

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 504

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 the strengthening of the state's  
7 oil contingency plan requirements, financial respon-  
8 sibility requirements, and inspection authority under  
9 AS 46.04; and providing for an effective date."

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

11 \* Section 1. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person  
13 may not cause or permit the operation of an oil terminal facility in  
14 the state unless an oil discharge contingency plan for the facility  
15 has been approved by the department and has been properly implemented.  
16 [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO  
17 APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS  
18 SECTION.]

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an offshore exploration or production facility in the  
21 state unless an oil discharge contingency plan for the facility has  
22 been approved by the department and has been properly implemented.

23 (c) A person may not operate a tank vessel or an oil barge  
24 within the waters of the state, or cause or permit the transfer of oil  
25 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
26 an oil barge, unless an oil discharge contingency plan for the tank  
27 vessel or oil barge has been approved by the department and has been  
28 properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),  
29 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1        **SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL**  
2        **DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN**  
3        **APPROVED BY THE DEPARTMENT.]**

4            (d) The department is the only state agency that has the power  
5        to approve, modify, or revoke an oil contingency plan for the purposes  
6        of this section, and the department shall exercise its power in a  
7        timely manner. Except for prosecutions under AS 46.03.790(b), it is  
8        not a defense to an action brought for a violation of (a) - (c) of  
9        this section that the person charged believed that a current oil  
10       discharge contingency plan had been approved by the department. .

11           (e) Before the department approves or modifies an oil discharge  
12       contingency plan under this section, the department shall provide a  
13       copy of the oil discharge contingency plan to the Department of Fish  
14       and Game and to the Department of Natural Resources and shall provide  
15       those departments a reasonable opportunity to review and comment on  
16       the plan.

17           (f) An applicant for an oil discharge contingency plan required  
18       by this section shall maintain in its area of operation, singly or in  
19       conjunction with other operators in its area of operation, sufficient  
20       oil discharge containment, storage, transfer, and removal equipment,  
21       manpower, and resources to immediately contain a realistic maximum oil  
22       discharge and to remove that discharge within 72 hours after the  
23       discharge. The requirements of this subsection apply for planning and  
24       equipping purposes only.

25           (g) An oil discharge contingency plan must be renewed at least  
26       every three years.

27           (h) [(e)] The department may attach reasonable terms and  
28       conditions to its approval or modification of an oil discharge  
29       contingency plan which the department [IT] determines are necessary to

1 insure that the applicant for an oil discharge contingency plan has  
2 access to sufficient resources to protect environmentally sensitive  
3 areas, [AND] to immediately contain a realistic maximum oil discharge,  
4 and to [,] clean up[,] and mitigate potential oil discharges from the  
5 facility or vessel within 72 hours after the discharge [THE SHORTEST  
6 FEASIBLE TIME]. The oil discharge contingency plan must provide for  
7 the use of the best available technology by the applicant. The  
8 department may require an applicant or holder of an approved  
9 contingency plan to take steps necessary to demonstrate its ability to  
10 carry out the contingency plan, including

- 11 (1) periodic training;
- 12 (2) response team exercises; and
- 13 (3) verifying access to inventories of available equipment,  
14 supplies, and personnel.

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

- 23 (1) approval was obtained by fraud or misrepresentation;
- 24 (2) the operator does not have access to the quality or  
25 quantity of resources identified in the plan; [OR]
- 26 (3) a term or condition of approval or modification has  
27 been violated; or
- 28 (4) the plan has not been properly implemented.

29 (j) [(g)] Failure of a holder of an approved or modified oil

1 discharge contingency plan to properly implement the plan, or to have  
2 access to the quality or quantity of resources identified in the plan  
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources  
4 within the shortest possible [FEASIBLE] time in the event of a spill,  
5 is a violation of this chapter for purposes of AS 46.03.760(a),  
6 46.03.765, 46.03.790, and any other applicable law. If the holder of  
7 an approved or modified oil discharge contingency plan fails to  
8 respond to and conduct cleanup operations of an unpermitted discharge  
9 of crude oil with the quality and quantity of resources identified in  
10 the plan and in a manner required under the plan, the holder is  
11 strictly liable, jointly and severally, for the civil penalty assessed  
12 under AS 46.03.758, 46.03.759, or 46.03.760 against any other person  
13 for that discharge.

14 \* Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A  
16 person may not cause or permit the operation of a crude [AN] oil  
17 terminal facility in the state unless the person has furnished to the  
18 department, and the department has approved, proof of financial  
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE  
20 DEPARTMENT]. Proof of financial responsibility may not be less than  
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT  
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER  
23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL  
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a  
26 non-crude oil terminal facility in the state unless the person has  
27 furnished to the department, and the department has approved, proof of  
28 financial ability to respond in damages. Proof of financial respon-  
29 sibility may not be less than

1           (1) \$5,000,000 for terminal facilities with a total storage  
2 capacity of 10,000 - 19,999 barrels; and

3           (2) \$10,000,000 for terminal facilities with a total  
4 storage capacity of 20,000 or more barrels.

5           (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
6 operation of an offshore exploration or production facility in the  
7 state unless the person has furnished to the department, and the  
8 department has approved, proof of financial ability to respond in  
9 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
10 responsibility may not be less than \$50,000,000 [\$35,000,000] per  
11 incident.

12           (d) [(c)] A person may not operate a tank vessel or an oil barge  
13 within the waters of the state, or cause or permit the transfer of oil  
14 to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR FROM] or  
15 an oil barge, unless the person has furnished to the department, and  
16 the department has approved, proof of financial [RESPONSIBILITY]  
17 ability to respond in damages [FOR THE TANK VESSEL OR BARGE HAS BEEN  
18 ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility may  
19 not be less than

20           (1) \$500,000,000 per incident for a tank vessel or oil  
21 barge carrying crude oil;

22           (2) \$500,000 per incident for a tank vessel or oil barge  
23 carrying 5,000 - 9,999 barrels of non-crude oil;

24           (3) \$1,000,000 per incident for a tank vessel or oil barge  
25 carrying 10,000 - 49,999 barrels of non-crude oil;

26           (4) \$10,000,000 per incident for a tank vessel or oil barge  
27 carrying 50,000 - 99,999 barrels of non-crude oil;

28           (5) \$20,000,000 per incident for a tank vessel or oil barge  
29 carrying 100,000 or more barrels of non-crude oil [FINANCIAL

1 RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING  
2 AMOUNTS:

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

7 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC  
8 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

9 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.  
10 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
11 GREATER.]

12 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is  
13 not a defense to an action brought for violation of (a) - (c) [(c)] of  
14 this section that the person charged believed in good faith that proof  
15 of financial ability to respond in damages had been furnished to, and  
16 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
17 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

18 (f) [(e)] Financial responsibility may be demonstrated by  
19 self-insurance, insurance, surety, [OR] guarantee, or other security  
20 approved by the department, under terms the department may prescribe.  
21 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),  
22 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER  
23 AS 46.03.759] may be brought in a state court directly against the  
24 insurer or another person providing evidence of financial respon-  
25 sibility. The applicant, and an insurer, surety, [OR] guarantor, or  
26 other person providing security approved by the department shall  
27 appoint an agent for service of process in the state. An insurer must  
28 either be authorized by the Department of Commerce and Economic  
29 Development to sell insurance in the state or be an unauthorized

1 insurer listed by the Department of Commerce and Economic Development  
2 as not disapproved for use in the state.

3 (g) [(f)] Acceptance of proof of financial responsibility  
4 expires

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

6 (2) on the effective date of a change in the surety bond,  
7 guarantee, [OR] insurance agreement, or other security approved by the  
8 department; or

9 (3) on the expiration or cancellation of the surety bond,  
10 guarantee, [OR] insurance agreement, or other security approved by the  
11 department.

12 (h) [(g)] The person whose proof of financial responsibility is  
13 accepted by the department under this section shall notify the depart-  
14 ment at least 30 days before the effective date of a change,  
15 expiration or cancellation in the surety bond, guarantee, [OR]  
16 insurance agreement, or other security approved by the department.  
17 Application for renewal of acceptance of proof of financial respon-  
18 sibility under this section must be filed at least 30 days before the  
19 date of expiration.

20 (i) [(h)] The department, after notice and hearing, may revoke  
21 acceptance of proof of financial responsibility if it determines that

22 (1) acceptance was procured by fraud or misrepresentation;  
23 or

24 (2) a change of circumstance has occurred other than a  
25 change specified in (f)(1) - (3) of this section, which would have  
26 warranted denial of the application.

27 (j) [(i)] Financial responsibility under this section extends to  
28 a loss compensable under AS 46.03.760(e) or 46.03.822 and an assess-  
29 ment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

1 \* Sec. 3. AS 46.04.050 is amended to read:

2 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of  
3 the operations and the uncertain [MINIMAL] danger to the environment  
4 posed by the activities, AS 46.04.030 and [,] 46.04.040 [AND  
5 46.04.060] do not apply to an oil terminal facility that has an  
6 effective storage capacity of less than 10,000 barrels of oil.

7 \* Sec. 4. AS 46.04.060 is amended to read:

8 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of  
9 access or inspection conferred upon the department by law or other-  
10 wise, the department may at reasonable times enter and inspect oil  
11 [OIL] terminal facilities, [OFFSHORE] exploration and production  
12 facilities, tank vessels, and oil barges within the territorial juris-  
13 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE  
14 DEPARTMENT] to

15 (1) ensure compliance with the provisions of this chapter;  
16 or

17 (2) examine the structural integrity of tank vessels and  
18 oil barges.

19 \* Sec. 5. AS 46.04 is amended by adding a new section to read:

20 Sec. 46.04.065. SMALL TERMINAL FACILITIES SURVEY. (a) The  
21 department shall survey, inspect, and inventory each non-crude oil  
22 terminal facility with a storage capacity of 5,000 - 9,999 barrels in  
23 order to determine

24 (1) the specific storage capacity;

25 (2) the type of non-crude oil products stored;

26 (3) the age, design, construction, and general condition of  
27 the facility;

28 (4) the design and construction standards applicable, or  
29 relevant and appropriate, for each type of facility;

1 (5) the existence or absence of spill containment  
2 structures and equipment;

3 (6) the ability to respond to a spill;

4 (7) the environmental sensitivity of the area in which the  
5 facility is located, and the potential risk to the environment if a  
6 spill occurs;

7 (8) the existence or absence of surface and subsurface  
8 pipelines and storage tanks; and

9 (9) any other appropriate factors.

10 (b) No later than January 31, 1991, the department shall report  
11 the results of the survey conducted under (a) of this section to the  
12 legislature. The department shall also recommend legislation to  
13 address oil spill prevention and response at new and existing  
14 non-crude oil terminal facilities with storage capacities of less than  
15 10,000 barrels.

16 (c) Upon completion of the survey conducted under (a) of this  
17 section, the department may notify each facility of the results of the  
18 facility's inspection and may provide the facility with  
19 recommendations concerning any identified deficiencies.

20 \* Sec. 6. AS 46.04.900 is amended by adding a new paragraph to read:

21 (18) "realistic maximum oil discharge" means the maximum  
22 and most damaging oil discharge that the department estimates could  
23 occur during the lifetime of the vessel or facility based on the size,  
24 location, and capacity of the vessel or facility; on the department's  
25 knowledge and experience with the vessel or facility or with similar  
26 vessels or facilities; and on the department's analysis of possible  
27 mishaps at the vessel or facility or at similar vessels or facilities.

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