. 13 of this Act, this Act takes effect immediately under
2 AS 01.10.070(c).

7-LS2045M
Ford
4/8/92

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of the state for certain registration, planning, and
2 response activities related to oil spills; relating to the liability of an oil spill response
3 action contractor, registration of response action contractors, and to oil discharge and
4 contingency plans; relating to liability for release of a hazardous substance; relating to the
5 duty of, and charges or financial responsibility requirements related to that duty imposed
6 by, the common operating agent for the holders and lessees of the right-of-way agreement
7 for the trans-Alaska pipeline system to control and contain oil discharges; and providing
8 for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) 25 percent of the country's crude oil supply moves through Alaska state waters; in
12 particular, 650,000,000 barrels of crude oil move through Prince William Sound each year;

1 (2) crude oil, once discharged into the environment, is highly damaging to the
2 environment, to the resources of the state, to wildlife, and to the commercial and subsistence livelihoods
3 of state residents; crude oil is also persistent in the environment and becomes increasingly difficult to
4 remove the longer it remains in the environment;

5 (3) experience from oil spill response in the state and throughout the world has
6 demonstrated that response activities must occur as aggressively as possible in the first few days
7 following a spill in order to be effective; experience has also shown that the critical initial response has
8 the best chance of success when it is conducted by trained personnel using a previously prepared, well-
9 practiced, and site-specific contingency plan;

10 (4) following the oil spill from the tanker vessel Exxon Valdez, there was a confusing
11 and time consuming transfer of spill response management from the oil spill contingency plan holder
12 and one of the parties responsible for the oil spill; this transfer of management delayed efficient and
13 effective response efforts in the critical period of initial response;

14 (5) under the provisions of the state Trans-Alaska Pipeline System Right-of-Way
15 Agreement, the lessees, the holders, and their common operating agent are required to contain and clean
16 up crude oil spills within state waters, in particular, in Prince William Sound;

17 (6) it is very important that initial oil spill response efforts be immediate, well-trained,
18 well-drilled, and certain; the response should not be subject to successive management transfers or to
19 the risk of interruption due to disagreements or disputes among contingency plan holders, parties
20 responsible for oil spills, and private responders relied upon for oil spill response.

21 * Sec. 2. AS 09.50.250 is amended to read:

22 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
23 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
24 against the state in the superior court. A person who may present the claim under AS 44.77 may
25 not bring an action under this section except as set out in AS 44.77.040(c). A person who may
26 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except
27 as set out in AS 36.30.685. However, an action may not be brought under this section if the
28 claim

29 (1) is an action for tort, and is based upon an act or omission of an employee of
30 the state, exercising due care, in the execution of a statute or regulation, whether or not the
31 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance

1 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
2 or an employee of the state, whether or not the discretion involved is abused;

3 (2) is for damages caused by the imposition or establishment of a quarantine by
4 the state;

5 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
6 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
7 contract rights; [OR]

8 (4) arises out of the use of an ignition interlock device certified under
9 AS 33.05.020(c); or

10 (5) arises out of

11 (A) registration and approval of an oil spill response action contractor
12 under AS 46.04.035;

13 (B) approval of an oil spill contingency plan under AS 46.04.030; or

14 (C) an act or omission of the state, an employee of the state, or a
15 person who contracts with the state in responding to or directing a response to a
16 release or threatened release of oil, unless the act or omission resulted from gross
17 negligence or intentional misconduct; in this subparagraph, "oil" has the meaning
18 given in AS 46.03.826.

19 * Sec. 3. AS 46.03.822(a) is amended to read:

20 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
21 set out in (b) of this section and the exception set out in (i) of this section, the following persons
22 are strictly liable, jointly and severally, for damages, for the costs of response, containment,
23 removal, or remedial action incurred by the state, a municipality, or a village, and for the
24 additional costs of a function or service, including administrative expenses for the incremental
25 costs of providing the function or service, that are incurred by the state, a municipality, or a
26 village, and the costs of projects or activities that are delayed or lost because of the efforts of the
27 state, the municipality, or the village, resulting from an unpermitted release of a hazardous
28 substance or, with respect to response costs, the substantial threat of an unpermitted release of
29 a hazardous substance:

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

1 in consumer use;

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

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

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

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

19 (6) a response action contractor who has agreed in writing to be listed and
20 who is listed in a contingency plan approved under AS 46.04.030 who fails to respond to a
21 release or threatened release of oil that the response action contractor was required to
22 respond to under the contingency plan; this paragraph does not apply to a response action
23 contractor if the failure to respond to a release or threatened release of oil results from a
24 concurrent response under another contingency plan approved under AS 46.04.030 in which
25 the response action contractor has the primary duty to respond.

26 * Sec. 4. AS 46.03.822(b) is amended to read:

27 (b) In an action to recover damages or costs, a person otherwise liable under this section
28 is relieved from liability under this section if the person proves

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

31 (A) an act of war;

1 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an
 2 intentional or negligent act or omission of a third party, other than a party or its agents
 3 in privity of contract with, or employed by, the person, and that the person

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

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

7 (C) an act of God; and

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

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

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

13 * Sec. 5. AS 46.03.822(k) is amended to read:

14 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
 15 [INCLUDE] damage to persons or to public or private property, damage to the natural resources
 16 of the state or a municipality, and damage caused by acts or omissions of a response action
 17 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

18 * Sec. 6. AS 46.03.825(a) is repealed and reenacted to read:

19 (a) A response action contractor who responds to a release or threatened release of oil
 20 is not civilly liable for removal costs or damages that result from an act or omission in the course
 21 of providing care, assistance, or advice

22 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
 23 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d); or

24 (2) as otherwise directed by the federal or state on-scene coordinator.

25 * Sec. 7. AS 46.03.825(b) is amended to read:

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

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

28 (2) an action for damages to tangible personal property not caused by oil; or

29 (3) an act or omission that occurs more than 60 [15] days after the release;
 30 provided, however, that the period of time described in this paragraph may be extended for
 31 not more than 60 days by a written order of the state on-scene coordinator issued on or

1 before the 60th day after the release;

2 (4) a response action contractor who

3 (A) would otherwise have been liable for the release or threatened
4 release under AS 46.03.822;

5 (B) acts with gross negligence or intentional misconduct; or

6 (C) is not registered by the department, who agrees in writing to be
7 listed and who is listed as a response action contractor in a contingency plan
8 approved under AS 46.04.030, that is being implemented to respond to a release or
9 threatened release of oil, and who has executed a written agreement with the
10 contingency plan holder.

11 * Sec. 8. AS 46.03.825(c) is amended to read:

12 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
13 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
14 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the response action contractor's act or omission with respect to
16 a release or threatened release of oil unless the act or omission of the oil spill response action
17 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
18 does not apply to an oil spill response action contractor who is liable under AS 46.03.822(a)(6)
19 or who would have been liable for the initial release or threatened release of oil under
20 AS 46.03.822 even if that contractor had not carried out a response action.

21 * Sec. 9. AS 46.03.825(d) is amended to read:

22 (d) In this section,

23 (1) "registered" means registered under AS 46.04.035;

24 (2) "response action" means an action taken to respond to a release or threatened
25 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release
26 or threatened release of oil.

27 * Sec. 10. AS 46.03.825 is amended by adding new subsections to read:

28 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable
29 person with respect to costs or damages caused by an act or omission of a response action
30 contractor.

31 (f) Except as provided in (e) of this section, this section does not affect the liability under

1 this chapter or under any other state law of a person other than a response action contractor.

2 * Sec. 11. AS 46.04.020(a) is amended to read:

3 (a) A person causing or permitting the discharge of oil shall immediately contain and
4 clean up the discharge. [THE DEPARTMENT MAY WAIVE THIS REQUIREMENT

5 (1) IF IT DETERMINES, IN CONSULTATION WITH THE UNITED STATES
6 COAST GUARD OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
7 AS APPROPRIATE, THAT CONTAINMENT OR CLEANUP IS TECHNICALLY NOT
8 FEASIBLE; OR

9 (2) IF THE CLEANUP OR CONTAINMENT ACTIVITIES WOULD RESULT
10 IN GREATER ENVIRONMENTAL DAMAGE THAN THE DISCHARGE ITSELF.]

11 * Sec. 12. AS 46.04.020 is amended by adding new subsections to read:

12 (g) The common operating agent for the holders and lessees of the right-of-way
13 agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of
14 crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to
15 related activities, including operation of a tank vessel while berthed at a marine terminal or while
16 traveling within state waters to or from a marine terminal. A charge or financial responsibility
17 requirement imposed by the common operating agent for holders and lessees of the right-of-way
18 agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage
19 from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil
20 is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441.
21 Review of a charge or financial responsibility requirement allowed under this subsection may
22 occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska
23 Public Utilities Commission.

24 (h) The department may waive an oil discharge containment and cleanup requirement
25 imposed under (a) or (g) of this section if

26 (1) the department determines, in consultation with the United States Coast Guard
27 or the United States Environmental Protection Agency, as appropriate, that containment or
28 cleanup is technically not feasible; or

29 (2) the cleanup or containment activities would result in greater environmental
30 damage than the discharge itself.

31 * Sec. 13. AS 46.04.030(e) is amended to read:

1 (e) The department may attach reasonable terms and conditions to its approval or
2 modification of a contingency plan that the department determines are necessary to ensure that
3 the applicant for a contingency plan has access to sufficient resources to protect environmentally
4 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
5 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
6 contingency plan. If a contingency plan submitted to the department for approval relies on
7 the services of an oil spill response action contractor, the department may not approve the
8 contingency plan unless the response action contractor is registered and approved under
9 AS 46.04.035. The contingency plan must provide for the use by the applicant of the best
10 technology that was available at the time the contingency plan was submitted or renewed. The
11 department may require an applicant or holder of an approved contingency plan to take steps
12 necessary to demonstrate its ability to carry out the contingency plan, including

13 (1) periodic training;

14 (2) response team exercises; and

15 (3) verifying access to inventories of equipment, supplies, and personnel identified
16 as available in the approved contingency plan.

17 * Sec. 14. AS 46.04 is amended by adding a new section to read:

18 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION
19 CONTRACTORS. (a) A person may apply to the department for registration as an oil spill
20 response action contractor. The department shall adopt regulations governing the registration and
21 approval of oil spill response action contractors. Regulations adopted by the department under
22 this section must include

23 (1) minimum training standards for personnel;

24 (2) verification requirements that ensure the existence of resources, including
25 personnel, equipment, services, and an adequate deployment plan necessary to a response action
26 or as required by a contingency plan in which the contractor has agreed in writing to be listed
27 and is listed;

28 (3) minimum professional response action standards and practices; and

29 (4) minimum performance standards for oil spill response action contractors listed
30 in an oil spill contingency plan approved under AS 46.04.030.

31 (b) Notwithstanding (a) of this section, the department may substitute a response action

1 contractor approval program, and a subsequent process to approve response action contractors
2 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
3 required under (a)(1) - (3) of this section if the approval program and subsequent process are
4 developed by the United States Coast Guard.

5 (c) The department shall establish fees applicable to registration under this section in an
6 amount necessary to cover the costs of the registration program. The fees shall be collected by
7 the department.

8 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations
9 under this section.

10 (e) The department shall develop and maintain a list of oil spill response action
11 contractors registered under this section. The department shall provide the list on request to
12 interested persons.

13 (f) A response action contractor registered under this section shall annually provide to
14 the department a list of all contingency plans approved under AS 46.04.030 in which the response
15 action contractor has agreed in writing to be listed as a responder.

16 (g) In this section,

17 (1) "oil" has the meaning given in AS 46.03.826;

18 (2) "response action" has the meaning given in AS 46.03.825;

19 (3) "response action contractor" means

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

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

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

28 * Sec. 15. TRANSITION. The Department of Environmental Conservation shall adopt regulations
29 to implement AS 46.04.035(a), enacted in sec. 14 of this Act, on or before January 1, 1993.

30 * Sec. 16. REPORT. The Department of Environmental Conservation shall report to the legislature
31 by March 31, 1993, on the progress of the department in developing the ability of the state to respond

1 to oil spills of an unknown origin and enhance regional response and coastline protection.

2 * Sec. 17. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

3 * Sec. 18. If this Act takes effect after June 30, 1992, sec. 17 of this Act is retroactive to June 30,
4 1992.

5 * Sec. 19. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
6 AS 46.03.822 and 46.03.825, made by secs. 3 - 10 of this Act, apply only to causes of action accruing
7 on or after the effective date of secs. 3 - 10 of this Act.

8 (b) The provisions of AS 46.03.825(b)(4)(C) apply only to causes of action accruing on or after
9 the effective date of that paragraph under sec. 20 of this Act.

10 * Sec. 20. AS 46.03.825(b)(4)(C), added by sec. 7 of this Act, and sec. 13 of this Act take effect
11 July 1, 1993.

12 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c).

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of the state for certain registration, planning, and
2 response activities related to oil spills; relating to the liability of an oil spill response
3 action contractor, to registration of response action contractors, and to oil discharge and
4 contingency plans; relating to liability for release of a hazardous substance; relating to the
5 duty of, and charges or financial responsibility requirements related to that duty imposed
6 by, the common operating agent for the holders and lessees of the right-of-way agreement
7 for the trans-Alaska pipeline system to control and contain oil discharges; and providing
8 for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) 25 percent of the country's crude oil supply moves through Alaska state waters; in
12 particular, 650,000,000 barrels of crude oil move through Prince William Sound each year;

1 (2) crude oil, once discharged into the environment, is highly damaging to the
2 environment, to the resources of the state, to wildlife, and to the commercial and subsistence livelihoods
3 of state residents; crude oil is also persistent in the environment and becomes increasingly difficult to
4 remove the longer it remains in the environment;

5 (3) experience from oil spill response in the state and throughout the world has
6 demonstrated that response activities must occur as aggressively as possible in the first few days
7 following a spill in order to be effective; experience has also shown that the critical initial response has
8 the best chance of success when it is conducted by trained personnel using a previously prepared, well-
9 practiced, and site-specific contingency plan;

10 (4) following the oil spill from the tanker vessel Exxon Valdez, there was a confusing
11 and time consuming transfer of spill response management from the oil spill contingency plan holder
12 and one of the parties responsible for the oil spill; this transfer of management delayed efficient and
13 effective response efforts in the critical period of initial response;

14 (5) under the provisions of the state Trans-Alaska Pipeline System Right-of-Way
15 Agreement, the lessees, the holders, and their common operating agent are required to contain and clean
16 up crude oil spills within state waters, in particular, in Prince William Sound;

17 (6) it is very important that initial oil spill response efforts be immediate, well-trained,
18 well-drilled, and certain; the response should not be subject to successive management transfers or to
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21 * Sec. 2. AS 09.50.250 is amended to read:

22 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
23 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
24 against the state in the superior court. A person who may present the claim under AS 44.77 may
25 not bring an action under this section except as set out in AS 44.77.040(c). A person who may
26 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except
27 as set out in AS 36.30.685. However, an action may not be brought under this section if the
28 claim

29 (1) is an action for tort, and is based upon an act or omission of an employee of
30 the state, exercising due care, in the execution of a statute or regulation, whether or not the
31 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance

1 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
2 or an employee of the state, whether or not the discretion involved is abused;

3 (2) is for damages caused by the imposition or establishment of a quarantine by
4 the state;

5 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
6 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
7 contract rights; [OR]

8 (4) arises out of the use of an ignition interlock device certified under
9 AS 33.05.020(c); or

10 (5) arises out of

11 (A) registration and approval of an oil spill response action contractor
12 under AS 46.04.035;

13 (B) approval of an oil spill contingency plan under AS 46.04.030; or

14 (C) an act or omission of the state, an employee of the state, or a
15 person who contracts with the state in responding to or directing a response to a
16 release or threatened release of oil, unless the act or omission resulted from gross
17 negligence or intentional misconduct; in this subparagraph, "oil" has the meaning
18 given in AS 46.03.826.

19 * Sec. 3. AS 46.03.822(a) is amended to read:

20 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
21 set out in (b) of this section and the exception set out in (i) of this section, the following persons
22 are strictly liable, jointly and severally, for damages, for the costs of response, containment,
23 removal, or remedial action incurred by the state, a municipality, or a village, and for the
24 additional costs of a function or service, including administrative expenses for the incremental
25 costs of providing the function or service, that are incurred by the state, a municipality, or a
26 village, and the costs of projects or activities that are delayed or lost because of the efforts of the
27 state, the municipality, or the village, resulting from an unpermitted release of a hazardous
28 substance or, with respect to response costs, the substantial threat of an unpermitted release of
29 a hazardous substance:

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

1 in consumer use;

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

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

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

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

19 (6) a response action contractor who has agreed in writing to be listed and
20 who is listed in a contingency plan approved under AS 46.04.030 who fails to respond to a
21 release or threatened release of oil that the response action contractor was required to
22 respond to under the contingency plan; this paragraph does not apply to a response action
23 contractor if the failure to respond to a release or threatened release of oil results from a
24 concurrent response under another contingency plan approved under AS 46.04.030 in which
25 the response action contractor has the primary duty to respond.

26 * Sec. 4. AS 46.03.822(b) is amended to read:

27 (b) In an action to recover damages or costs, a person otherwise liable under this section
28 is relieved from liability under this section if the person proves

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

31 (A) an act of war;

1 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an
2 intentional or negligent act or omission of a third party, other than a party or its agents
3 in privity of contract with, or employed by, the person, and that the person

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

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

7 (C) an act of God; and

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

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

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

13 * Sec. 5. AS 46.03.822(k) is amended to read:

14 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
15 [INCLUDE] damage to persons or to public or private property, damage to the natural resources
16 of the state or a municipality, and damage caused by acts or omissions of a response action
17 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

18 * Sec. 6. AS 46.03.825(a) is repealed and reenacted to read:

19 (a) A response action contractor who responds to a release or threatened release of oil
20 is not civilly liable for removal costs or damages that result from an act or omission in the course
21 of providing care, assistance, or advice

22 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
23 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d); or

24 (2) as otherwise directed by the federal or state on-scene coordinator.

25 * Sec. 7. AS 46.03.825(b) is amended to read:

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

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

28 (2) an action for damages to tangible personal property not caused by oil; or

29 (3) an act or omission that occurs more than 60 [15] days after the release;
30 provided, however, that the period of time described in this paragraph may be extended for
31 not more than 60 days by a written order of the state on-scene coordinator issued on or

1 before the 60th day after the release;

2 (4) a response action contractor who

3 (A) would otherwise have been liable for the release or threatened
4 release under AS 46.03.822;

5 (B) acts with gross negligence or intentional misconduct; or

6 (C) is not registered by the department, who agrees in writing to be
7 listed and who is listed as a response action contractor in a contingency plan
8 approved under AS 46.04.030, that is being implemented to respond to a release or
9 threatened release of oil, and who has executed a written agreement with the
10 contingency plan holder.

11 * Sec. 8. AS 46.03.825(c) is amended to read:

12 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
13 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
14 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the response action contractor's act or omission with respect to
16 a release or threatened release of oil unless the act or omission of the oil spill response action
17 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
18 does not apply to an oil spill response action contractor who is liable under AS 46.03.822(a)(6)
19 or who would have been liable for the initial release or threatened release of oil under
20 AS 46.03.822 even if that contractor had not carried out a response action.

21 * Sec. 9. AS 46.03.825(d) is amended to read:

22 (d) In this section,

23 (1) "registered" means registered under AS 46.04.035:

24 (2) "response action" means an action taken to respond to a release or threatened
25 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release
26 or threatened release of oil.

27 * Sec. 10. AS 46.03.825 is amended by adding new subsections to read:

28 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable
29 person with respect to costs or damages caused by an act or omission of a response action
30 contractor.

31 (f) Except as provided in (e) of this section, this section does not affect the liability under

1 this chapter or under any other state law of a person other than a response action contractor.

2 * Sec. 11. AS 46.04.020(a) is amended to read:

3 (a) A person causing or permitting the discharge of oil shall immediately contain and
4 clean up the discharge. [THE DEPARTMENT MAY WAIVE THIS REQUIREMENT

5 (1) IF IT DETERMINES, IN CONSULTATION WITH THE UNITED STATES
6 COAST GUARD OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
7 AS APPROPRIATE, THAT CONTAINMENT OR CLEANUP IS TECHNICALLY NOT
8 FEASIBLE; OR

9 (2) IF THE CLEANUP OR CONTAINMENT ACTIVITIES WOULD RESULT
10 IN GREATER ENVIRONMENTAL DAMAGE THAN THE DISCHARGE ITSELF.]

11 * Sec. 12. AS 46.04.020 is amended by adding new subsections to read:

12 (g) The common operating agent for the holders and lessees of the right-of-way
13 agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of
14 crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to
15 related activities, including operation of a tank vessel while berthed at a marine terminal or while
16 traveling within state waters to or from a marine terminal. A charge or financial responsibility
17 requirement imposed by the common operating agent for holders and lessees of the right-of-way
18 agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage
19 from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil
20 is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441.
21 Review of a charge or financial responsibility requirement allowed under this subsection may
22 occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska
23 Public Utilities Commission.

24 (h) The department may waive an oil discharge containment and cleanup requirement
25 imposed under (a) or (g) of this section if

26 (1) the department determines, in consultation with the United States Coast Guard
27 or the United States Environmental Protection Agency, as appropriate, that containment or
28 cleanup is technically not feasible; or

29 (2) the cleanup or containment activities would result in greater environmental
30 damage than the discharge itself.

31 * Sec. 13. AS 46.04.030(e) is amended to read:

1 (e) The department may attach reasonable terms and conditions to its approval or
2 modification of a contingency plan that the department determines are necessary to ensure that
3 the applicant for a contingency plan has access to sufficient resources to protect environmentally
4 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
5 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
6 contingency plan. If a contingency plan submitted to the department for approval relies on
7 the services of an oil spill response action contractor, the department may not approve the
8 contingency plan unless the response action contractor is registered and approved under
9 AS 46.04.035. The contingency plan must provide for the use by the applicant of the best
10 technology that was available at the time the contingency plan was submitted or renewed. The
11 department may require an applicant or holder of an approved contingency plan to take steps
12 necessary to demonstrate its ability to carry out the contingency plan, including

13 (1) periodic training;

14 (2) response team exercises; and

15 (3) verifying access to inventories of equipment, supplies, and personnel identified
16 as available in the approved contingency plan.

17 * Sec. 14. AS 46.04 is amended by adding a new section to read:

18 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION
19 CONTRACTORS. (a) A person may apply to the department for registration as an oil spill
20 response action contractor. The department shall adopt regulations governing the registration and
21 approval of oil spill response action contractors. Regulations adopted by the department under
22 this section must include

23 (1) minimum training standards for personnel;

24 (2) verification requirements that ensure the existence of resources, including
25 personnel, equipment, services, and an adequate deployment plan necessary to a response action
26 or as required by a contingency plan in which the contractor has agreed in writing to be listed
27 and is listed;

28 (3) minimum professional response action standards and practices; and

29 (4) minimum performance standards for oil spill response action contractors listed
30 in an oil spill contingency plan approved under AS 46.04.030.

31 (b) Notwithstanding (a) of this section, the department may substitute a response action

1 contractor approval program, and a subsequent process to approve response action contractors
2 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
3 required under (a)(1) - (3) of this section if the approval program and subsequent process are
4 developed by the United States Coast Guard.

5 (c) The department shall establish fees applicable to registration under this section in an
6 amount necessary to cover the costs of the registration program. The fees shall be collected by
7 the department.

8 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations
9 under this section.

10 (e) The department shall develop and maintain a list of oil spill response action
11 contractors registered under this section. The department shall provide the list on request to
12 interested persons.

13 (f) A response action contractor registered under this section shall annually provide to
14 the department a list of all contingency plans approved under AS 46.04.030 in which the response
15 action contractor has agreed in writing to be listed as a responder.

16 (g) In this section,

17 (1) "oil" has the meaning given in AS 46.03.826;

18 (2) "response action" has the meaning given in AS 46.03.825;

19 (3) "response action contractor" means

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

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

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

28 * Sec. 15. TRANSITION. The Department of Environmental Conservation shall adopt regulations
29 to implement AS 46.04.035(a), enacted in sec. 14 of this Act, on or before January 1, 1993.

30 * Sec. 16. REPORT. The Department of Environmental Conservation shall report to the legislature
31 by March 31, 1993, on the progress of the department in developing the ability of the state to respond

1 to oil spills of an unknown origin and enhance regional response and coastline protection.

2 * Sec. 17. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

3 * Sec. 18. If this Act takes effect after June 30, 1992, sec. 17 of this Act is retroactive to June 30,
4 1992.

5 * Sec. 19. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
6 AS 46.03.822 and 46.03.825, made by secs. 3 - 10 of this Act, apply only to causes of action accruing
7 on or after the effective date of secs. 3 - 10 of this Act.

8 (b) The provisions of AS 46.03.825(b)(4)(C) apply only to causes of action accruing on or after
9 the effective date of that paragraph under sec. 20 of this Act.

10 * Sec. 20. AS 46.03.825(b)(4)(C), added by sec. 7 of this Act, and sec. 13 of this Act take effect
11 July 1, 1993.

12 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c).

7-LS2045J /
Ford
4/6/92

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to registration of an oil spill response action contractor; limiting the
2 liability of an oil spill response action contractor for release or threatened release of a
3 hazardous substance and for an act or omission that is consistent with a state or national
4 oil spill contingency plan or consistent with an order of an on-scene coordinator; amending
5 certain exceptions to limited liability applicable to an oil spill response action contractor;
6 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
7 date."

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

9 * Section 1. AS 46.03.822(a) is amended to read:

10 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
11 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
12 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
13 jointly and severally, for damages, for the costs of response, containment, removal, or remedial

1 action incurred by the state, a municipality, or a village, and for the additional costs of a function
2 or service, including administrative expenses for the incremental costs of providing the function
3 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
4 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
5 village, resulting from an unpermitted release of a hazardous substance or, with respect to
6 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

27 * Sec. 2. AS 46.03.825(a) is repealed and reenacted to read:

28 (a) A response action contractor who responds to a release or threatened release of oil
29 is not civilly liable for removal costs or damages that result from an act or omission in the course
30 of providing care, assistance, or advice

31 (1) consistent with a contingency plan prepared under AS 46.04.200, 46.04.210,

1 or 33 U.S.C. 1321(d); or

2 (2) as otherwise directed by the federal or state on-scene coordinator.

3 * Sec. 3. AS 46.03.825(b) is amended to read:

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

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

6 (2) a response action contractor who

7 (A) would otherwise have been liable for the release or threatened
8 release under AS 46.03.822;

9 (B) acts with gross negligence or intentional misconduct; or

10 (C) is not registered with the department under AS 46.04.035, and
11 who agrees in writing to be listed and who is listed as a response action contractor
12 in a contingency plan approved under AS 46.04.030, that is being implemented to
13 respond to a release or threatened release of oil [AN ACTION FOR DAMAGES TO
14 TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL; OR

15 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
16 THE RELEASE].

17 * Sec. 4. AS 46.04 is amended by adding a new section to read:

18 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION
19 CONTRACTORS. (a) A person may register with the department as an oil spill response action
20 contractor. The department shall require a person registering as an oil spill response action
21 contractor under this section to verify the existence of resources, including personnel, equipment,
22 services, and a deployment plan as required of that contractor in any contingency plan approved
23 under AS 46.04.030 in which the contractor has agreed to be listed.

24 (b) The department shall develop and maintain a list of oil spill response action
25 contractors registered under this section. The department shall provide the list on request to
26 interested persons.

27 (c) In this section, "oil" and "response action contractor" have the meanings given in
28 AS 46.03.826.

29 * Sec. 5. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

30 * Sec. 6. If this Act takes effect after June 30, 1992, sec. 5 of this Act is retroactive to June 30, 1992.

31 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

7-LS2045P-
Ford
4/14/92

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of the state for certain registration, planning, and
2 response activities related to oil spills; relating to liability for release or threatened release
3 of a hazardous substance; relating to the liability of an oil spill response action contractor
4 for release or threatened release of a hazardous substance; relating to oil discharge and
5 contingency plans; relating to registration of an oil spill response action contractor;
6 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
7 date."

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

9 * Section 1. AS 09.50.250 is amended to read:

10 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
11 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
12 against the state in the superior court. A person who may present the claim under AS 44.77 may
13 not bring an action under this section except as set out in AS 44.77.040(c). A person who may

1 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except
2 as set out in AS 36.30.685. However, an action may not be brought under this section if the
3 claim

4 (1) is an action for tort, and is based upon an act or omission of an employee of
5 the state, exercising due care, in the execution of a statute or regulation, whether or not the
6 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance
7 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
8 or an employee of the state, whether or not the discretion involved is abused;

9 (2) is for damages caused by the imposition or establishment of a quarantine by
10 the state;

11 (3) arises out of assault, battery, false imprisonment, false arrest, malicious
12 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with
13 contract rights; [OR]

14 (4) arises out of the use of an ignition interlock device certified under
15 AS 33.05.020(c); or

16 (5) arises out of

17 (A) registration and approval of an oil spill response action contractor
18 under AS 46.04.035;

19 (B) approval of an oil spill contingency plan under AS 46.04.030; or

20 (C) an act or omission of the state, an employee of the state, or a
21 person who contracts with the state in responding to or directing a response to a
22 release or threatened release of oil, unless the act or omission resulted from gross
23 negligence or intentional misconduct; in this subparagraph, "oil" has the meaning
24 given in AS 46.03.826.

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

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
27 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
28 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
29 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
30 action incurred by the state, a municipality, or a village, and for the additional costs of a function
31 or service, including administrative expenses for the incremental costs of providing the function

1 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
2 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
3 village, resulting from an unpermitted release of a hazardous substance or, with respect to
4 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

25 * Sec. 3. AS 46.03.822(b) is amended to read:

26 (b) In an action to recover damages or costs, a person otherwise liable under this section
27 is relieved from liability under this section if the person proves

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

30 (A) an act of war;

31 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an

1 intentional or negligent act or omission of a third party, other than a party or its agents
2 in privity of contract with, or employed by, the person, and that the person

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

4 (ii) took reasonable precautions against the act or omission of the

5 third party and against the consequences of the act or omission; or

6 (C) an act of God; and

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

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

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

12 * Sec. 4. AS 46.03.822(k) is amended to read:

13 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
14 [INCLUDE] damage to persons or to public or private property, damage to the natural resources
15 of the state or a municipality, and damage caused by acts or omissions of a response action
16 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

17 * Sec. 5. AS 46.03.825(a) is repealed and reenacted to read:

18 (a) A response action contractor who responds to a release or threatened release of oil
19 is not civilly liable for removal costs or damages that result from an act or omission in the course
20 of providing care, assistance, or advice

21 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
22 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d);

23 (2) as otherwise directed by the federal or state on-scene coordinator.

24 * Sec. 6. AS 46.03.825(b) is amended to read:

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

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

27 (2) a response action contractor who

28 (A) would otherwise have been liable for the release or threatened
29 release under AS 46.03.822;

30 (B) acts with gross negligence or intentional misconduct;

31 (C) is not registered with the department under AS 46.04.035, and

1 who agrees in writing to be listed and who is listed as a response action contractor
 2 in a contingency plan approved under AS 46.04.030, that is being implemented to
 3 respond to a release or threatened release of oil; or

4 (D) has agreed in writing to be listed and who is listed in a
 5 contingency plan approved under AS 46.04.030 who fails to respond to a release or
 6 threatened release of oil that the response action contractor was required to respond
 7 to under its contract with the applicable contingency plan holder; this subparagraph
 8 does not apply to a response action contractor if the failure to respond to a release
 9 or threatened release of oil results from a concurrent response under another
 10 contingency plan approved under AS 46.04.030 in which the response action
 11 contractor has the primary duty to respond [AN ACTION FOR DAMAGES TO
 12 TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL; OR

13 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
 14 THE RELEASE].

15 * Sec. 7. AS 46.03.825(d) is amended to read:

16 (d) In this section,

17 (1) "registered" means registered under AS 46.04.035;

18 (2) "response action" means an action taken to respond to a release or threatened
 19 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release
 20 or threatened release of oil.

21 * Sec. 8. AS 46.03.825 is amended by adding new subsections to read:

22 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable
 23 person with respect to costs or damages caused by an act or omission of a response action
 24 contractor.

25 (f) Except as provided in (e) of this section, this section does not affect the liability under
 26 this chapter or under any other state law of a person other than a response action contractor.

27 * Sec. 9. AS 46.04.030(e) is amended to read:

28 (e) The department may attach reasonable terms and conditions to its approval or
 29 modification of a contingency plan that the department determines are necessary to ensure that
 30 the applicant for a contingency plan has access to sufficient resources to protect environmentally
 31 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or

1 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
2 contingency plan. If a contingency plan submitted to the department for approval relies on
3 the services of an oil spill response action contractor, the department may not approve the
4 contingency plan unless the response action contractor is registered and approved under
5 AS 46.04.035. The contingency plan must provide for the use by the applicant of the best
6 technology that was available at the time the contingency plan was submitted or renewed. The
7 department may require an applicant or holder of an approved contingency plan to take steps
8 necessary to demonstrate its ability to carry out the contingency plan, including

9 (1) periodic training;

10 (2) response team exercises; and

11 (3) verifying access to inventories of equipment, supplies, and personnel identified
12 as available in the approved contingency plan.

13 * Sec. 10. AS 46.04 is amended by adding a new section to read:

14 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION
15 CONTRACTORS. (a) A person may apply to the department for registration as an oil spill
16 response action contractor. The department shall adopt regulations governing the registration and
17 approval of oil spill response action contractors. Regulations adopted by the department under
18 this section must include

19 (1) minimum training standards for personnel;

20 (2) verification requirements that ensure the existence of resources, including
21 personnel, equipment, services, and an adequate deployment plan necessary to a response action
22 or as required by a contingency plan in which the contractor has agreed in writing to be listed
23 and is listed;

24 (3) minimum professional response action standards and practices; and

25 (4) minimum performance standards for oil spill response action contractors listed
26 in an oil spill contingency plan approved under AS 46.04.030.

27 (b) Notwithstanding (a) of this section, the department may substitute a response action
28 contractor approval program, and a subsequent process to approve response action contractors
29 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
30 required under (a)(1) - (3) of this section if the approval program and subsequent process are
31 developed by the United States Coast Guard.

1 (c) The department shall establish fees applicable to registration under this section in an
2 amount necessary to cover the costs of the registration program. The fees shall be collected by
3 the department.

4 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations
5 under this section.

6 (e) The department shall develop and maintain a list of oil spill response action
7 contractors registered under this section. The department shall provide the list on request to
8 interested persons.

9 (f) A response action contractor registered under this section shall annually provide to
10 the department a list of all contingency plans approved under AS 46.04.030 in which the response
11 action contractor has agreed in writing to be listed as a responder.

12 (g) In this section,

13 (1) "oil" has the meaning given in AS 46.03.826;

14 (2) "response action" has the meaning given in AS 46.03.825;

15 (3) "response action contractor" means

16 (A) a person who enters into a response action contract with respect to a
17 release or threatened release of oil and who is carrying out the contract, including a
18 cooperative organization formed to maintain and supply response equipment and materials
19 that enters into a response action contract relating to a release or threatened release of oil;

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

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

24 * Sec. 11. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

25 * Sec. 12. TRANSITION. The Department of Environmental Conservation shall adopt regulations
26 to implement AS 46.04.035(a), enacted in sec. 10 of this Act, on or before January 1, 1993.

27 * Sec. 13. If this Act takes effect after June 30, 1992, sec. 11 of this Act is retroactive to June 30,
28 1992.

29 * Sec. 14. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
30 AS 46.03.822 and 46.03.825, made by secs. 2 - 8 of this Act, apply only to causes of action accruing
31 on or after the effective date of secs. 2 - 8 of this Act.

1 (b) The provisions of AS 46.03.825(b)(2)(C) apply only to causes of action accruing on or after
2 the effective date of that paragraph under sec. 15 of this Act.

3 * Sec. 15. AS 46.03.825(b)(2)(C), added by sec. 6 of this Act, and sec. 9 of this Act take effect
4 July 1, 1993.

5 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect immediately under
6 AS 01.10.070(c).

HPB

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(File 2)

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 20, 1992

SUBJECT: Response action contractors - (SSHB 540)

TO: Representative Bill Hudson

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

The following is a section by section analysis of SSHB 540:

Section 1 - Provides that an oil spill response action contractor whose act or omission is not contrary to the state or national oil spill contingency plans, or if contrary, is not contrary to an order of the state or federal on-scene coordinator, receives protection from certain civil liability.

Section 2 - Repeals two current exceptions to the limited liability provisions of AS 46.03.825(a). The first being an action for damages to personal property not caused by oil, and the second being an action based on an act or omission that occurs more than 15 days after the release of oil.

Section 3 - Repeals the sunset provisions enacted in HB 196, that would repeal the limited liability of response actions contractors.

Section 4 - Retroactive clause for section 3.

Section 5 - Effective date.

MFF:pl
92-116.plm

OCTOBER 26, 1991 DRAFT REGULATIONS

18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN CONTENTS.

PART 2 -- PREVENTION PLAN

(H) RESPONSE CONTRACTOR INFORMATION - if a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of each contractor, with name, address, telephone number, and affiliation by company, a summary of each agreement or contract, and the response equipment and services provided; the use of a contractor does not relieve the plan holder's responsibility to provide the information required by this subsection, and to meet all other applicable requirements of this chapter;

18 AAC 75.445. APPROVAL CRITERIA.

(i) RESPONSE CONTRACTOR INFORMATION. If a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of all contractors, with names, addresses, telephone numbers, and affiliation by company, and a copy of the contract or a summary which clearly demonstrates

(1) the contractor's obligation to respond if a discharge occurs, and the contractor's liability to the plan holder for the contractor's failure to respond or for an inadequate response;

(2) the contractor's availability to respond to a department-conducted discharge exercise as well as an actual discharge; and

(3) that equipment and other spill response resources to be provided by the contractor are maintained in a state of readiness and are compatible with the type of facility or operation and the oil product handled by the plan holder.

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OIL DISCHARGE PREVENTION
AND CONTINGENCY PLAN APPROVAL

Name of plan holder
Address

Dear:

Re: (Name of facility) Oil Discharge Prevention and Contingency Plan

The Alaska Department of Environmental Conservation (ADEC) has completed review of the (date of application) application for approval of the following oil spill contingency plan:

Plan Title: _____, consisting of ____ volumes
Supporting Documents, if any (list): _____
Plan Holder: _____
[Be specific, as in "ABC Oil Co., A Delaware Corporation."]
Covered Vessels or Facilities: _____
[If vessel, U.S. Official Number: _____]

PLAN APPROVAL: The (name of plan) plan is hereby approved, effective [_____, 199_].

A certificate of approval stating that the contingency plan has been approved by the department is enclosed. This approval is subject to the following terms and conditions:

TERMS AND CONDITIONS:

1. Revisions to contingency plans demonstrating full compliance with the implementing regulations for HB 567 must be submitted to the Department within 90 days of their effective date. The Department's implementation schedule for demonstrating compliance with the new regulations is contained in the enclosed January 7, 1992 letter from the Commissioner.
2. Notice of Changed Relationship with Response Contractor (DELETE THIS PARAGRAPH IF NO RESPONSE CONTRACTOR INVOLVED IN THE PLAN).
Because the plan relies on the use of response contractor(s) for its

implementation, the plan holder must immediately notify the Department in writing of any change in the contractual relationship with the plan holder's response contractor(s), and of any event including but not limited to any breach by either party to the response contract that may excuse a response contractor from performing, that indicates a response contractor may fail or refuse to perform, or that may otherwise affect the response, prevention, or preparedness capabilities described in the approved plan.

This condition is reasonably necessary because there are certain risks associated with allowing a plan holder to rely in part or total upon a response contractor instead of obtaining its own response capability. The risks arise, in part, because the certainty of the contractor's response is dependent upon the continuation of the legal relationship between it and the plan holder. Given this risk, the Department must be promptly informed of any change of the contractual relationship between the plan holder and the response contractor, and of any other event that may arguably excuse the response contractor from performing or that would otherwise affect the response, prevention, or preparedness capabilities described in the approved plan. The Department may seek appropriate modifications to the plan or take other steps to ensure that the plan holder has continuous access to sufficient resources to protect the environment and to contain, cleanup, and mitigate potential oil spills.

3. (Additional facility specific conditions and their basis should be included here)

EXPIRATION: This approval expires _____, 199_. After the approval expires, operation of the facility/vessel is prohibited by Alaska law until an approved plan is once again in effect.

RENEWAL: To renew the approval, the plan holder must submit a complete renewal application to this office on or before _____, 199_.

REVOCAION, SUSPENSION, OR MODIFICATION: This approval is effective only while the plan holder is in "compliance with the plan" and with all of the terms and conditions described above. The Department may, after notice and opportunity for a hearing, revoke, suspend, or require the modification of an approved plan if the plan holder is not in compliance with it, or for any other reason stated in AS 46.04.030(f). In addition, Alaska law provides that a vessel or facility that is not in "compliance with the plan" may not operate (AS 46.04.030). The department may terminate approval prior to the expiration date if deficiencies are identified that would adversely affect spill prevention, response or preparedness capabilities.

DUTY TO RESPOND: Notwithstanding any other provisions or requirements of this contingency plan a person causing or permitting the discharge of oil is required by law to immediately contain and cleanup the discharge regardless of the adequacy or inadequacy of a contingency plan (AS 46.04.020).

BEST AVAILABLE TECHNOLOGY: The contingency plan must provide for use by the applicant of the best available technology at the time it is submitted or renewed (AS 46.04.030 (e)).

NOTIFICATION OF NON-READINESS: Within three days after any significant response equipment specified in the plan becomes nonoperational or is removed from its designated storage location the plan holder must notify the department in writing and provide a schedule for the equipment's substitution, repair, or return to service (18AAC 75.375).

CIVIL AND CRIMINAL SANCTIONS: Failure to comply with the plan may subject the plan holder to civil liability for damages and to civil and criminal penalties. Civil and criminal sanctions may also be imposed for any violation of AS 46.04, any regulation issued thereunder, or any violation of a lawful order of the Department.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: The Department has the right to verify the ability of the plan holder to carry out the provisions of its contingency plan and access to inventories of equipment, supplies and personnel through such means as inspections and discharge exercises, without prior notice to the plan holder. The Department has the right to enter and inspect the covered vessel or facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms and conditions (AS 46.04.030(e) and AS 46.04.060). The plan holder shall conduct exercises for the purpose of testing the adequacy of the contingency plan and its implementation (18 AAC 75.385).

FAILURE TO PERFORM: In granting approval of the plan, the Department has determined that the plan, as represented to it by the applicant in the plan and application for approval, satisfies the minimum planning standards and other requirements established by applicable statutes and regulations, taking as true all information provided by the applicant. The Department does not warrant to the applicant, the plan holder, or any other person or entity: (1) the accuracy or validity of the information or assurances relied upon; (2) that the plan is or will be implemented; or (3) that even full compliance and implementation with the plan will result in complete containment, control, or clean-up of any given oil spill, including a spill specifically described in the planning standards. The plan holder is encouraged to take any additional precautions and obtain any additional response capability it deems appropriate to further guard against the risk of oil spills and to enhance its ability to comply with its duty under AS 46.04.020(a) to immediately contain and clean up an oil discharge.

COMPLIANCE WITH APPLICABLE LAWS: If amendments to the approved plan are necessary to meet the requirements of any new laws or regulations, the plan holder must submit an application for amendment to the Department at the above address. The plan holder must adhere to all applicable state statutes and regulations as they may be amended from time to time. Copies of those currently in effect are enclosed. The department is currently developing regulations to implement Ch. 191, SLA 1990.

Amendments to comply with the regulations will be necessary upon promulgation.

ADJUDICATORY HEARING: Any person who disagrees with the decision may request an adjudicatory hearing by serving upon the Commissioner a request for hearing that complies with the requirements of 18 AAC 15.200-310. The hearing request must be received by the Commissioner within 30 days from the date of this letter. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation at 3220 Hospital Drive, P.O. Box 0, Juneau, AK 99811-1800 within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to a hearing is waived and the decision becomes final.

If you have any questions, please do not hesitate to contact _____ of this office.

Sincerely,

Regional Administrator
or
Regional Environmental Supervisor

Enclosures:

1. Certificate of Approval
2. Alaska Statutes 46.03, 46.04, 46.08 and 46.09 (white statute book)
3. 18 AAC 75, Article 4
4. October 26 Draft Regulations
5. Commissioner's January 7, 1992 letter

cc: (To be completed by the regions. Standard distribution should include one copy to Central Office SPPM c/o Larry Dietrick)



Alaska Department of
**Environmental
Conservation**

P.O. Box 0
Juneau, Alaska 99811-1800

Release

Walter J. Hickel, Governor

John A. Sandor, Commissioner

Contact: Debby Bloom, 563-6529
L.J. Evans, 563-1126

DEC COMMISSIONER SANDOR SIGNS NEW OIL SPILL REGULATIONS AFTER EXTENSIVE PUBLIC PROCESS

October 26, 1991. Anchorage... DEC Commissioner John Sandor has signed oil spill regulations which raise spill prevention and response standards for approximately 300 tankers, barges, terminals, and on-shore exploration and production facilities operating in Alaska, as well as the Trans-Alaska Pipeline System, after 16 months of drafting and public review.

The regulations, which Sandor said are "the toughest in the nation--if not the world," set new standards for spill prevention and readiness on the part of companies handling oil; establish the amount of oil that a company must be prepared to control and contain in the first hours of a spill; and broaden the range of options for meeting financial responsibility requirements.

Alaska will require crude oil tankers to have enough equipment and personnel in the region within 72 hours of the onset of a spill to control or cleanup 60% of a vessel's total cargo capacity; operators must plan to clean up 100% of a spill as soon as practicable. In contrast, federal law does not set a minimum time period.

"With the help of the public, environmental and industry groups, citizens' organizations, and an outstanding working group, we have reached a key milestone in Alaska's effort to develop the regulations called for by the Legislature in 1990 in House Bill 567," said Commissioner Sandor. "These new rules will put Alaska out front in effective spill prevention and response. For that, and for their countless hours of good work, we sincerely thank all those who attended our many public meetings, and especially the citizens' working group that assisted the department in resolving several key controversies about how this law should be implemented."

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"Our job now is to make sure equipment is in place and readiness is maintained," Sandor said. "All the equipment on earth will do no good unless people are trained to use it." The Commissioner said that DEC will enforce the law with frequent drills, including surprise drills, to test and maintain readiness and the effectiveness of plans and equipment.

The HB 567 Working Group was established in 1990 by DEC with representatives from state and federal agencies, citizen oversight groups, industry, and environmental organizations. The public participation process for the regulations included 18 public meetings last winter and spring throughout Alaska in addition to formal public hearings held last summer. The working group met many additional times throughout the process to advise the department on development of the regulations. DEC staff reviewed and considered 800 pages of comments on the draft regulations from members of the public.

"The response to the Exxon Valdez spill involved nearly all Alaskans, either in actual response activities or in terms of their concerns. We felt it necessary to likewise involve as many Alaskans as we could in developing a system to prevent future spills or to respond effectively if they ever happened. Now we need continued participation of Alaskans to implement the system and make sure it works," said Sandor. The Commissioner said that he has invited the Working Group to continue to advise DEC on implementation of the new regulations.

If the regulations are filed by Lt. Governor Jack Coghill following a review by the Department of Law, crude oil facilities will be asked to amend their current plans to conform with the new regulations by February 1, 1992.

Sandor said that Alaskans can already have more confidence in spill preparedness within the state. In most cases, the large companies have in place the necessary response equipment, personnel, and prevention measures. Alyeska Pipeline Company's SERVS system of escort vessels for tankers in Prince William Sound is an example.

The Commissioner indicated that the department will work with small companies covered by the law to form spill response co-ops throughout the state. The regulations encourage cost-sharing for increased prevention and response capabilities. Non-crude operators come under the law effective June 1, 1992.

The final step in developing the regulations was a set of decisions reached by the department on several key policy issues that remained unresolved at the conclusion of the public participation process.

DEC Deputy Commissioner Mead Treadwell said, "One of our toughest calls was the decision on the planning standard for crude oil carriers. In the public comments and working group there was no consensus on how much of a vessel's cargo the operator

should have to plan to clean up beyond the first 72 hours of a spill. HB 567 requires the department to set this standard, and operators must design their response plans accordingly. In the end we relied on statistical studies of spill situations and what we could expect to happen during an actual spill. It turned out that a 60% planning standard, the ability to clean up 60% of the cargo capacity, was the right answer in this case." Two DEC consultants independently reached this conclusion and made the recommendation to the department, Treadwell explained.

Under this requirement a plan holder must plan to clean up a total spill, but must demonstrate the availability of sufficient equipment and personnel deployed and operating within the region within the first 72 hours to clean up 60% of a vessel's cargo. The planning standard can be lowered through "prevention credits," but only for hydrostatic loading, double hulls or bottoms, or escort vessels. In no case will the planning standard be less than 30% of a vessel's cargo capacity.

"Another critical decision was whether to specifically enable DEC to require a facility or tanker to restrict operations, if conditions arise that would make it impossible for a plan holder to employ the methods outlined in this plan," said Treadwell.

He explained that this concern was for situations where conditions such as earthquakes, volcanoes, storms or other situations make an operator's proposed response methods ineffective. The regulations require a plan holder to describe scenarios when weather or environmental conditions would exceed maximum response limitations. Shutting down a facility is a decision limited to the DEC commissioner, either through an emergency order or by seeking a court injunction.

The department also decided:

- To adopt the majority of the proposed prevention provisions now and make a commitment to continue to work on unresolved issues with the HB 567 Working Group, rather than delay the entire "prevention" package.
- To retain language to guard against company employee substance abuse or medical problems diminishing abilities to perform tasks that could prevent or reduce the size of a spill. The language has been reviewed by the Departments of Law and Health and Social Services.
- For non-crude carriers, to adopt a current planning standard that requires the operator to plan to contain or control 15% of the capacity of the vessel or barge within a 48-hour time limit, and clean up the full amount of any size spill within the shortest feasible time.
- To maintain provisions for drilling relief wells in the event of a blowout. The department was concerned about the possibility of a sustained major discharge from an oil formation occurring during adverse winter conditions that could make it impossible to regain control of the well until the following season. Language was

- More -