

LEG. FINANCE - BILLS 1985 - 1986 2408
HB 470 cont. - CHB 470 2408

1 Sec. 46.08.020. FINANCING OF THE FUND. 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 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
15 SUBSTANCE RELEASES. It is the intent of the legislature and declared
16 to be the public policy of the state that funds for the abatement of a
17 release of oil or a hazardous substance will always be available.

18 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
19 of the governor, the commissioner may use money from the fund to

20 (1) contain and clean up releases or threatened releases of
21 oil or a hazardous substance;

22 (2) undertake plans, inspections, sampling, tests, inves-
23 tigation, public notification, damage assessment, surveys, analyses,
24 engineering, construction, operations, and maintenance necessary or
25 appropriate to contain and clean up releases or threatened releases of
26 oil or hazardous substances;

27 (3) help the Department of Labor to assist emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

1 oil or a hazardous substance;

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

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

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

12 (b) By July 1 of each year, the department shall determine the
13 projected cost for the following fiscal year of monitoring, operating,
14 and maintaining sites where response has been completed or is expected
15 to be continued during the fiscal year.

16 (c) The commissioner shall consult with the commissioner of
17 revenue and the governor before adopting regulations governing fund
18 accounting. The department shall develop procedures and adopt rules
19 governing the expenditure of, and accounting for, money expended from
20 the fund, and may not delay implementation of this chapter pending the
21 effective date of the procedures and rule .

22 (d) The proper state officer shall pay disbursements from the
23 fund on presentation of vouchers signed by the governor or the gover-
24 nor's authorized representative.

25 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
26 shall submit a report to the governor and to the legislature not later
27 than the 10th day following the convening of each regular session of
28 the legislature. The report may include information considered sig-
29 nificant by the commissioner but must include:

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

3 (2) the amount and source of money received and money
4 recovered during the preceding fiscal year as specified in AS 46.08.-
5 020.

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

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

15 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
16 regulations necessary to implement the provisions of this chapter.

17 Sec. 46.08.900. DEFINITIONS. In this chapter

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

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

24 (3) "containment and cleanup" includes the direct and
25 indirect efforts associated with the prevention, abatement, contain-
26 ment, or removal of a hazardous substance, the restoration of the
27 environment to its former state, and incidental administrative costs;

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

1 (5) "employee" means a person who works for an employer in
2 a place that is not used primarily as a personal residence;

3 (6) "employer" means a person, including the state and a
4 political subdivision of the state, who has one or more employees
5 working in a place that is not used primarily as a personal residence;

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

8 (8) "hazardous substance" means

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

15 (B) a substance defined as a hazardous substance under
16 state or federal law or by regulations adopted under state or
17 federal law;

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

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

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

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

27 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

28 Except as provided in (b) of this section, a person in charge of a
29 vehicle, vessel or container from which, or a place at which, a

1 hazardous substance is released shall report the release to the
2 department and appropriate public safety agencies promptly after
3 learning of the release.

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

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

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

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

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

19 (b) The commissioner shall develop guidelines prescribing
20 general procedures and methods to be used in the containment and
21 cleanup of a hazardous substance.

22 (c) If the commissioner determines that the containment or
23 cleanup of a hazardous substance undertaken is inadequate, the commis-
24 sioner may direct the person undertaking the containment or cleanup to
25 cease and may undertake the containment or cleanup directly or by
26 contract.

27 (d) If it appears to the commissioner that the cause or respon-
28 sibility for the release of a hazardous substance is unclear or unex-
29 plained, the commissioner may immediately undertake the containment

1 and cleanup of the release unless the commissioner determines

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

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

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

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

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

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

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

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

24 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
25 The commissioner may contract with a person or a municipality for
26 personnel, equipment, or services that may be useful to carry out the
27 requirements of this chapter. If the commissioner determines that it
28 is infeasible to contract with a person or a municipality, the commis-
29 sioner may establish and maintain containment and cleanup personnel,

1 equipment, and supplies necessary to carry out the requirements of
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
4 designated by the commissioner as enforcement officers in the imple-
5 mentation of this chapter are peace officers of the state.

6 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
7 into supplementary agreements, reciprocal arrangements, and compacts
8 with another state or country for the implementation of this chapter
9 subject to the approval of the Congress of the United States, if
10 required, under the Constitution of the United States.

11 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
12 chapter or of a regulation adopted by the commissioner under this
13 chapter conflicts with the charter, ordinance, or regulation of a
14 municipality, the provision of this chapter or of the regulation
15 adopted by the commissioner under this chapter prevails.

16 (b) Authority to contain, clean up, or prevent a release or
17 threatened release of oil or of a hazardous substance, and to exercise
18 other powers necessary to implement AS 46.08 - AS 46.09, are granted
19 to municipalities that do not otherwise have that authority. Except
20 as provided in (a) of this section, a municipality may exercise its
21 police power within the area of the municipality.

22 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
23 regulations necessary to implement the provisions of this chapter.

24 Sec. 46.09.900. DEFINITIONS. In this chapter

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

27 (2) "containment and cleanup" includes the direct and
28 indirect efforts associated with the prevention, abatement, contain-
29 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

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

4 (4) "hazardous substance" means

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

11 (B) a substance defined as a hazardous substance under
12 state or federal law or by regulations adopted under state or
13 federal law;

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

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

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

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

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

12 * Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

13 (g) Notwithstanding the provisions of (b) of this section and
14 AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal
15 year from the reserve for emergency operating expenses account to the
16 oil and hazardous substance release response fund (AS 46.08).

17 * Sec. 6. AS 44.19.050 is amended to read:

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

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

29 (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive
2 materials to the air, water, land or subsurface land of the state
3 poses an immediate threat to the public health or welfare, or the
4 environment of the state, it may issue an order declaring an emergency
5 and directing a person or persons to take action the department
6 believes necessary to meet the emergency, and protect the public
7 health, welfare, or environment.

8 * Sec. 8. AS 46.03.760(a) is amended to read:

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

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

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

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

29 * Sec. 9. AS 46.03.765 is amended to read:

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

12 * Sec. 10. AS 46.03.780(a) is amended to read:

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

21 * Sec. 11. AS 46.03.790(a) is amended to read:

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

28 * Sec. 12. AS 46.03.790(b) is amended to read:

29 (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
2 AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class A misdemeanor.

6 * Sec. 13. AS 46.03.790(d) is amended to read:

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

13 * Sec. 14. AS 46.04.010 is amended to read:

14 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
15 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
16 760(e), AS 46.08.070, or from an applicable federal fund, for the
17 expenses it incurs in cleaning up or containing a discharge of oil.
18 If the department obtains reimbursement for a portion of its expenses
19 from a federal fund, the remainder of the expenses incurred may be
20 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
21 the department under this section shall be deposited in the general
22 fund and may be appropriated by the legislature to the oil and hazar-
23 dous substance release response fund (AS 46.08).

24 * Sec. 15. Not later than January 1, 1987, the commissioner of
25 environmental conservation shall develop guidelines under AS 46.09.020,
26 added by sec. 2 of this Act.

27 * Sec. 16. Not later than October 1, 1987, the commissioner of
28 environmental conservation shall adopt regulations under AS 46.09.080,
29 added by sec. 2 of this Act.

1 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).

Introduced: 1/13/86
Referred: Resources and
Finance

BY DAVIS, KOPONEN, FURLEY,
SZYMANSKI, GOLL, GRUENBERG,
JENKINS, NAVARRE, SUND,
MARROU, GRUSSENDORF,
PIGNALBERI AND M.M. MILLER

1 IN THE HOUSE

2 HOUSE BILL NO. 470

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; and providing for an effective date."

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

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

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

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

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

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

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

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

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

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

8 (4) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation and Liability Act of
11 1980); and

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

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

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

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

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

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

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

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

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

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 vehicle, vessel or container from which, or a place at which, a haz-
2 arduous substance is released shall report the release to the depart-
3 ment promptly after learning of the release.

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

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

12 (1) after consulting the Environmental Protection Agency,
13 that containment or cleanup is technically infeasible; or

14 (2) that containment or cleanup would cause greater en-
15 vironmental damage than the release would cause if unabated.

16 (b) The commissioner shall adopt regulations prescribing proce-
17 dures and methods to be used in the containment and cleanup of a
18 hazardous substance and in the disposal of waste from the containment
19 or cleanup.

20 (c) If the commissioner determines that the containment or
21 cleanup of a hazardous substance undertaken is inadequate, the commis-
22 sioner may direct the person undertaking the containment or cleanup to
23 cease and may undertake the containment or cleanup directly or by
24 contract.

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

29 (1) after consulting the Environmental Protection Agency,

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

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

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

16 (B) a substance defined as a hazardous substance under
17 state or federal law or by regulations adopted under state or
18 federal law;

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

24 (9) "release" means an intentional or unintentional release
25 into the environment of the state.

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

27 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

28 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

29 Except as provided in (b) of this section, a person in charge of a

1 that containment or cleanup is technically infeasible; or

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

4 (e) The commissioner shall enter into agreement with the En-
5 vironmental Protection Agency, and may enter into agreements with
6 other persons, in order to

7 (1) facilitate a coordinated and effective hazardous sub-
8 stance response in the state; or

9 (2) provide for cooperative hazardous substance release
10 notification procedures.

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

17 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
18 The commissioner may contract with a person or a municipality of the
19 state for personnel, equipment, or services that may be useful to
20 carry out the requirements of this chapter. If the commissioner
21 determines that it is infeasible to contract with a person or a munic-
22 ipality in the state, the commissioner may establish and maintain
23 containment and cleanup personnel, equipment, and supplies necessary
24 to carry out the requirements of this chapter.

25 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
26 designated by the commissioner as enforcement officers in the imple-
27 mentation of this chapter are peace officers of the state.

28 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
29 into supplementary agreements, reciprocal arrangements, and compacts

1 with another state or country for the implementation of this chapter
2 subject to the approval of the Congress of the United States, if
3 required, under the Constitution of the United States.

4 Sec. 46.09.070. MUNICIPAL POWERS. (a) If a provision of this
5 chapter or of a regulation adopted by the commissioner under this
6 chapter conflicts with the charter, ordinance, or regulation of a
7 municipality of the state, the provision of this chapter or of the
8 regulation adopted by the commissioner under this chapter prevails.

9 (b) Except as provided in (a) of this section, a municipality of
10 the state may exercise its police power within the area of the munic-
11 ipality.

12 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
13 regulations necessary to implement the provisions of this chapter.

14 Sec. 46.09.900. DEFINITIONS. In this chapter

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

17 (2) "containment and cleanup" includes the direct and
18 indirect efforts associated with the prevention, abatement, contain-
19 ment, or removal of a hazardous substance, the restoration of the
20 environment to its former state, and incidental administrative costs;

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

23 (4) "hazardous substance" means

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

29 or

1 (B) a substance defined as a hazardous substance under
2 state or federal law or by regulations adopted under state or
3 federal law;

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

6 * Sec. 3. AS 26.23.230(1) is amended to read:

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

18 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

19 (g) Notwithstanding the provisions of (b) of this section and
20 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
21 during a fiscal year from the reserve for emergency operating expenses
22 account to the oil and hazardous substance release response fund
23 (AS 46.08).

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

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring emergency action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 46.03.290(a) is amended to read:

7 (a) When the department finds that an actual or imminent dis-
8 charge of oil, a hazardous substance, or low level radioactive mate-
9 rials to the air, water, land or subsurface land of the state poses an
10 immediate threat to the public health or welfare, or the environment
11 of the state, it may issue an order declaring an emergency and direct-
12 ing a person or persons to take action the department believes neces-
13 sary to meet the emergency, and protect the public health, welfare, or
14 environment.

15 * Sec. 7. AS 46.03.760(a) is amended to read:

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

26 (1) reasonable compensation in the nature of liquidated
27 damages for any adverse environmental effects caused by the violation,
28 that shall be determined by the court according to the toxicity,
29 degradability and dispersal characteristics of the substance

1 discharged, the sensitivity of the receiving environment, and the
2 degree to which the discharge degrades existing environmental quality;

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

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

7 * Sec. 8. AS 46.03.765 is amended to read:

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

19 * Sec. 9. AS 46.03.780(a) is amended to read:

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

28 * Sec. 10. AS 46.03.790(a) is amended to read:

29 (a) Except as provided in (d) - (f) of this section, a person

1 who negligently violates a provision of this chapter, [OR] AS 46.04,
2 or AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class B misdemeanor.

6 * Sec. 11. AS 46.03.790(b) is amended to read:

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

13 * Sec. 12. AS 46.03.790(d) is amended to read:

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

20 * Sec. 13. AS 46.04.010 is amended to read:

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

1 hazardous substance release response fund (AS 46.08).

2 * Sec. 14. AS 46.03.758(k) is repealed.

3 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

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

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);

(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 ether 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-

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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~~, 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