

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Oil & Gas)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil, penalties, and  
9 inspection authority of the Department of Environ-  
10 mental Conservation; relating to the oil and hazard-  
11 ous substance release response fund and responses to  
12 oil and hazardous substance emergencies; authorizing  
13 the Department of Environmental Conservation and  
14 municipalities to enter into agreements pertaining to  
15 vessel traffic control and monitoring systems; and  
16 providing for an effective date."

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

18 \* Section 1. AS 29.35.020 is amended by adding a new subsection to  
19 read:

20 (d) A municipality may enter into agreements with the United  
21 States Coast Guard, the United States Environmental Protection Agency,  
22 and other persons relating to development and enforcement of vessel  
23 traffic control and monitoring systems for oil barges and tank vessels  
24 carrying oil operating in or near the waters of the state.

25 \* Sec. 2. AS 46.03.759(c) is amended to read:

26 (c) Subject to the \$500,000,000 maximum set under (a) of this  
27 section the court shall assess four times the penalty set out in (a)  
28 of this section if the court finds

29 (1) the discharge was caused by the gross negligence or

1 intentional act of the defendant;

2 (2) the defendant did not take reasonable measures to  
3 contain and clean up the discharged oil; or

4 (3) the defendant did not act or respond in accordance with  
5 an approved oil discharge prevention and contingency plan.

6 \* Sec. 3. AS 46.03.823(a) is amended to read:

7 (a) A person who is a response action contractor with respect to  
8 a release or threatened release of a hazardous substance whose acts or  
9 omissions are not contrary to a response plan or order by a state or  
10 federal agency having jurisdiction over the release or threatened  
11 release is not civilly liable for injuries, costs, damages, expenses,  
12 or other liability that results from the release or threatened release  
13 unless the release or threatened release is caused by an act or omis-  
14 sion of the response action contractor that is negligent or grossly  
15 negligent or constitutes intentional misconduct. To show negligence by  
16 a response action contractor, a claimant must show that the acts or  
17 omissions of the contractor under the response action contract were  
18 not in accordance with generally accepted professional standards and  
19 practices at the time the response action services were performed.

20 \* Sec. 4. AS 46.03.823(b) is amended to read:

21 (b) The liability limitation under (a) of this section  
22 (1) does not apply to a response action contractor who  
23 would otherwise be liable for the release or threatened release under  
24 state or federal law even if that person had not carried out a re-  
25 sponse action with respect to the release or threatened release; and  
26 (2) does apply only to releases for which notification to  
27 the department was provided and received in the manner prescribed  
28 under state law [STRICTLY LIABLE UNDER THIS SECTION].

29 \* Sec. 5. AS 46.03.823(e) is amended to read:

1 (e) This section does not affect the liability of a response  
2 action contractor that may arise from the response action contractor's  
3 failure to comply with the terms or conditions of a

4 (1) response action contract or a remedial action plan if  
5 one has been approved by the department; or

6 (2) contingency plan approved by the department where the  
7 response action contractor is the plan holder.

8 \* Sec. 6. AS 46.03.823(g)(2) is amended to read:

9 (2) "response action contract" means a written contract or  
10 agreement to provide response action with respect to a release or  
11 threatened release of a hazardous substance, entered into by a person  
12 with

13 (A) the department; [OR]

14 (B) another person who has entered into an agreement  
15 with the department that provides for response action subject to  
16 the department's oversight and control;

17 (C) a federal agency with jurisdiction over the re-  
18 lease or threatened release; or

19 (D) another person potentially liable for the release  
20 or threatened release under state or federal law;

21 \* Sec. 7. AS 46.03.823(g)(3) is amended to read:

22 (3) "response action contractor" means

23 (A) a person who enters into a response action con-  
24 tract with respect to a release or threatened release of a haz-  
25 ardous substance and who is carrying out the contract, including  
26 a cooperative organization formed to maintain and supply response  
27 equipment and materials that enters into a response action con-  
28 tract relating to a release or threatened release; and

29 (B) a person who is retained or hired by and is under

1 the control of a person described in (A) of this paragraph to  
2 provide services related to the response action contract.

3 \* Sec. 8. AS 46.04.020(e) is amended to read:

4 (e) The department shall enter into negotiations for memoranda  
5 of understanding or cooperative agreements with the United States  
6 Coast Guard, the United States Environmental Protection Agency, and  
7 other persons in order to

8 (1) facilitate coordinated and effective oil discharge  
9 prevention and response in the state, including agreements relating to  
10 development and enforcement of vessel traffic control and monitoring  
11 systems for tank vessels and oil barges operating in or near the  
12 waters of the state;

13 (2) provide for cooperative review of oil discharge preven-  
14 tion and contingency plans submitted to the department under AS 46.-  
15 04.030;

16 (3) provide for cooperative inspections of oil terminal  
17 facilities by the department and the United States Coast Guard or  
18 United States Environmental Protection Agency; and

19 (4) provide for cooperative oil discharge notification  
20 procedures.

21 \* Sec. 9. AS 46.04.030 is amended to read:

22 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

23 (a) A person may not cause or permit the operation of an oil terminal  
24 facility in the state unless an oil discharge prevention and contin-  
25 gency plan for the facility has been approved by the department and  
26 the person is in compliance with the plan [. THE DEPARTMENT IS THE  
27 ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE  
28 CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

29 (b) ▲ [AFTER JANUARY 1, 1981, A] person may not cause or permit

1 the operation of a pipeline or an [OFFSHORE] exploration or production  
2 facility in the state unless an oil discharge prevention and contin-  
3 gency plan for the pipeline or facility has been approved by the  
4 department and the person is in compliance with the plan.

5 (c) Except as provided in (n) of this section, a [A] person may  
6 not operate a tank vessel or an oil barge within the waters of the  
7 state, or cause or permit the transfer of oil to or from a tank vessel  
8 or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an  
9 oil discharge prevention and contingency plan for the tank vessel or  
10 oil barge has been approved by the department and the person is in  
11 compliance with the plan [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.-  
12 790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS  
13 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DIS-  
14 CHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN  
15 APPROVED BY THE DEPARTMENT].

16 (d) Upon approval of a contingency plan, the department shall  
17 issue to the plan holder a certificate stating that the contingency  
18 plan has been approved by the department. The certificate must in-  
19 clude the name of the facility, pipeline, tank vessel, or oil barge  
20 for which it is issued, the effective date of the contingency plan,  
21 and the date by which the contingency plan must be submitted for  
22 renewal. A [AN OIL DISCHARGE] contingency plan must be submitted for  
23 renewal [RENEWED AT LEAST] every three years.

24 (e) The department may attach reasonable terms and conditions to  
25 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
26 that the department [WHICH IT] determines are necessary to ensure  
27 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
28 has access to sufficient resources to protect environmentally sensi-  
29 tive areas and to contain, clean up, and mitigate potential oil

1 discharges from the facility or vessel as provided in (k) of this sec-  
2 tion, and to ensure that the applicant complies with the contingency  
3 plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contin-  
4 gency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY]  
5 by the applicant of the best technology that was available at the time  
6 the contingency plan was submitted or renewed. The department may  
7 require an applicant or holder of an approved contingency plan to take  
8 steps necessary to demonstrate its ability to carry out the contingen-  
9 cy plan, including

10 (1) periodic training;  
11 (2) response team exercises; and  
12 (3) verifying access to inventories of [AVAILABLE] equip-  
13 ment, supplies, and personnel identified as available in the approved  
14 contingency plan.

15 (f) Upon request of a plan holder or on the department's own  
16 initiative, the [THE] department, after notice and opportunity for  
17 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency  
18 plan if the department [IT] determines that a change has occurred in  
19 the operation of a facility [, MARINA] or vessel necessitating an  
20 amended or supplemented plan, or the operator's discharge experience  
21 demonstrates a necessity for modification. The department, after  
22 notice and opportunity for hearing, may revoke its approval of a [AN  
23 OIL DISCHARGE] contingency plan if the department [IT] determines that

24 (1) approval was obtained by fraud or misrepresentation;  
25 (2) the operator does not have access to the quality or  
26 quantity of resources identified in the plan; [OR]  
27 (3) a term or condition of approval or modification has  
28 been violated; or  
29 (4) the person is not in compliance with the contingency

1 plan and the deficiency materially affects the plan holder's response  
2 capability.

3 (g) Failure of a holder of an approved or modified [OIL DIS-  
4 CHARGE] contingency plan to comply with the plan, or to have access to  
5 the quality or quantity of resources identified in the plan or [AND,  
6 IN THE EVENT OF A SPILL,] to respond with those resources within the  
7 shortest possible [FEASIBLE] time in the event of a spill is a vio-  
8 lation of this chapter for purposes of AS 46.03.760(a), 46.03.765,  
9 46.03.790, and any other applicable law. If the holder of an approved  
10 or modified [OIL DISCHARGE] contingency plan fails to respond to and  
11 conduct cleanup operations of an unpermitted discharge of crude oil  
12 with the quality and quantity of resources identified in the plan and  
13 in a manner required under the plan, the holder is strictly liable,  
14 jointly and severally, for the civil penalty assessed under AS 46.03.-  
15 758, 46.03.759, or 46.03.760 against any other person for that dis-  
16 charge.

17 \* Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

18 (h) The department is the only state agency that has the power  
19 to approve, modify, or revoke a contingency plan for the purposes of  
20 this section. The department shall exercise its power under this  
21 section in a timely manner. Except for prosecutions under AS 46.03.-  
22 790(b) and except as provided in (i) of this section, it is not a  
23 defense to an action brought for a violation of (a) - (c) of this  
24 section that the person charged believed that a current contingency  
25 plan had been approved by the department.

26 (i) It is a defense to an action brought for a violation of  
27 (a) - (c) of this section that the person charged relied on a certifi-  
28 cate of approval issued by the department under (d) of this section  
29 unless the person knew or had reason to know at the time of the

1 alleged violation that approval of the plan had been revoked or that  
2 the holder of the plan was not capable of carrying out the plan.

3 (j) Before the department approves or modifies a contingency  
4 plan under this section, the department shall provide a copy of the  
5 contingency plan to the Department of Fish and Game and to the Depart-  
6 ment of Natural Resources for their review. The department shall by  
7 regulation establish the procedures and time limits applicable to  
8 agency review of contingency plans.

9 (k) Except as provided in (m) and (o) of this section, the  
10 holder of an approved contingency plan required under this section  
11 shall maintain, or have available under contract, in its region of  
12 operation or in another region of operation approved by the depart-  
13 ment, singly or in conjunction with other operators, sufficient oil  
14 discharge containment, storage, transfer, and cleanup equipment,  
15 personnel, and resources to meet the following response planning  
16 standards:

17 (1) for a discharge from an oil terminal facility, the plan  
18 holder shall plan to be able to contain or control, and clean up a  
19 discharge equal to the capacity of the largest oil storage tank at the  
20 facility within 72 hours, except that if the department determines  
21 that the facility is located in an area of high risk because of natu-  
22 ral or man-made conditions outside of the facility, it may increase  
23 the volume requirement under this paragraph so that the contingency  
24 plan must be designed for a response that is greater in amount than  
25 the capacity of the largest oil storage tank at the facility;

26 (2) for a discharge from an exploration or production  
27 facility or a pipeline, the plan holder shall plan to be able to  
28 contain or control, and clean up the realistic maximum oil discharge  
29 within 72 hours;

1           (3) for a discharge of crude oil from a tank vessel or oil  
2 barge, the plan holder shall plan to be able to contain or control,  
3 and clean up a realistic maximum oil discharge as provided in (A),  
4 (B), and (C) of this paragraph:

5           (A) for tank vessels and oil barges having a cargo  
6 volume of less than 500,000 barrels, the plan holder shall main-  
7 tain at a minimum in the region of operation, equipment, person-  
8 nel, and other resources sufficient to contain or control, and  
9 clean up a 50,000 barrel discharge within 72 hours;

10           (B) for tank vessels and oil barges having a cargo  
11 volume of 500,000 barrels or more, the plan holder shall maintain  
12 at a minimum in its region of operation, equipment, personnel,  
13 and other resources sufficient to contain or control, and clean  
14 up a 300,000 barrel discharge within 72 hours;

15           (C) in addition to the minimum equipment, personnel,  
16 and other resources required to be maintained within the region  
17 of operation by (A) or (B) of this paragraph, a plan holder shall  
18 maintain, either within or outside of the plan holder's region of  
19 operation, additional equipment, personnel, and other resources  
20 sufficient to contain or control, and clean up a realistic maxi-  
21 mum discharge within the shortest possible time; the plan holder  
22 must demonstrate that the equipment, personnel, and other re-  
23 sources maintained outside the plan holder's region of operation  
24 are accessible to the plan holder and will be deployed and op-  
25 erating at the discharge site within 72 hours;

26           (4) for a discharge from a tank vessel or oil barge carry-  
27 ing noncrude oil in bulk as cargo, the plan holder shall plan to be  
28 able to contain or control 15 percent of the maximum capacity of the  
29 vessel or barge or the realistic maximum oil discharge, whichever is

1 greater, within 48 hours and clean up the discharge within the short-  
2 est possible time consistent with minimizing damage to the environ-  
3 ment;

4 (5) for a discharge subject to the provisions of (1) - (3)  
5 of this subsection that enters a receiving environment other than open  
6 water, the time requirement for clean up of the portion of the dis-  
7 charge that enters the receiving environment may, in the department's  
8 discretion, be within the shortest possible time consistent with  
9 minimizing damage to the environment.

10 (1) The provisions of (k) of this section do not constitute  
11 cleanup standards that must be met by the holder of a contingency  
12 plan. Notwithstanding (k) of this section, failure to remove a dis-  
13 charge within the time periods set out in (k) of this section does not  
14 constitute failure to comply with a contingency plan for purposes of  
15 (g) of this section or for the purpose of imposing administrative,  
16 civil, or criminal penalties under any other law.

17 (m) When considering whether to approve or modify a contingency  
18 plan, the department may consider evidence that oil discharge preven-  
19 tion measures such as double hulls or double bottoms on vessels or  
20 barges, secondary containment systems, hydrostatic testing, enhanced  
21 vessel traffic systems, or enhanced crew or staffing levels have been  
22 implemented, and, in its discretion, may make exceptions to the re-  
23 quirements of (k) of this section to reflect the reduced risk of oil  
24 discharges from the facility, pipeline, vessel, or barge for which the  
25 plan is submitted or being modified.

26 (n) A tank vessel or oil barge that is conducting, or is avail-  
27 able only for conducting, oil discharge response operations is exempt  
28 from the requirements of (c) of this section if the tank vessel or oil  
29 barge has received prior approval of the department. The department

1        may approve exemptions under this subsection upon application and  
2        presentation of information required by the department.

3            (o) A holder of an approved contingency plan does not violate  
4        the terms of the contingency plan by furnishing to another plan hold-  
5        er, with the approval of the department, equipment, materials, or  
6        personnel to assist the other plan holder in a response to an oil  
7        discharge. The plan holder shall replace or return the transferred  
8        equipment, materials, and personnel as soon as feasible. The depart-  
9        ment shall by regulation determine the maximum amount of equipment,  
10       materials, or personnel and the maximum amount of time for which it  
11       will approve a transfer.

12            (p) In this section,

13            (1) "contingency plan" means an oil discharge prevention  
14        and contingency plan required under this section;

15            (2) "in compliance with the plan" means, with respect to a  
16        contingency plan, to

17            (A) establish and carry out procedures identified in  
18        the plan as being the responsibility of the holder of the plan;

19            (B) have access to and have on hand the quantity and  
20        quality of equipment, personnel, and other resources identified  
21        as being accessible or on hand in the plan;

22            (C) fulfill the assurances espoused in the plan in the  
23        manner described in the plan;

24            (D) comply with terms and conditions attached to the  
25        plan by the department under the authority of (e) of this sec-  
26        tion; and

27            (E) successfully demonstrate the ability to carry out  
28        the plan when required by the department under (e) of this sec-  
29        tion;

1 (3) "realistic maximum oil discharge" means the maximum and  
2 most damaging oil discharge that the department estimates could occur  
3 during the lifetime of the facility or pipeline based on the size,  
4 location, and capacity of the facility or pipeline; on the depart-  
5 ment's knowledge and experience with the facility or pipeline or with  
6 similar facilities or pipelines; and on the department's analysis of  
7 possible mishaps at the facility or pipeline or at similar facilities  
8 or pipelines;

9 (4) "region of operation," with respect to the holder of a  
10 contingency plan, means the area where the operations of the holder  
11 that require a contingency plan are located, the boundaries of which  
12 correspond to the regional boundaries established by the commissioner  
13 for regional master planning purposes under AS 46.04.210.

14 \* Sec. 11. AS 46.04.040(a) is amended to read:

15 (a) A person may not cause or permit the operation of an oil  
16 terminal facility in the state unless the person has furnished to the  
17 department, and the department has approved, proof of financial abil-  
18 ity to respond in damages. Proof of financial responsibility required  
19 for a crude oil terminal is \$50,000,000 per incident. Proof of finan-  
20 cial responsibility required for a noncrude oil terminal is \$25, per  
21 incident, for each barrel of total noncrude oil storage capacity at  
22 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
23 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
24 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
25 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever  
26 is greater, subject to a maximum of \$50,000,000. For purposes of this  
27 subsection, an oil terminal facility that stores both crude oil and  
28 noncrude oil is subject to the financial responsibility requirements  
29 applicable to the type of facility that corresponds to the type of oil

1 storage that predominates at the facility. However, if the facility  
2 stores more noncrude oil than crude oil, the \$25 per incident, per  
3 barrel requirement of this subsection applies to each barrel of oil  
4 storage capacity at the facility.

5 \* Sec. 12. AS 46.04.040(b) is amended to read:

6 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
7 operation of a pipeline or an [OFFSHORE] exploration or production  
8 facility in the state unless the person has furnished to the depart-  
9 ment, and the department has approved, proof of financial ability to  
10 respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of  
11 financial responsibility required for a pipeline or an offshore explo-  
12 ration or production facility is \$50,000,000 [MAY NOT BE LESS THAN  
13 \$35,000,000] per incident. Proof of financial responsibility required  
14 for an onshore production facility is \$20,000,000 per incident. Proof  
15 of financial responsibility required for an onshore exploration facil-  
16 ity is \$5,000,000 per incident.

17 \* Sec. 13. AS 46.04.040(c) is amended to read:

18 (c) Except as provided in (m) of this section, a [A] person may  
19 not operate a tank vessel or an oil barge within the waters of the  
20 state, or cause or permit the transfer of oil to or from a tank vessel  
21 [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the  
22 person operating the tank vessel or oil barge has furnished to the  
23 department, and the department has approved, proof of financial abil-  
24 ity to respond in damages. Proof of financial responsibility required  
25 under this subsection is

26 (1) \$300, per incident, for each barrel of storage capacity  
27 or \$100,000,000, whichever is greater, for a tank vessel or barge  
28 carrying crude oil;

29 (2) \$100, per incident, for each barrel of storage capacity

1 or \$1,000,000, whichever is greater, subject to a maximum of  
2 \$35,000,000, for a tank vessel or barge carrying noncrude oil [RESPON-  
3 SIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART-  
4 MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE  
5 FOLLOWING AMOUNTS:

6 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-  
7 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE  
8 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204  
9 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

10 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC. -  
11 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

12 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY  
13 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
14 GREATER].

15 \* Sec. 14. AS 46.04.040(d) is amended to read:

16 (d) Except for prosecutions under AS 46.03.790(b) and except as  
17 provided in (k) of this section, it is not a defense to an action  
18 brought for violation of (a) - (c) [(c)] of this section that the  
19 person charged believed in good faith that proof of financial ability  
20 to respond in damages had been furnished to, and approved by, the  
21 department [THE VESSEL OPERATOR POSSESSED PROOF OF FINANCIAL RESPON-  
22 SIBILITY ACCEPTED BY THE DEPARTMENT].

23 \* Sec. 15. AS 46.04.040(e) is amended to read:

24 (e) Financial responsibility may be demonstrated by (1) self-  
25 insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter  
26 of credit approved by the department, or (6) other proof of financial  
27 responsibility approved by the department, including proof of finan-  
28 cial responsibility provided by a group of insureds who have agreed to  
29 cover pollution risks of members of the group under terms the

1 department may prescribe. An action brought under AS 46.03.758,  
2 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO  
3 COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a  
4 state court directly against the insurer, the group, or another person  
5 providing evidence of financial responsibility. The applicant, and an  
6 insurer, surety, [OR] guarantor, person furnishing an approved letter  
7 of credit, or other group or person providing proof of financial  
8 responsibility approved by the department shall appoint an agent for  
9 service of process in the state. For purposes of this subsection, an  
10 [AN] insurer, other than a group of insureds whose agreement has been  
11 approved by the department, must either be authorized by the Depart-  
12 ment of Commerce and Economic Development to sell insurance in the  
13 state or be an unauthorized insurer listed by the Department of Com-  
14 merce and Economic Development as not disapproved for use in the  
15 state.

16 \* Sec. 16. AS 46.04.040(f) is amended to read:

17 (f) Acceptance of proof of financial responsibility expires

18 (1) one year from its issuance for self-insurance;

19 (2) on the effective date of a change in the surety bond,  
20 guarantee, [OR] insurance agreement, letter of credit, or other proof  
21 of financial responsibility; or

22 (3) on the expiration or cancellation of the surety bond,  
23 guarantee, [OR] insurance agreement, letter of credit, or other proof  
24 of financial responsibility.

25 \* Sec. 17. AS 46.04.040(g) is amended to read:

26 (g) The person whose proof of financial responsibility is ac-  
27 cepted by the department under this section shall notify the depart-  
28 ment at least 30 days before the effective date of a change, expira-  
29 tion or cancellation in the surety bond, guarantee, [OR] insurance

1 agreement, letter of credit, or other proof of financial responsibil-  
2 ity. Application for renewal of acceptance of proof of financial  
3 responsibility under this section must be filed at least 30 days  
4 before the date of expiration.

5 \* Sec. 18. AS 46.04.040 is amended by adding new subsections to read:

6 (j) Upon acceptance and approval of proof of financial responsi-  
7 bility under this section, the department shall issue to the applicant  
8 a certificate stating that the state's financial responsibility re-  
9 quirements have been satisfied. The certificate must include the name  
10 of the facility, pipeline, tank vessel, or oil barge for which it is  
11 issued and the expiration date of the certificate.

12 (k) It is a defense to an action brought for violation of (a) -  
13 (c) of this section that the person charged relied on a certificate of  
14 approval issued under (j) of this section unless the person knew or  
15 had reason to know at the time of the alleged violation that the  
16 approval had been revoked or was expired.

17 (l) Notwithstanding the requirements of (e) of this section, the  
18 applicant may provide evidence of financial responsibility provided by  
19 an insurer or other person who does not agree to be subject to direct  
20 action in state courts or to appoint an agent for service of process  
21 if

22 (1) the department is satisfied that the insurance or other  
23 form of financial responsibility covers judgments under the statutes  
24 listed in (e) of this section;

25 (2) the applicant provides proof of \$50,000,000, or the  
26 amount required by (a) - (c) of this section, whichever is less, in  
27 insurance or other form of financial responsibility that meets the  
28 requirements of (e) of this section; and

29 (3) the applicant provides a sworn statement or affidavit

1 that insurance or other form of financial responsibility that meets  
2 the requirements of (e) of this section is not available in greater  
3 amounts.

4 (m) A tank vessel or oil barge that is conducting, or is avail-  
5 able only for conducting, oil discharge response operations is exempt  
6 from the requirements of (c) of this section if the tank vessel or oil  
7 barge has received prior approval of the department. The department  
8 may approve an exemption under this subsection upon application and  
9 presentation of information required by the department.

10 \* Sec. 19. AS 46.04 is amended by adding a new section to read:

11 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
12 amounts in AS 46.04.040 change, as provided in this section, according  
13 to and to the extent of changes in the Consumer Price Index for all  
14 urban consumers for the Anchorage metropolitan area compiled by the  
15 Bureau of Labor Statistics, United States Department of Labor (the  
16 index). The index for January of the year in which this section  
17 becomes effective is the reference base index.

18 (b) The dollar amounts change on October 1 of each third year  
19 according to the percentage change between the index for January of  
20 that year and the most recent index used to determine whether to  
21 change the dollar amounts. After calculation of the new amounts, the  
22 resulting amounts shall be rounded to the nearest cent.

23 (c) If the index is revised, the percentage of change is cal-  
24 culated on the basis of the revised index. If a revision of the index  
25 changes the reference base index, a revised reference base index is  
26 determined by multiplying the reference base index applicable by the  
27 rebasing factor furnished by the United States Bureau of Labor Statis-  
28 tics. If the index is superseded, the index referred to in this sec-  
29 tion is the one represented by the Bureau of Labor Statistics as

1 reflecting most accurately changes in the purchasing power of the  
2 dollar for Alaskan consumers.

3 (d) The department shall adopt a regulation announcing

4 (1) on or before June 30 of each third year, the changes in  
5 dollar amounts required by (b) of this section; and

6 (2) promptly after the changes occur, changes in the index  
7 required by (c) of this section, including, if applicable, the numer-  
8 ical equivalent of the reference base index under a revised reference  
9 base index and the designation or title of any index superseding the  
10 index.

11 (e) The department shall also provide notification of a change  
12 in dollar amounts required under (b) of this section to the clerks of  
13 court in each judicial district of the state.

14 \* Sec. 20. AS 46.04.050 is amended to read:

15 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE  
16 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE  
17 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and  
18 46.04.060 do not apply to an oil terminal facility that has an effec-  
19 tive storage capacity of less than 5,000 [10,000] barrels of crude oil  
20 or less than 10,000 barrels of noncrude oil.

21 \* Sec. 21. AS 46.04.060 is amended to read:

22 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
23 access or inspection conferred upon the department by law or other-  
24 wise, the department may at reasonable times and in a safe manner  
25 enter and inspect oil [OIL] terminal facilities, pipelines, [OFFSHORE]  
26 exploration and production facilities, tank vessels, and oil barges in  
27 order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

28 (1) ensure compliance with the provisions of this chapter;

29 or

1                   (2) participate in an examination of the structural integ-  
2 riety and the operating and mechanical systems of those vessels,  
3 barges, pipelines, and facilities by federal and state agencies with  
4 jurisdiction.

5 \* Sec. 22. AS 46.04.060 is amended by adding a new subsection to read:

6                   (b) When the department determines that no federal or state  
7 agencies with jurisdiction are performing timely and adequate inspec-  
8 tions of an oil terminal facility, pipeline, exploration or production  
9 facility, tank vessel, or oil barge, it may perform its own inspection  
10 of the structural integrity and operating and mechanical systems of a  
11 facility, pipeline, tank vessel, or oil barge by using personnel with  
12 qualifications in the areas being inspected.

13 \* Sec. 23. AS 46.04.200 is amended to read:

14                   Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
15 prepare and annually review and revise a statewide master oil and  
16 hazardous substance discharge [AND] prevention and contingency plan.

17                   (b) The state master plan prepared under this section must

18                   (1) take into consideration the elements of an oil dis-  
19 charge prevention and contingency plan approved or submitted for  
20 approval under AS 46.04.030;

21                   (2) clarify and specify the respective responsibilities of  
22 each of the following in the assessment, containment, and cleanup of a  
23 catastrophic oil discharge or of a significant discharge of a hazard-  
24 ous substance into the environment of the state:

25                   (A) agencies of the state;

26                   (B) municipalities of the state;

27                   (C) appropriate federal agencies;

28                   (D) operators of facilities;

29                   (E) private parties whose land and other property may

1 be affected by the oil or hazardous substance discharge; and

2 (F) other parties identified by the commissioner as  
3 having an interest in or the resources to assist in the contain-  
4 ment and cleanup of an oil or hazardous substance discharge;

5 (3) specify the respective responsibilities of parties  
6 identified in (2) of this subsection in an emergency response; and

7 (4) identify actions necessary to reduce the likelihood of  
8 catastrophic oil discharges and significant discharges of hazardous  
9 substances.

10 (c) In preparing and annually reviewing the state master plan,  
11 the commissioner shall

12 (1) consult with municipal and community officials, and  
13 with representatives of affected regional organizations;

14 (2) submit the draft plan to the public for review and  
15 comment;

16 (3) submit to the legislature for review, not later than  
17 the 10th day following the convening of each regular session, the plan  
18 and any annual revision of the plan; and

19 (4) require or schedule unannounced oil spill drills to  
20 test the sufficiency of an oil discharge prevention and contingency  
21 plan approved under AS 46.04.030 or of the cleanup plans of a party  
22 identified under (b)(2) of this section.

23 \* Sec. 24. AS 46.04.210(a) is amended to read:

24 (a) For any region of the state, the boundaries of which are  
25 determined by the commissioner by regulation, in which the department  
26 is required to review and approve an oil discharge prevention and  
27 contingency plan submitted by a person under AS 46.04.030, the depart-  
28 ment shall prepare and annually review and revise a regional master  
29 oil and hazardous substance discharge [AND] prevention and contingency

1 plan.

2 \* Sec. 25. AS 46.04.900(8) is amended to read:

3 (8) "[OFFSHORE] exploration [OR PRODUCTION] facility" means  
4 a platform, vessel, or other facility used to explore for [OR PRODUCE]  
5 hydrocarbons in or on the waters of the state or in or on land in the  
6 state; the term does not include platforms or vessels used for strati-  
7 graphic drilling or other operations that [WHICH] are not authorized  
8 or intended to drill to a producing formation;

9 \* Sec. 26. AS 46.04.900(15) is amended to read:

10 (15) "tank vessel" means a self-propelled waterborne vessel  
11 that is constructed or converted to carry liquid bulk cargo in tanks  
12 and includes tankers, tankships, and combination carriers when carry-  
13 ing oil; the term does not include vessels carrying oil in drums,  
14 barrels, or other packages, or vessels carrying oil as fuel or stores  
15 for that vessel;

16 \* Sec. 27. AS 46.04.900 is amended by adding new paragraphs to read:

17 (18) "pipeline" means the facilities, including piping,  
18 compressors, pump stations, and storage tanks, used to transport crude  
19 oil and associated hydrocarbons between production facilities or from  
20 one or more production facilities to marine vessels;

21 (19) "production facility" means a drilling rig, drill site,  
22 flow station, gathering center, pump station, storage tank, well, and  
23 related appurtenances on other facilities to produce, gather, clean,  
24 dehydrate, condition, or store crude oil and associated hydrocarbons  
25 in or on the water of the state or on land in the state, and gathering  
26 and flow lines used to transport crude oil and associated hydrocarbons  
27 to the inlet of a pipeline system for delivery to a marine facility,  
28 refinery, or other production facility.

29 \* Sec. 28. AS 46.08.040 is amended to read:

1           Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
2 money from the fund to

3           (1) investigate and evaluate the release or threatened  
4 release of oil or a hazardous substance, and contain, clean up, and  
5 take other necessary action, such as monitoring and assessing, to  
6 address a release or threatened release of oil or a hazardous sub-  
7 stance that poses an imminent and substantial threat to the public  
8 health or welfare, or to the environment;

9           (2) pay all costs incurred

10           (A) to establish and maintain the oil and hazardous  
11 substance response office and for the expenses of the oil and  
12 hazardous substance response corps and the oil and hazardous  
13 substance response depots established by that office;

14           (B) to review oil discharge prevention and contingency  
15 plans submitted under AS 46.04.030;

16           (C) to conduct training, response exercises, inspec-  
17 tions, and tests, in order to verify equipment inventories and  
18 ability to prevent and respond to oil and hazardous substance  
19 release emergencies, and to undertake other activities intended  
20 to verify or establish the preparedness of the state, a munic-  
21 ipality, or a party required by AS 46.04.030 to have an approved  
22 contingency plan to act in accordance with that plan; and

23           (D) to verify or establish proof of financial respon-  
24 sibility required by AS 46.04.040;

25           (3) provide matching funds for participation in federal oil  
26 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
27 hensive Environmental Response, Compensation, and Liability Act of  
28 1980); [AND]

29           (4) recover the costs to the state or to a municipality of

1 a containment and cleanup resulting from the release or the threatened  
2 release of oil or a hazardous substance; [.]

3 (5) prepare, review, and revise

4 (A) the state's master oil and hazardous substance  
5 discharge [AND] prevention and contingency plan required by  
6 AS 46.04.200; and

7 (B) a regional master oil and hazardous substance  
8 discharge [AND] prevention and contingency plan required by  
9 AS 46.04.210; and

10 (6) restore the environment by addressing the effects of an  
11 oil or hazardous substance release.

12 \* Sec. 29. AS 46.08.060(a) is amended to read:

13 (a) The commissioner shall submit a report to the legislature  
14 not later than the 10th day following the convening of each regular  
15 session of the legislature. The report may include information con-  
16 sidered significant by the commissioner but must include:

17 (1) the amount of money expended under AS 46.08.040 during  
18 the preceding fiscal year;

19 (2) the amount and source of money received and money  
20 recovered during the preceding fiscal year as specified in AS 46.08.-  
21 020;

22 (3) a summary of municipal participation in responses  
23 funded by the fund;

24 (4) a detailed summary of department activities in re-  
25 sponses funded by the fund during the preceding fiscal year, including  
26 response descriptions and statements outlining the nature of the  
27 threat; in this paragraph, "detailed" includes information describing  
28 each personal services position and total compensation for that posi-  
29 tion, each contract in excess of \$20,000, and each purchase in excess

1       of \$10,000; and

2                   (5) the projected cost for the next fiscal year of monitor-  
3       ing, operating, and maintaining sites where response has been com-  
4       pleted or is expected to be continued during the fiscal year.

5       \* Sec. 30. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
6       January 31, 1992, the Department of Environmental Conservation shall sur-  
7       vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
8       in the state with an effective storage capacity of 5,000 to 10,000 barrels  
9       in order to determine for each facility

10           (1) its actual storage capacity;

11           (2) the type of noncrude oil products stored;

12           (3) its age, design, construction, and general condition;

13           (4) the design and construction standards applicable or rele-  
14       vant;

15           (5) the presence or absence of containment structures and equip-  
16       ment;

17           (6) its ability to respond to a release or threatened release;

18           (7) the environmental sensitivity of the surrounding area and  
19       the potential risk to the environment if a release occurs;

20           (8) the presence or absence of surface and subsurface pipelines  
21       and storage tanks; and

22           (9) other appropriate information.

23       (b) By January 31, 1992, the Department of Environmental Conservation  
24       shall report to the legislature the results of the survey required under  
25       (a) of this section and its written recommendations concerning discharge  
26       prevention and contingency requirements or design review requirements that  
27       should be enacted for noncrude oil terminal facilities with storage capac-  
28       ities of less than 10,000 barrels.

29       (c) Upon completion of the survey required under (a) of this section,

1 the Department of Environmental Conservation may

2 (1) notify each facility of the results of the facility's in-  
3 spection; and

4 (2) provide each facility with recommendations and technical  
5 assistance concerning identified deficiencies.

6 (d) The Department of Environmental Conservation may conduct the  
7 inspections required under this section notwithstanding the provisions of  
8 AS 46.04.050. The department shall conduct the inspections at reasonable  
9 times.

10 \* Sec. 31. STUDY RELATING TO NONCRUDE OIL TANKERS AND BARGES. By  
11 July 1, 1991, the Department of Environmental Conservation shall conduct a  
12 study and report to the legislature its recommendations concerning the  
13 following issues related to oil discharge prevention and contingency plan-  
14 ning for tank vessels and oil barges carrying noncrude oil in bulk as  
15 cargo:

16 (1) appropriate locations for regional response depots, based on  
17 an assessment of historical evidence of where noncrude oil discharges are  
18 most likely to occur and the needs of remote areas of the state such as  
19 western and northern Alaska and the Aleutians;

20 (2) appropriate discharge response times;

21 (3) requirements for personnel and equipment that should be  
22 imposed on contingency plan holders;

23 (4) appropriate roles for industry and state and local govern-  
24 ments in the purchase, ownership, and positioning of discharge response  
25 efforts.

26 \* Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), en-  
27 acted by sec. 10 of this Act, do not apply to oil discharge prevention and  
28 contingency plans until June 1, 1991. On and after June 1, 1991, a contin-  
29 gency plan must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of

1 this Act, regardless of whether the contingency plan is due for renewal  
2 under AS 46.04.030(d), as amended by sec. 9 of this Act.

3 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this  
4 Act, do not apply to persons required to show proof of financial respon-  
5 sibility until June 1, 1991. On and after June 1, 1991, proof of financial  
6 responsibility must comply with AS 46.04.040, as amended by secs. 11 - 18  
7 of this Act, regardless of whether acceptance of proof of financial respon-  
8 sibility has expired under AS 46.04.040(f), as amended by sec. 16 of this  
9 Act.

10 \* Sec. 33. This Act takes effect immediately under AS 01.10.070(c).