

COMMITTEE REPORT  
SENATE

3/26/86

FURTHER:

Date 5/11/86

Mr. President

The Committee on FINANCE considered CSHB 470(Fin)am relating to the release of oil and hazardous substances; repealing the oil spill mitigation account; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt 5 CS for CSHB 470(FIN)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE  
149.3 HFC
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
 Co-Chairman  
do pass  
 Chairman recommendation

S E N A T E   A M E N D M E N T

BY: P. Fischer

To: AMEND            SENATE FIN. CS FOR CS FOR HOUSE BILL NO. 470  
Version A

On pg. 5, line 6

DELETE:

Sec. 46.08.080 REGULATIONS. [The commissioner shall adopt regulations establishing minimum quantities of substances to which this chapter applies.]

And insert:

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and in his discretion adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies.

On pg. 9, line 25

DELETE:

Sec. 46.09.070 REGULATIONS. [The commissioner shall adopt regulations establishing minimum quantities of substances to which this chapter applies.]

And insert:

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and in his discretion adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies.

Adopted  
5/11/86

Amend 2.

S E N A T E A M E N D M E N T

To: AMEND SENATE FIN. CS FOR CS FOR HOUSE BILL NO. 470  
Version A

On page 6, line 4

Delete the remainder of paragraph (6) beginning with "but"  
and add a new subsection (C) to read:

(C) "hazardous substance" does not mean uncontaminated  
crude oil or uncontaminated refined oil in an amount up to  
and including 10 gallons;

On page 7, line 23

Delete "The commissioner shall apply and enforce the  
national contingency plan until the commissioner develops  
guidelines under this subsection."

On page 10, line 17

Delete the remainder of paragraph (4) beginning with "but"  
and add a new subsection (C) to read:

(C) "hazardous substance" does not mean uncontaminated  
crude oil or uncontaminated refined oil.

Adopted  
5/11/86

Rj: Adopted 5/10/86

Version A  
Hein  
5/8/86 ✓

Original sponsors: Davis, Koponen,  
Hurley, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 470 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; repealing the oil spill mitigation ac-  
8 count; and providing for an effective date."

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

10 \* Section 1. AS 46 is amended by adding a new chapter to read:

11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

12 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
13 that the release of oil or hazardous substances into the environment  
14 presents a real and substantial threat to the public health and wel-  
15 fare, to the environment, and to the economy of the state. The legis-  
16 lature therefore concludes that it is in the best interest of the  
17 state and its citizens to provide a readily available fund for the  
18 payment of the expenses incurred by the Department of Environmental  
19 Conservation in the protection of the environment of the state from  
20 the release of oil or hazardous substances.

21 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
22 the state general fund the oil and hazardous substance release re-  
23 sponse fund. The fund shall be administered by the commissioner of  
24 environmental conservation.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under  
29 AS 46.08.040. The fund may not be used for capital improvements.

1           Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           (b) Money received by the state under (a)(2) and (a)(3) of this  
15 section shall be deposited in the general fund and credited to a  
16 special account called the "oil and hazardous substance release miti-  
17 gation account." The legislature may annually appropriate to the fund  
18 from this account a sum equal to the amount received under (a)(2) and  
19 (a)(3) of this section during the calendar year preceding the legisla-  
20 tive session in which the appropriations are to be made.

21           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
22 SUBSTANCE RELEASES. It is the intent of the legislature and declared  
23 to be the public policy of the state that funds for the abatement of a  
24 release of oil or a hazardous substance will always be available.

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

27           (1) contain, clean up, and take other necessary action,  
28 such as monitoring, assessing, investigating, and evaluating the  
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or  
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil  
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
5 hensive Environmental Response, Compensation, and Liability Act of  
6 1980); and

7 (3) recover the cost to the state or to a municipality of a  
8 containment and cleanup resulting from the release or the threatened  
9 release of oil or a hazardous substance.

10 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
11 maintain accounting records showing the income and expenses of the  
12 fund.

13 (b) The department shall develop procedures governing the expen-  
14 diture of, and accounting for, money expended from the fund, and may  
15 not delay implementation of this chapter pending the effective date of  
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-  
18 sioner shall submit a report to the legislature not later than the  
19 10th day following the convening of each regular session of the legis-  
20 lature. The report may include information considered significant by  
21 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; and

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

7 (b) As part of the department's on-going identification efforts  
8 associated with oil spill or hazardous waste sites, the commissioner  
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public  
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,  
14 and their estimated cost.

15 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)  
16 The commissioner shall seek reimbursement promptly under this section,  
17 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
18 or containment of oil or a hazardous substance that has been released.

19 (b) The attorney general, at the request of the commissioner,  
20 may seek to recover money expended by the department under this chap-  
21 ter or other law to contain and clean up oil or a hazardous substance  
22 that has been released or to control the threatened release of oil or  
23 a hazardous substance.

24 (c) The department may reimburse a municipality for actual  
25 expenses, other than normal operating expenses, incurred in the abate-  
26 ment of a release or threatened release of oil or a hazardous sub-  
27 stance if

28 (1) the municipality has entered into an agreement with the  
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for  
3 a necessary emergency first response to a release or threatened re-  
4 lease that posed an imminent and substantial threat to the public  
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt  
7 regulations establishing minimum quantities of substances to which  
8 this chapter applies. The commissioner may otherwise adopt only those  
9 regulations that are expressly required to implement the specific  
10 purposes of this chapter.

11 Sec. 46.08.900. DEFINITIONS. In this chapter

12 (1) "capital improvement" includes construction, renova-  
13 tion, repair of, and improvement to, a building, but does not include  
14 other improvements to real property, such as construction of a dike or  
15 retaining wall;

16 (2) "commissioner" means the commissioner of environmental  
17 conservation;

18 (3) "containment and cleanup" includes the direct and  
19 indirect efforts associated with the prevention, abatement, contain-  
20 ment, or removal of oil or a hazardous substance, the restoration of  
21 the environment, and incidental administrative costs;

22 (4) "department" means the Department of Environmental  
23 Conservation;

24 (5) "fund" means the oil and hazardous substance release  
25 response fund;

26 (6) "hazardous substance" means (A) an element or compound  
27 that, when it enters into or on the surface or subsurface land or  
28 water of the state, presents an imminent and substantial danger to the  
29 public health or welfare, or to fish, animals, vegetation, or any part

1 of the natural habitat in which fish, animals, or wildlife may be  
2 found; or (B) a substance defined as a hazardous substance under 42  
3 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compens-  
4 sation, and Liability Act of 1980); but "hazardous substance" does not  
5 include oil in an amount less than 55 gallons, or another substance in  
6 an amount less than the minimum quantity established by the commis-  
7 sioner under AS 46.08.080, even if the substance is described in (A)  
8 or (B) of this paragraph;

9 (7) "oil" means petroleum products of any kind and in any  
10 form, whether crude, refined, or a petroleum by-product, including  
11 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
12 refuse, oil mixed with other wastes, liquified natural gas, propane,  
13 butane, and other liquid hydrocarbons regardless of specific gravity;

14 (8) "permitted release" means a release occurring under the  
15 authority of a valid permit issued by the department or by the En-  
16 vironmental Protection Agency;

17 (9) "release" means any spilling, leaking, pumping, pour-  
18 ing, emitting, emptying, discharging, injecting, escaping, leaching,  
19 dumping, or disposing into the environment, except that "release" does  
20 not include a permitted release or an act of nature;

21 (10) "threatened release" means an imminent danger that a  
22 release will occur.

23 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

24 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

25 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
26 Except as provided in (b) of this section, a person in charge of a  
27 vehicle, vessel or container from which, or a place at which, a haz-  
28 ardous substance is released shall report the release to the depart-  
29 ment and appropriate public safety agencies promptly after learning of

1 the release.

2 (b) The commissioner may enter into an agreement with a person  
3 for the periodic reporting of a controlled release of a hazardous  
4 substance if the release is not into water.

5 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
6 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
7 stance shall make reasonable efforts to contain and clean up the  
8 hazardous substance promptly after learning of the release, unless the  
9 commissioner determines

10 (1) after consulting the Environmental Protection Agency or  
11 appropriate public safety agencies, that containment or cleanup is  
12 technically infeasible;

13 (2) that containment or cleanup would cause greater en-  
14 vironmental damage than if the release were not contained or cleaned  
15 up; or

16 (3) that containment or cleanup would pose a greater threat  
17 to human life or health than if the release were not contained or  
18 cleaned up.

19 (b) The commissioner shall develop guidelines prescribing gen-  
20 eral procedures and methods to be used in the containment and cleanup  
21 of a hazardous substance. The guidelines shall be consistent with the  
22 national contingency plan revised and republished under 42 U.S.C.  
23 9605. The commissioner shall apply and enforce the national contin-  
24 gency plan until the commissioner develops guidelines under this  
25 subsection.

26 (c) If the commissioner determines that the containment or  
27 cleanup of a hazardous substance undertaken is inadequate, the commis-  
28 sioner may direct the person undertaking the containment or cleanup to  
29 cease and may undertake the containment or cleanup directly or by

1 contract.

2 (d) If it appears to the commissioner that the cause or respon-  
3 sibility for the release of a hazardous substance is unclear or unex-  
4 plained, the commissioner may immediately undertake the containment  
5 and cleanup of the release unless the commissioner determines

6 (1) after consulting the Environmental Protection Agency or  
7 appropriate public safety agencies, that containment or cleanup is  
8 technically infeasible;

9 (2) that containment or cleanup would cause greater en-  
10 vironmental damage than if the release were not contained or cleaned  
11 up; or

12 (3) that containment or cleanup would pose a greater threat  
13 to human life or health than if the release were not contained or  
14 cleaned up.

15 (e) The commissioner shall enter into agreement with the En-  
16 vironmental Protection Agency, and may enter into agreements with  
17 other persons and municipalities, in order to

18 (1) facilitate a coordinated and effective hazardous sub-  
19 stance release response in the state;

20 (2) provide for cooperative hazardous substance release  
21 notification procedures; or

22 (3) provide for cooperative review of hazardous substance  
23 release response contingency plans submitted to the department.

24 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
25 request the governor to determine that an actual or imminent release  
26 of a hazardous substance constitutes a disaster emergency under  
27 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
28 23, the commissioner may assist the adjutant general in the relief of  
29 the emergency.

1           Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.

2           The commissioner may contract with a person or a municipality for  
3           personnel, equipment, or services that may be useful to carry out the  
4           requirements of this chapter. If the commissioner determines that it  
5           is infeasible to contract with a person or a municipality, the commis-  
6           sioner may establish and maintain containment and cleanup personnel,  
7           equipment, and supplies necessary to carry out the requirements of  
8           this chapter.

9           Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter

10          into supplementary agreements, reciprocal arrangements, and compacts  
11          with another state or country for the implementation of this chapter  
12          subject to the approval of the Congress of the United States, if  
13          required, under the Constitution of the United States.

14          Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this

15          chapter or of a regulation adopted by the commissioner under this  
16          chapter conflicts with the charter, ordinance, or regulation of a  
17          municipality, the provision of this chapter or of the regulation  
18          adopted by the commissioner under this chapter prevails.

19          (b) Authority to contain, clean up, or prevent a release or  
20          threatened release of oil or of a hazardous substance, and to exercise  
21          other powers necessary to implement this chapter and AS 46.08, are  
22          granted to municipalities that do not otherwise have that authority.  
23          Except as provided in (a) of this section, a municipality may exercise  
24          its police power within the area of the municipality.

25          Sec. 46.09.070. REGULATIONS. The commissioner shall adopt

26          regulations establishing minimum quantities of substances to which  
27          this chapter applies. The commissioner shall adopt only those regu-  
28          lations which are expressly required to implement the specific pur-  
29          poses of this chapter.

1           Sec. 46.09.900. DEFINITIONS. In this chapter

2           (1) "commissioner" means the commissioner of environmental  
3 conservation;

4           (2) "containment and cleanup" includes the direct and  
5 indirect efforts associated with the prevention, abatement, contain-  
6 ment, or removal of a hazardous substance, the restoration of the  
7 environment, and incidental administrative costs;

8           (3) "department" means the Department of Environmental  
9 Conservation;

10           (4) "hazardous substance" means (A) an element or compound  
11 that, when it enters into or on the surface or subsurface land or  
12 water of the state, presents an imminent and substantial danger to the  
13 public health or welfare, or to fish, animals, vegetation, or any part  
14 of the natural habitat in which fish, animals, or wildlife may be  
15 found; or (B) a substance defined as a hazardous substance under 42  
16 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compen-  
17 sation, and Liability Act of 1980); but "hazardous substance" does not  
18 include oil in an amount less than 55 gallons, or another substance in  
19 an amount less than the minimum quantity established by the commis-  
20 sioner under AS 46.09.070, even if the substance is described in (A)  
21 or (B) of this paragraph;

22           (5) "permitted release" means a release occurring under the  
23 authority of a valid permit issued by the department or by the En-  
24 vironmental Protection Agency;

25           (6) "release" means any spilling, leaking, pumping, pour-  
26 ing, emitting, emptying, discharging, injecting, escaping, leaching,  
27 dumping, or disposing into the environment, except that "release" does  
28 not include a permitted release or an act of nature;

29           (7) "threatened release" means an imminent danger that a

1 release will occur.

2 \* Sec. 3. AS 26.23.050(b) is amended to read:

3 (b) Whenever, and to the extent that, money is needed to cope  
4 with a disaster, the first recourse shall be to funds regularly appro-  
5 priated to state and local agencies. The second recourse shall be to  
6 funds available in the disaster relief fund or the oil and hazardous  
7 substance release response fund, as appropriate. If money available  
8 from these sources is insufficient, and if the governor finds that  
9 other sources of money to cope with the disaster are not available or  
10 are insufficient, the governor may, notwithstanding any limitation  
11 imposed by AS 37.07.080(e), transfer and spend money appropriated for  
12 other purposes or, in situations involving natural disasters, borrow  
13 from the United States government or other public or private sources  
14 for a term not to exceed two years.

15 \* Sec. 4. AS 26.23.230(1) is amended to read:

16 (1) "disaster" means the occurrence or imminent threat of  
17 widespread or severe damage, injury, or loss of life or property  
18 resulting from any natural or nonmilitary man-made cause including,  
19 but not limited to, fire, flood, earthquake, landslide, mudslide,  
20 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
21 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
22 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
23 blight, infestation, explosion, riot, equipment failure, or shortage  
24 of food, water, fuel, or clothing, or the release of oil or a hazard-  
25 ous substance requiring prompt action to avert environmental danger or  
26 damage;

27 \* Sec. 5. AS 44.19.050 is amended to read:

28 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,  
29 "disaster" means the occurrence or imminent threat of widespread or

1 severe damage, injury, or loss of life or property resulting from any  
2 natural or man-made cause including, but not limited to, fire, flood,  
3 earthquake, landslide, avalanche, wind-driven water, weather condi-  
4 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
5 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
6 contamination, blight, infestation, explosion, [OR] riot, or the  
7 release of oil or a hazardous substance requiring prompt action to  
8 avert environmental danger or damage.

9 \* Sec. 6. AS 45.45.900 is amended to read:

10 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC  
11 POLICY. A provision, clause, covenant, or agreement contained in,  
12 collateral to, or affecting a [ANY] construction contract that [WHICH]  
13 purports to indemnify the promisee against liability for damages for  
14 (1) death or bodily injury to persons, (2) injury to property, (3)  
15 design defects or (4) [ANY] other loss, damage or expense arising  
16 under (1), (2), or (3) of this section from the sole negligence or  
17 wilful misconduct of the promisee or the promisee's agents, servants  
18 or independent contractors who are directly responsible to the prom-  
19 isee, is against public policy and is void and unenforceable; however,  
20 this provision does not affect the validity of an [ANY] insurance  
21 contract, workers' compensation, or agreement issued by an insurer  
22 subject to the provisions of AS 21, or a provision, clause, covenant,  
23 or agreement of indemnification respecting the handling, containment  
24 or cleanup of oil or hazardous substances as defined in AS 46.

25 \* Sec. 7. AS 46.03.290(a) is amended to read:

26 (a) When the department finds that an actual or imminent dis-  
27 charge of oil, a hazardous substance, or low level radioactive mate-  
28 rials to the air, water, land or subsurface land of the state poses an  
29 immediate threat to the public health or welfare, or the environment

1 of the state, it may issue an order declaring an emergency and direct-  
2 ing a person or persons to take action the department believes neces-  
3 sary to meet the emergency, and protect the public health, welfare, or  
4 environment.

5 \* Sec. 8. AS 46.03 is amended by adding a new section to read:

6 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a  
7 controlled release, the reporting of which is the subject of an agree-  
8 ment with the commissioner under AS 46.09.010(b), a person may not  
9 cause or permit the release of a hazardous substance as defined in  
10 AS 46.09.900.

11 \* Sec. 9. AS 46.03.760(a) is amended to read:

12 (a) A person who violates or causes or permits to be violated a  
13 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
14 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
15 the department, or a permit, approval, or acceptance, or term or  
16 condition of a permit, approval, or acceptance issued under this  
17 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
18 state for a sum to be assessed by the court of not less than \$500 nor  
19 more than \$100,000 for the initial violation, nor more than \$5,000 for  
20 each day after that on which the violation continues, and that shall  
21 reflect, when applicable,

22 (1) reasonable compensation in the nature of liquidated  
23 damages for any adverse environmental effects caused by the violation,  
24 that shall be determined by the court according to the toxicity,  
25 degradability and dispersal characteristics of the substance dis-  
26 charged, the sensitivity of the receiving environment, and the degree  
27 to which the discharge degrades existing environmental quality;

28 (2) reasonable costs incurred by the state in detection,  
29 investigation, and attempted correction of the violation;

1 (3) the economic savings realized by the person in not  
2 complying with the requirement for which a violation is charged.

3 \* Sec. 10. AS 46.03.765 is amended to read:

4 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
5 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
6 or of a regulation, a lawful order of the department, or permit,  
7 approval, or acceptance, or term or condition of a permit, approval,  
8 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
9 In actions brought under this section, temporary or preliminary relief  
10 may be obtained upon a showing of an imminent threat of continued  
11 violation, and probable success on the merits, without the necessity  
12 of demonstrating physical irreparable harm. The balance of equities  
13 in actions under this section may affect the timing of compliance, but  
14 not the necessity of compliance within a reasonable period of time.

15 \* Sec. 11. AS 46.03.780(a) is amended to read:

16 (a) A person who violates a provision of this chapter, [OR]  
17 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
18 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
19 order, permit, or other determination of the department made under the  
20 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
21 and thereby causes the death of fish, animals, or vegetation or other-  
22 wise injures or degrades the environment of the state is liable to the  
23 state for damages.

24 \* Sec. 12. AS 46.03.790(a) is amended to read:

25 (a) Except as provided in (d) - (f) of this section, a person  
26 who negligently violates a provision of this chapter, [OR] AS 46.04,  
27 or AS 46.09, or of a regulation, lawful order of the department, or  
28 permit, approval, or acceptance, or term or condition of a permit,  
29 approval, or acceptance issued under this chapter, [OR] AS 46.04, or

1        AS 46.09 is guilty of a class B misdemeanor.

2        \* Sec. 13. AS 46.03.790(b) is amended to read:

3            (b) Except as provided in (d) - (f) of this section, a person  
4        who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
5        AS 46.09, or of a regulation, lawful order of the department, or  
6        permit, approval, or acceptance, or term or condition of a permit,  
7        approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
8        AS 46.09 is guilty of a class A misdemeanor.

9        \* Sec. 14. AS 46.03.790(d) is amended to read:

10           (d) Notwithstanding (a) and (b) of this section, a person who  
11        fails to provide or falsely states information required under AS 46.-  
12        03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
13        upon conviction, is punishable by a fine of not more than \$25,000, or  
14        by imprisonment for not more than one year, or by both. Each unlawful  
15        act constitutes a separate offense.

16        \* Sec. 15. AS 46.04.010 is amended to read:

17            Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
18        partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
19        760(e), AS 46.08.070, or from an applicable federal fund, for the  
20        expenses it incurs in cleaning up or containing a discharge of oil.  
21        If the department obtains reimbursement for a portion of its expenses  
22        from a federal fund, the remainder of the expenses incurred may be  
23        recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
24        the department under this section shall be deposited in the general  
25        fund and credited to a special account called the "oil and hazardous  
26        substance release mitigation account".

27        \* Sec. 16. AS 46.04.090(b) is amended to read:

28            (b) Inspection and enforcement employees of the department  
29        designated by the commissioner are peace officers in the performance

1 of their duties under this chapter, AS 46.09, and AS 46.03.

2 \* Sec. 17. Not later than January 1, 1987, the commissioner of environ-  
3 mental conservation shall develop guidelines under AS 46.09.020, added by  
4 sec. 2 of this Act.

5 \* Sec. 18. Not later than October 1, 1987, the commissioner of environ-  
6 mental conservation shall adopt regulations under AS 46.09.070, added by  
7 sec. 2 of this Act.

8 \* Sec. 19. AS 46.03.758(k) is repealed.

9 \* Sec. 20. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Version B

MEMORANDUM

To: Senate Finance Committee

Date: May 7, 1986

Re: SCSHB 470 (Finance) - An Act relating to the release of oil and hazardous substances

-----

The Senate Finance Committee substitute for HB 470 differs from the House version of the bill in three respects. These changes are as follows:

\* Language is deleted that would have granted the governor the authority to transfer funds from the rainy day account to the oil and hazardous substance release response fund.

\* Sec. 46.09.020(a)(3) is rewritten in order to clarify that:

A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

\* Sec. 46.09.020(d)(3) is rewritten in order to clarify that:

If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

Senate Finance Committee amendments to CSHB 470 (Fin) am:

Page 7, Line 5

to human life or health than if the release [ITSELF] were not contained or cleaned up.

Page 7, Line 24

to human life or health than if the release [ITSELF] were not contained or cleaned up.

Page 15, Line 7

Sections 19 - 22 are deleted and replaced with the following language:

\* Sec. 19. AS 46.03.758(k) is repealed.

\* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

Proposed amendments to SCSCSHB 470 (Finance)

Page 6, Line 10

Paragraph (8) is deleted, and new definitions are added to read:

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(10) "threatened release" means a situation in which there is an imminent danger that a release will occur.

Page 10, Line 1

Paragraph (5) is deleted, and new definitions are added to read:

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(7) "threatened release" means a situation in which there is an imminent danger that a release will occur.

Hein ✓  
5/7/86

Original sponsors: Davis, Koponen,  
Hurley, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 470 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; repealing the oil spill mitigation ac-  
8 count; and providing for an effective date."

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

10 \* Section 1. AS 46 is amended by adding a new chapter to read:

11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

12 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
13 that the release of oil or hazardous substances into the environment  
14 presents a real and substantial threat to the public health and wel-  
15 fare, to the environment, and to the economy of the state. The legis-  
16 lature therefore concludes that it is in the best interest of the  
17 state and its citizens to provide a readily available fund for the  
18 payment of the expenses incurred by the Department of Environmental  
19 Conservation in the protection of the environment of the state from  
20 the release of oil or hazardous substances.

21 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
22 the state general fund the oil and hazardous substance release re-  
23 sponse fund. The fund shall be administered by the commissioner of  
24 environmental conservation.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under  
29 AS 46.08.040. The fund may not be used for capital improvements.

1           Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           (b) Money received by the state under (a)(2) and (a)(3) of this  
15 section shall be deposited in the general fund and credited to a  
16 special account called the "oil and hazardous substance release miti-  
17 gation account." The legislature may annually appropriate to the fund  
18 from this account a sum equal to the amount received under (a)(2) and  
19 (a)(3) of this section during the calendar year preceding the legisla-  
20 tive session in which the appropriations are to be made.

21           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
22 SUBSTANCE RELEASES. It is the intent of the legislature and declared  
23 to be the public policy of the state that funds for the abatement of a  
24 release of oil or a hazardous substance will always be available.

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

27           (1) contain, clean up, and take other necessary action,  
28 such as monitoring, assessing, investigating, and evaluating the  
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or  
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil  
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
5 hensive Environmental Response, Compensation, and Liability Act of  
6 1980); and

7 (3) recover the cost to the state or to a municipality of a  
8 containment and cleanup resulting from the release or the threatened  
9 release of oil or a hazardous substance.

10 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
11 maintain accounting records showing the income and expenses of the  
12 fund.

13 (b) The department shall develop procedures governing the expen-  
14 diture of, and accounting for, money expended from the fund, and may  
15 not delay implementation of this chapter pending the effective date of  
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-  
18 sioner shall submit a report to the legislature not later than the  
19 10th day following the convening of each regular session of the legis-  
20 lature. The report may include information considered significant by  
21 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; and

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

7 (b) As part of the department's on-going identification efforts  
8 associated with oil spill or hazardous waste sites, the commissioner  
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public  
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,  
14 and their estimated cost.

15 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)  
16 The commissioner shall seek reimbursement promptly under this section,  
17 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
18 or containment of oil or a hazardous substance that has been released.

19 (b) The attorney general, at the request of the commissioner,  
20 may seek to recover money expended by the department under this chap-  
21 ter or other law to contain and clean up oil or a hazardous substance  
22 that has been released or to control the threatened release of oil or  
23 a hazardous substance.

24 (c) The department may reimburse a municipality for actual  
25 expenses, other than normal operating expenses, incurred in the abate-  
26 ment of a release or threatened release of oil or a hazardous sub-  
27 stance if

28 (1) the municipality has entered into an agreement with the  
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for  
3 a necessary emergency first response to a release or threatened re-  
4 lease that posed an imminent and substantial threat to the public  
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner may adopt only  
7 those regulations which are expressly required to implement the  
8 specific purposes of this chapter.

9 Sec. 46.08.900. DEFINITIONS. In this chapter

10 (1) "capital improvement" includes construction, renova-  
11 tion, repair of, and improvement to, a building, but does not include  
12 other improvements to real property, such as construction of a dike or  
13 retaining wall;

14 (2) "commissioner" means the commissioner of environmental  
15 conservation;

16 (3) "containment and cleanup" includes the direct and  
17 indirect efforts associated with the prevention, abatement, contain-  
18 ment, or removal of oil or a hazardous substance, the restoration of  
19 the environment, and incidental administrative costs;

20 (4) "department" means the Department of Environmental  
21 Conservation;

22 (5) "fund" means the oil and hazardous substance release  
23 response fund;

24 (6) "hazardous substance" means

25 (A) an element or compound that, when it enters into  
26 or on the surface or subsurface land or water of the state,  
27 presents an imminent and substantial danger to the public health  
28 or welfare, or to fish, animals, vegetation, or any part of the  
29 natural habitat in which fish, animals, or wildlife may be found;

1 or

2 (B) a substance defined as a hazardous substance under  
3 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
4 Compensation, and Liability Act of 1980);

5 (7) "oil" means petroleum products of any kind and in any  
6 form, whether crude, refined, or a petroleum by-product, including  
7 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
8 refuse, oil mixed with other wastes, liquified natural gas, propane,  
9 butane, and other liquid hydrocarbons regardless of specific gravity;

10 (8) "release" means an intentional or unintentional release  
11 into the environment of the state.

12 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

13 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

14 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
15 Except as provided in (b) of this section, a person in charge of a  
16 vehicle, vessel or container from which, or a place at which, a haz-  
17 ardous substance is released shall report the release to the depart-  
18 ment and appropriate public safety agencies promptly after learning of  
19 the release.

20 (b) The commissioner may enter into an agreement with a person  
21 for the periodic reporting of a controlled release of a hazardous  
22 substance if the release is not into water.

23 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
24 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
25 stance shall make reasonable efforts to contain and clean up the  
26 hazardous substance promptly after learning of the release, unless the  
27 commissioner determines

28 (1) after consulting the Environmental Protection Agency or  
29 appropriate public safety agencies, that containment or cleanup is

1 technically infeasible;

2 (2) that containment or cleanup would cause greater en-  
3 vironmental damage than the release would cause if unabated; or

4 (3) that containment or cleanup would pose a greater threat  
5 to human life or health than if the release were not contained or  
6 cleaned up.

7 (b) The commissioner shall develop guidelines prescribing gen-  
8 eral procedures and methods to be used in the containment and cleanup  
9 of a hazardous substance.

10 (c) If the commissioner determines that the containment or  
11 cleanup of a hazardous substance undertaken is inadequate, the commis-  
12 sioner may direct the person undertaking the containment or cleanup to  
13 cease and may undertake the containment or cleanup directly or by  
14 contract.

15 (d) If it appears to the commissioner that the cause or respon-  
16 sibility for the release of a hazardous substance is unclear or unex-  
17 plained, the commissioner may immediately undertake the containment  
18 and cleanup of the release unless the commissioner determines

19 (1) after consulting the Environmental Protection Agency or  
20 appropriate public safety agencies, that containment or cleanup is  
21 technically infeasible;

22 (2) that containment or cleanup would cause greater en-  
23 vironmental damage than the release would cause if unabated; or

24 (3) that containment or cleanup would pose a greater threat  
25 to human life or health than if the release were not contained or  
26 cleaned up.

27 (e) The commissioner shall enter into agreement with the En-  
28 vironmental Protection Agency, and may enter into agreements with  
29 other persons and municipalities, in order to

1           (1) facilitate a coordinated and effective hazardous sub-  
2 stance release response in the state;

3           (2) provide for cooperative hazardous substance release  
4 notification procedures; or

5           (3) provide for cooperative review of hazardous substance  
6 release response contingency plans submitted to the department.

7           Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
8 request the governor to determine that an actual or imminent release  
9 of a hazardous substance constitutes a disaster emergency under  
10 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
11 23, the commissioner may assist the adjutant general in the relief of  
12 the emergency.

13           Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.  
14 The commissioner may contract with a person or a municipality for  
15 personnel, equipment, or services that may be useful to carry out the  
16 requirements of this chapter. If the commissioner determines that it  
17 is infeasible to contract with a person or a municipality, the commis-  
18 sioner may establish and maintain containment and cleanup personnel,  
19 equipment, and supplies necessary to carry out the requirements of  
20 this chapter.

21           Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter  
22 into supplementary agreements, reciprocal arrangements, and compacts  
23 with another state or country for the implementation of this chapter  
24 subject to the approval of the Congress of the United States, if  
25 required, under the Constitution of the United States.

26           Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this  
27 chapter or of a regulation adopted by the commissioner under this  
28 chapter conflicts with the charter, ordinance, or regulation of a  
29 municipality, the provision of this chapter or of the regulation

1 adopted by the commissioner under this chapter prevails.

2 (b) Authority to contain, clean up, or prevent a release or  
3 threatened release of oil or of a hazardous substance, and to exercise  
4 other powers necessary to implement this chapter and AS 46.08, are  
5 granted to municipalities that do not otherwise have that authority.  
6 Except as provided in (a) of this section, a municipality may exercise  
7 its police power within the area of the municipality.

8 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt only  
9 those regulations which are expressly required to implement the  
10 specific purposes of this chapter.

11 Sec. 46.09.900. DEFINITIONS. In this chapter

12 (1) "commissioner" means the commissioner of environmental  
13 conservation;

14 (2) "containment and cleanup" includes the direct and  
15 indirect efforts associated with the prevention, abatement, contain-  
16 ment, or removal of a hazardous substance, the restoration of the  
17 environment, and incidental administrative costs;

18 (3) "department" means the Department of Environmental  
19 Conservation;

20 (4) "hazardous substance" means

21 (A) an element or compound that, when it enters into  
22 or on the surface or subsurface land or water of the state,  
23 presents an imminent and substantial danger to the public health  
24 or welfare, or to fish, animals, vegetation, or any part of the  
25 natural habitat in which fish, animals, or wildlife may be found;  
26 or

27 (B) a substance defined as a hazardous substance under  
28 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
29 Compensation, and Liability Act of 1980);

1 (5) "release" means an intentional or unintentional release  
2 into the environment of the state.

3 \* Sec. 3. AS 26.23.050(b) is amended to read:

4 (b) Whenever, and to the extent that, money is needed to cope  
5 with a disaster, the first recourse shall be to funds regularly appro-  
6 priated to state and local agencies. The second recourse shall be to  
7 funds available in the disaster relief fund or the oil and hazardous  
8 substance release response fund, as appropriate. If money available  
9 from these sources is insufficient, and if the governor finds that  
10 other sources of money to cope with the disaster are not available or  
11 are insufficient, the governor may, notwithstanding any limitation  
12 imposed by AS 37.07.080(e), transfer and spend money appropriated for  
13 other purposes or, in situations involving natural disasters, borrow  
14 from the United States government or other public or private sources  
15 for a term not to exceed two years.

16 \* Sec. 4. AS 26.23.230(1) is amended to read:

17 (1) "disaster" means the occurrence or imminent threat of  
18 widespread or severe damage, injury, or loss of life or property  
19 resulting from any natural or nonmilitary man-made cause including,  
20 but not limited to, fire, flood, earthquake, landslide, mudslide,  
21 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
22 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
23 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
24 blight, infestation, explosion, riot, equipment failure, or shortage  
25 of food, water, fuel, or clothing, or the release of oil or a hazard-  
26 ous substance requiring prompt action to avert environmental danger or  
27 damage;

28 \* Sec. 5. AS 44.19.050 is amended to read:

29 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,

1 "disaster" means the occurrence or imminent threat of widespread or  
2 severe damage, injury, or loss of life or property resulting from any  
3 natural or man-made cause including, but not limited to, fire, flood,  
4 earthquake, landslide, avalanche, wind-driven water, weather condi-  
5 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
6 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
7 contamination, blight, infestation, explosion, [OR] riot, or the  
8 release of oil or a hazardous substance requiring prompt action to  
9 avert environmental danger or damage.

10 \* Sec. 6. AS 45.45.900 is amended to read:

11 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC  
12 POLICY. A provision, clause, covenant, or agreement contained in,  
13 collateral to, or affecting a [ANY] construction contract that [WHICH]  
14 purports to indemnify the promisee against liability for damages for  
15 (1) death or bodily injury to persons, (2) injury to property, (3)  
16 design defects or (4) [ANY] other loss, damage or expense arising  
17 under (1), (2), or (3) of this section from the sole negligence or  
18 wilful misconduct of the promisee or the promisee's agents, servants  
19 or independent contractors who are directly responsible to the prom-  
20 isee, is against public policy and is void and unenforceable; however,  
21 this provision does not affect the validity of an [ANY] insurance  
22 contract, workers' compensation, or agreement issued by an insurer  
23 subject to the provisions of AS 21, or a provision, clause, covenant,  
24 or agreement of indemnification respecting the handling, containment  
25 or cleanup of oil or hazardous substances as defined in AS 46.

26 \* Sec. 7. AS 46.03.290(a) is amended to read:

27 (a) When the department finds that an actual or imminent dis-  
28 charge of oil, a hazardous substance, or low level radioactive mate-  
29 rials to the air, water, land or subsurface land of the state poses an

1 immediate threat to the public health or welfare, or the environment  
2 of the state, it may issue an order declaring an emergency and direct-  
3 ing a person or persons to take action the department believes neces-  
4 sary to meet the emergency, and protect the public health, welfare, or  
5 environment.

6 \* Sec. 8. AS 46.03 is amended by adding a new section to read:

7 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a  
8 controlled release, the reporting of which is the subject of an agree-  
9 ment with the commissioner under AS 46.09.010(b), a person may not  
10 cause or permit the release of a hazardous substance as defined in  
11 AS 46.09.900.

12 \* Sec. 9. AS 46.03.760(a) is amended to read:

13 (a) A person who violates or causes or permits to be violated a  
14 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
15 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
16 the department, or a permit, approval, or acceptance, or term or  
17 condition of a permit, approval, or acceptance issued under this  
18 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
19 state for a sum to be assessed by the court of not less than \$500 nor  
20 more than \$100,000 for the initial violation, nor more than \$5,000 for  
21 each day after that on which the violation continues, and that shall  
22 reflect, when applicable,

23 (1) reasonable compensation in the nature of liquidated  
24 damages for any adverse environmental effects caused by the violation,  
25 that shall be determined by the court according to the toxicity,  
26 degradability and dispersal characteristics of the substance dis-  
27 charged, the sensitivity of the receiving environment, and the degree  
28 to which the discharge degrades existing environmental quality;

29 (2) reasonable costs incurred by the state in detection,

1 investigation, and attempted correction of the violation;

2 (3) the economic savings realized by the person in not  
3 complying with the requirement for which a violation is charged.

4 \* Sec. 10. AS 46.03.765 is amended to read:

5 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
6 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
7 or of a regulation, a lawful order of the department, or permit,  
8 approval, or acceptance, or term or condition of a permit, approval,  
9 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
10 In actions brought under this section, temporary or preliminary relief  
11 may be obtained upon a showing of an imminent threat of continued  
12 violation, and probable success on the merits, without the necessity  
13 of demonstrating physical irreparable harm. The balance of equities  
14 in actions under this section may affect the timing of compliance, but  
15 not the necessity of compliance within a reasonable period of time.

16 \* Sec. 11. AS 46.03.780(a) is amended to read:

17 (a) A person who violates a provision of this chapter, [OR]  
18 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
19 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
20 order, permit, or other determination of the department made under the  
21 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
22 and thereby causes the death of fish, animals, or vegetation or other-  
23 wise injures or degrades the environment of the state is liable to the  
24 state for damages.

25 \* Sec. 12. AS 46.03.790(a) is amended to read:

26 (a) Except as provided in (d) - (f) of this section, a person  
27 who negligently violates a provision of this chapter, [OR] AS 46.04,  
28 or AS 46.09, or of a regulation, lawful order of the department, or  
29 permit, approval, or acceptance, or term or condition of a permit,

1 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
2 AS 46.09 is guilty of a class B misdemeanor.

3 \* Sec. 13. AS 46.03.790(b) is amended to read:

4 (b) Except as provided in (d) - (f) of this section, a person  
5 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
6 AS 46.09, or of a regulation, lawful order of the department, or  
7 permit, approval, or acceptance, or term or condition of a permit,  
8 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
9 AS 46.09 is guilty of a class A misdemeanor.

10 \* Sec. 14. AS 46.03.790(d) is amended to read:

11 (d) Notwithstanding (a) and (b) of this section, a person who  
12 fails to provide or falsely states information required under AS 46.-  
13 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
14 upon conviction, is punishable by a fine of not more than \$25,000, or  
15 by imprisonment for not more than one year, or by both. Each unlawful  
16 act constitutes a separate offense.

17 \* Sec. 15. AS 46.04.010 is amended to read:

18 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
19 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
20 760(e), AS 46.08.070, or from an applicable federal fund, for the  
21 expenses it incurs in cleaning up or containing a discharge of oil.  
22 If the department obtains reimbursement for a portion of its expenses  
23 from a federal fund, the remainder of the expenses incurred may be  
24 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
25 the department under this section shall be deposited in the general  
26 fund and credited to a special account called the "oil and hazardous  
27 substance release mitigation account".

28 \* Sec. 16. AS 46.04.090(b) is amended to read:

29 (b) Inspection and enforcement employees of the department

1 designated by the commissioner are peace officers in the performance  
2 of their duties under this chapter, AS 46.09, and AS 46.03.

3 \* Sec. 17. Not later than January 1, 1987, the commissioner of environ-  
4 mental conservation shall develop guidelines under AS 46.09.020, added by  
5 sec. 2 of this Act.

6 \* Sec. 18. Not later than October 1, 1987, the commissioner of environ-  
7 mental conservation shall adopt regulations under AS 46.09.070, added by  
8 sec. 2 of this Act.

9 \* Sec. 19. AS 46.03.758(k) is repealed.

10 \* Sec. 20. This Act takes effect immediately in accordance with AS 01.-  
11 10.070(c).

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29



# Alaska State Legislature

Representative Mike Davis

Room V  
Juneau, Alaska 99811  
(907) 465-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708

## MEMORANDUM

To: Senate Finance Committee

From: Rep. Mike Davis

Date: May 8, 1986

Re: HB 470 - Oil and Hazardous Substance Release Response

-----

Following are some of the major flaws in the committee substitute for HB 470 proposed by Chevron:

1. The Chevron CS allows containment and cleanup to be undertaken even if that action were to cause a greater risk to human life or health than not cleaning up the materials.
2. Chevron's CS restricts response activities to the release from a facility of oil or hazardous substances. This provision undermines existing oil spill response capabilities, as well as severely limiting response to the release of hazardous substances. For example, the CS would prevent DEC from responding to the Peters Creek incident, in which benzene from an unknown source has contaminated the water supply of eight subdivisions in Southcentral Alaska.
3. Chevron's CS states that if the commissioner determines that cleanup of a hazardous substance is inadequate, the responsible party shall be notified in writing, be granted a response and comment period, and be allowed a hearing on the issue. In light of the recent incident at Crown Point, which required immediate action, this policy contravenes the public interest.
4. The Chevron bill deletes a provision allowing the commissioner to enter into agreements with municipalities providing for cooperative review of hazardous substance release response contingency plans submitted to the department. The CS would, for example, preclude the Municipality of Anchorage from having DEC review contingency plans regarding the shipment of hazardous substances through the city's railroad yard.

5. In the Chevron CS, notification of a release shall take place only if the release is at a certain level or greater, even if human health and safety is placed at risk while attempting to determine the chemical composition and quantity of the release. A prime example of this situation is the Crown Point incident.

6. Chevron would have DEC follow a national contingency plan for cleanup operations, though the national contingency plan does not provide any specific guidance regarding cleanup response.

7. The House version of HB 470 uses the same definition for 'hazardous substance' as is found elsewhere in state statute, with the exception that reference is also made to the federal Superfund definition of 'hazardous substance.' The Chevron CS deviates entirely from the definition of this term as found in state law, and instead substitutes language that specifically exempts any hazardous wastes associated with the oil and gas industry, whether or not human health and safety are placed at risk by the release of these materials.

8. In Chevron's CS, the containment and cleanup of oil and hazardous substances excludes any environmental restoration. The House version of HB 470 is already more relaxed than existing state law, in that the bill seeks only 'restoration of the environment' rather than 'restoration of the environment to its former state.' An example of environmental restoration is providing a proper slope where materials have been removed, in order to prevent erosion.

9. Chevron deletes the definition of 'oil' from the response fund, and incorporates oil and natural gas into the definition of 'hazardous substance.'—Consequently, it is not clear to what extent materials covered under the oil pollution chapter are or are not be covered by the response fund because of this change. This is the type of inconsistency in statutory language that results in conflicting or confusing regulations and enforcement procedures.

10. Chevron's CS deletes language stating that "except for a controlled release . . . a person may not cause or permit the release of a hazardous substance." This language parallels a similar provision already in statute regarding oil spills.

Offered: 3/14/86  
Referred: Rules

Original sponsors: Davis, Koponen, Hurley, et al

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 470 (Finance) am  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the release of oil  
and hazardous substances; repealing the  
oil spill mitigation account; and  
providing for an effective date."

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

\* Section 1. AS 46 is amended by adding a new chapter to

Read: -

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds  
and declares that the release from a facility of oil or  
hazardous substances into the environment presents a real  
and substantial threat to the public health and welfare, to  
the environment, and to the economy of the state. The  
legislature therefore concludes that it is in the best  
interest of the state and its citizens to provide a readily  
available fund for the payment of the expenses incurred by

[Note: In this markup, a single underline indicates a  
suggested addition to the original legislation. A double  
underline indicates underscoring contained in the original  
legislation.]

the Department of Environmental Conservation in the protection of the environment of the state from the such releases of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a) (2) and (a) (3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a) (2) and (a) (3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. It is the intent of the legislature and declared to be the public policy of the state that funds for the containment and cleanup abatement of a release or threat of release from a facility of oil or a hazardous substance will always be available.

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

"(1) take action necessary to contain and clean up and take other necessary action, such as monitoring, assessing, investigating, and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public

health-or-welfare,--or-to-the-environment, a release or threat of release into the environment of a hazardous substance from a facility.

(2) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(3) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of ~~oil~~-or a hazardous substance from a facility.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) Prior to the expenditure of any monies from the fund, ~~the~~ The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not otherwise delay implementation of this chapter pending the effective date of the procedures.

Sec. 46.08.060. REPORT TO THE LEGISLATURE.

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

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

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.020;

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

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; and

(5) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(b) As part of the department's on-going identification of sites of releases of hazardous substances efforts-associated-with-oil-spill-or-hazardous-waste-sites, the commissioner shall include in the report under this section

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by releases of hazardous substances from a facility at these sites; and

(3) the appropriate actions needed to contain and clean up ~~abate~~ these releases ~~threats~~ and their estimated cost.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the containment and cleanup ~~or containment~~ of ~~oil-or~~ a hazardous substance that has been released from a facility.

(b) The attorney general, at the request of the commissioner, may seek to recover money expended by the department under this chapter or other law to contain and clean up a release or threatened release of ~~oil-or~~ a hazardous substance from a facility ~~that-has-been-released or-to-control-the-threatened-release-of-oil-or-a-hazardous~~ substance.

(c) The department may reimburse a municipality for actual expenses, other than normal operating expenses, incurred in the containment and cleanup abatement of a release or threatened release of ~~oil-or~~ a hazardous substance from a facility if

(1) the municipality has entered into an agreement with the commissioner under AS 46.09.020(e) before incurring the expenses for which reimbursement is sought; and

(2) the commissioner determines that the expenses were for a necessary emergency first response to a release

or threatened release from a facility that posed an imminent and substantial threat to the public health or welfare, or to the environment.

Sec. 46.08.080. REGULATIONS. The commissioner may adopt only those regulations which are expressly required to implement the specific purposes of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "containment and cleanup" means action taken in the event of a release or threatened release of a hazardous substance from a facility as may be necessary to prevent, minimize or mitigate an imminent and substantial danger to public health and the environment, including such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance from a facility and actions to contain or abate such release or threatened release and incidental administrative costs.

~~includes-the-direct-and-indirect-efforts-associated-with-the prevention,-abatement,-containment,-or-removal-of-oil-or-a hazardous-substance,-the-restoration-of-the-environment,-and incidental-administrative-costs;~~

(4) "department" means the Department of Environmental Conservation;

(5) "fund" means the oil and hazardous substance release response fund;

(6) "facility" means a facility or a vessel as defined under 42 U.S.C. § 9601(9) and (28) (Comprehensive Environmental Response Compensation and Liability Act of 1980 or CERCLA);

~~(6)~~ (7) "hazardous substance" means

(A) any hazardous waste identified by the department pursuant to AS 46.03.299 an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under 42 U.S.C. § 9601(14) except that the exclusion in that definition concerning petroleum, natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel shall not apply for purposes of this chapter -9657-(Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

Cont. any  
line

{7} - "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity,

(8) "Permitted release" means

(A) any federally permitted release as defined under 42 U.S.C. § 9601(10) (CERCLA), or

(B) any release authorized by statute, ordinance, regulation, or rule of any state, municipality or local government or by any specific permit, license, or similar authorization from any such agency, including one of the foregoing which recognizes a standard industry practice, including variances obtained from any such agency which allow operations for facilities during a period of time when such facilities do not conform with relevant statutes, ordinances, regulations or rules. The term includes releases in accordance with any court order or consent decree.

(9) {8} "release" means any release as defined under 42 U.S.C. § 9601(22) (CERCLA), except that the term does not include any permitted release. means-an intentional-or-unintentional-release-into-the-environment-of the-state-

\* Sec. 2. AS 46 is amended by adding a new chapter to read:

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a) Except as provided in (b) of this section, a person in charge of a facility ~~vehicle, vessel or container~~ from which ~~or a place at which~~ a hazardous substance is released in excess of any quantity established pursuant to subsection (b) shall report the release to the department and any other appropriate public safety agencies designated by the department promptly after learning of the release.

(b) The department shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to this section. For any hazardous substance for which a reportable quantity has been established pursuant to regulations promulgated under 33 U.S.C. § 1321(b) (4) (Federal Water Pollution Control Act), such reportable quantity shall be deemed the reportable quantity for purposes of this section, unless and until superseded by regulations issued by the department.

~~(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.~~

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance from a facility shall take

make reasonable steps necessary efforts to contain and clean up the hazardous substance promptly after learning of the release, ~~unless the commissioner determines in a manner which is consistent with the guidelines developed under subsection (b) of this section.~~

~~(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible,~~

~~(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated, or~~

~~(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.~~

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines developed by the commissioner shall be consistent with the national contingency plan as revised and republished pursuant to 42 U.S.C. § 9605. Until the commissioner develops guidelines pursuant to this subsection, the national contingency plan revised and republished pursuant to 42 U.S.C. § 9605 shall be deemed to be the guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance.

DEC

p. 2779

(c) (1) If the commissioner determines that the containment and or cleanup of a hazardous substance undertaken pursuant to subsection (a) of this section is inadequate, the commissioner shall notify the person undertaking the containment and cleanup in writing specifying the respects in which the actions taken are inadequate and what actions are required. Such person shall have an opportunity to respond and comment on the determination of the commissioner or to request a hearing regarding the undertaking of the containment and cleanup. The determination of the department shall be upheld if it is found that the containment and cleanup is not consistent with the guidelines issued pursuant to subsection (b) of this section.

(2) If a determination of the department pursuant to subsection (c) (1) of this section is upheld, the department may

(A) direct the person undertaking the containment and cleanup to modify the containment and cleanup so as to meet the criteria of subsection (a) of this section, or

(B) direct the person undertaking the containment and cleanup to cease and may undertake the containment and cleanup directly or by contract so as to meet the criteria of subsection (a) of this section.

Nothing in this section shall be construed to prevent or otherwise delay the authority of the department to undertake or contract for the containment and cleanup of a release of a hazardous substance from a facility in the event of a disaster as defined in AS 26.23.230 and AS 44.19.050 to the extent necessary to respond to the disaster. ~~the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.~~

(d) If the identity of a person who causes or is responsible ~~it appears to the commissioner that the cause or responsibility~~ for the release of a hazardous substance from a facility is unknown ~~is unclear or unexplained~~, the commissioner may immediately undertake the containment and cleanup of the release in accordance with the guidelines developed pursuant to subsection (b). ~~unless the commissioner determines~~

~~(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;~~

~~(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or~~

~~(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.~~

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state; or

(2) provide for cooperative hazardous substance release notification procedures; ~~or~~ .

~~(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.~~

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner may assist the adjutant general in the relief of the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to

contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provision of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, and clean up, ~~or prevent~~ a release or threatened release of ~~oil or of~~ a hazardous substance from a facility, ~~and to exercise other powers necessary to implement this chapter and AS-46-08~~, are is granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

Sec. 46.09.070. REGULATIONS. The commissioner shall adopt only those regulations which are expressly required to implement the specific purposes of this chapter.

Sec. 46.09.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" means action taken in the event of a release or threatened release of a hazardous substance from a facility as may be necessary to prevent, minimize or mitigate an imminent and substantial danger to public health and the environment, including such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance from a facility and actions to contain or abate such release or threatened release and incidental administrative costs ~~includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment, and incidental administrative costs;~~

(3) "department" means the Department of Environmental Conservation;

~~(4)~~ (4) "facility" means a facility or a vessel as defined under 42 U.S.C. § 9601(9) and (28) (Comprehensive Environmental Response Compensation and Liability Act of 1980 or CERCLA);

~~(4)~~ (5) "hazardous substance" means

(A) any hazardous waste identified by the department pursuant to AS 46.03.299 an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under 42 U.S.C. § 9601(14)-9657 ~~(Comprehensive Environmental Response, Compensation, and Liability Act of 1980)~~ (CERCLA);

(6) "permitted release" means

(A) any federally permitted release as defined under 42 U.S.C. § 9601(10) (CERCLA), or

(B) any release authorized by statute, ordinance, regulation, or rule of any state, municipality or local government or by any specific permit, license, or similar authorization from any such agency, including one of the foregoing which recognizes a standard industry practice, including variances obtained from any such agency which allow operations for facilities during a period of time when such facilities do not conform with relevant statutes, ordinances, regulations or rules. The term includes releases in accordance with any court order or consent decree.

(7) (5) "release" means any release as defined under 42 U.S.C. § 9601(22) (CERCLA), except that the term does not include any permitted release as intentional or unintentional release into the environment of the state.

\* Sec. 3. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

\* Sec. 4. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER

CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of either a hazardous substance requiring prompt action to avert environmental danger or damage;

\* Sec. 5. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather conditions, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air contamination, blight, infestation, explosion, [OR] riot, or the release of either a hazardous substance requiring prompt action to avert environmental danger or damage.

\* Sec. 6 AS 45.45.900 is amended to read:

Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC POLICY. A provision, clause, covenant, or agreement contained in, collateral to, or affecting a ANY construction contract that [WHICH] purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design

defects or (4) [ANY] other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of an [ANY] insurance contract, workers' compensation, or agreement issued by an insurer subject to the provisions of AS 21, or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment and or cleanup of oil-or hazardous substances as defined in AS 46.

\* Sec. 7. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land or subsurface land of the state poses an immediate and substantial threat to the public health or welfare, or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment.

~~\* Sec. 8. AS 46.03 is amended by adding a new section to read:~~

~~Sec. 46.03.745. HAZARDOUS-SUBSTANCE-RELEASE-  
Except for a controlled release, the reporting of which is~~

~~the-subject-of-an-agreement-with-the-commissioner-under  
AS-46.09.010(b),-a-person-may-not-cause-or-permit-the  
release-of-a-hazardous-substance-as-defined-in-AS-46.09.900.~~

\*Sec. 9. AS 46.03.760(a) is amended to read:

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250-46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, acceptance, or term or condition of a permit, approval or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

\* Sec. 10. AS 46.03.765 is amended to read:

AS 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09 or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

\* Sec. 11. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an order, permit or other determination of the department made under the provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively, and

thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

\* Sec. 12. AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) - (f) of this section, a person who negligently violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class B misdemeanor.

\* Sec. 13. AS 46.03.790(b) is amended to read:

(b) Except as provided in (d) - (f) of this section, a person who knowingly violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class A misdemeanor.

\* Sec. 14. AS 46.03.790(d) is amended to read:

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$25,000, or by imprisonment for

not more than one year, or by both. Each unlawful act constitutes a separate offense.

\* Sec. 15. AS 46.04.010 is amended to read:

Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The department shall promptly seek reimbursement [ , EITHER] under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account".

\*Sec. 16. AS 46.04.090(b) is amended to read:

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.09, and AS 46.03.

\* Sec 17. Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020, added by sec. 2 of this Act.

\* Sec. 18. Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.070, added by sec. 2. of this Act.

\* Sec. 19. Notwithstanding the provisions of AS 37.05.159(b) and AS 37.07.080(e), the governor may, during the 1987 fiscal year, transfer from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08) amounts that, when added to the amounts appropriated, reappropriated, or transferred to the response fund in laws enacted by the legislature during the 1986 regular legislative session, do not exceed \$1,000,000.

\* Sec. 20. AS 46.03.758(k) is repealed.

\* Sec. 21 Sections 1-18 and 20 of this Act take effect immediately in accordance with AS 01.10.070(c).

\* Sec. 22. Section 19 of this Act takes effect July 1, 1986.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Page 1 of 4

Revision Date: \_\_\_\_\_

**REQUEST**

**FISCAL DETAIL**

Bill/Resolution No.: CSHB 470 (Fin)  
Title: An Act Relating to the Release of Oil and Hazardous Substances

Agency Affected: Environmental Conservation  
BRU: Environmental Quality

Sponsor: Rep. Mike Davis  
Requestor: House Finance Committee  
Date of Request: 3/12/86

Components: Director's Office

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>149.3</b>	<b>180.2</b>	<b>180.2</b>	<b>180.2</b>	<b>180.2</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>					

**POSITIONS : \*3.0 PFT**

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Al Adams, Chair Phone: 465-3706  
Division: House Finance Committee Date: 3/12/86

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 470(Fin) - Page 2 of 4

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and to make effective use of the fund created by this proposed legislation, several new positions would be required. TOTAL  
REQUEST

Funding for nine months of personal services is requested for FY 87, 100.8

### A. Response Capability

1. Two environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned in Anchorage for the South-central Region but would be available to respond to emergencies throughout the state. The new position form total reflects funding for one position and should be doubled to reflect the two positions.

2. One administrative assistant position to assist program staff by preparing contract documents for municipalities, by tracking and recording expenditures of the fund and by preparing the fiscal reports required by the Legislature.

### B. Support Costs

1. Travel funds of 3.0 for the administrative position and 5.0 per field officer position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 13.0

2. Contractual funds of about 7.0 per position are required to pay office costs including telephones, xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. 21.0

3. Funds for office supplies amounting to about 1.5 are requested; 2.0 is requested to replace expendable field sampling and safety supplies; and 5.0 is requested to repair laboratory testing equipment and replace supplies. 8.5

4. Equipment funds of 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 6.0

149.3

Position Title <b>Administrative Assistant II</b>			No. of Positions <b>One</b>	Range/Step <b>14 A</b>	Borg. Unit <b>GGU</b>	Gov. <b>Leg.</b>	Approv.	Disapp.
Time Status <b>Full Time</b>	Staff Months <b>12</b>	RP Number	Location <b>Juneau</b>		Election District			
<b>Justification</b>								
This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.								
We expect to fill this position on October 1, 1986.								
Funding for nine months has been requested for FY 87.								
<b>Type of Expenditure</b>			<b>Amount</b>					
<b>1</b>			<b>2</b>			<b>3</b>		
Salary			21.2					
Benefits			5.8					
Premium Pay								
Other								
<b>Total Personal Services</b>						<b>28.0</b>		
Travel						3.0		
Contractual						11.0		
Commodities						1.5		
Equipment						2.0		
Other								
<b>Total Cost</b>						<b>45.5</b>		
<b>Receipt Code</b>		<b>Funding Source</b>						
		Federal Receipts 1002						
		G. P. Match 1003						
		General Funds 1004		45.5				
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
<b>For B&amp;M Use Only</b>								
Key Number _____								

**Request For  
New Position**

Agency Environmental Conservation  
 DRU Environmental Quality  
 Component Water Quality Management

CSHB 470(Fin)

**FY 87**

Page 3 of 4  
 Revised Date \_\_\_\_\_

Position Title <b>Environmental Field Officer III</b>			No. of Positions Two	Range/Step 18 A	Req. Unit GGII	Clas.	Agency	Disapp.
Time Status <b>Full Time</b>	Staff Grade <b>12</b>	EP Number	Location <b>Anchorage</b>		Section District	ESG		
Type of Expenditures			Justification					
1	2	3	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>					
Salary	28.1							
Benefits	8.3							
Premium Pay								
Other								
<b>Total Personnel Services</b>		<b>36.4</b>						
Travel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Other								
<b>Total Cost</b>		<b>51.9</b>						
Receipt Code	Funding Source							
	Federal Receipts	1802						
	G. F. Match	1081						
	General Funds	1824	51.9					
	FA Receipts	1805						
	Program Receipts	928						
	CIP Receipts	1061						
	Other							
Pw. 3000 Unit Only Key Number								

**Request For  
New Position**

Agency Environmental Conservation  
 BAU Environmental Quality  
 Component Southcentral Region

CSHB 470(Fin)

**FY 87**

Page 4 of 4  
 Revised Date

### Sectional Analysis

Senate Finance Committee amendments to CSHB 470 (Fin) am - An Act relating to the release of oil and hazardous substances; repealing the oil spill mitigation account; and providing for an effective date.

#### Page 6, Line 10

Paragraph (8) is deleted, and new definitions are added to read:

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(10) "threatened release" means a situation in which there is an imminent danger that a release will occur.

#### Page 7, Line 5

to human life or health than if the release [ITSELF] were not contained or cleaned up.

#### Page 7, Line 24

to human life or health than if the release [ITSELF] were not contained or cleaned up.

#### Page 10, Line 1

Paragraph (5) is deleted, and new definitions are added to read:

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(7) "threatened release" means a situation in which there is an imminent danger that a release will occur.

Page 15, Line 7

Sections 19 - 22 are deleted and replaced with the following language:

\* Sec. 19. AS 46.03.758(k) is repealed.

\* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST Page 1 of 4

FISCAL DETAIL

Bill/Resolution No.: CSHB 470 (Fin)  
 Title: An Act Relating to the Release  
 of Oil and Hazardous Substances

Agency Affected: Environmental Conservation  
 BRU: Environmental Quality

Sponsor: Rep. Mike Davis  
 Requestor: House Finance Committee  
 Date of Request: 3/12/86

Components: Director's Office

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>149.3</b>	<b>180.2</b>	<b>180.2</b>	<b>180.2</b>	<b>180.2</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>					

**POSITIONS : \*3.0 PFT**

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Al Adams, Chair  
 Division: House Finance Committee

Phone: 465-3706  
 Date: 3/12/86

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 470(Fin) - Page 2 of 4

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and to make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL  
REQUEST

Funding for nine months of personal services is requested for FY 87,

100.8

### A. Response Capability

1. Two environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned in Anchorage for the South-central Region but would be available to respond to emergencies throughout the state. The new position form total reflects funding for one position and should be doubled to reflect the two positions.

2. One administrative assistant position to assist program staff by preparing contract documents for municipalities, by tracking and recording expenditures of the fund and by preparing the fiscal reports required by the Legislature.

### B. Support Costs

1. Travel funds of 3.0 for the administrative position and 5.0 per field officer position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

13.0

2. Contractual funds of about 7.0 per position are required to pay office costs including telephones, xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses.

21.0

3. Funds for office supplies amounting to about 1.5 are requested; 2.0 is requested to replace expendable field sampling and safety supplies; and 5.0 is requested to repair laboratory testing equipment and replace supplies.

8.5

4. Equipment funds of 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position.

6.0

149.3

Position Title <b>Administrative Assistant II</b>			No. of Positions One	Range/Step 14 A	Org. Unit GGU	Gov. L28	Appov.	Disapp.																																				
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District																																							
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>21.2</td> <td></td> </tr> <tr> <td>Benefits</td> <td>6.8</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td><b>Total Personal Services</b></td> <td></td> <td>28.0</td> </tr> <tr> <td>Travel</td> <td></td> <td>3.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>11.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>1.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td><b>Total Cost</b></td> <td></td> <td>45.5</td> </tr> </tbody> </table>			Type of Expenditure	2	3	Salary	21.2		Benefits	6.8		Premium Pay			Other			<b>Total Personal Services</b>		28.0	Travel		3.0	Contractual		11.0	Commodities		1.5	Equipment		2.0	Other			<b>Total Cost</b>		45.5	<b>Justification</b>  This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.					
Type of Expenditure	2	3																																										
Salary	21.2																																											
Benefits	6.8																																											
Premium Pay																																												
Other																																												
<b>Total Personal Services</b>		28.0																																										
Travel		3.0																																										
Contractual		11.0																																										
Commodities		1.5																																										
Equipment		2.0																																										
Other																																												
<b>Total Cost</b>		45.5																																										
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th></th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. P. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>45.5</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source			Federal Receipts 1002			G. P. Match 1003			General Funds 1004	45.5		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other		We expect to fill this position on October 1, 1986.  Funding for nine months has been requested for FY 87.																	
Receipt Code	Funding Source																																											
	Federal Receipts 1002																																											
	G. P. Match 1003																																											
	General Funds 1004	45.5																																										
	I-A Receipts 1005																																											
	Program Receipts 1028																																											
	CIP Receipts 1061																																											
	Other																																											
<b>For B&amp;M Use Only</b> Key Number _____																																												

**Request For  
New Position**

Agency Environmental Conservation  
BRU Environmental Quality  
Component Water Quality Management

CSHB 470(Fin)

**FY 87**

Page 3 of 4  
Revised Date

Position Title <b>Environmental Field Officer III</b>			No. of Positions Two	Range/Sup 18 A	Borg. Unit GGU	Clas. 1-9	Appoint.	Disapp.																																															
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Division District																																																		
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>28.1</td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>8.3</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td><b>Total Personnel Services</b></td> <td></td> <td></td> <td>36.4</td> </tr> <tr> <td>Tenure</td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Comm. Allowance</td> <td></td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td><b>Total Cost</b></td> <td></td> <td></td> <td>51.9</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary		28.1		Benefits		8.3		Premium Pay				Other				<b>Total Personnel Services</b>			36.4	Tenure			5.0	Contractual			5.0	Comm. Allowance			3.5	Equipment			2.0	Other				<b>Total Cost</b>			51.9	<b>Justification</b> <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>				
Type of Expenditure	1	2	3																																																				
Salary		28.1																																																					
Benefits		8.3																																																					
Premium Pay																																																							
Other																																																							
<b>Total Personnel Services</b>			36.4																																																				
Tenure			5.0																																																				
Contractual			5.0																																																				
Comm. Allowance			3.5																																																				
Equipment			2.0																																																				
Other																																																							
<b>Total Cost</b>			51.9																																																				
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Position Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1020</td> <td>51.9</td> </tr> <tr> <td></td> <td>FA Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1070</td> <td></td> </tr> <tr> <td></td> <td>CIF Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Position Source	Amount		Federal Receipts 1002			G. F. Match 1003			General Funds 1020	51.9		FA Receipts 1005			Program Receipts 1070			CIF Receipts 1061			Other																														
Receipt Code	Position Source	Amount																																																					
	Federal Receipts 1002																																																						
	G. F. Match 1003																																																						
	General Funds 1020	51.9																																																					
	FA Receipts 1005																																																						
	Program Receipts 1070																																																						
	CIF Receipts 1061																																																						
	Other																																																						
<div style="border: 1px solid black; padding: 5px;">             For BAMS Use Only              Key Number _____           </div>																																																							

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Southcentral Region

CSHB 470(Fin)

**FY 87**

Page 4 of 4  
 Revised Date \_\_\_\_\_

### Sectional Analysis

Senate Finance Committee amendments to CSHB 470 (Fin) am - An Act relating to the release of oil and hazardous substances; repealing the oil spill mitigation account; and providing for an effective date.

#### Page 6, Line 10

Paragraph (8) is deleted, and new definitions are added to read:

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(10) "threatened release" means a situation in which there is an imminent danger that a release will occur.

#### Page 7, Line 5

to human life or health than if the release [ITSELF] were not contained or cleaned up.

#### Page 7, Line 24

to human life or health than if the release [ITSELF] were not contained or cleaned up.

#### Page 10, Line 1

Paragraph (5) is deleted, and new definitions are added to read:

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency.

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that release does not include a permitted release or an act of nature which is unforeseeable in kind or degree.

(7) "threatened release" means a situation in which there is an imminent danger that a release will occur.

Page 15, Line 7

Sections 19 - 22 are deleted and replaced with the following language:

\* Sec. 19. AS 46.03.758(k) is repealed.

\* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

cc  
3/14

HOUSE FINANCE COMMITTEE  
LETTER OF INTENT  
FOR  
CS HB 470 (FINANCE)

To encourage responsible, experienced Alaskan companies to enter the oil and hazardous substance cleanup business and to facilitate the goals of cleaning up these substances, it is the intent of the Legislature to clarify the definition of "construction contracts" in AS 45.45.900. The provision in CS HB 470 (Finance) addresses an ambiguity in the current statute which prohibits indemnification agreements in construction contracts by specifically exempting hazardous waste cleanup contracts from this definition.

The provision does not require any entity, public or private, to enter into an indemnification agreement. It is not intended to hold any party harmless or exempt parties from liability for mishandling of oil or hazardous substances. The intent is to provide a mechanism for the allocation of liability among parties by allowing them to enter into contracts which provide protections and clear lines of responsibility.



-----  
Al Adams, Chair  
House Finance Committee

Adopted by House 3/19/86

1           Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           (b) Money received by the state under (a)(2) and (a)(3) of this  
15 section shall be deposited in the general fund and credited to a  
16 special account called the "oil and hazardous substance release miti-  
17 gation account." The legislature may annually appropriate to the fund  
18 from this account a sum equal to the amount received under (a)(2) and  
19 (a)(3) of this section during the calendar year preceding the legisla-  
20 tive session in which the appropriations are to be made.

21           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
22 SUBSTANCE RELEASES. It is the intent of the legislature and declared  
23 to be the public policy of the state that funds for the abatement of a  
24 release of oil or a hazardous substance will always be available.

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

27           (1) contain, clean up, and take other necessary action,  
28 such as monitoring, assessing, investigating, and evaluating the  
29 release or threatened release of oil or a hazardous substance that

Offered: 3/14/86  
Referred: Rules

Original sponsors: Davis, Koponen,  
Hurley, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 470 (Finance) am  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; repealing the oil spill mitigation ac-  
8 count; and providing for an effective date."

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

10 \* Section 1. AS 46 is amended by adding a new chapter to read:

11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

12 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
13 that the release of oil or hazardous substances into the environment  
14 presents a real and substantial threat to the public health and wel-  
15 fare, to the environment, and to the economy of the state. The legis-  
16 lature therefore concludes that it is in the best interest of the  
17 state and its citizens to provide a readily available fund for the  
18 payment of the expenses incurred by the Department of Environmental  
19 Conservation in the protection of the environment of the state from  
20 the release of oil or hazardous substances.

21 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
22 the state general fund the oil and hazardous substance release re-  
23 sponse fund. The fund shall be administered by the commissioner of  
24 environmental conservation.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under  
29 AS 46.08.040. The fund may not be used for capital improvements.

1           Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           (b) Money received by the state under (a)(2) and (a)(3) of this  
15 section shall be deposited in the general fund and credited to a  
16 special account called the "oil and hazardous substance release miti-  
17 gation account." The legislature may annually appropriate to the fund  
18 from this account a sum equal to the amount received under (a)(2) and  
19 (a)(3) of this section during the calendar year preceding the legisla-  
20 tive session in which the appropriations are to be made.

21           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
22 SUBSTANCE RELEASES. It is the intent of the legislature and declared  
23 to be the public policy of the state that funds for the abatement of a  
24 release of oil or a hazardous substance will always be available.

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

27           (1) contain, clean up, and take other necessary action,  
28 such as monitoring, assessing, investigating, and evaluating the  
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or  
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil  
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
5 hensive Environmental Response, Compensation, and Liability Act of  
6 1980); and

7 (3) recover the cost to the state or to a municipality of a  
8 containment and cleanup resulting from the release or the threatened  
9 release of oil or a hazardous substance.

10 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
11 maintain accounting records showing the income and expenses of the  
12 fund.

13 (b) The department shall develop procedures governing the expen-  
14 diture of, and accounting for, money expended from the fund, and may  
15 not delay implementation of this chapter pending the effective date of  
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-  
18 sioner shall submit a report to the legislature not later than the  
19 10th day following the convening of each regular session of the legis-  
20 lature. The report may include information considered significant by  
21 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; and

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

7 (b) As part of the department's on-going identification efforts  
8 associated with oil spill or hazardous waste sites, the commissioner  
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public  
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,  
14 and their estimated cost.

15 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)

16 The commissioner shall seek reimbursement promptly under this section,  
17 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
18 or containment of oil or a hazardous substance that has been released.

19 (b) The attorney general, at the request of the commissioner,  
20 may seek to recover money expended by the department under this chap-  
21 ter or other law to contain and clean up oil or a hazardous substance  
22 that has been released or to control the threatened release of oil or  
23 a hazardous substance.

24 (c) The department may reimburse a municipality for actual  
25 expenses, other than normal operating expenses, incurred in the abate-  
26 ment of a release or threatened release of oil or a hazardous sub-  
27 stance if

28 (1) the municipality has entered into an agreement with the  
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for  
3 a necessary emergency first response to a release or threatened re-  
4 lease that posed an imminent and substantial threat to the public  
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner may adopt only  
7 those regulations which are expressly required to implement the  
8 specific purposes of this chapter.

9 Sec. 46.08.900. DEFINITIONS. In this chapter

10 (1) "capital improvement" includes construction, renova-  
11 tion, repair of, and improvement to, a building, but does not include  
12 other improvements to real property, such as construction of a dike or  
13 retaining wall;

14 (2) "commissioner" means the commissioner of environmental  
15 conservation;

16 (3) "containment and cleanup" includes the direct and  
17 indirect efforts associated with the prevention, abatement, contain-  
18 ment, or removal of oil or a hazardous substance, the restoration of  
19 the environment, and incidental administrative costs;

20 (4) "department" means the Department of Environmental  
21 Conservation;

22 (5) "fund" means the oil and hazardous substance release  
23 response fund;

24 (6) "hazardous substance" means

25 (A) an element or compound that, when it enters into  
26 or on the surface or subsurface land or water of the state,  
27 presents an imminent and substantial danger to the public health  
28 or welfare, or to fish, animals, vegetation, or any part of the  
29 natural habitat in which fish, animals, or wildlife may be found;

1 or

2 (B) a substance defined as a hazardous substance under  
3 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
4 Compensation, and Liability Act of 1980);

5 (7) "oil" means petroleum products of any kind and in any  
6 form, whether crude, refined, or a petroleum by-product, including  
7 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
8 refuse, oil mixed with other wastes, liquified natural gas, propane,  
9 butane, and other liquid hydrocarbons regardless of specific gravity;

10 (8) "release" means an intentional or unintentional release  
11 into the environment of the state.

12 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

13 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

14 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
15 Except as provided in (b) of this section, a person in charge of a  
16 vehicle, vessel or container from which, or a place at which, a haz-  
17 arduous substance is released shall report the release to the depart-  
18 ment and appropriate public safety agencies promptly after learning of  
19 the release.

20 (b) The commissioner may enter into an agreement with a person  
21 for the periodic reporting of a controlled release of a hazardous  
22 substance if the release is not into water.

23 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
24 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
25 stance shall make reasonable efforts to contain and clean up the  
26 hazardous substance promptly after learning of the release, unless the  
27 commissioner determines

28 (1) after consulting the Environmental Protection Agency or  
29 appropriate public safety agencies, that containment or cleanup is

1           technically infeasible;

2                   (2) that containment or cleanup would cause greater en-  
3           vironmental damage than the release would cause if unabated; or

4                   (3) that containment or cleanup would pose a greater threat  
5           to human life or health than the release itself.

6                   (b) The commissioner shall develop guidelines prescribing gen-  
7           eral procedures and methods to be used in the containment and cleanup  
8           of a hazardous substance.

9                   (c) If the commissioner determines that the containment or  
10          cleanup of a hazardous substance undertaken is inadequate, the commis-  
11          sioner may direct the person undertaking the containment or cleanup to  
12          cease and may undertake the containment or cleanup directly or by  
13          contract.

14                   (d) If it appears to the commissioner that the cause or respon-  
15          sibility for the release of a hazardous substance is unclear or unex-  
16          plained, the commissioner may immediately undertake the containment  
17          and cleanup of the release unless the commissioner determines

18                   (1) after consulting the Environmental Protection Agency or  
19          appropriate public safety agencies, that containment or cleanup is  
20          technically infeasible;

21                   (2) that containment or cleanup would cause greater en-  
22          vironmental damage than the release would cause if unabated; or

23                   (3) that containment or cleanup would pose a greater threat  
24          to human life or health than the release itself.

25                   (e) The commissioner shall enter into agreement with the En-  
26          vironmental Protection Agency, and may enter into agreements with  
27          other persons and municipalities, in order to

28                   (1) facilitate a coordinated and effective hazardous sub-  
29          stance release response in the state;

1           (2) provide for cooperative hazardous substance release  
2 notification procedures; or

3           (3) provide for cooperative review of hazardous substance  
4 release response contingency plans submitted to the department.

5           Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
6 request the governor to determine that an actual or imminent release  
7 of a hazardous substance constitutes a disaster emergency under  
8 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
9 23, the commissioner may assist the adjutant general in the relief of  
10 the emergency.

11           Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.  
12 The commissioner may contract with a person or a municipality for  
13 personnel, equipment, or services that may be useful to carry out the  
14 requirements of this chapter. If the commissioner determines that it  
15 is infeasible to contract with a person or a municipality, the commis-  
16 sioner may establish and maintain containment and cleanup personnel,  
17 equipment, and supplies necessary to carry out the requirements of  
18 this chapter.

19           Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter  
20 into supplementary agreements, reciprocal arrangements, and compacts  
21 with another state or country for the implementation of this chapter  
22 subject to the approval of the Congress of the United States, if  
23 required, under the Constitution of the United States.

24           Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this  
25 chapter or of a regulation adopted by the commissioner under this  
26 chapter conflicts with the charter, ordinance, or regulation of a  
27 municipality, the provision of this chapter or of the regulation  
28 adopted by the commissioner under this chapter prevails.

29           (b) Authority to contain, clean up, or prevent a release or

1 threatened release of oil or of a hazardous substance, and to exercise  
2 other powers necessary to implement this chapter and AS 46.08, are  
3 granted to municipalities that do not otherwise have that authority.  
4 Except as provided in (a) of this section, a municipality may exercise  
5 its police power within the area of the municipality.

6 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt only  
7 those regulations which are expressly required to implement the  
8 specific purposes of this chapter.

9 Sec. 46.09.900. DEFINITIONS. In this chapter

10 (1) "commissioner" means the commissioner of environmental  
11 conservation;

12 (2) "containment and cleanup" includes the direct and  
13 indirect efforts associated with the prevention, abatement, contain-  
14 ment, or removal of a hazardous substance, the restoration of the  
15 environment, and incidental administrative costs;

16 (3) "department" means the Department of Environmental  
17 Conservation;

18 (4) "hazardous substance" means

19 (A) an element or compound that, when it enters into  
20 or on the surface or subsurface land or water of the state,  
21 presents an imminent and substantial danger to the public health  
22 or welfare, or to fish, animals, vegetation, or any part of the  
23 natural habitat in which fish, animals, or wildlife may be found;  
24 or

25 (B) a substance defined as a hazardous substance under  
26 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
27 Compensation, and Liability Act of 1980);

28 (5) "release" means an intentional or unintentional release  
29 into the environment of the state.

1 \* Sec. 3. AS 26.23.050(b) is amended to read:

2 (b) Whenever, and to the extent that, money is needed to cope  
3 with a disaster, the first recourse shall be to funds regularly appro-  
4 priated to state and local agencies. The second recourse shall be to  
5 funds available in the disaster relief fund or the oil and hazardous  
6 substance release response fund, as appropriate. If money available  
7 from these sources is insufficient, and if the governor finds that  
8 other sources of money to cope with the disaster are not available or  
9 are insufficient, the governor may, notwithstanding any limitation  
10 imposed by AS 37.07.080(e), transfer and spend money appropriated for  
11 other purposes or, in situations involving natural disasters, borrow  
12 from the United States government or other public or private sources  
13 for a term not to exceed two years.

14 \* Sec. 4. AS 26.23.230(1) is amended to read:

15 (1) "disaster" means the occurrence or imminent threat of  
16 widespread or severe damage, injury, or loss of life or property  
17 resulting from any natural or nonmilitary man-made cause including,  
18 but not limited to, fire, flood, earthquake, landslide, mudslide,  
19 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
20 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
21 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
22 blight, infestation, explosion, riot, equipment failure, or shortage  
23 of food, water, fuel, or clothing, or the release of oil or a hazard-  
24 ous substance requiring prompt action to avert environmental danger or  
25 damage;

26 \* Sec. 5. AS 44.19.050 is amended to read:

27 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,  
28 "disaster" means the occurrence or imminent threat of widespread or  
29 severe damage, injury, or loss of life or property resulting from any

1 natural or man-made cause including, but not limited to, fire, flood,  
2 earthquake, landslide, avalanche, wind-driven water, weather condi-  
3 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
4 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
5 contamination, blight, infestation, explosion, [OR] riot, or the  
6 release of oil or a hazardous substance requiring prompt action to  
7 avert environmental danger or damage.

8 \* Sec. 6. AS 45.45.900 is amended to read:

9 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC  
10 POLICY. A provision, clause, covenant, or agreement contained in,  
11 collateral to, or affecting a [ANY] construction contract that [WHICH]  
12 purports to indemnify the promisee against liability for damages for  
13 (1) death or bodily injury to persons, (2) injury to property, (3)  
14 design defects or (4) [ANY] other loss, damage or expense arising  
15 under (1), (2), or (3) of this section from the sole negligence or  
16 wilful misconduct of the promisee or the promisee's agents, servants  
17 or independent contractors who are directly responsible to the prom-  
18 isee, is against public policy and is void and unenforceable; however,  
19 this provision does not affect the validity of an [ANY] insurance  
20 contract, workers' compensation, or agreement issued by an insurer  
21 subject to the provisions of AS 21, or a provision, clause, covenant,  
22 or agreement of indemnification respecting the handling, containment  
23 or cleanup of oil or hazardous substances as defined in AS 46.

24 \* Sec. 7. AS 46.03.290(a) is amended to read:

25 (a) When the department finds that an actual or imminent dis-  
26 charge of oil, a hazardous substance, or low level radioactive mate-  
27 rials to the air, water, land or subsurface land of the state poses an  
28 immediate threat to the public health or welfare, or the environment  
29 of the state, it may issue an order declaring an emergency and

1 directing a person or persons to take action the department believes  
2 necessary to meet the emergency, and protect the public health,  
3 welfare, or environment.

4 \* Sec. 8. AS 46.03 is amended by adding a new section to read:

5 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a  
6 controlled release, the reporting of which is the subject of an agree-  
7 ment with the commissioner under AS 46.09.010(b), a person may not  
8 cause or permit the release of a hazardous substance as defined in  
9 AS 46.09.900.

10 \* Sec. 9. AS 46.03.760(a) is amended to read:

11 (a) A person who violates or causes or permits to be violated a  
12 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
13 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
14 the department, or a permit, approval, or acceptance, or term or  
15 condition of a permit, approval, or acceptance issued under this  
16 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
17 state for a sum to be assessed by the court of not less than \$500 nor  
18 more than \$100,000 for the initial violation, nor more than \$5,000 for  
19 each day after that on which the violation continues, and that shall  
20 reflect, when applicable,

21 (1) reasonable compensation in the nature of liquidated  
22 damages for any adverse environmental effects caused by the violation,  
23 that shall be determined by the court according to the toxicity,  
24 degradability and dispersal characteristics of the substance dis-  
25 charged, the sensitivity of the receiving environment, and the degree  
26 to which the discharge degrades existing environmental quality;

27 (2) reasonable costs incurred by the state in detection,  
28 investigation, and attempted correction of the violation;

29 (3) the economic savings realized by the person in not

1 complying with the requirement for which a violation is charged.

2 \* Sec. 10. AS 46.03.765 is amended to read:

3 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
4 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
5 or of a regulation, a lawful order of the department, or permit,  
6 approval, or acceptance, or term or condition of a permit, approval,  
7 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
8 In actions brought under this section, temporary or preliminary relief  
9 may be obtained upon a showing of an imminent threat of continued  
10 violation, and probable success on the merits, without the necessity  
11 of demonstrating physical irreparable harm. The balance of equities  
12 in actions under this section may affect the timing of compliance, but  
13 not the necessity of compliance within a reasonable period of time.

14 \* Sec. 11. AS 46.03.780(a) is amended to read:

15 (a) A person who violates a provision of this chapter, [OR]  
16 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
17 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
18 order, permit, or other determination of the department made under the  
19 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
20 and thereby causes the death of fish, animals, or vegetation or other-  
21 wise injures or degrades the environment of the state is liable to the  
22 state for damages.

23 \* Sec. 12. AS 46.03.790(a) is amended to read:

24 (a) Except as provided in (d) - (f) of this section, a person  
25 who negligently violates a provision of this chapter, [OR] AS 46.04,  
26 or AS 46.09, or of a regulation, lawful order of the department, or  
27 permit, approval, or acceptance, or term or condition of a permit,  
28 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
29 AS 46.09 is guilty of a class B misdemeanor.

1 \* Sec. 13. AS 46.03.790(b) is amended to read:

2 (b) Except as provided in (d) - (f) of this section, a person  
3 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
4 AS 46.09, or of a regulation, lawful order of the department, or  
5 permit, approval, or acceptance, or term or condition of a permit,  
6 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
7 AS 46.09 is guilty of a class A misdemeanor.

8 \* Sec. 14. AS 46.03.790(d) is amended to read:

9 (d) Notwithstanding (a) and (b) of this section, a person who  
10 fails to provide or falsely states information required under AS 46.-  
11 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
12 upon conviction, is punishable by a fine of not more than \$25,000, or  
13 by imprisonment for not more than one year, or by both. Each unlawful  
14 act constitutes a separate offense.

15 \* Sec. 15. AS 46.04.010 is amended to read:

16 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
17 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
18 760(e), AS 46.08.070, or from an applicable federal fund, for the  
19 expenses it incurs in cleaning up or containing a discharge of oil.  
20 If the department obtains reimbursement for a portion of its expenses  
21 from a federal fund, the remainder of the expenses incurred may be  
22 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
23 the department under this section shall be deposited in the general  
24 fund and credited to a special account called the "oil and hazardous  
25 substance release mitigation account".

26 \* Sec. 16. AS 46.04.090(b) is amended to read:

27 (b) Inspection and enforcement employees of the department  
28 designated by the commissioner are peace officers in the performance  
29 of their duties under this chapter, AS 46.09, and AS 46.03.

1 \* Sec. 17. Not later than January 1, 1987, the commissioner of environ-  
2 mental conservation shall develop guidelines under AS 46.09.020, added by  
3 sec. 2 of this Act.

4 \* Sec. 18. Not later than October 1, 1987, the commissioner of environ-  
5 mental conservation shall adopt regulations under AS 46.09.070, added by  
6 sec. 2 of this Act.

7 \* Sec. 19. Notwithstanding the provisions of AS 37.05.159(b) and  
8 AS 37.07.080(e), the governor may, during the 1987 fiscal year, transfer  
9 from the reserve for emergency operating expenses account to the oil and  
10 hazardous substance release response fund (AS 46.08) amounts that, when  
11 added to the amounts appropriated, reappropriated, or transferred to the  
12 response fund in laws enacted by the legislature during the 1986 regular  
13 legislative session, do not exceed \$1,000,000.

14 \* Sec. 20. AS 46.03.758(k) is repealed.

15 \* Sec. 21. Sections 1 - 18 and 20 of this Act take effect immediately  
16 in accordance with AS 01.10.070(c).

17 \* Sec. 22. Section 19 of this Act takes effect July 1, 1986.