

Responsibilities and Liabilities for Oil Spills

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Cleanup Responsibilities

Alaska law:

- A person who causes or permits an oil discharge (Alaska Statute 46.04.020)
- The holder of an approved oil discharge prevention and contingency plan (AS 46.04.030)
- Alyeska, as the common operating agent for TAPS, is also required to respond to a TAPS-trade tanker spill in Prince William Sound.

Federal law:

- Owner and operator of a facility or vessel (33 U.S.C. 1321)
 - Holder of a Federal Response Plan (33 U.S.C. 1321).
 - Trans-Alaska Pipeline Right of Way Permittees (43 U.S.C. 1653(b))
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Cleanup Responsibilities.

The State Contingency Plan Holder is the tanker operator or a person with “primary operational control.”

If the vessel and crew are chartered and another entity is the C-plan holder, the contract must specify that the C-plan holder has operational control for operations in Alaska waters and the vessel must follow prevention and response procedures in the C-plan.

Under federal law, the operator of the tanker is the holder of the federal Vessel Response Plan (VRP). The state C-plan holder and federal VRP holder can be different companies.

However, all TAPS-trade tankers use Alyeska as their main primary response action contractor.



Financial Responsibility Assurances

Alaska law: Tankers and Terminals must establish and maintain proof of Financial Responsibility (FR) for response costs and damages. AS 46.04.040

For Crude Oil Tankers, FR is required in the amount of \$561.30 per incident for each barrel of storage capacity

Alaska Tanker Co. \$729 million

Polar Tankers, Inc. \$650 million

Andeavor LLC \$293 million

Crowley Alaska Tankers \$459 million

Hilcorp North Slope Alaska \$603 million

For Crude oil marine terminals like the Valdez Marine Terminal is \$93.55 million.

The required amount is periodically adjusted for inflation*



Liable Persons

Alaska law: (AS 46.03.822)

- Owner or operator of the facility or vessel
- Owner of the oil at the time of release

Federal law: 33 U.S.C. 2702 (Oil Pollution Act); 33 U.S.C. 1321(Federal Water Pollution Control Act).

- Owner and operator of the facility or vessel
- Federal law has liability limits for vessels based on the gross tonnage of the vessel, except in cases of gross negligence, willful misconduct or violation of a federal safety, construction or operating regulation in which cases there is no limit.



Liable Persons under Federal Law (continued)

Federal OPA 90 Liability Caps:

- for a tank vessel over 3,000 gross tons: the greater of \$2300 per gross ton or \$19,943,400. (removal costs and damages) \$196 million largest PWS tanker.
- for other vessels, the greater of \$1,200 per gross ton or \$997,100 (removal costs and damages)



Liable Persons under Federal Law (continued)

Valdez Marine Terminal

Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653):

\$350 million (strict several liability for damages to public and private persons; uncapped negligence thereafter)(§1653(a))
unlimited liability for removal costs (§1653(b)).

Federal Water Pollution Control Act, 33 U.S.C. 1321(f)(2)&(4)

\$50 million cap for federal removal costs and federal/state natural resource restoration costs unless the result of wilful negligence or wilful misconduct within the privity and knowledge of the owner in which case there is liability for full costs.



Liable Persons under State Law

Alaska state law has no liability limits (AS 46.03.822)

However, Alaska's Proof of Financial Responsibility Laws only require proof of financial ability to respond to cleanup costs and damages for specific amounts

Financial Responsibility only applies to contingency plan covered facilities and vessels.



Liability for What? Removal Costs and Damages

Federal Law 33 U.S.C. 2702; 33 U.S.C. 1321

- 1) Removal costs incurred by the US, a State, an Indian Tribe, or incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

- 2) Damages 33 U.S.C. 2702 (OPA 90)
 - A) Property damage.
 - B) Loss of Subsistence use.
 - C) Economic Claims: Profits and earning capacity.
 - D) Governmental claims: Lost Government revenues.
 - E) Increased costs of Public services.



Liability for What? Damages under OPA 90

F) Natural Resource Damages. Damages for injury to, destruction of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, are recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

Measure of Damages (33 U.S.C. 2706):

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.



Alaska's Oil and Hazardous Substance Liability Statute: AS 46.03.822

- Strict liability (liable without fault), jointly and severally, for
 - 1) damages (broadly defined);
 - 2) the costs of response, containment, removal or remedial action incurred by the state, a municipality, or a village; and
 - 3) increased costs of certain government projects and services.



Who Can Use AS 46.03.822?

- The State
- Municipalities
- Villages
- Private Persons. AS 46.03.870; *FDIC v. Laidlaw* (Alaska Supreme Court 2001).



Oil Spill Liability Trust Fund

Source of funds for both the federal agencies and the state in the event of a spill and the Fund is a back-up in the event of the failure of the plan holder and responsible parties' response to a spill.

Natural resource trustees have several tools for accessing the OSLTF to pay for natural resource assessments and restoration.

Claimants (individuals, corporations, and government entities) can submit claims for uncompensated removal costs and OPA damages caused by the oil spill to the OSLTF if the RP does not satisfy their claims. The National Pollution Fund Center adjudicates the claims and pays those with merit.

The Trust Fund is a source of compensation for injured parties if the federal limits of liability are exceeded in a spill incident. The Fund is limited to \$1 billion per incident and \$500 million for natural resource damages.



Alaska Oil and Hazardous Substance Release Prevention and Response Fund

The Alaska Response Fund has two accounts:

1) the Prevention Account funds on-going state spill prevention and cleanup programs; and

2) the Response Account is a source of funding for the state's response to an oil or hazardous substance release that is declared a disaster by the governor, or to respond to a release or threatened release that poses an imminent and substantial threat to the public health or welfare, or to the environment. Unlike the federal Fund, it does not pay private claims.

Funded by a 4 cent a barrel (prevention account) and 1 cent a barrel surcharge (response account) on crude oil production, a .95 cent per gallon refined fuels surcharge (prevention account) and from costs recovered from liable parties.*



Example #1: Alaska Tanker Co., LLC (ATC)

Alaskan Explorer -- owned by Kiska Island LLC and operated by Alaska Tanker Company LLC -- both are responsible parties under federal law and liable parties under Alaska law.

ATC transports Hilcorp Alaska, LLC's crude oil who would also be a liable party under Alaska law in the event of a spill incident.

ATC is the holder of the federal Vessel Response Plan and the State C-plan.

ATC has a federal Certificate of Financial Responsibility for the tanker and a Certificate of Financial Responsibility from the State. The amount of required state FR for the tanker is \$729 million.

Alyeska is the primary response action contractor and OSRO for ATC and will respond to a spill incident along with ATC's incident team.



Example #2 Hilcorp North Slope, LLC: Spot Chartered Foreign Tankers

Hilcorp North Slope, LLC holds the state contingency plan previously held by BP Oil Shipping Co, to spot charter foreign tankers to transport crude oil to Asia.

Zenith Spirit -- owned by Zenith Spirit L.L.C. and operated by Teekay Marine (Singapore) Pte Ltd. Both are responsible parties under federal law and liable parties under Alaska law.

Hilcorp Alaska, LLC is the owner of the crude oil cargo making it also a liable party under Alaska law.

Teekay Shipping Limited holds the federal response plan.* Hilcorp North Slope, LLC is the state c-plan holder. Alyeska is Hilcorp North Slope, LLC's primary response action contractor.**

Teekay Marine (Singapore) Pte. Ltd. has a federal Certificate of Financial Responsibility for the tanker. Hilcorp North Slope, LLC has a Certificate of Financial Responsibility from the State. The amount of the required state FR for the tanker is \$ 590,639,151.***

