

5/9/92

TESTIMONY OF RIKI OTT

ON CSSSHB 540

BEFORE SENATE SPECIAL COMMITTEE ON OIL & GAS

The version of HB 540 which passed the House by a vote of 26 to 14 is Alyeska's Cadillac. Should Alyeska be allowed to drive their Cadillac through this committee and the rest of the Senate with the same ease which they drove it through the House, the list of hit-and-run victims will include tens of thousands of fishermen, Tesoro and other small independent oil companies, state and federal lawsuits over the Exxon Valdez spill, and our natural resources after the next major oil spill.

The politics involved with gutting the Judiciary CS for HB 540 on the House floor were disgusting. It was obvious to even the most naive public observers that the process was completely rigged by dozens of Alyeska lobbyists and lawyers before the vote.

The ORA wishes to return three provisions to the bill that 26 members of the House, lead by Representative Hudson, gutted. In addition, we wish to include a fourth provision which was discussed in House committees. Without all four of these provisions, we cannot support this legislation.

1. PROFESSIONAL RESPONSE CONTRACTORS AND RESPONDERS WITH A STATUTORY DUTY TO RESPOND MUST BE HELD TO A STANDARD OF SIMPLE NEGLIGENCE.

In 1987, the parties responsible for the Glacier Bay oil spill in Cook Inlet refused to initiate cleanup for several days, believing they would get the oil when it hit the beaches. Leaving the oil in the water resulted in over \$40 million in damages to Cook Inlet fishermen and very probable long-term damages to the fisheries resources.

In 1989, Alyeska, the party responsible for responding to TAPS oil spills, failed to respond immediately because their cleanup barge with all its equipment lay buried under four feet of snow.

In both 1987 and 1989, the state had a liability standard of simple negligence, yet spill response failed even under this standard of care. How can we even be seriously considering further reducing the standard of care?

It is true that the majority of other coastal states have reduced their standard from simple to gross negligence. But these other states have not had our history of failed or completely inadequate response to major spills. Alaska should know better.

Simple negligence is already a compromise between the public and the oil interests: it is the middle ground between strict liability (responsibility without fault which was the state standard until 1989) and gross negligence (which stops just short of intentional misconduct).

Liability exposure cannot be reduced without trade-offs. The liability goes somewhere, it does not just disappear. Proponents of HB 540 have consistently argued that the liability for increased damages would go to the spiller, but it is obvious that this is simply true. If it was, Alyeska would not have relieved Tesoro of the \$1 billion direct action bond. Alyeska's owner companies are exposed to liability through their common operating agent Alyeska.

A standard of gross negligence effectively immunizes Alyeska and the owner companies because, as BP, Arco, Exxon and the others know, gross negligence is next to impossible to prove in court. This is why Alyeska reduced the direct action bonding requirement; because gross negligence reduced their exposure to lawsuits.

And who would be bringing the lawsuits? The fishermen, the Natives, the property owners -- the spill victims, the injured public. Allowing a standard of gross negligence for ANY

amount of time, shifts the liability for additional damages from professional spill responders CLEARLY, SQUARELY, AND DEFINITELY to the natural resources and the public.

THE ORA CANNOT SUPPORT THIS BILL IF IT CONTAINS A STANDARD ANY LOWER THAN SIMPLE NEGLIGENCE.

2. HB 540 MUST CONTAIN STRONG ANTI-TRUST LANGUAGE THAT PROTECTS THE SMALL INDEPENDENT OIL COMPANIES FROM THE HUGE TRANSNATIONALS.

Last year, and again this year, Tesoro has come to the legislature and pleaded that unless they get liability relief in the form of gross negligence, they will be put out of business by Alyeska's direct action bonding requirement.

Tesoro is not telling the whole story. Tesoro has 100 problems and "solving" one in the manner Tesoro has proposed leaves the other 99. We are supportive of Tesoro's bonding predicament, but we cannot support gross negligence as the bailout option.

Instead we support requiring that a charge or contractual provision imposed by Alyeska must be fair, reasonable, and nondiscriminatory and must be subject to review by the Alaska Public Utilities Commission and/or the superior court.

From both Tesoro's and Alyeska's actions in the Capitol hallways, it is clear that the continuous war between Big and Little Oil is being used as blackmail at the expense of the natural resources. This is intolerable.

It is completely unacceptable to settle this issue by bailing out Tesoro at the expense of the public and the natural resources when there is a perfectly viable alternative. The ORA supports anti-trust language in this bill as a condition of its passage.

3. REGISTERED CONTRACTORS LISTED IN CONTINGENCY PLANS MUST HAVE A STATUTORY DUTY TO RESPOND TO SPILLS IN WHICH THE SPILLER IS INSOLVENT OR UNKNOWN.

The State of Alaska should have authority which parallels the Coast Guard's authority to command contractors to response to mystery spills and spills in which the spiller declares

bankruptcy. Under existing law, if these types of spills are not federalized, the state is unable to insure response and the public is exposed to damages.

For example, the Coast Guard federalized the barge spill at the Shumagin Islands by ordering Cook Inlet contractors (the closest) to respond. Had this spill not been federalized, there most likely would have been no response as in the small spill in Cook Inlet this last week.

The House Judiciary Committee included language in its CS (pg. 10, lines 23-31, pg. 11, line 1) that a response contractor, as a condition of registration, agrees to respond to oil spills "in which the responsible party is unknown or insolvent".

Without this language returned, the ORA cannot support this bill.

4. ALYESKA MUST HAVE A STATUTORY DUTY TO RESPOND TO TAPS SPILLS IN THE STATE OF ALASKA INCLUDING OUR WATERS.

This provision, while important, should be viewed as completely separate and independent of the other issues.

We have watched the debate over Alyeska's duty to respond to TAPS spills in utter disbelief. On one hand, Congress is drafting language in the energy bill to require that Alyeska submits an oil spill contingency plan for Prince William Sound to carry out their federally-mandated duty to respond to TAPS oil spills in any area in the State of Alaska as stated in the Oil Pollution Act of 1990. On the other hand, Representative Hudson and twenty some other representatives, are working to undermine our federal protections by requiring that Alyeska only have a contractual obligation with shippers instead of a duty to respond.

A contractual duty is not an acceptable guarantee of response for the people of Prince William Sound, Cook Inlet, Kodiak, and the Kenai Peninsula.

Alyeska's history of defiance for federal and state laws and regulators has led to countless oversight hearings and investigations: faulty pipeline construction, intimidation of workers and inspectors, worker safety, ballast water, invasion of privacy, manipulation of science and the regulatory

process, response to the Exxon Valdez oil spill. The list goes on and on and on from as early as 1976 to the present.

Alyeska is notorious for breaking and bending laws to suit their needs. They would no qualms about cancelling contracts for insolvent spillers and leaving the public stranded with damages.

Limiting Alyeska's obligations to private contractual arrangements makes absolutely no sense for other reasons as well. Alyeska never owns the TAPS oil. They don't own it when its in the pipeline and they don't own it when its on board the tankers. Yet Alyeska has only agreed to respond to TAPS spills from the pipeline. Why?

Because when it's in the pipeline, it's clear that its everybody's oil. But when it's in the tankers, it is split out into the separate TAPS owner companies and other buyers. This only splits out who PAYS for the response. The DUTY TO RESPOND still remains with all the owners through Alyeska as their common agent as a condition of Congress and commitment by the owners to authorize the trans-Alaska pipeline right-of-way nearly 20 years ago.

The issue of who pays for the response should not be confused with who is required to respond. The issue of who pays for the response should be left up to the owner companies to settle amongst themselves. The issue of who is required to respond was settled nearly 20 years ago. State law should clearly state the language in existing federal laws that Alyeska shall immediately contain and cleanup TAPS oil spills in any area in the State of Alaska.

To require any less undermines the state and federal lawsuits over exactly this issue; it undermines the state's ability to regulate its most powerful industry; and it undermines the state's ability to protect its own people and natural resources.

Our faith in this legislature and the Administration's intent to protect the public interest as mandated in Section 203(e) of the Trans-Alaska Pipeline Authorization Act has already been greatly eroded simply by the debate to diminish Alyeska's duty to respond to TAPS spills.

Having a lesser standard than the federal government is completely unacceptable to us and, should such legislation pass this body, it should be vetoed by the Governor.

In summary, we are asking that four critical provisions be included in HB 540 as a condition of its passage. Each provision can be used to let the air out of one tire of Alyeska's Cadillac. Unless all four tires are flat, Alyeska's Cadillac should not be allowed to drive out of this committee.

Thank-you for the opportunity to testify.