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Referred: Rules

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Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Finance)
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) A [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) The department shall approve or disapprove a proposed con-
13 tingency plan within 65 days after it receives a complete application
14 for approval under this section.

15 (q) In this section,

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

18 (2) "in compliance with the plan" means, with respect to a
19 contingency plan, to

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

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

25 (C) fulfill the assurances espoused in the plan in the
26 manner described in the plan;

27 (D) comply with terms and conditions attached to the
28 plan by the department under the authority of (e) of this sec-
29 tion; and

1 (E) successfully demonstrate the ability to carry out
2 the plan when required by the department under (e) of this sec-
3 tion;

4 (3) "realistic maximum oil discharge" means the maximum and
5 most damaging oil discharge that the department estimates could occur
6 during the lifetime of the tank vessel, oil barge, facility, or pipe-
7 line based on the size, location, and capacity of the tank vessel, oil
8 barge, facility, or pipeline; on the department's knowledge and expe-
9 rience with the tank vessel, oil barge, facility, or pipeline or with
10 similar tank vessels, oil barges, facilities, or pipelines; and on the
11 department's analysis of possible mishaps to the tank vessel or oil
12 barge or at the facility or pipeline or to similar tank vessels or oil
13 barges or at similar facilities or pipelines;

14 (4) "region of operation," with respect to the holder of a
15 contingency plan, means the area where the operations of the holder
16 that require a contingency plan are located, the boundaries of which
17 correspond to the regional boundaries established by the commissioner
18 for regional master planning purposes under AS 46.04.210.

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

20 (a) A person may not cause or permit the operation of an oil
21 terminal facility in the state unless the person has furnished to the
22 department, and the department has approved, proof of financial abil-
23 ity to respond in damages. Proof of financial responsibility required
24 for a crude oil terminal is \$50,000,000 per incident. Proof of finan-
25 cial responsibility required for a noncrude oil terminal is \$25, per
26 incident, for each barrel of total noncrude oil storage capacity at
27 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY
28 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN
29 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE

1 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever
2 is greater, subject to a maximum of \$50,000,000. For purposes of this
3 subsection, an oil terminal facility that stores both crude oil and
4 noncrude oil is subject to the financial responsibility requirements
5 applicable to the type of facility that corresponds to the type of oil
6 storage that predominates at the facility. However, if the facility
7 stores more noncrude oil than crude oil, the \$25 per incident, per
8 barrel requirement of this subsection applies to each barrel of oil
9 storage capacity at the facility.

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

11 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
12 operation of a pipeline or an [OFFSHORE] exploration or production
13 facility in the state unless the person has furnished to the depart-
14 ment, and the department has approved, proof of financial ability to
15 respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of
16 financial responsibility required for a pipeline or an offshore explo-
17 ration or production facility is \$50,000,000 [MAY NOT BE LESS THAN
18 \$35,000,000] per incident. Proof of financial responsibility required
19 for an onshore production facility is \$20,000,000 per incident. Proof
20 of financial responsibility required for an onshore exploration facil-
21 ity is \$5,000,000 per incident.

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

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

1 under this subsection is

2 (1) \$300, per incident, for each barrel of storage capacity
3 or \$100,000,000, whichever is greater, for a tank vessel or barge
4 carrying crude oil;

5 (2) \$100, per incident, for each barrel of storage capacity
6 or \$1,000,000, whichever is greater, subject to a maximum of
7 \$35,000,000, for a tank vessel or barge carrying noncrude oil [RESPON-
8 SIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART-
9 MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE
10 FOLLOWING AMOUNTS:

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

15 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC. -
16 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

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

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

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

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

29 (e) Financial responsibility may be demonstrated by (1) self-

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

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

22 (f) Acceptance of proof of financial responsibility expires
23 (1) one year from its issuance for self-insurance;
24 (2) on the effective date of a change in the surety bond,
25 guarantee, [OR] insurance agreement, letter of credit, or other proof
26 of financial responsibility; or
27 (3) on the expiration or cancellation of the surety bond,
28 guarantee, [OR] insurance agreement, letter of credit, or other proof
29 of financial responsibility.

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

2 (g) The person whose proof of financial responsibility is ac-
3 cepted by the department under this section shall notify the depart-
4 ment at least 30 days before the effective date of a change, expira-
5 tion or cancellation in the surety bond, guarantee, [OR] insurance
6 agreement, letter of credit, or other proof of financial responsibil-
7 ity. Application for renewal of acceptance of proof of financial
8 responsibility under this section must be filed at least 30 days
9 before the date of expiration.

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

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

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

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

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

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

5 (3) the applicant provides a sworn statement or affidavit
6 that insurance or other form of financial responsibility that meets
7 the requirements of (e) of this section is not available in greater
8 amounts.

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

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

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

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

28 (c) If the index is revised, the percentage of change is cal-
29 culated on the basis of the revised index. If a revision of the index

1 changes the reference base index, a revised reference base index is
2 determined by multiplying the reference base index applicable by the
3 rebasing factor furnished by the United States Bureau of Labor Statis-
4 tics. If the index is superseded, the index referred to in this sec-
5 tion is the one represented by the Bureau of Labor Statistics as
6 reflecting most accurately changes in the purchasing power of the
7 dollar for Alaskan consumers.

8 (d) The department shall adopt a regulation announcing

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

11 (2) promptly after the changes occur, changes in the index
12 required by (c) of this section, including, if applicable, the numer-
13 ical equivalent of the reference base index under a revised reference
14 base index and the designation or title of any index superseding the
15 index.

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

19 * Sec. 20. AS 46.04.050 is amended to read:

20 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE
21 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE
22 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and
23 46.04.060 do not apply to an oil terminal facility that has an effec-
24 tive storage capacity of less than 5,000 [10,000] barrels of crude oil
25 or less than 10,000 barrels of noncrude oil.

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

27 Sec. 46.04.060. INSPECTIONS. In addition to other rights of
28 access or inspection conferred upon the department by law or other-
29 wise, the department may at reasonable times and in a safe manner

1 enter and inspect oil [OIL] terminal facilities, pipelines, [OFFSHORE]
2 exploration and production facilities, tank vessels, and oil barges in
3 order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

4 (1) ensure compliance with the provisions of this chapter;
5 or

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

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

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

18 * Sec. 23. AS 46.04.200 is amended to read:

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

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

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

26 (2) clarify and specify the respective responsibilities of
27 each of the following in the assessment, containment, and cleanup of a
28 catastrophic oil discharge or of a significant discharge of a hazard-
29 ous substance into the environment of the state:

- 1 (A) agencies of the state;
2 (B) municipalities of the state;
3 (C) appropriate federal agencies;
4 (D) operators of facilities;
5 (E) private parties whose land and other property may
6 be affected by the oil or hazardous substance discharge; and
7 (F) other parties identified by the commissioner as
8 having an interest in or the resources to assist in the contain-
9 ment and cleanup of an oil or hazardous substance discharge;

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

12 (4) identify actions necessary to reduce the likelihood of
13 catastrophic oil discharges and significant discharges of hazardous
14 substances.

15 (c) In preparing and annually reviewing the state master plan,
16 the commissioner shall

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

19 (2) submit the draft plan to the public for review and
20 comment;

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

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

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

29 (a) For any region of the state, the boundaries of which are

1 determined by the commissioner by regulation, in which the department
2 is required to review and approve an oil discharge prevention and
3 contingency plan submitted by a person under AS 46.04.030, the depart-
4 ment shall prepare and annually review and revise a regional master
5 oil and hazardous substance discharge [AND] prevention and contingency
6 plan.

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

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

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

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

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

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

26 (19) "production facility" means a drilling rig, drill site,
27 flow station, gathering center, pump station, storage tank, well, and
28 related appurtenances on other facilities to produce, gather, clean,
29 dehydrate, condition, or store crude oil and associated hydrocarbons

1 in or on the water of the state or on land in the state, and gathering
2 and flow lines used to transport crude oil and associated hydrocarbons
3 to the inlet of a pipeline system for delivery to a marine facility,
4 refinery, or other production facility.

5 * Sec. 28. AS 46.08.040 is amended to read:

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

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

14 (2) pay all costs incurred

15 (A) to establish and maintain the oil and hazardous
16 substance response office and for the expenses of the oil and
17 hazardous substance response corps and the oil and hazardous
18 substance response depots established by that office;

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

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

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

1 (3) provide matching funds for participation in federal oil
2 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
3 hensive Environmental Response, Compensation, and Liability Act of
4 1980); [AND]

5 (4) recover the costs to the state or to a municipality of
6 a containment and cleanup resulting from the release or the threatened
7 release of oil or a hazardous substance; [.]

8 (5) prepare, review, and revise

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

12 (B) a regional master oil and hazardous substance
13 discharge [AND] prevention and contingency plan required by
14 AS 46.04.210; and

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

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

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

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

24 (2) the amount and source of money received and money
25 recovered during the preceding fiscal year as specified in AS 46.08.-
26 020;

27 (3) a summary of municipal participation in responses
28 funded by the fund;

29 (4) a detailed summary of department activities in

1 responses funded by the fund during the preceding fiscal year, includ-
2 ing response descriptions and statements outlining the nature of the
3 threat; in this paragraph, "detailed" includes information describing
4 each personal services position and total compensation for that posi-
5 tion, each contract in excess of \$20,000, and each purchase in excess
6 of \$10,000; and

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

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

- 15 (1) its actual storage capacity;
- 16 (2) the type of noncrude oil products stored;
- 17 (3) its age, design, construction, and general condition;
- 18 (4) the design and construction standards applicable or rele-
19 vant;
- 20 (5) the presence or absence of containment structures and equip-
21 ment;
- 22 (6) its ability to respond to a release or threatened release;
- 23 (7) the environmental sensitivity of the surrounding area and
24 the potential risk to the environment if a release occurs;
- 25 (8) the presence or absence of surface and subsurface pipelines
26 and storage tanks; and
- 27 (9) other appropriate information.

28 (b) By January 31, 1992, the Department of Environmental Conservation
29 shall report to the legislature the results of the survey required under

1 (a) of this section and its written recommendations concerning discharge
2 prevention and contingency requirements or design review requirements that
3 should be enacted for noncrude oil terminal facilities with storage capac-
4 ities of less than 10,000 barrels.

5 (c) Upon completion of the survey required under (a) of this section,
6 the Department of Environmental Conservation may

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

9 (2) provide each facility with recommendations and technical
10 assistance concerning identified deficiencies.

11 (d) The Department of Environmental Conservation may conduct the
12 inspections required under this section notwithstanding the provisions of
13 AS 46.04.050. The department shall conduct the inspections at reasonable
14 times.

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

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

25 (2) appropriate discharge response times;

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

28 (4) appropriate roles for industry and state and local govern-
29 ments in the purchase, ownership, and positioning of discharge response

1 efforts.

2 * Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), en-
3 acted by sec. 10 of this Act, do not apply to oil discharge prevention and
4 contingency plans until June 1, 1991. On and after June 1, 1991, a contin-
5 gency plan must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of
6 this Act, regardless of whether the contingency plan is due for renewal
7 under AS 46.04.030(d), as amended by sec. 9 of this Act.

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

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