ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

1637 SCOMM 62. SENATE SPEC. COMM. ON OIL & GAS, 1989-1990 1205

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 503 / HB 566
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:

Title: An Act concerning Response Fund expenditures/DES's role in spill disaster/SERC

Sponsor: Rules Committee

Requestor: Governor

Agency Affected: Environ Conservation

BRU: Environmental Quality

Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	115.4	115.4	115.4	115.4	115.4	115.4
TRAVEL	80.4	80.4	80.4	80.4	80.4	80.4
CONTRACTUAL	143.0	143.0	143.0	143.0	143.0	143.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	10.0	10.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	350.8	350.8	350.8	350.8	350.8	350.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	350.8	350.8	350.8	350.8	350.8	350.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	350.8	350.8	350.8	350.8	350.8	350.8

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
The impact for FY 90 will depend upon the effective date of this legislation.

Prepared by: Camille Stephens
Division: Environmental Quality
Phone: 465-2630
Date: 2/12/90

Approved by Commissioner:
Agency: Department of Environmental Conservation
Date: 2/12/90

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

Sections 1-5

Sections 1-5 will not require additional resources for the Department of Environmental Conservation.

Section 6

This legislation establishes the State Emergency Response Commission (SERC) in statute, giving the Department authority to request funds for performing its duties under the federal law SARA Title III.

The Department presently funds .5 FTE as technical staff to the SERC. This legislation will require two additional FTE (153.4) to serve as technical support to the SERC, coordinate SERC meetings, coordinate establishment of LEPCs, provide technical information to LEPCs, and other duties as required by the statute. The Department considers it essential that SERC/LEPC plans are coordinated with the State and Regional Oil and Hazardous Substance Discharge Prevention and Contingency Plans.

Travel expenses and per diem for commission members attending quarterly SERC meetings (6-8 persons) and quarterly subcommittee meetings (6-8 persons) are paid by the Department. There are four subcommittees. Based on an air fare of $360 and one day per diem at $80/day, travel and per diem amount to $70.4.

This legislation will require the commission to establish LEPCs for each emergency planning district. Approximately 12 Local Emergency Planning Committees (LEPC) are in the process of being established at an estimated cost of $20.0 to each community. Contractual services monies in the amount of $120.0 ($10 per LEPC) will be necessary to help insure that LEPCs are established, members receive appropriate training, and that the requirements of this proposed statute and SARA Title III are complied with. This cost will recur in subsequent fiscal years as additional LEPCs are established.

Based on the past year's expenditures, annual costs to advertise quarterly SERC meetings in newspapers will require approximately $5.0. Annual cost to transcribe audio tapers of quarterly SERC meetings is $2.0.

SUMMARY

	100	200	300	400	500	Total
ECO III	57.7	5.0	8.0	1.0	5.0	$ 76.7
ECO III	57.7	5.0	8.0	1.0	5.0	$ 76.7
Travel/per diem		70.4				$ 70.4
Contractual			127.0			$127.0
TOTALS	115.4	80.4	143.0	2.0	10.0	$350.8

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CSSB 503 (Oil and Gas)
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title :"...transfering the oil and hazardous substance response office to the Dept. of Military & Veterans' Affairs
Sponsor : Senate Oil and Gas
Requestor : Senate Oil and Gas

Agency Affected : Department of Law
BRU : Legal Services
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : April 2, 1990

Richard L. Pegues [FOR]

Approved by Commissioner : Douglas B. Baily, Attorney General
Date : April 2, 1990
Agency : Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 503 (Oil and Gas)

This bill amends various statutes to provide that when an actual or imminent oil or hazardous substance discharge develops in to a catastrophic oil discharge, or becomes a declared disaster emergency, the division of emergency services, Department of Military and Veterans' Affairs, shall exercise the authority of the Department of Environment Conservation and direct a person or persons to take action necessary to meet the emergency, and protect the public health, welfare and environment. The division would establish an oil and hazardous substance response office to perform related duties.

The bill would also provide that the attorney general shall immediately seek to recover money expended by the division of emergency services for containment and cleanup. Because the Department of Law already provides this service on behalf of DEC, there will not be a fiscal impact for the Department of Law if the division of emergency services is included in this provision. Law's costs for this purpose are normally reimbursable from the hazardous substance release response fund, as a necessary part of containment and cleanup.

Section 25 of the bill establishes an Alaska State Emergency Response Commission, within the Department of Military and Veterans' Affairs, to oversee state and regional plans for hazardous substance response, and to prepare, review, and revise the statewide and regional master oil and hazardous substance discharge and prevention contingency plans. The commission would be responsible for overseeing local planning committee activities.

A Hazardous Substance Spill Technology Review Council would also be established within the commission. The council would be responsible for reviewing and recommending oil and hazardous substance spill technology research topics to DEC; establishing testing protocols to be used by DEC to evaluate the effectiveness of hazardous substance spill technologies for use in the state; identifying sources of money that may be available for discharge related research; and making proposals to the governor and the commission to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances.

The council would serve as a central repository of hazardous substance discharge information and compile and maintain information relating to available containment and cleanup technology, including ways to improve hazardous substance spill response technology and procedures, steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substance, and the steps that should be taken to improve the ability of industry and government to respond to discharges of hazardous substances. The council would also compile and maintain information on the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharge and on hazardous substance spill technology research conducted by the Department of Environmental Conservation.

Finally, the council would be given investigative and hearing powers and would be able to issue subpoenas, administer oaths, and conduct investigations related to its duties. The council would be empowered to compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and could have the depositions of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when it is consistent with the duties assigned to the council. The failure, refusal, or neglect to obey a subpoena would be punishable by law or court rule. The superior court would be able to compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

These latter powers are substantial and could require considerable attorney legal services if the council conducted extensive investigations. Unfortunately, there is no way to predict the extent to which investigations might be conducted. For instance, if the council's investigations are merely incidental, existing staff who normally assist the Department of Environmental Conservation would suffice. Conversely, if the council undertook an indepth investigation involving complex issues, substantial evidence, or numerous witnesses, additional attorney resources would be required before the work could be undertaken. Consequently, it is likely that an appropriation for legal services will be required at some point after the bill is implemented and the actual workload becomes known.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 503 (O&G)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: April 2, 1990
Title: Oil and hazardous substance response.
Sponsor: Governor
Requestor: Senate Oil and Gas Committee

Agency Affected: DMVA
BRU: Disaster Planning & Control
Components: Oil & Hazardous Substance Response Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	443.4	443.4	443.4	443.4	443.4	443.4
TRAVEL	115.4	115.4	115.4	115.4	115.4	115.4
CONTRACTUAL	1427.0	1327.0	1327.0	1327.0	1327.0	1327.0
SUPPLIES	59.0	59.0	59.0	59.0	59.0	59.0
EQUIPMENT	67.0	67.0	67.0	67.0	67.0	67.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2111.8	2011.8	2011.8	2011.8	2011.8	2011.8

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	2111.8	2011.8	2011.8	2011.8	2011.8	2011.8
TOTAL						

POSITIONS:

FULL-TIME	9	9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Jeff Morrison, Director
Phone: 465-4600
Division: Administrative & Support Services, DMVA
Date: 4/2/90

J Morrison
Approved by Commissioner: for MG John Schaeffer
Date: 4/2/90
Agency: Department of Military & Veterans Affairs

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

FISCAL NOTE FOR CSSB 503 (O&G)
Department of Military and Veterans Affairs

This bill does two things that have a fiscal impact: 1) it transfers the Oil and Hazardous Substance Response Office created by Ch 113, SLA 1989 from the Department of Environmental Conservation to the Department of Military and Veterans Affairs; and 2) it establishes the State Emergency Response Commission (SERC) in statute. Passage of the act would create a new component in the Disaster Planning and Control BRU: Oil and Hazardous Substance Response Office.

The fiscal note for DMVA for these two purposes is derived from the fiscal notes prepared by the Department of Environmental Conservation for SB264 (Ch 113, SLA 1989) [for the costs associated with the Oil and Hazardous Substance Response Office], and for the initial Governor's submission of SB 503 [for the costs associated with the SERC].

Due to the short response time to prepare this fiscal note, it may be necessary to revise it after consultation with the Department of Environmental Conservation. There was not ample time to work closely with DEC prior to the deadline for submission of the fiscal note.

TRANSFER OF OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE

The response office would consist of a full-time staff of nine agency personnel: a deputy director, six response specialists, one administrative assistant, and one clerk typist. The contractual line includes the following: 1) the second of two years of office set-up costs ($100,000); 2) training contracts ($200,000); 3) contracts with local governments ($500,000); 4) wages and per diem for volunteer training ($300,000); 5) contracts with private response specialist ($100,000); and contracts for oil spill response research ($100,000). These funds are currently budgeted in the Department of Environmental Conservation, in the Environmental Quality Projects component of the Environmental Quality BRU.

Funding for this office is from the Oil and Hazardous Substance Release Response Fund, established by A.S. 46.08.010. Including the personal services costs and contractual services costs specifically addressed above, the total costs of this portion of the fiscal note are:

Personal services	443.4
Travel	45.0
Contractual Services	1300.0
Supplies	59.0
Equipment	67.0
Total	1914.4

ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSION (SERC)

The staff of the Oil and Hazardous Substance Response Office will serve as staff to the SERC under terms of this bill, providing the following services: serve as technical support to the SERC, coordinate SERC meetings, coordinate establishment of the Local Emergency Planning Committees (LEPCs), provide technical information to LEPCs and other duties required by statute. This legislation will not require additional new positions. Costs of the SERC will consist chiefly of travel and per diem of SERC members, and costs of establishing Local Emergency Planning Committees (LEPCs).

Travel expenses and per diem for Commission members attending quarterly meetings (6-8 persons) and quarterly subcommittee meetings (6-8 persons) will be paid by the fiscal note to this bill. There are four subcommittees. Assuming air fare of $360.00 and per diem of $80.00 per member on an average, the total cost of travel and per diem are estimated to be $70,400.

The legislation will require the SERC to establish LEPCs for each emergency planning district. Approximately 12 LEPCs are in the process of being established at an estimated cost of $20,000 to each community. Contractual services monies in the amount of $120,000 ($10,000 per LEPC) will be necessary to help ensure that LEPCs are established, members receive appropriate training, and that the requirements of this proposed statute and SARA Title III are complied with. This cost will recur in subsequent fiscal years as additional LEPCs are established.

Based on past experience, annual costs to advertise quarterly SERC meetings in newspapers will require approximately $5,000. Annual cost to transcribe audio tapes of quarterly SERC meetings is $2,000.

Including the travel and contractual services costs specifically addressed above, the total costs of this portion of the fiscal note are:

Personal services	0.0
Travel	70.4
Contractual Services	127.0
Supplies	0.0
Equipment	0.0
Total	197.4

The combined annual cost of the fiscal note is $2,111,800. This drops by $100,000, to $2,011,800, in the second year due to the end of office start-up costs. Since this fiscal note was prepared rather hastily, we welcome the critical review of the legislative finance committees.

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9364
Fax - (907) 262-1881

TO: L.I.O. June

ATTN: ____________ FAX: ____________ PHONE: ____________

FROM: Soldotna - Shelia Dickson PHONE: ____________

INSTRUCTIONS: Please deliver to Senate Oil & Gas as testimony to be included in tape # 90-02-116.

DATE: 3-6-90 TIME: 7:19pm

DISCARD ORIGINALS___ HOLD FOR PICKUP___

NUMBER OF PAGES (not counting the cover sheet): 1

TRANSMITTED BY: Alyson

Alaska State Legislature

Please enter into the record my testimony to the Senate Oil & Gas
committee name

committee on SB 503, dated 3-6-90.
bill/subject

The adoption of S.B. 503 will strengthen the states emergency response capabilities.

The establishment of the fund is also a good idea.

I understand our Governor asked for industry comments prior to introducing these bills. This is very disappointing.

~~Industries comments should be no more~~
~~relevant Than any~~

Thank you

Signed: Sheila Dickson
Testifier

PACE.
Representing (Optional)

100 Trading Bay, Suite 4 Kenai AK 99611
Address

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Trustees for ALASKA
a nonprofit public interest environmental law firm

Michael M. Wenig
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(907) 276-4244

An Appeal for Significant Improvement in the Enforcement of Alaska's Environmental Laws

Recommended Legislative Remedies

submitted by: Sue Libenson, Executive Director
Alaska Center for the Environment

Mike Wenig, Staff Attorney
Trustees for Alaska

Introduction

In the wake of the Exxon Valdez oil spill, Alaska's greatest environmental tragedy, it is anticipated that the legislature will consider numerous approaches to improving public policy with the intent of preventing future spills. Many of these changes will focus on improvements within the Alaska Department of Environmental Conservation (DEC) which has the bulk of the State's responsibility with regards to oil spill prevention and response.

For any of the legislature's potential actions to succeed, however, they must be backed by one underlying factor - improved enforcement. While there are undoubtedly needs for change in spill prevention and response, the Commission must recognize that the current failure of existing regulatory safeguards is largely due to the inability of agencies, including DEC, to properly enforce the law and thereby create an atmosphere which encourages compliance by potential polluters.

The following outlines a package of legislative recommendations for improving the enforcement of Alaska's environmental laws and regulations. The implementation of these measures will ultimately be improved compliance, the ultimate tool in preventing future pollution catastrophes.

Recommendations

I. Authorize DEC to assess administrative penalties.

II. Strengthen criminal penalties for violations of pollution laws.

III. Authorize DEC to make reasonable inspections without first obtaining a warrant.

IV. Eliminate administrative and judicial "pre-enforcement review" of compliance orders.

V. Provide for citizen suits to enforce environmental statutes and regulations.

VI. Provide adequate funding for DEC to fulfill its regulatory mandate.

Discussion of Recommendations

I. DEC SHOULD HAVE THE STATUTORY AUTHORITY TO ASSESS ADMINISTRATIVE PENALTIES

Among the tools that are necessary for DEC to have a credible, forceful, and efficient enforcement program is the authority to assess administrative penalties for violations of the State's environmental laws.

Penalties, generally, are an important enforcement tool because they greatly reduce the economic incentives to violate the State's environmental laws. However, DEC currently has the authority only to issue a compliance order requiring corrective action or to commence a judicial enforcement action for civil or criminal penalties.[1] Like most litigation, however, judicial enforcement actions require the State to commit substantial resources and time and, thus, are used only for the most extreme violators. By themselves, judicial enforcement actions cannot provide a sufficient enforcement threat.

A civil penalty program is thus a necessary tool for a credible enforcement arsenal. Administrative penalties could be assessed through a fair yet far less resource intensive administrative hearing procedure than court proceedings. Decisions by administrative hearing officers would be judicially reviewable on the record, rather than through a cumbersome trial

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[1] Two of these three tools, themselves, need to be strengthened, as explained below in sections IV and VI.

procedure.

Administrative penalties would greatly strengthen DEC's enforcement presence and capability by providing the agency with a relatively quick and efficient means of imposing penalties. The authority to assess administrative penalties is particularly important for the relatively numerous yet small violators, for whom DEC's commencement of lengthy judicial enforcement proceedings is simply not worthwhile. By greatly reducing the resources necessary to levy penalties, an administrative penalty program would provide an enforcement threat that is otherwise not present at all for these small violators.

Administrative penalties are an integral component of the federal environmental enforcement program.[2] Numerous state agencies also have the authority to assess penalties for violations of state environmental laws.[3] Administrative penalties should become an essential component of DEC's enforcement arsenal as well.

Of course, merely having the legal authority to assess penalties is not enough. DEC must also be given the corresponding budgetary resources to hire sufficient technical

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[2] See, e.g., section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a); section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 1361(a); section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a); and section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609.

[3] For example, see Washington, RCW 90.48.144.

staff and permanent hearing officers to make the administrative penalty process work.

II. CRIMINAL PENALTIES FOR VIOLATIONS OF STATE ENVIRONMENTAL LAWS SHOULD BE STRENGTHENED

Stiff criminal sanctions are another essential component of the kind of enforcement program that is necessary to achieve full compliance with the State's environmental laws. The current liability for criminal violations of Alaska's environmental laws is inadequate.

With a few exceptions, negligent and knowing violations of the State's environmental laws are currently only class B and A misdemeanors, respectively. AS 46.03.790(a), (b). Class B misdemeanors are punishable by a fine of not more than $1000 and by imprisonment for no longer than 90 days; Class A misdemeanors are punishable by a fine of not more than $5000 and by a maximum of imprisonment for one year. AS 12.55.035(b)(3), (4); 12.55.135(a), (b).

These liabilities stand in stark contrast with criminal liabilities for violations of federal environmental laws. For example, under section 309(c) of the federal Clean Water Act, negligent violations are punishable by either or both maximum fines of $25,000 per violation and/or one year imprisonment; knowing violations are punishable by either maximum fines of $50,000 per violation or by three years imprisonment. 33 U.S.C.

§ 1319(c).[4]

Alaska's criminal liabilities should be strengthened by making negligent violations Class A misdemeanors and knowing violations Class C felonies, which are punishable by a maximum fine of $50,000 per violation and five years' imprisonment. AS 12.55.035((b)(2); 12.55.125(e). In addition, the definition in AS 46.03.900(17) of "persons" who are subject to criminal sanctions should be amended to include "any responsible corporate officer." See Clean Water Act section 309(c)(6), 33 U.S.C. § 1319(c)(6).

The last legislature increased civil penalties for oil polluters (see SB 271) and considered tougher criminal sanctions in the oil pollution context. The legislature should now complete its mission and stiffen criminal sanctions for violations of all State environmental laws.

As to criminal liability for oil spills, in particular, two bills sponsored by the Governor and introduced in the last legislative session should become law. Among other things, HB 315 classifies as Class C felonies, oil spills of 10,000 barrels or more involving a failure to comply with an oil discharge contingency plan or a failure to adequately clean up a discharge of oil. HB 316 expands the penalties that can be levied against a defendant that is an organization by including fines equal to twice the damage or loss caused by the defendant.

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[4] See also, e.g., section 3008(d) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); section 113(c) of the Clean Air Act, 42 U.S.C. § 7413(c).

III. DEC SHOULD HAVE THE AUTHORITY TO MAKE REASONABLE INSPECTIONS WITHOUT FIRST OBTAINING A WARRANT

The ability to make inspections to determine whether violations of the State's environmental laws are occurring is still another necessary element of a credible enforcement program. Currently, AS 46.03.860 appears to require DEC to obtain a search warrant before it can investigate possible violations. Federal environmental laws, in contrast, contain no such warrant requirement. For example, section 308(a)(B) of the Clean Water Act expressly provides the EPA with a "right of entry" and with authority "at reasonable times" to make inspections and copy relevant records. 33 U.S.C. § 1318(a)(B).[5]

Consistent with federal environmental law, AS 46.03.860 should be amended to remove the warrant requirement and thereby improve the DEC's ability to investigate potential violations of the State's environmental laws.

IV. THERE SHOULD BE NO "PRE-ENFORCEMENT REVIEW" OF DEC'S COMPLIANCE ORDERS IN EITHER AN ADMINISTRATIVE ADJUDICATORY HEARING OR JUDICIAL PROCEEDING

A sixth tool that is necessary for a sound, effective State environmental enforcement program is the ability of the enforcing agency to issue compliance orders without cumbersome procedural constraints. DEC does not presently have this ability.

Current State law (AS 46.03.850) provides DEC with the authority to issue compliance orders for known or suspected

[5] See also, e.g., section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927; and section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).

violations of the State's environmental laws, but the required procedures for issuing such orders are so cumbersome as to render the compliance order an infrequently used and thus ineffective enforcement tool.

State law appears to require that, before DEC can issue an order requiring a polluter to comply with an applicable State environmental law, the agency must first notify the polluter of its finding that the polluter is or may be in violation and give the polluter an opportunity to respond to the finding. AS 46.03.850(a), (b).[6]

In addition, although compliance orders become effective upon receipt (AS 46.03.850(c)), it appears that recipients can subsequently contest the order in an adjudicatory hearing that is required to include the extensive procedural steps set out in the Administrative Procedure Act. See AS 44.62. Recipients of a compliance order can also challenge an adverse ruling by a hearing officer in court. AS 44.62.560.

By requiring DEC to defend an order at administrative and, subsequently, judicial hearings, Alaska law imposes substantial resource constraints on the use of the compliance order as an enforcement tool by DEC (and its legal representatives in the Department of Law). These constraints effectively discourage DEC

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[6] AS 46.03.865 allows DEC to sidestep this pre-notification procedure, but only in the extremely narrow circumstances, where DEC has found that there is an "actual or imminent" discharge of either oil, a hazardous substance, or a low level radioactive material.

from invoking this tool, except in extremely rare circumstances.[7] As a result, the tool has not been used to fulfill its obvious role, as an efficient, relatively quick means for DEC to command compliance with the State's environmental laws and to compel the cleanup of unlawful discharges of harmful pollutants.

As with several of the other enforcement tools discussed above, State law regarding the procedures for issuing compliance orders does not compare with EPA's legal authority to issue orders to compel compliance with federal laws. Federal environmental law generally adheres to the sound policy of not allowing "pre-enforcement review" of EPA's compliance orders. This means that compliance orders which do not also require the recipient to pay an administrative penalty generally can not be challenged in any administrative or judicial proceeding, until and unless EPA commences a judicial proceeding to enforce the order and seeks penalties for violations of the order. At that time, the validity of the order can be questioned by the

[7] In fact, the right of a recipient to challenge an order in an administrative adjudicatory hearing, by itself, appears sufficient to effectively discourage DEC from issuing compliance orders. DEC's budget does not include sufficient funds for a permanent in-house staff of hearing officers. Thus, when an adjudicatory hearing is requested, DEC must hire hearing officers on a contract basis. The substantial expense of such outside contracting, alone, strongly discourages DEC from issuing compliance orders.

recipient as a defense to EPA's enforcement suit.[8]

As the Second Circuit Court of Appeals recognized, in upholding the principle of no pre-enforcement review of compliance orders issued under the federal Clean Air Act:

> To introduce the delay of court review of administrative action taken to ameliorate a potential public health hazard would conflict with Congress' aim to 'accelerate . . . the prevention and control of pollution.' . . . In short, immediate pre-enforcement review of compliance orders . . . would 'serve neither efficiency nor enforcement' of the Clean Air Act.

Asbestec Const. Services, Inc. v. EPA, 849 F.2d 765, 769 (2d Cir. 1988).

Not until DEC's ability to issue compliance orders is as procedurally unencumbered as that of the EPA, will the compliance order become an effective tool in the State's environmental enforcement arsenal.

V. PRIVATE CITIZENS SHOULD HAVE THE AUTHORITY TO ENFORCE THE STATE'S ENVIRONMENTAL LAWS

The final, necessary, and, perhaps, most critical component of a viable, credible State enforcement program is the ability of citizens to act as "private attorneys general" by bringing suits to enforce the State's environmental laws. This ability is nonexistent under current law.

AS 46.03.760 and 46.03.765 provide State courts with authority to compel the payment of civil penalties and to grant

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[8] For example, section 113(h) of CERCLA, 42 U.S.C. § 9613(h) expressly prohibits federal courts from reviewing challenges to compliance orders, except under limited circumstances, including a suit brought by EPA to seek penalties for a violation of the order.

injunctive relief for violations of the State's environmental laws. But AS 46.03.870 provides that the bases for the enforcement actions listed above "inure solely to and are for the benefit of the state. . . ." Similarly, AS 46.03.890 provides that only State officials are authorized to enforce the State's environmental laws.

The ability of private citizens to enforce environmental laws is a critical supplement to government enforcement because resource constraints inevitably prevent governments from taking all the enforcement measures that would otherwise be warranted. Given the DEC's severely limited enforcement resources (even if a separate enforcement unit like the one recommended above were available), citizen suits are necessary to present to the regulated community a forceful and credible message that violations of the State's environmental laws will not be tolerated.

Congress has wisely recognized the value of citizen suits as supplements to governmental enforcement and thus provided citizens with ample authority to enforce the federal environmental laws.[9] The record of citizens suits to enforce these laws is a strong one. Citizens enforcement actions have proven not to be unreasonable avenues for harassment of industry

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[9] See, e.g., section 505 of the Clean Water Act, 33 U.S.C. § 1365; section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, section 304 of the Clean Air Act, 42 U.S.C. § 7604; and section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659.

or the EPA, but to be valuable means for stopping major violators whom the EPA had not been able to reach.

Full enforcement and, in turn, compliance with the State's environmental laws will simply not be achieved without the ability of citizens as well as the government to enforce those laws.

VI. THE LEGISLATURE SHOULD PROVIDE ADEQUATE FUNDING FOR DEC TO FULFILL ITS LEGAL MANDATE OF PROTECTING THE ENVIRONMENT

A State such as Alaska which relies on a healthy environment for many of its economic mainstays such as tourism and fisheries and yet persistently scrimps on environmental protection will continue to run the risk of environmental and associated economic degradation. Current funding levels for DEC not only preclude effective enforcement, they also result in delayed and inadequately researched permits as well as narrow interpretation of regulations intended to protect the environment. Future funding should provide for sufficient personnel, including attorneys, to provide DEC the ability to more effectively enforce Alaska's environmental laws. A commitment to increased funding would more realistically reflect the immense mandate of environmental protection assumed by DEC and the importance of DEC's success in assuring that there will be a viable environment for Alaska's long term needs. We will be working shortly towards providing the legislature with some recommendations for DEC budget needs.

SCOMM

62:18

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Offered: 4/24/90
Referred: Rules

go0530hG

Administration Mark up
4-29-90

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, civil penalties for discharges of crude oil, and inspection authority of the Department of Environmental Conservation; authorizing certain additional uses of the oil and hazardous substance release response fund and restricting use of the fund for municipal grants and reimbursable service agreements; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; relating to reporting requirements; and providing for an effective date."

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

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

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

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

(c) Subject to the $500,000,000 maximum set under (a) of this section the court shall assess five [FOUR] times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

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

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

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

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

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

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

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

(4) provide for cooperative oil discharge notification procedures.

* Sec. 4. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal and the person is in compliance with the provisions of the p

facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department [and has been properly implemented] [. THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit the operation of ~~an~~ Pipeline, or [OFFSHORE] exploration or production facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department [and has been properly implemented.] and the person is in compliance with the provisions of the pla

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department [and has been properly implemented] and the person is in compliance with the plan. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT].

insert language in attachment #1

(d) A [AN OIL DISCHARGE] contingency plan must be renewed at least every three years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a [AN OIL DISCHARGE] contingency plan that the department [WHICH IT] determines are necessary to ensure [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan has access to sufficient resources to protect environmentally sensitive areas ~~and to~~ contain, clean up, and mitigate potential oil discharges at or from the facility or vessel as provided in (j) of this section, and to ensure that the applicant properly implements the contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contingency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY] by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of [available] equipment, supplies, and personnel identified as available in an approved plan.

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

(1) approval was obtained by fraud or misrepresentation;

(2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]

(3) a term or condition of approval or modification has been violated; or

(4) the plan has not been properly implemented and the deficiency materially affects the ~~plan holder's~~ compliance response capability.

(g) Failure of a holder of an approved or modified [OIL to comply with the provisions of the plan

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

* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

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

(i) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(j) Except as provided in (l) of this section, the holder of an approved contingency plan required under this section shall maintain in its region of operation, singly or in conjunction with other operators in its region of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, personnel, and resources to rapidly contain a

(1) realistic maximum oil discharge and to remove that discharge within 72 hours if the contingency plan is for [an] pipeline, exploration or production facility;

(2) discharge in an amount equal to the capacity of the largest oil storage tank at the facility and to remove that discharge within 72 hours if the contingency plan is for an oil terminal facility; if the department determines that the oil terminal facility is located in an area of high risk because of natural or manmade conditions outside of the facility, the department may increase the volume requirement under this paragraph so that the contingency plan must be designed for response to a discharge that is greater in amount than the capacity of the largest oil storage tank at the facility;

(3) discharge of oil in an amount equal to the maximum capacity of the vessel or barge and to remove that discharge within 72 hours if the contingency plan is for a tank vessel or oil barge.

(k) Notwithstanding (j) of this section, failure to remove a discharge within 72 hours does not constitute failure to properly implement a contingency plan for purposes of (g) of this section.

(l) Notwithstanding (j) of this section, the department may approve a contingency plan for a noncrude oil terminal facility or for a tank vessel or barge carrying noncrude oil that provides for the holder of the plan to maintain the equipment, personnel, and resources required under (j) of this section outside the holder's region of operation upon a showing satisfactory to the department that the planning requirements of (j) of this section are otherwise satisfied.

(m) In this section

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

"in compliance with the provisions of the plan"

(2) ["properly implement"] means, with respect to a contingency plan, to

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

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

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

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

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

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

* Sec. 6. AS 46.04.040(a) is amended to read:

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

* Sec. 7. AS 46.04.040(b) is amended to read:

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

Proof of financial responsibility for pipelines may not be less than $50,000 per incident.

Proof of financial responsibility for an onshore exploration facility may not be less than $5,000,000 per incident.

facility may not be less than $20,000,000 per incident.

* Sec. 8. AS 46.04.040(c) is amended to read:

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility under this subsection may not be less than

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

(2) $100, per incident, for each barrel of storage capacity or $1,000,000, whichever is greater, subject to a maximum of $35,000,000, for a tank vessel or barge carrying noncrude oil in an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

* Sec. 9. AS 46.04.040(d) is amended to read:

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

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

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an [AN] insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

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

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, [OR] insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

* Sec. 13. AS 46.04.040 is amended by adding new subsections to read:

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, tank vessel, or barge for which it is issued and the expiration date of the certificate.

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

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

(2) proof of [redacted] $50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section is provided; and

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

* Sec. 14. AS 46.04 is amended by adding a new section to read:

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

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

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor

Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

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

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

* Sec. 15. AS 46.04.050 is amended to read:

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

* Sec. 16. AS 46.04.060 is amended to read:

See substitute language in attachment #2

Sec. 46.04.060. INSPECTIONS. In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times enter and inspect oil [OIL] terminal facilities, [OFFSHORE] exploration and production facilities, tank vessels, and oil barges within the territorial jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE

DEPARTMENT] to

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

~~(2) examine the structural integrity of tank vessels, oil barges, oil terminal facilities, oil exploration and production facilities, pipelines, and other facilities related to the exploration, production, storage, and transportation of oil; or~~

~~(3) participate in an examination of the structural integrity of tank vessels and oil barges by the United States Coast Guard.~~]

* Sec. 17. AS 46.04.200 is amended to read:

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

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

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of a catastrophic oil discharge or of a significant discharge of a hazardous substance into the environment of the state:

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commissioner as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

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

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

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

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

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

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

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

* Sec. 18. AS 46.04.210(a) is amended to read:

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

* Sec. 19. AS 46.04.900(8) is amended to read:

(8) "[OFFSHORE] exploration [or production] facility" means a platform, vessel, or other facility used to explore for [or produce]

or on

hydrocarbons in the waters of the state or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that [WHICH] are not authorized or intended to drill to a producing formation;

Insert language in attachment #3

* Sec. 20. AS 46.04.900(15) is amended to read:

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

* Sec. 21. AS 46.08.040 is amended to read:

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

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a 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;

(2) pay all costs incurred

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

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

(C) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) to verify or establish proof of financial responsibility required by AS 46.04.040;

(3) 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]

(4) recover the costs 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; [.]

(5) prepare, review, and revise

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

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

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

* Sec. 22. AS 46.08.040 is amended by adding a new subsection to read:

(b) Except for direct response to a declared disaster emergency relating to an oil or hazardous substance discharge or for specific projects authorized by the legislature, the department may not receive or expend money in the fund as grants to municipalities or for reimbursable service agreements with any state agency.

* Sec. 23. AS 46.08.060(a) is amended to read:

(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; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000; 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.

* Sec. 24. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 to 10,000 barrels in order to determine for each facility

(1) its actual storage capacity;

(2) the type of noncrude oil products stored;

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

(4) the design and construction standards applicable or relevant;

(5) the presence or absence of containment structures and equipment;

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

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

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

(9) other appropriate information.

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

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

(1) notify each facility of the results of the facility's inspection; and

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

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

* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

DRAFT

4-30-90

refineries are oil terminal facilities

new ¶ to Section (e) credit for prevention

p. 4, insert following l. 12: The department may consider evidence that the holder of the contingency plan has implemented oil spill prevention measures and may, in its discretion, modify the standards set out in (j) of this section to reflect reduced risk of oil spills. measures

P. 6, substitute the following for the whole page:

in its region of operation, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and removal equipment, personnel, and resources to accomplish the following:

encounter eate

(1) for discharges ~~onto~~ or into land from oil terminal facilities, contain ~~and~~ or control a discharge in an amount equal to the capacity of the largest oil storage tank at the facility within 72 hours and remove the discharge within the shortest feasible time consistent with minimizing damage to the environment; land cleanups are generally longer

largest tank is seconbbls

(2) for discharges onto or into land from exploration or production facilities and pipelines, contain ~~and~~ or control the realistic maximum oil discharge within 72 hours and remove the discharge within the shortest feasible time consistent with minimizing damage to the environment;

(3) for discharges onto or into waters from oil terminal facilities, contain or control, and remove a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or manmade conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capabity of the largest oil storage tank at the facility;

(4) for discharges onto or into waters from exploration or production facilities and pipelines, contain or control, and remove the realistic maximum oil discharge within 72 hours;

(5) for discharges into or onto waters from tank vessels and oil barges, contain or control, and remove a discharge of up to 15% of the maximum capacity of the vessel or barge within 24 hours; contain, control, and remove a discharge of up to 60% of the maximum capacity of the vessel or barge within 72 hours; and contain, control, and remove a discharge of up to the entire maximum capacity of the vessel or barge within 144 hours; notwithstanding (j) of this section, the plan may provide for use of equipment, personnel, and resources maintained outside the holder's region of operation for purposes of containment, control and removal of the entire capacity of a vessel or barge.

5%

30%

100%

instate? not necessarily

(k) Notwithstanding (j) of this section, failure to remove a discharge within the time periods set out in (j) does not constitute failure to comply with the provisions of a contingency plan for purposes of (g) of this section.

(l) Notwithstanding (j) of this section, the department may approve a contingency plan for a noncrude oil terminal facility or for a tank vessel or barge carrying noncrude oil that provides for the holder of the plan to maintain the required equipment, personnel, and resources outside the holder's region of operation upon a satisfactory showing to the department that the operator maintains or has access to sufficient equipment, personnel and resources within the region to contain, control, and remove at least 15% of the maximum capacity of the tank vessel or barge or 15% of the largest tank of the facility, within the region, and that the planning requirements of (j) of this section are otherwise satisfied.

2 tanks and
a barge,

Attachment #1
4/29/90

CSHB 567 (Fin)

CERTIFICATES FOR FINANCIAL RESPONSIBILITY AND CONTINGENCY PLANS:

p.3, line 21-22, add language as follows [AS 46.04.030(d):

<u>Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the date by which the contingency plan must be submitted for renewal. A</u> [AN OIL DISCHARGE] contingency plan must be renewed at least every three years.

(A similar certificate requirement for proof of financial responsibility is already in the bill at p. 11, lines 18-24.)

Attachment #2
4/29/90

CSHB 567 (Fin)

INSPECTIONS

Starting at p.13, line 24, amend AS 46.04.060 to read:

following safety rules + regs

INSPECTIONS. <u>(a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner, enter and inspect oil</u> [OIL] terminal facilities, [OFFSHORE] ~~exploration~~ and production facilities, pipelines, tank vessels, and oil barges ~~within the territorial jurisdiction of the state in order~~ [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to ensure compliance with the provisions of this chapter <u>and to participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, pipelines, and facilities by federal and state agencies with jurisdiction.</u>

written

<u>(b) When the department determines that no federal or state agencies with jurisdiction are able to perform timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel or oil barge, it may, using personnel with qualifications in the areas being inspected, perform its own inspections of structural integrity and operating and mechanical systems.</u>

permissive

good cause necessary

what type determination?

Bettye.
Concern about state liability.

reason to insp't

Attachment # 3

(9) "Production Facility" means a drilling rig, drill site, flow station, gathering centers, pump stations, storage tanks, wells and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition or store crude oil and associated hydrocarbons in or on the waters of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

(10) "Pipeline" means the facilities, including but not limited to piping, compressors, pump stations, storage tanks, ~~and loading terminals~~ used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels or refineries.

oil terminal facility definition needs to drop production facility for this section.

AS46.04.030
new section

Good Samaritan

(■) In the event of an oil discharge within or directly affecting the state, a person with an approved contingency plan under this section may, without liability for failure to maintain required supplies, personnel, services or equipment ~~under this section,~~ loan or transfer cleanup or containment supplies, personnel, services or equipment to another person for the purpose of responding to that discharge:

(1) upon notice to the department; and

(2) if the transferor requires ~~agrees~~ to the replacement or return of the supplies, personnel, services or equipment at the earliest feasible time.

✓ language to allow sharing - Doug will get to David

AMENDMENT NO. _______

H.B. ~~566~~ 567

AS 46.03.823 is amended to read:

Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance and whose acts or omissions are not contrary to a response plan or orders by a state or federal agency; permitted [illegible] [illegible] is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section does not apply to a response action contractor who would otherwise be <u>liable for the release or threatened release under state or federal law even if that person had not carried out any response action with respect to the release or threatened release</u> [STRICTLY LIABLE UNDER THIS SECTION].

(c) The defense provided in AS 46.03.822 (b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

[(e THIS SECTION DOES NOT AFFECT THE LIABILITY OF A RESPONSE ACTION CONTRACTOR THAT MAY ARISE FROM THE RESPONSE ACTION CONTRACTOR'S FAILURE TO COMPLY WITH THE TERMS OR CONDITIONS OF A RESPONSE ACTION CONTRACT OR A REMEDIAL ACTION PLAN IF ONE HAS BEEN APPROVED BY THE DEPARTMENT.]

[(f)]<u>(e)</u> This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

[(g)]<u>(f)</u> In this section,

(1) "response action" means an action taken in connection with the mitigation or cleanup of a hazardous substance release or threatened release, including investigation, evaluation, plan development, mapping and surveying, engineering, design and con-

— not contrary to cleanup plan or orders
[illegible].

---

struction, removal, and equipment provision;

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

(A) the department; [OR]

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

<u>(C) a federal agency with jurisdiction over the release or threatened release; or</u>

<u>(D) a person potentially liable for the release or threatened release under state or federal law;</u>

(3) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract; and

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract.

4/28/90

State Pipeline Inspections

The review and inspection of the Trans Alaska Pipeline System, Alaska Natural Gas Transportation System, and Trans Alaska Gas System have been coordinated through a single state point of contact established in the Office of the State Pipeline Coordinator. By Administrative Order, the Governor has assigned the Department of Natural Resources, through the State Pipeline Coordinating Office, the lead responsibility for processing the state right-of-way (A.S. 38.35) and coordination of state permitting, monitoring, and inspection actions under the authorities of all state agencies. This office also coordinates interaction with federal authorities dealing with these pipelines. Other state agencies having authority over the construction and operation of common carrier oil and gas pipelines, that will work through the State Pipeline Coordinating Office, include the Departments of Environmental Conservation, Fish and Game, Transportation and Public Facilities, Law, and the Division of Governmental Coordination.

Consistent with administrative procedures to date, an administrative order has been drafted to establish a management system for oversight of all common carrier oil and gas pipelines in the State (Exhibit I). Under this order, the Office of the State Pipeline Coordinator, located in the Department of Natural Resources, would coordinate, and serve as the single point of contact for, all inspection activities under the authority of the Department of Environmental Conservation and other state agencies.

DRAFT
May 1990

Exhibit I

Administrative Order No. 104

The purpose of this Order is to establish a management system for oversight of all common carrier oil or gas pipelines including designating the lead agency and procedures for processing and adjudicating applications, monitoring design, construction and close out of common carrier pipeline right-of-way leases. This Order defines responsibilities of State agencies and procedures the State will following during the processing of the right-of-way lease and monitoring of preconstruction, construction, operations, closure and rehabilitation of common carrier lines.

FINDINGS:

1) It is in the best interest of the people of the State of Alaska that North Slope gas and oil is expeditiously brought to market with minimum practicable effect on the environment, positive effects on the socioeconomic climate of Alaska, and safe design and construction.

2) Application processing, preconstruction and construction of common carrier pipelines will involve many State agencies to review the right-of-way lease application, preconstruction documents and plans, construction monitoring, permitting, licensing, taxing, or offsetting the impacts on Alaska's environment, its economy and its people. For this reason, close coordination among these agencies is necessary.

3) The review, processing and monitoring of past pipeline project rights-of-way of this magnitude (TAPS and NWA) have been coordinated through a single point of contact established in the Office of the State Pipeline Coordinator.

4) The Alaska Natural Gas Transportation System (ANGTS) is currently scheduled for construction along a similar alignment with TAGS and the existing Trans-Alaska Pipeline System.

5) Portions of the Trans-Alaska Pipeline System (TAPS) and TAPS Fuel Gas Pipeline are parallel or crossed by the TAGS route and their integrity is vital to the State of Alaska.

6) The President of the United States, through the Office of the Federal Inspector, has established a single point of contact with the federal government for matters relating to ANGTS.

7) The Bureau of Land Management (BLM) has been established as the lead federal agency to process the TAGS Environmental Impact Statement (EIS) and issue the federal grant of right-of-way to YPC.

8) TAPS corrosion and SPCC Plan Review.

9) It is desirable that the State have a single point of contact for right-of-way matters to ensure adequate coordination among State and federal authorizations and, where appropriate, develop substantially similar terms and conditions in these documents.

ORDER:

In light of the foregoing, I, Steve Cowper, Governor of the State of Alaska, order and declare the following:

1) Each State agency shall comply with applicable provisions of this Order to ensure that where appropriate, substantially similar terms and conditions are developed, implemented and placed on all federal, State and local authorizations for the common carrier lines on State and Federal land, and that a schedule is developed to implement this process. This includes the federal EIS, U.S. Army Corps of Engineers (USACE) 404 permit, State 401 certification, federal and State rights-of-way and associated stipulations.

2) The Department of Natural Resources, through the State Pipeline Officer, shall be the lead agency for the State processing of the AS 38.35 right-of-way and the review and coordination of the federal grant of right-of-way and the associated stipulations. In addition, the State Pipeline Officer will be the lead for the State for monitoring, preconstruction, construction, operation and closeout of the common carrier pipelines.

3) Each department will appoint a liaison officer who will be available to do necessary work to process the State right-of-way application, Alaska Coastal Management Program (ACMP) consistency review, federal EIS and other related State and federal authorizations for common carrier pipeline on a schedule established by the State Pipeline Office. Liaison officers shall represent their departments in matters relating to processing the State right-of-way application, issuance of respective authorizations and monitoring of the proposed and existing projects to assist the State Pipeline Officer and the State Pipeline Officer's staff in carrying out their responsibilities. Each liaison shall keep the State Pipeline Officer informed of actions taken on each common carrier pipeline.

4) The State Pipeline Officer shall have the authority and responsibility for planning and coordinating the input and activities of the liaison agencies and their staff for purposes of processing State authorizations and monitoring of field activities. At present, these agencies include the Departments of Natural Resources, Fish and Game, Environmental Conservation,

Transportation and Public Facilities, and Law, and the Division of Governmental Coordination. Other agencies are expected to assign a liaison officer who has other duties as well such as Revenue, Labor, APUC, CRA. If an agency's monitoring responsibilities expand to the point which a full-time liaison officer is needed, it will appoint one, with the concurrence of the Pipeline Officer who is responsible for coordinating and submitting necessary budget documents.

5) The Division of Governmental Coordination (DGC), through its liaison officer, shall coordinate the processing of the ACMP consistency determination(s) related to common carrier pipelines as provided under 44.19.145 and 6 AAC 50. The DGC liaison officer shall, in cooperation with the State Pipeline Officer, also coordinate the State's review of the federal EIS and, with the exception of rights-of-way and their associated stipulations, other permits or authorizations requiring involvement of more than one State agency (e.g., Corps of Engineers and 404 Permitting).

6) If a department's responsibilities require staff additional to the liaison officer, the department shall, with concurrence of the State Pipeline Officer, appoint additional staff. This staff will be under the supervision of the liaison officer or the officer's designee.

7) All applications for permits and other authorizations which the State may require of the sponsor of a common carrier pipeline shall be submitted by the sponsor to the State Pipeline Officer. The State Pipeline Officer shall forward the applications to the Division of Governmental Coordination or to the appropriate department liaison officer, who shall ensure that they are properly processed. The State Pipeline Officer shall receive a copy of the permit or other authorization issued.

8) To the extent consistent with applicable law, departments shall delegate permit or other authorization signatory authority to their liaison officers and/or to staff of the liaison officer.

9) Except for routine or follow-up informational inquiries by or to departmental liaison officers or other department staffs, as may be mutually agreed upon by the respective Commissioner and the State Pipeline Officer, all correspondence relating to pipeline monitoring between a department and the pipeline sponsor(s) or the United States Government shall be routed through the Office of the State Pipeline Officer and be reviewed by him.

This does not apply to agency liaison officers' communications with their respective agencies. The State Pipeline Officer and a department Commissioner may, if mutually agreeable, modify or amend this provision as it relates to that department's communications regarding pipeline monitoring.

10) Each department shall keep a full set of files in a central location on all aspects of its activities relating to common carrier pipelines.

11) The State Pipeline Officer shall establish those field monitoring teams and activities pertaining to common carrier pipelines and related facilities that the officer determines, with the concurrence of affected agencies, are in the best interests of efficiency and effectiveness. Such monitoring teams may be composed of staff from a number of agencies. Responsibilities and authorities of affected agencies may, consistent with law, be delegated to team members regardless of their department affiliation, and those team members shall conduct the entire field monitoring program of the agencies involved. The State Pipeline Officer shall appoint the team leader.

12) All applicable departments shall prepare and submit an annual budget request for all costs which are reimbursable under AS 38.35.140(b) and all other costs associated with the common carrier pipeline projects. These budget requests will be reviewed and will require approval by the State Pipeline Officer. All such budget requests will be submitted as a consolidated unit to the Division of Budget Review in a manner established by the Division. Costs will not be reimbursable unless proposed budgets are approved by the State Pipeline Officer. The State Pipeline Officer shall have the authority to negotiate reimbursement agreements for common carrier pipelines and ensure that reimbursement is secured promptly for costs incurred under approved budgets.

13) To the extent allowed by law, before taking enforcement action against the common carrier pipeline project sponsor(s), its agents or contractors for violation of State law relating to design, preconstruction, construction, operation and termination of the pipeline, the department involved shall consult with the State Pipeline Officer and consider the Officer's advice. Whenever feasible, and the department involved and the State Pipeline Officer agree on a particular course of action, such enforcement action shall be undertaken under the grant of lease and right-of-way issued by the Department of Natural Resources. For the purposes of this section, consultation is considered "infeasible" only if the nature of the violation requires prompt or immediate action, and the State Pipeline Officer or the Officer's designee is not available.

14) In the event of a dispute between departments regarding a matter covered under this Order, including matters involving annual budget requests, the departments involved will consult with the Department of Law, and (a) if the dispute involves the right-of-way lease and the matter cannot be resolved between a department and the State Pipeline Officer, the affected department Commissioner should attempt to resolve this matter with the Commissioner of Natural Resources, and the decision of the Commissioner of Natural Resources shall be final; (b) if the dispute involves a question covered by a department's statutory or regulatory authority, the dispute will be resolved by the department responsible for administering that law, and the decision of that department Commissioner is final. In all such disputes, affected Commissioners shall seek the views of the State Pipeline Officer, and consider these views before making a decision; (c) in disputes between Commissioners other than in cases subject to (a) and (b) above, the Office of the Governor shall resolve the matter.

15) The terms of this Order do not apply to those subject areas specifically excluded from the jurisdiction of the State Pipeline Officer.

16) This Order is for administrative purposes only, and does not create any third party rights.

17) The State Pipeline Officer is the designee of the Commissioner of the Department of the Natural Resources.

DATED at Juneau, Alaska, this _______ day of _________________

____

Steve Cowper
Governor

Jim Easons comments on CSHB 567 (Finance): 4/26/90

Page 1:

Comments:

1. Dave--Obviously we need to be sure that there is a provision for ample time for existing facilities to draft plans and for DEC to approve them.

2. DEC should be required to complete its review and either approve or deny within a fixed time.

Pg. 3:

line 2 -- delete "and has been properly implemented.
add "and the person is in compliance with the provisions of the plan."
(Literally, contingency plans can only be "implemented" when the event they are designed to respond to has occurred.

line 7 -- delete "offshore exploration or"
add "an offshore drilling vessel or a"
add after facility ", whether on shore or offshore, or a transportation system"

line 9 -- delete "has been properly implemented"
add "and the person is in compliance with the provisions of the plan."

line 16 -- delete "has been properly implemented"
add "the person is in compliance with the plan"

Pg. 4:

line 4 & 5 -- ?

line 11 -- delete "available"

line 12 -- add after "personnel" --"purported to be available in an approved plan."

line 25 -- add after "a" -- "material"

Page 5:

line 1: -- delete "to properly implement the plan, or"
add "to comply with the provisions of the plan, or"

line 18: -- (make the time specific in law)

Page 6: (suggests that lines 5 - 22 be deleted, and that, alternatively, the Department be required to adopt regulations establishing reasonable standards.)

If lines 5 - 22 are not deleted then:

line 6: -- delete "exploration"
add "offshore drilling vessel

line 7: -- add before "production" -- "a"
add after "facility" -- "whether onshore or offshore or a transportation facility;"

lines 8 - 22: ?--couldn't come up with changes

line 24: -- delete "noncrude oil"
add "refined hydrocarbon products"

line 25: -- delete "noncrude oil"
add "refined hydrocarbon products"

Page 7:

lines 19-24 -- (This is simply unworkable--this definition actually defines the "unrealistic" maximum discharge)

Page 8:

Lines 7-10 -- ? Can Tesoro do?

line 7,8 & 15: -- delete "noncrude oil"
add "refined hydrocarbon products"

line 23: --- delete "OFFSHORE exploration"
add "offshore drilling vessel"
add after "or" -- "a"
add after "facility" -- ",whether onshore or offshore,"

line 27: -- delete "exploration"
add "drilling vessel"
add before "production" -- "a"
add after "facility" -- "whether onshore or offshore or a transportation facility"

line 29: -- delete "exploration or"

Page 9:

line 15: -- delete "noncrude oil"
add "refined hydrocarbon products"

Page 11:

line 23: -- add after "of the" -- "vessel,"

Page 13:

line 22: -- delete "noncrude"
add "refined hydrocarbon products"

line 27: -- delete "exploration"
add "offshore drilling vessels

line 28: -- add after "facilities," -- "whether onshore or offshore,"

Page 14:

line 4-6: ? Structural?

line 4: -- delete "oil exploration"
add "offshore drilling vessels"

line 5: -- add after "ities" -- "whether offshore or onshore"

Page 15:

line 28 -- much of section 19 is replaced with:

(8) "offshore drilling vessel" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, including but not limited to a jack-up drilling rig, a semisubmersible drilling rig, or floating drilling ships which are designed and authorized or intended to drill exploratory oil and gas wells. The term does not include vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "production facility" means one or more lease or unit facility, whether on state, federal or private lands, used to produce, gather, clean, dehydrate, condition, and store crude oil and associated hydrocarbons as well, including the pipeline or pipelines used to transport the treated crude oil and associated hydrocarbons to the inlet of a common-carrier pipeline system for delivery to market.

(10) "transportation facility" means the combined common-carrier facilities, including but not limited to compressors, pump stations, pipelines, storage tanks, loading terminals, and flowlines used to transport crude oil and associated hydrocarbons from one or more production facility to marine vessels or

refineries.

(11) "unit" means two or more oil and gas leases covering all or part of one or more potential hydrocarbon accumulations, or all or part of one or more adjacent or vertically separate oil or gas reservoirs which are subject to an agreement or plan of development and operation for the recovery of oil and gas without regard to separate lease ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan. "

Page 18:

line 23 & 25: -- delete "noncrude oil"
add "refined hydrocarbon products"

line 29: -- delete "noncrude oil"
add "refined hydrocarbon"

Page 19:

line 16: -- delete "noncrude oil"
add "refined hydrocarbon products"

Offered: 4-24-90
Referred: Rules

Hearing #4 -

Original sponsor(s): Rules/Governor

(1) And — Obviously, we need to ensure that there is a provision for adequate time for existing facilities to create plans and for DEC to approve them. (2) DEC should be required to complete its review and either approve or deny within a fixed time

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, civil penalties for discharges of crude oil, and inspection authority of the Department of Environmental Conservation; authorizing certain additional uses of the oil and hazardous substance release response fund and restricting use of the fund for municipal grants and reimbursable service agreements; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; relating to reporting requirements; and providing for an effective date."

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

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

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

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

(c) Subject to the $500,000,000 maximum set under (a) of this section the court shall assess five [FOUR] times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

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

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

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

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

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

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

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

(4) provide for cooperative oil discharge notification procedures.

* Sec. 4. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal and the ~~applicant~~ person is in compliance with the provisions of the plan.

(literally) contingency plans can't be "implemented" when the discharge they're designed to respond to has not occurred

facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and has been properly implemented[. THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

or a [illegible] transportation

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit the operation of an offshore drilling vessel or a ~~a [OFFSHORE] exploration or~~ production facility, whether on or offshore, in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the provisions of the plan ~~and has been properly implemented~~. Same comments as above.

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan. ~~has been properly implemented~~ [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT].

(d) A [AN OIL DISCHARGE] contingency plan must be renewed at least every three years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a [AN OIL DISCHARGE] contingency plan that the department [WHICH IT] determines are necessary to ensure [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges at or from the facility or vessel as provided in (j) of this section, and to ensure that the applicant properly implements the contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contingency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY] by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of ~~available~~ equipment, supplies, and personnel purported to be available in an approved plan.

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

(1) approval was obtained by fraud or misrepresentation;

(2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]

(3) a material term or condition of approval or modification has been violated; or

(4) the plan has not been properly implemented and the deficiency materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified [OIL to comply with the provisions of the plan, or

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

* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

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

time specific per law!

(i) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(j) Except as provided in (l) of this section, the holder of an approved contingency plan required under this section shall maintain

* I suggest that ... be stripped and not ... alternatively, the Dept be required to adopt regulations establishing reasonable standards.

in its region of operation, singly or in conjunction with other operators in its region of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, personnel, and resources to rapidly contain a

(1) realistic maximum oil discharge and to remove that discharge within 72 hours if the contingency plan is for an ~~explora- tion~~ offshore drilling vessel or a production facility whether onshore or offshore or a transportation facility;

(2) discharge in an amount equal to the capacity of the largest oil storage tank at the facility and to remove that discharge within 72 hours if the contingency plan is for an oil terminal facility; if the department determines that the oil terminal facility is located in an area of high risk because of natural or manmade conditions outside of the facility, the department may increase the volume requirement under this paragraph so that the contingency plan must be designed for response to a discharge that is greater in amount than the capacity of the largest oil storage tank at the facility;

(3) discharge of oil in an amount equal to the maximum capacity of the vessel or barge and to remove that discharge within 72 hours if the contingency plan is for a tank vessel or oil barge.

(k) Notwithstanding (j) of this section, failure to remove a discharge within 72 hours does not constitute failure to properly implement a contingency plan for purposes of (g) of this section.

(l) Notwithstanding (j) of this section, the department may approve a contingency plan for a ~~noncrude oil~~ refined ~~products~~ hydrocarbon products terminal facility or for a tank vessel or barge carrying ~~noncrude oil~~ refined hydrocarbon products that provides for the holder of the plan to maintain the equipment, personnel, and resources required under (j) of this section outside the holder's region of operation upon a showing satisfactory to the department that the planning requirements of (j) of this section are otherwise satisfied.

(m) In this section

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

(2) "properly implement" means, with respect to a contingency plan, to

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

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

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

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

This is sweeping unworkable.

This definition actually defines the "unrealistic maximum disc

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

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

Can Tesoro do?

Sec. 6. AS 46.04.040(a) is amended to read:

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

Sec. 7. AS 46.04.040(b) is amended to read:

(b) A [AFTER JULY 1, 1981, A] person may not cause or permit the operation of an [OFFSHORE] offshore drilling vessel ~~exploration~~ or a production facility, whether onshore or offshore, in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility for an offshore drilling vessel ~~exploration~~ or a production facility, whether onshore or offshore may not be less than $50,000,000 [$35,000,000] per incident. Proof of financial responsibility for an onshore [~~exploration or~~] production

or a transportation

facility may not be less than $20,000,000 per incident.

* Sec. 8. AS 46.04.040(c) is amended to read:

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility under this subsection may not be less than

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

(2) $100, per incident, for each barrel of storage capacity or $1,000,000, whichever is greater, subject to a maximum of $35,000,000, for a tank vessel or barge carrying refined hydrocarbon products ~~noncrude oil~~ in an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

* Sec. 9. AS 46.04.040(d) is amended to read:

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

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

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an [AN] insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

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

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, [OR] insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

* Sec. 13. AS 46.04.040 is amended by adding new subsections to read:

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the vessel, facility, tank vessel, or barge for which it is issued and the expiration date of the certificate.

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

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

(2) proof of at least $50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section is provided; and

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

* Sec. 14. AS 46.04 is amended by adding a new section to read:

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

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

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor

Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

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

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

* Sec. 15. AS 46.04.050 is amended to read:

Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels of ~~noncrude oil~~ refined hydrocarbon products.

* Sec. 16. AS 46.04.060 is amended to read:

Sec. 46.04.060. INSPECTIONS. In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times enter and inspect oil [OIL] terminal facilities, [OFFSHORE] ~~exploration~~ offshore drilling vessels and production facilities, whether onshore or offshore, tank vessels, and oil barges within the territorial jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE

Structural?

DEPARTMENT] to

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

(2) examine the structural integrity of tank vessels, oil barges, oil terminal facilities, offshore drilling vessels ~~oil exploration~~ and production facilities, whether offshore or onshore, pipelines, and other facilities related to the exploration, production, storage, and transportation of oil; or

(3) participate in an examination of the structural integrity of tank vessels and oil barges by the United States Coast Guard.

Sec. 17. AS 46.04.200 is amended to read:

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

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

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of a catastrophic oil discharge or of a significant discharge of a hazardous substance into the environment of the state:

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commissioner as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

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

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

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

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

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

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

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

* Sec. 18. AS 46.04.210(a) is amended to read:

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge <u>prevention and</u> contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge [AND] prevention <u>and</u> contingency plan.

* Sec. 19. AS 46.04.900(8) is amended to read:

offshore drilling vessel means . . . — (See new defi

~~(8) "[OFFSHORE] exploration or production facility" means a platform, vessel, or other facility used to explore for or produce~~

I can not see // the numbering, but these are now definitions.

(9) Production facility means

(10) Transportation facility means

(11) Unit means ...

~~hydrocarbons in the waters of the state or on land in the state~~; the term does not include vessels used for stratigraphic drilling or other operations that [WHICH] are not authorized or intended to drill to a producing formation;

* Sec. 20. AS 46.04.900(15) is amended to read:

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

* Sec. 21. AS 46.08.040 is amended to read:

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

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a 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;

(2) pay all costs incurred

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

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

(C) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) to verify or establish proof of financial responsibility required by AS 46.04.040;

(3) 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]

(4) recover the costs 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; [.]

(5) prepare, review, and revise

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

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

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

* Sec. 22. AS 46.08.040 is amended by adding a new subsection to read:

(b) Except for direct response to a declared disaster emergency relating to an oil or hazardous substance discharge or for specific projects authorized by the legislature, the department may not receive or expend money in the fund as grants to municipalities or for reimbursable service agreements with any state agency.

* Sec. 23. AS 46.08.060(a) is amended to read:

(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; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000; 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.

* Sec. 24. SURVEY OF SMALL ~~NONCRUDE OIL~~ Refined Hydrocarbon Products TERMINAL FACILITIES. (a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of ~~noncrude oil~~ refined hydrocarbon products terminal facilities in the state with an effective storage capacity of 5,000 to 10,000 barrels in order to determine for each facility

(1) its actual storage capacity;

(2) the type of ~~noncrude oil~~ refined hydrocarbon products stored;

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

(4) the design and construction standards applicable or relevant;

(5) the presence or absence of containment structures and equipment;

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

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

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

(9) other appropriate information.

(b) By January 31, 1992, the Department of Environmental Conservation shall report to the legislature the results of the survey required under (a) of this section and its written recommendations concerning discharge prevention and contingency requirements or design review requirements that should be enacted for refined hydrocarbon products ~~[illegible]~~ terminal facilities with storage capacities of less than 10,000 barrels.

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

(1) notify each facility of the results of the facility's inspection; and

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

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

* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

4/28/90
Rep. Kay Brown

SECTIONAL ANALYSIS
CS HB 567 (Finance)

Section 1 - Local Governments and Vessel Traffic Control

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

Section 2 - Penalty Multiplier for the Discharge of Oil

Increases the fine for a discharge which was grossly negligent and adds language to include prevention requirements in contingency plans.

Section 3 - Cooperative Agreements for Vessel Traffic Control in State Waters

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

Section 4 - Implementation of Prevention and Contingency Plans

Requires that persons may not operate a tank vessel or oil barge without having a prevention and contingency plan and that these plans be properly implemented. Amends language in present law to clarify that a prevention and contingency plan provide for the best available technology at the time the plan was submitted or renewed. Failure to respond to a spill in the "shortest possible time" is a violation of the chapter. Holder of a plan may request, or the department may make on its own initiative, modifications to a plan upon a determination that a change has occurred in the operation of a facility of that the operators discharge experience demonstrates the need for change.

Section 5 - Contingency Plan Approvals

Provides DEC with state authority to approve, revoke or modify or contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires that DEC exercise its powers in a timely manner. Requires an applicant for a contingency plan to plan for the removal of a discharge within 72 hours. Requires that an exploration or production facility contingency plan provide for response to the realistic maximum discharge, an oil terminal facility plan provide for response to a discharge from the largest tank at the facility, and a tanker or barge contingency plan provide for response to a discharge equal to the capacity of the vessel. Holder of plan must keep equipment within the region except in the case of non-crude terminals or tankers, in which case, out-of-region equipment or resources may be allowed if planning objectives are met. Failure to actually remove oil within the 72 hours does not constitute a failure to implement a plan properly. Defines "properly implement," "maximum realistic discharge" and region of operation."

Section 6 through 8 - Amount of Financial Responsibility Established

(see attached chart)

Section 9 - Defense Standard

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

Section 10 - Methods to Demonstrate of Financial Responsibility

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

Section 11 and 12 - Conforming Amendments/Letter of Credit

Conforming amendments providing for use of letter of credit.

Section 13 - Certificate for Proof of Financial Responsibility

Provides that the department will formally acknowledge a determination of financial responsibility with a certificate from the department acknowledging that the proof requirement has been satisfied. Adds language that allows use of P&I's to be used and exempts them from direct action requirements if the department is satisfied with the coverage, there is at least $50,000,000 in coverage and that there is a sworn affidavit provided that the required coverage is not otherwise available.

Section 14 - Financial Responsibility and the CPI

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

Section 15 - Small Facility Exemption

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