

HB

567

SENATE FINANCE COMMITTEE REPORT

DATE: 5/8/90

FURTHER:

DATE TURNED INTO OFFICE: 5/8/90

The Finance Committee considered CSHB 567 (Finance) am Oil discharge prevention and contingency plan requirements.

and recommended:

- [x] replace with 5 CS CSHB 567 (Fin) [x] same title
[] or adopt CS [] new title
[] attached amendment(s) [] technical title change (HB only)
[x] Oil & Gas letter of intent adopted

[] do pass

[] do not pass

[x] no recommendation

[] individual recommendations

[] further referral to

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

[] fiscal note(s) DEC 1,371.0 DNR & DFB 156.5

[] zero fiscal note(s)

APPROVES PREVIOUS:

Dept/Date:

[] fiscal note(s)

[] zero fiscal note(s)

[] appropriation-no fiscal note

SIGNING DO PASS:

Handwritten signatures for 'SIGNING DO PASS'.

OTHER RECOMMENDATIONS:

Handwritten notes and signatures under 'OTHER RECOMMENDATIONS' including 'No Rec'.

1. Co-Chairs Signatures and Recommendations -- 2.

FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Oil Spill Contingency Plans
Sponsor: Rules Committee (Governor)
Requestor: Senate Oil & Gas

Agency Affected: Natural Resources
BRU: Petroleum Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 5/5/90

Approved by Commissioner: [Signature] Date: 5/5/90
Agency: Natural Resources

Distribution (by preparer):

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

Changes in SCS CS HR 567 (FIR)
have no fiscal impact.
This fiscal note is
appropriate. 5/3/90 1.1.

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
Title: An Act strengthening DEC's BRJ: Habitat Division
contingency plan and inspection requirements.
Sponsor: Rules Committee/Governor Components: Habitat
Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER *	156.5					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

* Oil and Hazardous Substance Release Response Fund

Prepared by: House Finance Committee Phone: 465-3727
Division: Co-Chairman Ron Larson Date: 4/23/90
Co-Chairman Lyman Hoffman
Approved by Commissioner: [Signature] Date: 4/23/90
Agency: _____

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management &
Impacted Agency(ies)

Changes in SGS CSHE 567(FI)
have no fiscal impact.
This fiscal note is
appropriate. 5/8/90

Adopted

Continuation of fiscal note analysis

FY91 Line Itemization -

PCM/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. The state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCSCSHB 567 (O&G)X
PUBLISH DATE: 5-8-90

FISCAL NOTE

REQUEST:

Revision Date: 5/3/90 Agency Affected: Environ. Conservation
Title: An Act relating to contingency BRU: Environmental Quality
plan requirements, financial responsibility...
Sponsor: Rules/Governor Components: Environmental Quality
Requestor: Senate Oil and Gas

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	665.0	614.0	563.0	563.0	563.0	563.0
TRAVEL	60.0	52.5	45.0	45.0	45.0	45.0
CONTRACTUAL	562.0	554.0	546.0	546.0	546.0	546.0
SUPPLIES	14.0	13.0	12.0	12.0	12.0	12.0
EQUIPMENT	70.0	65.0	60.0	60.0	60.0	60.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
CAPITAL	0.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
TOTAL	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0

POSITIONS:

FULL-TIME	12.0	12.0	12.0	12.0	12.0	12.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	2.0	1.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Larry Dietrick
Division: Environmental Quality

Phone: 465-2640
Date: 5/4/90

Approved by Commissioner: AD Kyle
Agency: Environmental Conservation

Date: 5/4/90

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Changes in SCS SHB 567 (Fin)
have no fiscal impact.
This fiscal note is
appropriate. 5/8/90

FISCAL ANALYSIS

The legislation requires certain facilities and vessels to include prevention measures in their contingency plans. One Ecologist II is necessary to develop prevention regulations such as design, construction and operation standards for the various types of facilities and vessels. In addition, field staff will require additional time to review the prevention portions of the plan and to perform more detailed facility inspections. Statewide, this will increase the workload by two FTE (Environmental Field Officer II's).

In addition, this legislation this section requires a new class of facilities - onshore exploration and production facilities - to develop oil discharge prevention and contingency plans. There are approximately 60 sites with multiple facilities currently operating in the state. Two Environmental Field Officers are necessary to evaluate these contingency plans, inspect facilities for compliance with the approved contingency plans, and to develop and participate in spill drills designed to test the ability of the contingency plans.

The legislation requires the Department to provide a copy of a contingency plan to the Departments of Fish and Game and Natural Resources and provide those agencies with an opportunity to review and comment on the plans. The coordination of review for over 70 plan reviews annually will require one additional FTE (Ecologist II).

The legislation requires proof of financial responsibility for responding to discharge incidents. One-half of an Administrative Assistant III is necessary to carry out the additional workload reviewing and approving the financial responsibility documentation for facilities covered by the section.

The legislation broadens the forms of security acceptable to demonstrate financial responsibility. The Department will need to evaluate what forms of security will be acceptable to the state and define those by regulation (.5 Administrative Assistant III).

The legislation provides authority to the Department to inspect the structural integrity of tank vessels, oil barges, oil terminal facilities, and pipelines. Outside expertise is necessary for some inspections. The Department will require two FTE (Environmental Field Officer III) and contractual funds (\$350.0) to implement this section.

The legislation requires the Department to conduct a survey of small non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. There are over 30 of these facilities, most of which are located in rural areas. The inspections will involve a technical review of facility design and construction, prevention measures, and spill response capability. The Department will provide technical assistance to the facility owners/operators to enhance their spill prevention and response capabilities. In addition, the Department will submit a report to the legislature outlining the types of problems at these facilities and suggestions for improvement. The inspections and technical assistance will require two Environmental Field Officers. Compilation of the statewide inspection information and recommendations report to the legislature will require one Ecologist II. The survey is required to be done within two years.

The legislation requires the Department to study oil discharge prevention and contingency planning issues associated with tank vessels and oil barges carrying noncrude oil. Based on the study results, the Department must report to the legislature with recommendations for locating regional response depots, defining operator response times including equipment and personnel requirements, and assigning industry and government roles in response efforts. The study must be completed no later than July 1, 1991. The Department will require contractual funds (\$100.0) to manage the study required by this section and prepare a report to the legislature.

Position	100	200	300	400	500	Total
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Env. Field Ofc II's	102.0	10.0	16.0	2.0	10.0	140.0
2 Env. Field Ofc III's	102.0	10.0	16.0	2.0	20.0	140.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
1 Admin. Asst. III	36.0	0.0	8.0	1.0	5.0	50.0
2 Env. Field Ofc III	102.0	10.0	16.0	2.0	10.0	140.0
Contractual (inspections)			450.0			450.0
2 Env. Field Ofc III	102.0	15.0	16.0	2.0	10.0	145.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Clerk Typist III's	68.0	0.0	16.0	2.0	10.0	96.0
TOTALS	665.0	60.0	562.0	14.0	70.0	\$1,371.0

Letter of Intent for Senate CS for CS for HB 567 (Oil and Gas)

Subsection (k) (3) (C) of HB 567 provides that a contingency plan holder must demonstrate that the equipment, personnel, and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours.

Like all other provisions in Section (k), subsection (k) (3) (C) is subject to Section (l) which provides that the Section (k) provisions are not clean up or performance standards for the discharge response. Rather, the Section (k) requirements, including those in subsection (k) (3) (C), are planning requirements for determining what will be in any particular contingency plan.

The subsection (k) (3) (C) planning provisions require a demonstrated plan for moving equipment, personnel, and other resources necessary to deploy and operate that equipment and personnel to the discharge site. The provision includes deployment and operation of the equipment and personnel to ensure that there are systems and plans to actually use the additional equipment in a manner that is well orchestrated to supplement and enhance the equipment and personnel from the plan holder's region of operation.

However, both segments of the contingency plan -- the deployment of the in-region equipment and the transportation and deployment of the out-of-region equipment -- are subject to Section (l). Neither segment creates a performance standard under the terms of HB 567. So, if a contingency plan has been approved, based upon a demonstrated plan of action to get equipment, personnel, and other resources to the site, it would not be a violation of the terms of A.S. 46.04.030 if unforeseeable circumstances result in a failure to actually deploy and operate all equipment within 72 hours.

A Sept 6

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 567 (O&G)

In the amendment that adds a new subsection (p) on page 11, after line 11:

Delete "A person who intends to commence operations for which an approved contingency plan is required under this section shall submit the proposed contingency plan to the department so that it is received by the department at least 65 days before the date on which the person intends to commence operations."

In the remaining sentence of subsection (p):

Delete "the"

Insert "a"

Delete "subsection"

Insert "section"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 567(O&G)

Page 11, after line 11:

Insert a new subsection to read:

"(p) A person who intends to commence operations for which an approved contingency plan is required under this section shall submit the proposed contingency plan to the department so that it is received by the department at least 65 days before the date on which the person intends to commence the operations. The department shall approve or disapprove the proposed contingency plan within 65 days after it receives a complete application for approval under this subsection."

Reletter the following subsections accordingly.

TO: SCS CS HB 567 (Oil and Gas)

AMENDMENT

page 12, line 3, insert after "of the"

"tank vessel, oil barge,"

page 12, line 4, insert after "of the"

"tank vessel, oil barge,"

page 12, line 5, insert after "with the"

"tank vessel, oil barge,"

page 12, line 6, insert after "similar"

"tank vessels, oil barges,"

page 12, line 7, insert after "mishaps"

"to the tank vessel or oil barge, or"

page 12, line 7, insert after "pipeline or"

"to similar tank vessels or oil barges, or"

Offered: 5/8/90
Referred: Finance

go0530hP

DP Adopted

Original sponsor(s): Rules/Governor

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

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

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

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

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

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

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

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

intentional act of the defendant;

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

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

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

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

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

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law [STRICTLY LIABLE UNDER THIS SECTION].

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

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

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

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

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

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

13 (A) the department; [OR]

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

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

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

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

22 (3) "response action contractor" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (p) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (f) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (d) The department shall adopt a regulation announcing

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

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

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

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

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

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

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

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

29 or

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

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

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

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

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

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

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

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

25 (A) agencies of the state;

26 (B) municipalities of the state;

27 (C) appropriate federal agencies;

28 (D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

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

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

1 plan.

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

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

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

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

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

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

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

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

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

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

9 (2) pay all costs incurred

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

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

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

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

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

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

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

3 (5) prepare, review, and revise

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

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

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

12 * Sec. 29. AS 46.08.060(2) is amended to read:

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

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

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

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

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

1 of \$10,000; and

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

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

10 (1) its actual storage capacity;

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

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

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

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

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

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

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

22 (9) other appropriate information.

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

29 (c) Upon completion of the survey required under (a) of this section,
SCS CSHB 567(O&G)

1 the Department of Environmental Conservation may

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

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

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

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

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

20 (2) appropriate discharge response times;

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

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

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

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

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

10 * Sec. 33. This Act takes effect immediately under AS 01.10.070(c).
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5/8/90

SECTIONAL ANALYSIS SCS CS HB 567 (Oil & Gas)

Section 1 - Local Governments and Vessel Traffic Control

Allows a municipality to enter into agreements with the U.S. Coast Guard, the EPA and other persons to develop and enforce vessel traffic control and monitoring systems for oil tank vessels and barges.

Section 2 - Penalty Multiplier for the Discharge of Oil

Adds language to include prevention requirements in contingency plans.

Section 3, 4, 5, 6 & 7 - Response Action Contractors

Provides for the limitation of liability of response action contractors.

Section 8 - Cooperative Agreements for Vessel Traffic Control in State Waters

Allows DEC to enter into agreements with the U.S. Coast Guard, the EPA and other persons to prevent oil discharges and develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

Section 9 - Implementation of Prevention and Contingency Plans

Requires that persons may not operate a tank vessel or oil barge unless they have and are in compliance with a prevention and contingency plan. Amends language in present law to clarify that a prevention and contingency plan provide for the best available technology at the time the plan was submitted or renewed. Failure to respond to a spill in the "shortest possible time" is a violation of the chapter. Holder of a plan may request, or the department may make on its own initiative, modifications to a plan upon a determination that a change has occurred in the operation of a facility of that the operators discharge experience demonstrates the need for change. Certificates will be provided to plan holders upon approval of the plan by the department. These certificates may be relied upon unless a person knows or has reason to know that the plan was revoked or the plan holder was out of compliance.

Section 10 - Contingency Plan Approvals

Provides DEC with state authority to approve, revoke or modify or contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires that DEC exercise its powers in a timely manner.

Provides that it is a defense to rely on a certificate issued by the department unless a person knows or has reason to know that the plan was revoked or the plan holder was not capable of carrying out the plan.

Requires an applicant for a contingency plan to plan for the clean up of a discharge.

Requires that an oil terminal facility plan must provide for containment or control and clean up of a discharge equal to the largest tank at the facility within 72 hours.

Requires that exploration or production facility or pipeline contingency plans provide for containment or control and clean up to the realistic maximum discharge within 72 hours.

Requires that an oil tank vessel or barge plan to have resources within the region of operation to contain or control and clean up within 72 hours, in the case of vessels larger than 500,000 barrels, a 300,000 barrel discharge and, in the case of vessels smaller than 500,000 barrels, a 50,000 barrel discharge. Additionally, the plan holder shall demonstrate access to other equipment located within or outside the region of operation, and the ability to have that equipment deployed at the discharge within 72 hours, necessary to accomplish containment and clean up of the maximum realistic discharge within the shortest possible time.

For a non-crude tank vessel or barge, the contingency plan must provide for containment and control of 15% of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment.

In the case of discharges into a receiving environment other than open water, the time requirement for clean up may, in the department's discretion extend beyond 72 hours. Failure to actually remove oil within the 72 hours does not constitute a failure to implement a plan properly. Defines "in compliance with the plan," "maximum realistic discharge" and region of operation." When considering whether to approve or modify a plan, the department may give credit for preventive measures such as double hull, double bottoms, secondary containment. Vessels that are used only for response operations can be exempted from the contingency planning requirements with prior approval of the department. Provision made for a plan holder, with departmental approval, to furnish equipment and resources to another plan holders in a response.

Requires that DEC approve or disapprove contingency plans within 65 days.

Section 11 through 13 - Amount of Financial Responsibility Established

(see attached chart)

Section 14 - Defense Standard

It is not a defense from the financial responsibility requirement to argue that the person believed they had satisfied the financial responsibility requirements.

Section 15 - Methods to Demonstrate of Financial Responsibility

Methods for establishing financial responsibility include: self-insurance, insurance, surety, guarantee, letter of credit or "other proof of financial responsibility" approved by the Department. Allows use of "protection and indemnity clubs."

Section 16 and 17 - Conforming Amendments/Letter of Credit

Conforming amendments providing for use of letter of credit.

Section 18 - Certificate for Proof of Financial Responsibility

Provides that the department will formally acknowledge a determination of financial responsibility with a certificate of approval from the department acknowledging that the proof requirement has been satisfied. It is a defense to rely on a certificate of approval issued by the department unless a person knows or has reason to know that the approval had been revoked. Adds language that allows use of P&I's and exempts them from direct action requirements if the department is satisfied with the coverage, there is at least \$50,000,000 in coverage and that there is a sworn affidavit provided that the required coverage is not otherwise available. Barges or tank vessels that are conducting or available for conducting response operations are exempt from these requirements subject to departmental approval.

Section 19 - Financial Responsibility and the CPI

Adjusts the financial responsibility requirement with the consumer price index every three years.

Section 20 - Small Facility Exemption

Exempts crude oil terminal facilities smaller than 5,000 barrels and non-crude oil terminal facilities smaller than 10,000 barrels from the contingency planning and financial responsibility requirements.

Sections 21 and 22 - Facility Inspections

Authorizes DEC to participate in the examination of vessels, barges, pipelines and facilities by federal and state agencies with jurisdiction and to independently inspect oil terminal facilities, exploration and production facilities, tank vessels and barges only if the department determines that federal or state agencies with jurisdiction are not performing timely and adequate inspections.

Sections 23 and 24 - Prevention Language

Includes "prevention" planning in the state's master and regional contingency plans.

Sections 25, 26 and 27 - Definitions

Defines an exploration facility, production facility, pipeline and tank vessel.

Section 28 - Use of Oil and Hazardous Substance Release Response Fund

Allows DEC to use money from the Oil and Hazardous Substance Release Response Fund to review industry contingency plans, conduct training, response exercises, inspections and tests in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies and to verify proof of financial responsibility.

Section 29 - Oil and Hazardous Substance Release Response Fund Reporting

Requires detailed reporting of uses of the Oil and Hazardous Substance Release Response Fund expenditures for contracts greater than \$20,000 and purchases greater than \$10,000.

Section 30 - Survey of Small Non-Crude Oil Terminal Facilities

Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for small non-crude oil terminal facilities.

Section 31 - Study Concerning Non-Crude Tank Vessels and Oil Barges

Requires DEC to study and make recommendation to the legislature concerning the oil discharge response capabilities relating to non-crude tank vessels and barges.

Section 32 - Transitional Provisions

New planning standards take effect on June 1, 1991. New financial responsibility requirements take effect June 1, 1991.

Section 33 - Effective Date

Immediate effective date.

Financial Responsibility Requirements

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	CS HB 567 (Finance)	SCS HB 567 (Oil & Gas)
Crude Oil Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$1 million up to \$50 million @ \$25/bbl. capacity	Same as the H Finance version
5 to 10,000 bbl.	None	None	None
Offshore exploration and production facilities	\$35 million	\$50 million	\$50 million
Pipelines	Not specifically addressed	Not addressed	\$50 million
Onshore production facilities	None	\$20 million	\$20 million
Onshore exploration facilities	None	\$20 million	\$5 million
Crude Oil Tank Vessels and Barges			
	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$100+ million @ \$300/bbl. capacity
Non-Crude Oil Tank Vessels and Barges			
	Tank Vessels = \$20 million, Barges = \$1 million	\$1 million up to \$35 million @ \$100/bbl. capacity	Same as the H Finance version

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Q
HB 565
HB 566
HB 567

February 21, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

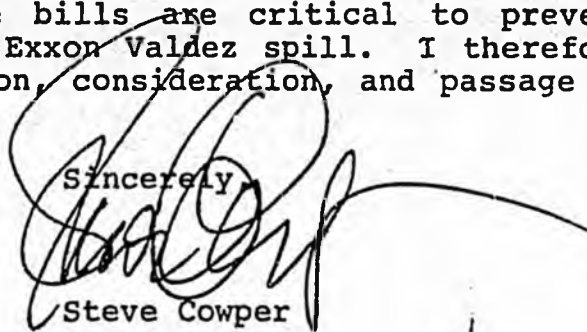
The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Steve Cowper', with a long horizontal flourish extending to the right.

Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCSCSHB 567 (O&G)(a)
PUBLISH DATE: 5-8-90

FISCAL NOTE

REQUEST:

Revision Date: 5/3/90
Title: An Act relating to contingency
plan requirements, financial responsibility...
Sponsor: Rules/Governor
Requestor: Senate Oil and Gas

Agency Affected: Environ. Conservation
BRU: Environmental Quality

Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	665.0	614.0	563.0	563.0	563.0	563.0
TRAVEL	60.0	52.5	45.0	45.0	45.0	45.0
CONTRACTUAL	562.0	554.0	546.0	546.0	546.0	546.0
SUPPLIES	14.0	13.0	12.0	12.0	12.0	12.0
EQUIPMENT	70.0	65.0	60.0	60.0	60.0	60.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
CAPITAL	0.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
TOTAL	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0

POSITIONS:

FULL-TIME	12.0	12.0	12.0	12.0	12.0	12.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	2.0	1.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Larry Dietrick

Division: Environmental Quality

Phone: 465-2640

Date: 5/4/90

Approved by Commissioner: *A. D. Lytle*

Agency: Environmental Conservation

Date: 5/4/90

Distribution (by preparer) :

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

FISCAL ANALYSIS

The legislation requires certain facilities and vessels to include prevention measures in their contingency plans. One Ecologist II is necessary to develop prevention regulations such as design, construction and operation standards for the various types of facilities and vessels. In addition, field staff will require additional time to review the prevention portions of the plan and to perform more detailed facility inspections. Statewide, this will increase the workload by two FTE (Environmental Field Officer II's).

In addition, this legislation this section requires a new class of facilities - onshore exploration and production facilities - to develop oil discharge prevention and contingency plans. There are approximately 60 sites with multiple facilities currently operating in the state. Two Environmental Field Officers are necessary to evaluate these contingency plans, inspect facilities for compliance with the approved contingency plans, and to develop and participate in spill drills designed to test the ability of the contingency plans.

The legislation requires the Department to provide a copy of a contingency plan to the Departments of Fish and Game and Natural Resources and provide those agencies with an opportunity to review and comment on the plans. The coordination of review for over 70 plan reviews annually will require one additional FTE (Ecologist II).

The legislation requires proof of financial responsibility for responding to discharge incidents. One-half of an Administrative Assistant III is necessary to carry out the additional workload reviewing and approving the financial responsibility documentation for facilities covered by the section.

The legislation broadens the forms of security acceptable to demonstrate financial responsibility. The Department will need to evaluate what forms of security will be acceptable to the state and define those by regulation (.5 Administrative Assistant III).

The legislation provides authority to the Department to inspect the structural integrity of tank vessels, oil barges, oil terminal facilities, and pipelines. Outside expertise is necessary for some inspections. The Department will require two FTE (Environmental Field Officer III) and contractual funds (\$350.0) to implement this section.

The legislation requires the Department to conduct a survey of small non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. There are over 30 of these facilities, most of which are located in rural areas. The inspections will involve a technical review of facility design and construction, prevention measures, and spill response capability. The Department will provide technical assistance to the facility owners/operators to enhance their spill prevention and response capabilities. In addition, the Department will submit a report to the legislature outlining the types of problems at these facilities and suggestions for improvement. The inspections and technical assistance will require two Environmental Field Officers. Compilation of the statewide inspection information and recommendations report to the legislature will require one Ecologist II. The survey is required to be done within two years.

The legislation requires the Department to study oil discharge prevention and contingency planning issues associated with tank vessels and oil barges carrying noncrude oil. Based on the study results, the Department must report to the legislature with recommendations for locating regional response depots, defining operator response times including equipment and personnel requirements, and assigning industry and government roles in response efforts. The study must be completed no later than July 1, 1991. The Department will require contractual funds (\$100.0) to manage the study required by this section and prepare a report to the legislature.

Position	100	200	300	400	500	Total
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Env. Field Ofc II's	102.0	10.0	16.0	2.0	10.0	140.0
2 Env. Field Ofc III's	102.0	10.0	16.0	2.0	20.0	140.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
1 Admin. Asst. III	36.0	0.0	8.0	1.0	5.0	50.0
2 Env. Field Ofc III	102.0	10.0	16.0	2.0	10.0	140.0
Contractual (inspections)			450.0			450.0
2 Env. Field Ofc III	102.0	15.0	16.0	2.0	10.0	145.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Clerk Typist III's	68.0	0.0	16.0	2.0	10.0	96.0
TOTALS	665.0	60.0	562.0	14.0	70.0	\$1,371.0