

SCOMM

62:9

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing an oil and
hazardous substance response office and
Sponsor: corps. etc.
Requestor: Kelly, Sturgulewski, Eliason, etc.

Agency Affected: Environmental Conservation
BRU: Environmental Quality
Administrative Services
Components: Environmental Quality
Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		660.0	660.0	660.0	660.0	660.0
TRAVEL		60.0	60.0	60.0	60.0	60.0
CONTRACTUAL		2700.0	2620.0	1620.0	1620.0	1620.0
SUPPLIES		265.0	265.0	265.0	265.0	265.0
EQUIPMENT		345.0	325.0	325.0	325.0	325.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		4030.0	3930.0	2930.0	2930.0	2930.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		4030.0	3930.0	2930.0	2930.0	2930.0
TOTAL		4030.0	3930.0	2930.0	2930.0	2930.0

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton Phone: 465-2640
Division: Environmental Quality Date: April 21, 1989

Approved by Commissioner: ADP/AL Date: 04/21/89
Agency: Alaska Department of Environmental Conservation

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

THE FOLLOWING IS A VERY PRELIMINARY ANALYSIS BASED ON A BRIEF REVIEW OF THE PROPOSED LEGISLATION. THE ANALYSIS AND INCLUDED ESTIMATES WILL BE REFINED DURING THE COMMITTEE PROCESS.

ESTABLISH DEPOTS AND RESPONSE STATIONS (\$2000.0)

The Department estimates that \$2000.0 will be required for each of the first two years to establish and stock depots and response stations at a minimum of two locations: Valdez and on the Kenai Peninsula. Once established, subsequent year costs are expected to decline to \$500.0 for contracted services to maintain inventories and response readiness.

100	\$ -0-
200	\$ -0-
300	\$1,500.0
400	\$ 250.0
500	\$ 250.0
Total	<u>\$2,000.0*</u>

*includes \$1,500.0 in first and second year costs

ESTABLISH OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE (\$2,030.0)

The Response Office would consist of a full-time staff of nine agency personnel: a director, six response specialists, one clerk-typist and one administrative assistant. First-year costs to establish and staff the office are estimated at \$700.0. Subsequent year costs are estimated at \$600.0. Other costs include training contracts (\$200.0), contracts with local governments (\$500.0), wages and per diem for volunteer training (\$300.0), contracts with private response specialists (\$100.0), and contracts for oil spill response research (\$100.0).

100	\$ 660.0
200	\$ 60.0
300	\$1,200.0
400	\$ 15.0
500	\$ 95.0
Total	<u>\$2,030.0*</u>

*includes \$100.0 in first year costs

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



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SENATE SPECIAL COMMITTEE ON OIL AND GAS

To: Members of the Senate Special
Committee on Oil and Gas

From: Committee staff

Re: SB 264, Sectional analysis

Date: April 11, 1989

Section 1. AS. 46.08

This chapter, Oil and Hazardous Substances Releases, is amended to add a new section creating the Oil and Hazardous Substance Response Office.

Sec. 46.08.100. Office Established.

The response office is established within the Department of Environmental Conservation. It is to be staffed with a director and staff who are specialist in the technologies related to discharge of hazardous substances.

Sec. 46.08.110. Response Corp.

A response corp, comprised of volunteer shall be trained in containment and cleanup techniques by the office. The members are entitled to per diem, wages and expenses for training and while on containment and cleanup actions.

Sec. 46.08.120. Response Depots.

The response office shall maintain depots with staff and equipment in areas of the state where there is the potential for hazardous substance releases.

Sec. 46.08.130. Emergency Powers.

The director may allow his staff to enter private property for the purpose of cleanup and containment if there is reasonable grounds to believe that a release of oil or other hazardous substance has occurred or is likely to occur and it would prejudice the interests of the state to delay action. A prior hearing is not necessary under these conditions.

The affected property owner has the right to a hearing to present proof to the office that the action was unnecessary.

Sec. 46.08.140. Contracts.

The office may enter into agreements to provide cleanup and containment services.

Sec. 46.08.150. Research.

The office may conduct research or contract for studies to improve the technology relating to cleanup and containment.

Sec. 46.08.040. Purposes of the Fund.

This section of existing law, dealing with the uses of the oil and hazardous substance release fund, is amended to include the cost of the response office and response corp.

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

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April 11, 1989

Senator Drue Pearce, Chair
Special Committee on Oil & Gas
Alaska State Senate
Box V
Juneau, Ak 99811

Re: SB 264, Establishing an oil spill response office and corps.

Dear Senator Pearce,

I introduced SB 264 in response to the catastrophic oil spill that occurred in Prince William Sound two weeks ago which is still wreaking destruction relatively unchecked. There is not one Alaskan that will allow the repeat of such a disastrous event. I believe that the state must take control of operations to contain and clean up oil spills before there will be any measure of protection and guarantee against a disastrous aftermath of any future event.

The bill establishes an office of oil and hazardous substance response and a cadre of Alaskan volunteers trained and ready to quickly respond to oil and hazardous substance releases throughout the state. A system of material and equipment depots will be established in areas of the state susceptible to spill or release events. The office has authority to enter into agreements and contracts with other agencies, municipalities, and private entities to augment the state's readiness and capability to control and minimize damage from a spill or release of any size.

I have drawn on organizational structures for wild fire suppression as a successful pattern for the state's oil and hazardous response organization (see attached concept outline). Indeed, rapid response and the ability to quickly marshal large numbers of trained personnel and quantities of material as may be necessary is exactly what is needed.

I propose that depots be established along the pipeline, in Cook Inlet, and in the Pacific Rim coastal communities. If the Bering Straits has substantial tanker deliveries of MacKenzie Delta oil, then Barrow, Kotzebue, Nome and all major

Sen. Kelly
Page 2
April 11, 1989

communities down that coast most definitely should have depots and rapid response capabilities. There may be sufficient reasons for Bristol Bay and other communities to also have response capabilities right now.

Substantial funds should be made available for training of a corps of volunteers. The Prince William Sound disaster unfortunately is already providing a training ground for many Alaskans on massive oil spill clean up. It would seem valuable that response teams from other depot communities also get experience with the real thing.

Oil spill research and clean up technology funds should be made available. In the months ahead, there should be much known about what proved useful and what did not to make an assessment of better methods and materials for oil spill containment and clean up.

Finally, I propose that the legislature fund this initial effort with \$20,000,000 from the Oil and Hazardous Substance Release Response Fund (AS 46.08.010). This commitment and all future expenses of the response office and corps should be borne by the oil production or transportation industry.

I do not present SB 264 as the only answer or even as a complete proposal. But it does provide a framework that I believe can be successful. It eliminates reliance on others and accepts both the commitment and responsibility that Alaskans will best protect Alaska and its land and marine resources.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim", with a stylized, sweeping underline.

TIM KELLY
Alaska State Senator

SB264 Concept and Organizational Outline

Premise

The people of Alaska cannot depend on the oil industry to protect them from the environmental damage and economic hardships caused by catastrophic spills of oil or hazardous substances.

Goal

To establish a capability within the Department of Environmental Conservation to respond rapidly to oil and hazardous substance spills on the lands and in the waters of the State of Alaska.

Objective

To establish a management structure for oil and hazardous substance spill response research, training, planning, operations, command and control.

The following management structure is patterned after the Incident Command System developed by the U.S. Forest Service to combat large forest fires.

Oil and Hazardous Substance Response Office

Duties

- Establish oil and hazardous response positions, qualifications and certification requirements for Response Corps personnel.
- Establish inter-agency Incident Command System.
- Recruit and train personnel for on-call Response Corps.
- Establish and maintain system of Response Depots for the marshalling of oil and hazardous response equipment and supplies.

Organization

- Director
- Operations Officer
- Logistics Officer
- Planning Officer
- Training Officer
- Finance Officer
- Liaison Officer

- Safety Officer
- Crisis Management Information Officer
- Depot Managers (11)
- Clerical (4)

Response Corps

Duties

- To be on call to respond rapidly to an oil or hazardous substance spill anywhere in Alaska.
- To establish and maintain acceptable levels of training, certification, experience, readiness and physical fitness.

Organization

Incident Operations

- Air Operations Supervisor
- Vessel Operations Supervisor
- Staging Area Supervisor
- Strike Team Supervisor

- Helicopter Coordinator
- Helibase Manager
- Helispot Manager

- Vessel Coordinator
- Vesselbase Manager
- Vesselspot Manager

- Strike Team Leader
- Strike Team Single Resource Boss—Containment Booms
- Strike Team Single Resource Boss—Dispersant Materials
- Strike Team Single Resource Boss—Firing
- Strike Team Single Resource Boss—Dozer
- Strike Team Single Resource Boss—Wildlife and Bird Capture and Cleaning
- Strike Team Members

Incident Planning

- Training Specialists
- Agency Coordinator
- Mobilization/Demobilization Leader
- Spill Behavior Analyst
- Meteorology Analyst
- Wildlife/Fisheries Behavior Analyst
- Economic Impact Analyst

Incident Logistics

- Facilities Unit Leader
- Communications Unit Leader
- Incident Dispatcher
- Base Camp Manager
- Security Manager
- Medical Unit Leader
- Food Unit Leader
- Supply Unit Leader
- Ordering Manager
- Receiving/Distribution Manager
- Transportation Unit Leader

Incident Financial Management

- Cost Unit Leader
- Time Unit Leader
- Personnel Time Recorder
- Equipment Time Recorder
- Compensation/Claims Unit Leader
- Procurement Unit Leader

Oil and Hazardous Substance Response Depots

Duties

- To stockpile oil and hazardous materials containment and clean-up equipment at key points across the State of Alaska.
- To maintain stockpiles in a state of readiness to respond rapidly to spills wherever they occur.

Composition

- Prudhoe Bay
- Fairbanks
- Valdez
- Kenai
- Kodiak
- Sitka
- Unalaska
- Seward
- Ketchikan
- Cordova
- Yakutat

SB264 Cost Estimate

Response Office _____ \$1,960,000

Salaries & Benefits

Office Expenses

Travel

Office Equipment

Response Corps Establishment & Training _____ \$5,000,000

Depots (11)

Booms, absorbants, pumps, etc. \$8,250,000

Speciality Equipment 3,000,000

Contractual Storage 550,000

Subtotal _____ \$11,800,000

Oil Spill Containment & Clean-up Technology Research _____ \$1,000,000

TOTAL \$19,760,000

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

RES
FIN

4/5/89

DATE TURNED INTO OFFICE _____

Mr. President:

O&G

Committee considered SB 264

establishing an oil and hazardous substance response office and corps;
and authorizing the use of the oil and hazardous substance release
response fund for certain expenses

and recommended:

☐ replace with CS _____ ☐ same title

☐ attached amendment(s) and ☐ new title

☐ _____ letter of intent adopted

☒ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☒ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tim Kell
Al Sedeno
Rick Halford
Paul Truitt

True Peace - no rec
Chair signature and recommendation

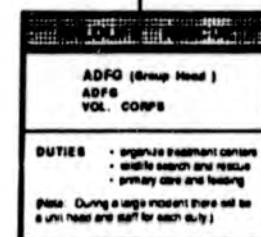
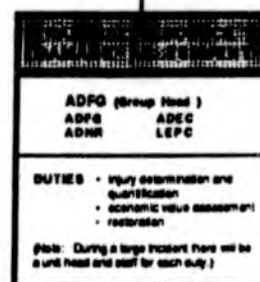
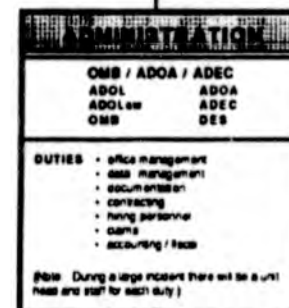
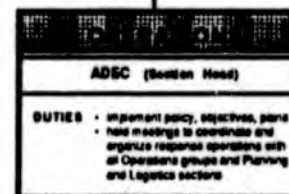
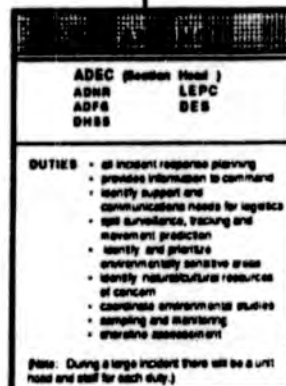
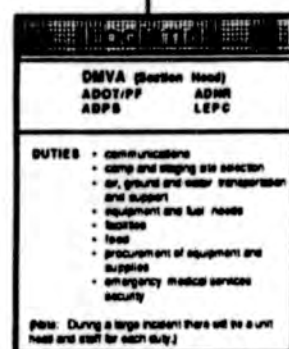
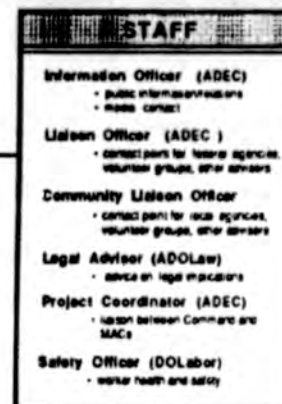
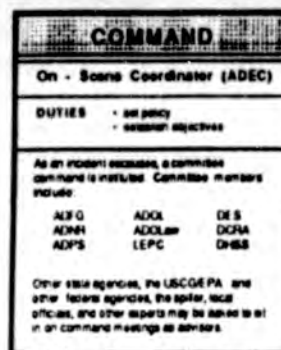
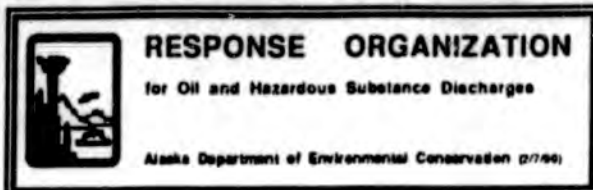
☐ Committee backup attached

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Alaska State Legislature

Senator Drue Pearce, Chair

Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



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SENATE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

TO: Lana Decker, Information Officer
Anchorage Information Office

FROM: Senator Drue Pearce, Chair
Senate Oil and Gas Committee

Drue Pearce

DATE: September 14, 1989

RE: 1989 Oil Spill Legislation

The following list is a brief synopsis of legislation that the Alaska State Legislature passed due to the Prince William Sound oil spill. The Alaska Senate and House worked together to pass these measures to provide solutions to future litigation and to ensure that as much as possible a disaster like the Prince William Sound oil spill not happen again.

If you need further information on the legislation, please feel free to contact me at 561-2038.

SB 247 "Appropriation: Oil spill clean up expenditures"

Appropriates \$10,000,000 from the general fund and \$10,000,000 from general fund program receipts for the State response to the Exxon Valdez oil spill. Transfers excess funds from the oil and hazardous substance release response fund to the general fund on January 31, 1990.

SB 256 "Reimbursement due to a released hazardous substance"

Requires the attorney general to immediately seek to recover certain money expended to contain and clean up a released hazardous substance. Deletes the requirement that a municipality enter into an agreement regarding its obligations with respect to released hazardous substances before incurring expenses for which reimbursement from the state is sought.

SB 260 "Oil and gas properties production (severance) tax conservation surcharge"

Levies a 5 cent-per-barrel conservation surcharge on crude oil subject to the state severance tax; directs separate accounting of the revenue derived from the surcharge; authorizes appropriation of the revenue generated by the surcharge to the oil and hazardous substance release

response fund; provides a mechanism by which levy and collection of the surcharge may be suspended and reimposed to keep the fund balance at \$50,000,000; incorporates transitional provisions to assist in the initial operation of the legislation.

✓ **SB 261 "Oil and hazardous substance discharge contingency plans"**

Directs the Department of Environmental Conservation to prepare and to annually review and revise a master oil and hazardous substance discharge and prevention contingency plan to clarify the respective responsibilities of various named parties in the event of a catastrophic oil discharge or the significant discharge of a hazardous substance, and sets out procedures applicable to the preparation and annual revision of that master plan; directs the department to prepare comparable master plans for regions of the state in which the department is required, under current law, to review and approve oil discharge contingency plans submitted by persons operating oil terminal facilities, offshore exploration and production facilities, and tank vessels and oil barges; authorizes use of money in the oil and hazardous substance release response fund for preparation, review, and revision of these plans and for their implementation in the event of an oil or hazardous substance release.

✓ **SB 264 "Oil and hazardous substance response office"**

Establishes a special office in the Department of Environmental Conservation with the duty to increase the state's ability to respond promptly to a discharge of oil or a hazardous substance. Directs the office to maintain emergency response depots that are equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary. Requires the office to establish and train volunteers who agree to be available on short notice to assist the office in containment and cleanup.

SB 271 "Civil penalties related to oil discharges"

Increases the civil penalties that can be imposed on a person who discharges more than 18,000 gallons of crude oil. Increases the maximum civil penalty for these crude oil discharges to \$500,000,000 and removes completely the previous maximum of \$100,000,000 with respect to civil penalties for large discharges of other types of petroleum products. Makes a person who fails to respond properly to a discharge of crude oil jointly and severally liable for the civil penalties assessed against the discharger.

SB 277 "Exxon Valdez Oil Spill Commission"

Establishes a seven-member commission appointed by the governor to investigate the Exxon Valdez oil spill disaster and to recommend changes needed to minimize the possibility and effects of similar oil spills.

SB 299 "Oil and gas properties production (severance) tax determination of gross value of oil"

Disallows, as allowable costs in determining the gross value of oil for purposes of levy and collection of the state severance tax, certain incremental costs, losses, damages, and expenses, including tanker damage repair and certain oil spill cleanup costs, incurred after February 28, 1989, by a taxpayer in connection with a catastrophic oil discharge into the marine or inland waters of the state.

HB 68 "Liability for hazardous substance releases"

Clarifies which persons are strictly liable for damages and response costs when oil or another hazardous substance is released into the environment or is in danger of being released into the environment. Allows the state to put a lien on property to help the state recover money it may have spent on responding to a release or threatened release of oil or another hazardous substance. Applies retroactively to releases and threats of releases that occurred before the law was passed.

DP:tej

Alaska Statutes

Title 46. Water, Air, Energy, and Environmental Conservation.

Chapter

- 03. Environmental Conservation (§§ 46.03.032, 46.03.299, 46.03.316 — 46.03.317, 46.03.758, 46.03.759, 46.03.763, 46.03.770, 46.03.822, 46.03.823, 46.03.826, 46.03.870, 46.03.900)
- 04. Oil and Hazardous Substance Pollution Control (§§ 46.04.030, 46.04.040, 46.04.120, 46.04.200 — 46.04.210, 46.04.900)
- 06. Recycling and Reduction of Litter (§ 46.06.150)
- 07. Village Safe Water Act (§§ 46.07.030, 46.07.040)
- 08. Oil and Hazardous Substance Releases (§§ 46.08.020, 46.08.040, 46.08.060 — 46.08.080, 46.08.100 — 46.08.190)
- 09. Hazardous Substance Release Control (§ 46.09.020)
- 15. Water Use Act (§§ 46.15.140, 46.15.150 — 46.15.165)

Chapter 03. Environmental Conservation.

Article

- 2. Department of Environmental Conservation (§ 46.03.032)
- 5. Radiation and Hazardous Waste Protection (§§ 46.03.299, 46.03.316, 46.03.317)
- 7. Prohibited Acts and Penalties (§§ 46.03.758, 46.03.759, 46.03.763, 46.03.770, 46.03.822, 46.03.823, 46.03.826)
- 8. General Provisions (§§ 46.03.870, 46.03.900)

Article 2. Department of Environmental Conservation.

Section

- 32. Alaska clean water fund

Sec. 46.03.020. Powers of the department.

NOTES TO DECISIONS

Approval of subdivision plans. — Department of environmental conservation can validly require its approval of potential subdivision plans as a prerequisite

to the recording and sale of any lots in the subdivision. *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

Sec. 46.03.032. Alaska clean water fund. (a) There is established as a separate fund the Alaska clean water fund, which is distinct from any other money or fund in the treasury, and which consists of money appropriated by the legislature to meet federal matching requirements, federal capitalization grants, loan repayments, interest

received from loan repayments, and interest received from investment of money in the clean water fund.

(b) The department shall administer the Alaska clean water fund.

(c) The department may accept and make use of all capitalization grants provided by the federal government under the federal Clean Water Act, as amended by P.L. 100-4.

(d) Except as otherwise limited by federal law, the Alaska clean water fund may be used for the following:

(1) buying or refinancing treatment works debt obligations of municipalities;

(2) planning, designing, building, constructing, and rehabilitating facilities associated with public sewage collection, treatment, and discharge facilities;

(3) constructing, equipping, modifying, improving, and expanding public water supply, treatment, and distribution systems;

(4) guaranteeing or purchasing insurance for public agency obligations related to treatment works construction.

(e) Repayment of loans must be secured in a manner that the department determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower.

(f) The department may spend money from the fund to pay the costs of administering the fund.

(g) A municipality wishing to borrow money from the fund must demonstrate to the satisfaction of the department,

(1) sufficient legal authority to incur the debt for which it is applying; and

(2) that it will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan.

(h) Allocation of Alaska clean water fund loans must be made in accordance with the priority list developed by the department, using criteria specified in regulations adopted by the department.

(i) Before making a loan from the Alaska clean water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant criteria, standards, or procedures.

(j) A loan made by the department must be made according to the standards, criteria, and procedures established by regulations under this section.

(k) The department shall prepare reports required by the federal government in conjunction with federal capitalization grant award conditions. The department shall also provide the Alaska legislature with an annual report on the Alaska clean water fund on or before the first day of each legislative session.

(l) Except as provided in (n) of this section, loan repayments and interest earned by loans from the Alaska clean water fund must be deposited in the fund.

(m) Annual principal payments must commence within one year after project completion, or within two years after the date the loan is made, whichever is earlier.

(n) State appropriations in excess of the amount required by the federal Clean Water Act, as amended by P.L. 100-4, shall be accounted for separately. Repayments of principal from loans from these amounts shall be deposited in the Alaska clean water fund. Payments of interest from loans made from these amounts and earnings on these amounts shall be deposited in the general fund. The commissioner of administration shall separately account for the interest payments and earnings that the Department of Environmental Conservation deposits in the general fund. (§ 4 ch 40 SLA 1987)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Article 3. Water Pollution Control and Waste Disposal.

Sec. 46.03.090. Plans for pollution disposal.

NOTES TO DECISIONS

Quoted in *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

Article 5. Radiation and Hazardous Waste Protection.

Section

299. Regulation of hazardous waste
316. Hazardous waste reduction and recycling program

Section

317. Hazardous waste reduction matching grants

Sec. 46.03.299. Regulation of hazardous waste. (a) The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) for the identification and management of hazardous waste as defined by the Environmental Protection Agency and hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity.

(b) Regulations adopted under (a) of this section shall exempt from their coverage mining waste and waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy until studies required under 42 U.S.C. 6982(f) and (m) are completed. The department, after considering the findings in the reports of these studies, may terminate or amend the exemptions.

(c) The department shall take all actions necessary to receive authorization from the administrator of the Environmental Protection Agency to administer and enforce a hazardous waste program in accordance with 42 U.S.C. 6901 — 6987 (Resource Conservation and Recovery Act of 1976).

(d) Regulations adopted under (a) of this section shall cover (1) hazardous waste, not otherwise exempted by law, that is generated in any month by a single generator in an amount of 220 pounds or more, and (2) acute hazardous wastes identified in 40 C.F.R. 261.33(e), not otherwise exempted by law, that are generated in any month by a single generator in an amount of 2.2 pounds or more. The department shall extend the regulations to manage smaller quantities of hazardous waste if the quantities specified in this subsection exceed the quantities regulated under the authority of 42 U.S.C. 6921 — 6934, as amended. The department may at any time extend coverage of regulations adopted under (a) of this section to small quantities of hazardous waste and acute hazardous waste.

(e) *[Repealed, § 61 ch 50 SLA 1989.]*

(f) In order to minimize the present and future threat to human health and the environment, the department shall promote the following hazardous waste management practices in the following order of priority:

- (1) waste source reduction;
- (2) recycling of waste;
- (3) waste treatment; and
- (4) waste disposal. (§ 10 ch 93 SLA 1981; am § 1 ch 77 SLA 1984; am §§ 55, 61 ch 50 SLA 1989; am § 2 ch 97 SLA 1989)

Effect of amendments. — The first 1989 amendment, effective May 27, 1989, in subsection (a), substituted "adopt regulations under the Administrative Procedure Act (AS 44.62)" for "develop regulations" and deleted the former second and

third sentences relating to the adoption and effective date of initial regulations, and repealed subsection (e).

The second 1989 amendment, effective July 1, 1989, added subsection (f).

Sec. 46.03.316. Hazardous waste reduction and recycling program. (a) There is established within the department a hazardous waste reduction and recycling program. Within the limit of funds available, the department shall

- (1) coordinate agency efforts to reduce the production of hazardous waste, including air and water emissions;

(2) in order to implement the priorities set out in AS 46.03.299(f)(1) — (2), promote hazardous waste source reduction and on-site recovery of resources from hazardous waste streams and through materials recycling;

(3) provide for source reduction and recycling technical assistance and consultation to hazardous waste generators at their request;

(4) sponsor or co-sponsor with public or private organizations technical workshops and seminars on hazardous waste reduction;

(5) develop a hazardous waste reduction technical reference center and data base;

(6) establish and maintain a hazardous waste reduction information referral service;

(7) identify and evaluate hazardous waste reduction research needs for state businesses and industry, local governments, and state agencies;

(8) develop, in consultation with institutions of higher education in the state, courses and curricula related to hazardous waste reduction; and

(9) issue hazardous waste reduction grants under AS 46.03.317.

(b) In response to a request of a hazardous waste generator, a representative of the department may visit the hazardous waste generator's site for the purpose of observing a waste generating process, obtaining information relevant to waste reduction, rendering advice, and making recommendations. A visit under this subsection may not be regarded as an inspection or investigation. A representative of the department designated to render advisory or consultative services may not have enforcement authority.

(c) This section does not diminish the responsibility of a person to comply with this chapter, AS 46.04, or AS 46.09. (§ 3 ch 97 SLA 1989)

Cross references. — For legislative findings in connection with the enactment of this section and AS 46.03.317, see § 1, ch. 97, SLA 1989 in the Temporary and Special Acts.

Effective dates. — Section 5, ch. 97, SLA 1989, provides: "This Act takes effect July 1, 1989."

Sec. 46.03.317. Hazardous waste reduction matching grants.

(a) A hazardous waste reduction grant account is established in the general fund. It consists of appropriations made to it.

(b) The department may issue matching grants from money in the account to businesses, local governments, industry trade associations, labor organizations, or nonprofit organizations for the purpose of feasibility analysis and evaluation of ways to implement hazardous waste reduction.

(c) Grants under this section

(1) must be matched on a dollar-for-dollar basis by the grantee in cash or in kind;

(2) may not exceed \$10,000 for any single proposal or project.

(d) The department shall establish an advisory committee, consisting of five members, to assist the department in reviewing and evaluating grant applications under this section. The advisory committee must include

- (1) an officer or employee of the department;
- (2) a representative of the University of Alaska;
- (3) a professional civil or chemical engineer with experience in environmental engineering;
- (4) an owner or representative of a small business; and
- (5) a public member. (§ 3 ch 97 SLA 1989)

Effective dates. — Section 5, ch. 97, SLA 1989, provides: "This Act takes effect July 1, 1989."

Article 7. Prohibited Acts and Penalties.

Section

758. Civil penalties for discharges of oil

759. Civil penalties for discharges of crude oil

763. Attorney fees and costs

770. Detention of vessel without warrant as security for damages

Section

822. Strict liability for the release of hazardous substances

823. Hazardous substance response action contractors

826. Definitions

Sec. 46.03.758. Civil penalties for discharges of oil. (a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment. Even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking which poses a significant threat to the economy and environment

of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive which is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while insuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner which will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) \$1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources.

(2) For discharges of oil which are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environ-

ments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor will be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;
- (3) a negligent or intentional act of the State of Alaska or the United States; or
- (4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

(k) *[Repealed, § 19 ch 59 SLA 1986.]*

(l) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf which would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state (except oil discharges into an enclosed and impervious oil spill containment area), regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limita-

tion, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms. (§ 1 ch 129 SLA 1977; am §§ 1 — 3 ch 128 SLA 1978; am § 110 ch 59 SLA 1982; am § 19 ch 59 SLA 1986; am §§ 1, 2 ch 41 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 10, 1989, deleted "After April 19, 1978" at the beginning and substituted "adopted under this section" for "or \$100,000,000, which-

ever is less" at the end of subsection (e) and rewrote the definition of "oil" in paragraph (1)(6) which read "means petroleum, crude oil, and any substance refined from petroleum or crude oil."

Sec. 46.03.759. Civil penalties for discharges of crude oil.

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of \$500,000,000, in the amount of

(1) \$8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) \$12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the \$50,000,000 maximum set under (a) of this section the court shall assess 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 respond in accordance with an approved oil discharge contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty

provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) a negligent or intentional act of the State of Alaska or the United States; or
- (3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area. (§ 3 ch 41 SLA 1989)

Revisor's notes. — The introductory language of (c) of this section was reorganized in 1989 to conform to the style of the Alaska Statutes.

Effective dates. — Chapter 41, SLA 1989, which enacted this section, took effect on August 10, 1989.

Sec. 46.03.763. Attorney fees and costs. In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action. (§ 4 ch 41 SLA 1989)

Cross references. — For effect of this section on Rule 82, Alaska Rules of Civil Procedure, see § 9, ch. 41, SLA 1989 in the Temporary and Special Acts.

Effective dates. — Chapter 41, SLA 1989, which enacted this section, took effect on August 10, 1989.

Sec. 46.03.770. Detention of vessel without warrant as security for damages. A vessel that is used in or in aid of a violation of AS 46.03.740 — 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 — 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid

within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g). (§ 3 ch 120 SLA 1971; am § 1 ch 7 SLA 1986; am § 5 ch 41 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 10, 1989, inserted the references to "46.03.759" and

"46.04.030(g)" in the second, fourth, and last sentences of the section.

Sec. 46.03.822. Strict liability for the release of hazardous substances. (a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality, and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a

release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 — 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 — 508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner, operator, or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state or a municipality is not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another

person unless the actions taken by the state or municipality constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section. (§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976; am § 2 ch 39 SLA 1989)

Cross references. — For applicability of the 1989 amendment of this section to releases or threats of releases that occurred before May 13, 1989, see § 8, ch. 39, SLA 1989 in the Temporary and Special Acts.

Effect of amendments. — The 1989 amendment, effective May 13, 1989, rewrote this section.

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 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 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) 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) 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 construction, removal, and equipment provision;

(2) "response action contract" means a written contract or agreement to provide 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;

(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. (§ 3 ch 39 SLA 1989)

Effective dates. — Section 9, ch. 39, May 13, 1989, in accordance with AS SLA 1989 makes this section effective 01.10.070(c).

Sec. 46.03.826. Definitions. In AS 46.03.822 — 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle,

rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(5) "hazardous substance" means

(A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);

(6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

(7) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(8) "owner" and "operator"

(A) mean

(i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;

(ii) in the case of facility, any person owning or operating the facility;

(iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and

(iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;

(B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping,

or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

(10) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(11) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(12) "vessel" means every description of watercraft or other artificial contrivance that is used, or is capable of being used, as a means of transportation on water, or that carries hazardous substances for the purpose of incineration of the hazardous substances.

(13) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska. (§ 1 ch 122 SLA 1972; am § 22 ch 7 SLA 1986; am §§ 4 — 6 ch 39 SLA 1989)

Revisor's notes. — Reorganized in 1986 and 1989 to alphabetize the defined terms.

Effect of amendments. — The 1989 amendment, effective May 13, 1989, in-

serted "into the atmosphere or" in paragraphs (4) and (5); added subparagraph (C) in paragraph (5); and added paragraphs 3, 6, 8, 9, 11 and 12.

Article 8. General Provisions.

Section

870. Actionable rights

900. Definitions

Sec. 46.03.870. Actionable rights. (a) Except as specified in AS 46.03.822 — 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 — 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation. (§ 3 ch 120 SLA 1971; am § 2 ch 122 SLA 1972)

Editor's notes. — This section is set out above to correct a minor error in subsection (a) in the main pamphlet.

Sec. 46.03.900. Definitions. In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

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

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

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the envi-

ronment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal.

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and

(C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.40.100;

(16) "municipality" means an organized borough or an incorporated city outside an organized borough, and includes all classes of boroughs and cities whether home rule or otherwise;

(17) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(18) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other entity whatsoever;

(19) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides and biocides;

(20) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or nox-

ious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(21) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other processes or purposes and includes the reuse of materials or products to conserve natural resources;

(22) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(23) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(24) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(25) "solid waste" means all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source;

(26) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(27) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(28) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(29) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(30) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(31) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste, or other wastes;

(32) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means (A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(33) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed (A) at the drill site; or (B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(34) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 3 ch 120 SLA 1971; am §§ 16, 17 ch 220 SLA 1976; am § 2 ch 26 SLA 1977; am § 2 ch 129 SLA 1977; am §§ 7, 12 ch 172 SLA 1978; am § 5 ch 163 SLA 1980; am §§ 7, 14 ch 93 SLA 1981; am §§ 115, 116 ch 59 SLA 1982; am § 9 ch 77 SLA 1984; am § 4 ch 97 SLA 1989)

Revisor's notes. — Paragraph (10) was enacted as (34). Renumbered in 1989, at which time the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1989 amendment, effective July 1, 1989, added paragraph (10).

Chapter 04. Oil and Hazardous Substance Pollution Control.

Article

1. Oil Pollution Control (§§ 46.04.030, 46.04.040, 46.04.120)
2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans (§§ 46.04.200, 46.04.210)
3. General Provisions (§ 46.04.900)

Article 1. Oil Pollution Control.

Section

30. Oil discharge contingency plans
40. Proof of financial responsibility

Section

120. [Renumbered]

Sec. 46.04.030. Oil discharge contingency plans. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department. 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) After January 1, 1981, a person may not cause or permit the operation of an offshore exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department.

(c) A person may not 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 an oil discharge contingency plan for the tank vessel or oil barge has been approved by the department. 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) 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 of an oil discharge contingency plan which it determines are necessary to insure that the applicant for 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 from the facility or vessel within the shortest feasible time. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. 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.

(f) The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if 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 an oil discharge contingency plan if 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 has been violated.

(g) Failure of a holder of an approved oil discharge contingency plan to have access to the quality or quantity of resources identified in the plan and, in the event of a spill, to respond with those resources within the shortest feasible time 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 oil discharge contingency plan fails to respond to 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 46.03.759 or 46.03.760 against any other person for that discharge. (§ 2 ch 116 SLA 1980; am §§ 1, 2 ch 140 SLA 1988; am § 6 ch 41 SLA 1989)

Effect of amendments. — The 1988 amendment, in subsection (e), added paragraphs (1) — (3) and substituted "or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including" for "to undertake discharge ex-

ercises" in the last sentence in the introductory paragraph; and added subsection (g).

The 1989 amendment, effective August 10, 1989, added the second sentence in subsection (g).

Sec. 46.04.040. Proof of financial responsibility. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished proof of financial ability to respond in damages 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.

(b) After July 1, 1981, a person may not cause or permit the operation of an offshore exploration or production facility in the state unless proof of financial ability to respond in damages has been accepted by the department. Proof of financial responsibility may not be less than \$35,000,000 per incident.

(c) A person may not 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 proof of financial 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 § 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 § 311(p)(1) of the Clean Water Act, or \$20,000,000, whichever is greater.

(d) Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of (c) of this section that the person charged believed in good faith that the vessel operator possessed proof of financial responsibility accepted by the department.

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. An action brought under AS 46.03.758, 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 or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, or guarantor shall appoint an agent for service of process in the state. An insurer 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.

(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; or
- (3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

(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. 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.

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

- (1) acceptance was procured by fraud or misrepresentation; or
- (2) a change of circumstance has occurred other than a change specified in (f)(1) — (3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g). (§ 2 ch 116 SLA 1980; §§ 117, 118 ch 59 SLA 1982; am §§ 7, 8 ch 41 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 10, 1989, inserted "or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759" in

the second sentence in subsection (e) and inserted the references to "46.03.759" and "46.04.030(g)" in subsection (i).

Sec. 46.04.120. [Renumbered as AS 46.04.900.]**Article 2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans.****Section**

200. State master plan

210. Regional master plan

Cross references. — For legislative findings and purpose in connection with the enactment of AS 46.04.200 — 46.04.210, see § 1, ch. 90, SLA 1989 in the Temporary and Special Acts; for deadlines for initial master plans under AS 46.04.200 and 46.04.210, see § 4, ch. 90, SLA 1989 in the Temporary and Special Acts.

Effective dates. — Section 6, ch. 90, SLA 1989, makes this article effective June 3, 1989, in accordance with AS 01.10.070(c).

Editor's notes. — Section 5, ch. 90, SLA 1989 provides that chapter 90, which enacted AS 46.04.200 — 46.04.210, "does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

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 contingency plan.

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

(1) take into consideration the elements of an oil discharge 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 contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section. (§ 2 ch 90 SLA 1989)

Sec. 46.04.210. Regional master plan. (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 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 contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section. (§ 2 ch 90 SLA 1989)

Article 3. General Provisions.

Section

900. Definitions

Sec. 46.04.900. Definitions. In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 — 1376);

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

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment or removal of a pollutant, the restoration of the environment to its former state, and all incidental administrative costs;

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

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "offshore exploration or production facility" means a platform, vessel or other facility used to explore for or produce hydrocarbons in the waters of the state; the term does not include vessels used for stratigraphic drilling or other operations which are not authorized or intended to drill to a producing formation;

(9) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(10) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(11) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(12) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(13) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(14) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(15) "tank vessel" means a self-propelled 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;

(16) "vessel" includes tank vessels and oil barges;

(17) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of

Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 2 ch 116 SLA 1980)

Revisor's notes. — Enacted as AS
46.04.120. Renumbered in 1989.

Chapter 06. Recycling and Reduction of Litter.

Section 150. Definitions

Sec. 46.06.150. Definitions. In this chapter,

(1) "beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton containing beer or other malt beverages or carbonated soft drinks, in liquid form;

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

(3) "degradable" means a characteristic of a material that allows the material to be broken down by biological, chemical, photochemical, or other physical processes

(A) within two years upon exposure to natural elements; and

(B) to a particle size and chemical composition that may be assimilated harmlessly and aesthetically into the environment without producing a residue or by-product determined by the department to be hazardous;

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

(5) "litter" means all waste material including disposable packages or containers disposed of in a manner prohibited by AS 46.06.080, but does not include the wastes of the primary processes of mining or other extraction process, logging, sawmilling, farming or manufacturing;

(6) "litter bag" means a bag, sack or other container made of any material which is large enough and suitable to serve as a receptacle for litter inside a vehicle or vessel;

(7) "public place" means public or private property that is used or held out for use by the public, whether owned or operated by public or private interests, including but not limited to highways or other roads upon which vehicles are moved, parks, campgrounds, trailer parks, drive-in and fast food restaurants, gasoline service stations, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches, bathing areas, school grounds, sporting event sites with seating capacity for more than 200 spectators, business district sidewalks, parking lots for taverns, shopping centers and gro-

cery stores, and other parking lots if they have a capacity for more than 50 vehicles;

(8) "vehicle" means a mechanically driven device of any kind which is used for the transportation of a person or property on a public highway, trail or path;

(9) "vessel" means all descriptions of watercraft used or capable of being used as a means of transportation on the water. (§ 2 ch 149 SLA 1980; am §§ 6 — 8 ch 164 SLA 1984; r § 5 ch 149 SLA 1980; § 9 ch 164 SLA 1984)

Revisor's notes. — Reorganized in 1989 to alphabetize the defined terms.

Chapter 07. Village Safe Water Act.

Section

- 30. Nature and location of facilities
- 40. Construction of facilities

Sec. 46.07.030. Nature and location of facilities. (a) A facility constructed under authority of this chapter shall be available for use by the public and shall be designed to assure year-round use. The facility shall include, at a minimum, a source of clean water, such as a well with pumping facilities or utilization of surface water treated so it is safe and healthful for use, shower bath facilities, an adequate means of hygienic sewage disposal, and facilities for the washing of clothes. The building housing the facility shall also contain, if the commissioner determines it to be feasible and appropriate, suitable quarters to be used as a community health service office.

(b) The location of a facility constructed under this chapter shall be determined by the commissioner after consultation with the governing body of the village in which the facility is located, as well as with appropriate public agencies, including but not limited to the Alaska State Housing Authority. The aim of the consultation is to achieve maximum coordination in public development plans and activities affecting the community in which the facility is to serve. (§ 1 ch 186 SLA 1970; am § 49 ch 71 SLA 1972)

Revisor's notes. — Under § 2, ch. 11, SLA 1989 and AS 01.05.031 "Alaska State Housing Authority" was substituted for "Alaska State Building Authority" in 1989.

Sec. 46.07.040. Construction of facilities. (a) The commissioner shall provide for the construction of facilities under this chapter, and is authorized to provide for the construction by contract or through grants to public agencies or private nonprofit organizations, or otherwise. A contribution toward the cost of the construction of a facility

may not be required from its users. Construction under this section by contract is governed by AS 36.30 (State Procurement Code).

(b) In the construction of a facility under this chapter, workers from the village in which the facility is being constructed shall be utilized to the maximum extent feasible.

(c) In (a) of this section, "cost of the construction of a facility" includes, in addition to costs directly related to the project, the sum total of all costs of financing and carrying out the project. These include, but are not limited to, the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property and the acquisition of machinery and equipment as may be necessary in connection with the project; an allocable portion of the administrative and operating expenses of the grantee; the cost of financing the project, including interest on bonds issued to finance the project; and the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary. (§ 1 ch 186 SLA 1970; am § 32 ch 168 SLA 1978; am § 55 ch 106 SLA 1986)

Editor's notes. — This section is set out above to correct a minor error in the next-to-last sentence of subsection (a) in the main pamphlet.

Chapter 08. Oil and Hazardous Substance Releases.

Article

1. Release Response Fund (§§ 46.08.020, 46.08.040, 46.08.060 — 46.08.080)
2. Oil and Hazardous Substance Response Office (§§ 46.08.100 — 46.08.190)

Article 1. Release Response Fund.

Section

20. Financing of the fund
40. Purposes of the fund
60. Report to the legislature
70. Reimbursement for containment and cleanup

Section

75. Liens against property as security for state expenditures
80. Regulations

Sec. 46.08.020. Financing of the fund. (a) The legislature may appropriate from the following sources to the fund:

- (1) money received from federal, state, or other sources or from a private donor;
- (2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other

forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 — 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made. (§ 1 ch 59 SLA 1986)

Revisor's notes. — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (a)(3) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

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 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;

(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 cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

(5) prepare, review, and revise

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

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

(6) restore the environment by addressing the effects of an oil or hazardous substance release. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2 ch 113 SLA 1989)

Revisor's notes. — Paragraphs (5) and (6) were enacted as (4) and (5) respectively. Renumbered in 1989.

Effect of amendments. — The first 1989 amendment, effective June 3, 1989, in paragraph (1), added "investigate and evaluate the release or threatened release of oil or a hazardous substance, and" at the beginning and substituted "and assessing, to address a release" for "assessing, investigating, and evaluating the release"; and added paragraphs (5) and (6).

The second 1989 amendment, effective June 16, 1989, added present paragraph (2) and designated former paragraphs (2) and (3) as paragraphs (3) and (4).

Editor's notes. — Section 5, ch. 90, SLA 1989 provides that the amendments to this section by that chapter do "not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

For essentially similar language in connection with the amendments to this section by ch. 113, SLA 1989, see § 4, ch. 113, SLA 1989 in the Temporary and Special Acts.

Sec. 46.08.060. Report to the legislature. (a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

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

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

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

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

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

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

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

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

(3) the appropriate actions needed to abate these threats, and their estimated cost. (§ 1 ch 59 SLA 1986)

Editor's notes. — This section is set out above to correct a minor error in paragraph (a)(4) in the main pamphlet.

Sec. 46.08.070. Reimbursement for containment and cleanup.

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

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 — 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

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

(1) the municipality has entered into an agreement with the commissioner under AS 46.09.020(e); and

(2) the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare, or to the environment. (§ 1 ch 59 SLA 1986; am §§ 1, 2 ch 29 SLA 1989)

Revisor's notes. — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (b) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

Effect of amendments. — The 1989 amendment, effective May 12, 1989, substituted "shall immediately seek" for

"may seek" near the beginning of subsection (b) and deleted "before incurring the expenses for which reimbursement is sought" at the end of paragraph (c)(1).

Editor's notes. — Section 3, ch. 29, SLA 1989 provides that this section is retroactive to March 24, 1989.

Sec. 46.08.075. Liens against property as security for state expenditures. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property

and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance. (§ 7 ch 39 SLA 1989)

Effective dates. — Section 9, ch. 39, May 13, 1989, in accordance with AS SLA 1989 makes this section effective 01.10.070(c).

Sec. 46.08.080. Regulations. The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all of any portion of the substances to which AS 46.08.005 — 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 — 46.08.080. (§ 1 ch 59 SLA 1986)

Revisor's notes. — References to "AS 46.08.005 — 46.08.080" were substituted for "this chapter" in this section, with a corresponding minor word change, in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

Article 2. Oil and Hazardous Substance Response Office.**Section**

- 100. Office established
- 110. Response corps
- 120. Response depots
- 130. Duties of the office

Section

- 140. Emergency powers
- 150. Contracts
- 160. Limitation of liability
- 190. Definitions

Cross references. — For legislative findings and purpose in connection with the enactment of AS 46.08.100 — 46.08.190, see § 1, ch. 113, SLA 1989 in the Temporary and Special Acts.

Effective dates. — Chapter 5, ch. 113, SLA 1989, makes this article effective June 16, 1989, in accordance with AS 01.10.070(c).

Editor's notes. — In ch. 113, SLA 1989, which enacted AS 46.08.100 — 46.08.190, Sec. 4 provides: "APPLICABILITY OF ACT. (a) This Act does not relieve a person responsible for an oil terminal facility, offshore exploration or production

facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law.

"(b) This Act does not add to or detract from the authority under law of a municipality to impose taxes on oil and gas property or other properties for the purpose of establishing or maintaining services and facilities to minimize the risk of or respond to a release of oil or a hazardous substance."

Sec. 46.08.100. Office established. There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances. (§ 3 ch 113 SLA 1989)

Sec. 46.08.110. Response corps. (a) The office shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the office and agree to be trained by the office in techniques for containment and cleanup and to be available on short notice to assist the office in containment and cleanup.

(c) Members of the corps are entitled to per diem and expenses as determined by the commissioner for training and for days spent in service to the state in containment and cleanup actions. (§ 3 ch 113 SLA 1989)

Sec. 46.08.120. Response depots. The office shall maintain emergency response depots in areas of the state determined by the director to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary. (§ 3 ch 113 SLA 1989)

Sec. 46.08.130. Duties of the office. (a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) — (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment. (§ 3 ch 113 SLA 1989)

Sec. 46.08.140. Emergency powers. (a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action. (§ 3 ch 113 SLA 1989)

Sec. 46.08.150. Contracts. The office may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private entities to

(1) establish and maintain regional oil and hazardous substances depots and to acquire the supplies and equipment necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology. (§ 3 ch 113 SLA 1989)

Sec. 46.08.160. Limitation of liability. The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 — 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct. (§ 3 ch 113 SLA 1989)

Sec. 46.08.190. Definitions. In AS 46.08.100 — 46.08.190

- (1) "corps" means the oil and hazardous substance response corps;
 - (2) "depots" means the oil and hazardous substance supply and equipment storage depots;
 - (3) "office" means the oil and hazardous substance response office.
- (§ 3 ch 113 SLA 1989)

Chapter 09. Hazardous Substance Release Control.

Section

20. Containment and cleanup of a released hazardous substance

Sec. 46.09.020. Containment and cleanup of a released hazardous substance. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

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

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

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

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

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

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

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department. (§ 2 ch 59 SLA 1986)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Chapter 15. Water Use Act.

Article

2. Appropriation and Use of Water (§§ 46.15.140, 46.15.150 — 46.15.165)

Article 2. Appropriation and Use of Water.

Section

140. Abandonment, forfeiture, and reversion of appropriations

150. Preferred use

Section

160. Transfer and change of appropriations

165. Administrative adjudications

Sec. 46.15.140. Abandonment, forfeiture, and reversion of appropriations. (a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke or amend the certificate of appropriation as to the unused quantity of water if an appropriator, with intention to abandon, does not make beneficial use of all or a part of the appropriated water.

(b) The commissioner may declare that an appropriator has wholly or partially forfeited an appropriation, and shall revoke the certificate of appropriation in whole or in part if the appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of the appropriated water for a period of five successive years. A person who has a permit to develop a use of water including but not limited to residential, agricultural, industrial, or mining use, but has

not developed that property to the point of water use before permit expiration, may file a request for permit extension with the commissioner.

(c) Failure to use beneficially for five successive years all or part of the water granted in a certificate of appropriation raises a rebuttable presumption that the appropriator has abandoned or forfeited the right to use the unused quantity of water and shifts to the appropriator the burden to prove otherwise to the satisfaction of the commissioner.

(d) If the commissioner revokes a certificate in whole or in part, the portion of the certificate covered by the revocation reverts to the state and the water becomes unappropriated water. (§ 1 ch 50 SLA 1966; am §§ 3, 4 ch 135 SLA 1986)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Sec. 46.15.150. Preferred use. (a) An applicant who asserts and proves a preferred use shall be granted a permit and shall be granted preference over other appropriators. A preferred use of water is for a public water supply.

(b) To be entitled to a preference an applicant must show that the applicant's use will be prevented or substantially interfered with by a prior appropriation; the use is a preferred use; the applicant agrees to compensate a permit or certificate holder for the prior appropriation for any damages sustained by the preferred use; and other information which the commissioner requires by regulation. (§ 1 ch 50 SLA 1966)

Editor's notes. — This section is set out above to correct a minor error in subsection (b) in the main pamphlet.

Sec. 46.15.160. Transfer and change of appropriations. (a) The right to use water under an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplied by one person to another person's property is not appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

(b) With the permission of the commissioner, all or any part of an appropriation may be severed from the land to which it is appurtenant, may be sold, leased or transferred for other purposes or to other land and be made appurtenant to other land. A permit or certificate or a deed, lease, contract, assignment of permit or other instrument transferring an appropriation must be filed in the office of the com-

missioner and a certified copy of the instrument must be recorded in the recorder's office of the recording district in which the appropriation is located. (§ 1 ch 50 SLA 1966)

Revisor's notes. — Minor word section in 1988 under § 42, ch. 161, SLA changes related to the recording of documents were made in subsection (b) of this 1988.

Sec. 46.15.165. Administrative adjudications. (a) The commissioner may, by order, initiate an administrative adjudication to quantify and determine the priority of all water rights and claims in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

(b) In the order initiating an administrative adjudication, the commissioner shall describe the appropriate geographic and hydrologic boundaries of the adjudication area. During the adjudication, the commissioner may adjust the boundaries to ensure the efficient administration of water appropriations among users.

(c) Upon initiation of the adjudication, the commissioner shall

(1) serve the order on each applicant, certificate holder, or permittee listed in the department's records within the adjudication area;

(2) serve the order on any agency of the federal, state, or a local government with management authority over land or water within the adjudication area;

(3) serve the order on any person who owns or claims land within the adjudication area if the land is held in trust by the United States for the person or if the patent, deed, or certificate to the land from the United States was issued under 25 U.S.C. 334 (Indian General Allotment Act of February 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), any other allotment act, or the Alaska Native Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the United States on behalf of the person;

(4) serve the order on the United States and the appropriate governing body of the Annette Island Reserve established by 25 U.S.C. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land or water, including hydrologically interconnected water, of the Annette Island Reserve is within the adjudication area;

(5) serve the order on any other person claiming a federal reserved water right within the adjudication area;

(6) serve the regional corporation and village corporation established under 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act) that has a pending land selection or has acquired ownership to land under that act that is located within the adjudication area; and

(7) serve the order on each mining claimant of record with the United States and the state within the adjudication area as of the date of the order initiating the administrative adjudication.

(d) Service of an order under (c) of this section does not constitute an admission by the state that the person served with the order has a water right.

(e) Service of the order under (c)(1) of this section is sufficient if mailed by certified mail, return receipt requested, to the last known address that the applicant, certificate holder, permittee, or claimant has given to the division of the department responsible for administration of water rights. A person served under (c)(1) — (7) of this section who fails to appear in a timely manner and assert a claim as prescribed by the commissioner is estopped from subsequently asserting an objection to the adjudication of that person's water rights within the adjudication area, unless the person is entitled to a federal reserved water right and has failed to consent under (k) of this section.

(f) In an adjudication under this section, the commissioner may appoint an impartial qualified person as a master to preside over the adjudication, to hold hearings, to take testimony, to collect evidence, to propose to the commissioner an order adjudicating the validity of, quantifying, and determining the priority of all water rights, and to take other action the commissioner decides is necessary.

(g) A state agency may assert a water right on behalf of the state in the adjudication.

(h) A division of the department or another state agency may provide documentary and testimonial evidence, research, and scientific analysis during the adjudication. The commissioner may provide evidence, research, or analysis from sources outside government.

(i) In conducting an adjudication, the commissioner may take action necessary for the efficient and fair administration and use of the state's water including

(1) determining indispensable, necessary, and convenient parties to the adjudication;

(2) classifying applicants, certificate holders, permittees, and claimants in groups that share similar interest, such as by the amount of water used or the type of use, and restricting their active participation in the adjudication by appointing group representatives for the purposes of receiving notices, examining witnesses, and other adjudicatory functions;

(3) entering interlocutory orders appropriate to a disposal of all or part of the issues in the adjudication, and designating the orders as final for the purposes of an appeal to the superior court under (l) of this section; and

(4) allocating to a participant the extra costs that the state has incurred in conducting the adjudication because the participant has in

bad faith asserted a claim to water wholly without merit or has unreasonably delayed the proceeding.

(j) For the purpose of asserting a water right in an adjudication, a certificate issued under this chapter is prima facie evidence of the water right and its priority date.

(k) If the commissioner has initiated the adjudication and the federal government or a private person who has been served under (c)(2) — (4) of this section asserts a federal reserved water right but fails to consent in writing to the adjudication, then the commissioner may exclude the federal government or the person, respectively, as participants in the adjudication. The commissioner may negotiate the terms of the written consent.

(l) A person adversely affected by a final order of the commissioner adjudicating water rights under this section may appeal to the superior court within 30 days after the decision is mailed or delivered to the person.

(m) The commissioner may adopt regulations setting out procedures for administrative adjudications under this section. (§ 6 ch 135 SLA 1986)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Effective Date. Section effective Oct. 1, 1986, see section 1001 of Pub.L. 99-425, set out as a note under section 8621 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-425, see 1986 U.S. Code Cong. and Adm. News, p. 2092.

§ 10905. Authorization of appropriations

There is authorized to be appropriated \$1,500,000 for each of the fiscal years 1987, 1988, 1989, and 1990 for carrying out this chapter.

(Pub.L. 99-425, Title VI, § 606, Sept. 30, 1986, 100 Stat. 977.)

Effective Date. Section effective Oct. 1, 1986, see section 1001 of Pub.L. 99-425, set out as a note under section 8621 of this title.

Library References

Schools 448.4.

C.J.S. Schools and School Districts §§ 443, 489.

Legislative History. For legislative history and purpose of Pub.L. 99-425, see 1986 U.S. Code Cong. and Adm. News, p. 2092.

CHAPTER 116—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

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SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

§ 11001. Establishment of State commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of Emergency Planning Districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of Local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include

provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub.L. 99-499, Title III, § 301, Oct. 17, 1986, 100 Stat. 1729.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as a note under section 9601 of this title.

Short Title. Section 300(a) of Pub. L. 99-499 provided that: "This title [classified to this chap-

ter] may be cited as the 'Emergency Planning and Community Right-To-Know Act of 1986'."

Legislative History. For legislative history and purpose of Pub. L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

§ 11002. Substances and facilities covered and notification

(a) Substances covered

(1) In General

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

Except as provided in section 11004 of this title, a facility is subject to the

(a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

(1) each notification received from a facility under subsection (c) of this section, and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

(Pub.L. 99-499, Title III, § 302, Oct. 17, 1986, 100 Stat. 1730.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub. L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

Library References

Health and Environment — 25.5(5.5).

C.J.S. Health and Environment §§ 91, 92, 106 to 109, 129 to 131.

Notes of Decisions

2. Revisions

Environmental Protection Agency's refusal to remove erroneously included bacitracin and phthalate esters from right-to-know toxic substance list was arbitrary, capricious, and contrary to provisions of Right-to-Know Act; EPA's interpretation that Act precluded removal from list of any substance which was listed solely because of clerical error until EPA had determined that the substance posed no short or long-term health hazard was irrational. *A.L. Laboratories, Inc. v. E.P.A.*, D.D.C.1987, 674 F.Supp. 894.

Jurisdiction 1 Revisions 2

1. Jurisdiction

Court of Appeals lacked jurisdiction to review Environmental Protection Agency's listing of bacitracin as "extremely hazardous substance" under Emergency Planning and Community Right-to-Know Act; that Act was independent statute rather than amendment to CERCLA and did not contain provision conferring jurisdiction on Court of Appeals. *A.L. Laboratories, Inc. v. E.P.A.*, C.A.D.C.1987, 826 F.2d 1123.

§ 11003. Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make

recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by the State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

(Pub.L. 99-499, Title III, § 303, Oct. 17, 1986, 100 Stat. 1781.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub. L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

§ 11004. Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C.A. § 9603(a)] (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other 11002(a) of this title substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)] the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA, [42 U.S.C.A. § 9601(10)]

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 9602(a) of this title, the owner or operator shall provide notice as described in subsection (b) of this section.

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C.A. § 9602(a)]—

(1) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the

community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)].

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committee, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

(Pub.L. 99-499, Title III, § 304, Oct. 17, 1986, 100 Stat. 1733.)

References in Text. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (a)(1), is Pub.L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified generally to chapter 103 (section 9601 et seq.) of this title.

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub. L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

Library References

Health and Environment ¶25 5(5.5).

C.J.S. Health and Environment: §§ 91, 92, 106 to 109, 129 to 131.

§ 11005. Emergency training and review of emergency systems

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title, for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard

posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

(Pub.L. 99-499, Title III, § 305, Oct. 17, 1986, 100 Stat. 1735.)

References in Text. Such date of enactment, referred to in subsec. (b)(1), is the date of enactment of Pub.L. 99-499, which was approved Oct. 17, 1986.

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499 see 1986 U.S. Code Cong. and Adm. News, p. 2835.

Library References

Health and Environment § 25.5(5.5).
C.J.S. Health and Environment §§ 91, 92, 106 to 109, 129 to 131.

SUBCHAPTER II—REPORTING REQUIREMENTS

§ 11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) [29 U.S.C.A. § 651 et seq.] shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) Hazardous chemical defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

may accept the offer and upon acceptance the governor or the executive officer or governing body of the district may authorize an officer of the state or of the district, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or district, and subject to the terms of the offer. (§ 18 ch 131 SLA 1951)

Sec. 26.20.160. Civil defense personnel. (a) A person may not be employed or associated in any capacity in a civil defense organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging a subversive act against the United States.

(b) Each person who is appointed to serve in an organization for civil defense shall, before entering upon duties for the organization, take the following oath in writing, before a person authorized to administer oaths in this state:

"I, do solemnly swear that I will support and defend the Constitution of the United States and the constitution of the state of Alaska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear that I do not advocate, nor am I, nor have I ever been, a member of any political party or organization that advocates, the overthrow of the Government of the United States or of this state by force or violence; and that during such time as I am a member of any organization for civil defense within the state of Alaska, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this state by force or violence." (§ 20 ch 131 SLA 1951)

Sec. 26.20.170. Political activity prohibited. An organization for civil defense established under this chapter may not participate in any form of political activity. The organization may not be employed for political purposes. (§ 21 ch 131 SLA 1951)

Sec. 26.20.180. Penalties. A person who violates a regulation pertaining to blackouts, alerts, evacuation procedure, or any other order or regulation issued or adopted under this chapter, upon conviction, is punishable by a fine of not more than \$500, or by imprisonment for a period of not more than 90 days, or by both. (§ 22 ch 131 SLA 1951)

Sec. 26.20.190. Liberality of construction. This chapter shall be construed liberally in order to carry out its purposes. (§ 23 ch 131 SLA 1951)

Sec. 26.20.200. Definitions. In this chapter unless the context otherwise requires

(1) "civil defense" means the protection and defense of the civilian population by the organized efforts of the residents of the state other than those in the military service, and includes without limitation, fire fighting, policing, rescue, air raid warning, communications, medical service, transportation, evacuation of persons, welfare aid, guard duty, anti-espionage and anti-sabotage service, construction of temporary housing and bomb proof shelters, and any other service necessary for the protection of and aid to the public not normally furnished by the military services;

(2) "department" means the Department of Military and Veterans' Affairs;

(3) "district" means an area or subdivision of the state designated as such by the department for administrative purposes. (§ 1 ch 131 SLA 1951; am E.O. No. 58, § 15 (1984))

Cross references. — See revisor's note to AS 26.20.020.

amendment inserted "and Veterans" in paragraph (2).

Effect of amendments. — The 1984

NOTES TO DECISIONS

Cited in *City of Seward v. Wisdom*, Sup. Ct. Op. No. 342 (File No. 627), 413 P.2d 931 (1966).

Chapter 23. Alaska Disaster Act.

Section	Section
10. Purposes	110. Debris and wreckage removal in disaster emergency or major disaster
20. The governor and disaster emergencies	120. Intergovernmental arrangements
30. Creation of the Alaska division of emergency services	130. Interstate Civil Defense and Disaster Compact
40. Duties of the Alaska division of emergency services	140. Local disaster emergencies
50. Financing	150. Disaster prevention
60. Local and interjurisdictional disaster agencies and services	160. Compensation
70. Establishment of interjurisdictional disaster planning and service areas	170. Communications
80. Community disaster loans	180. Mutual aid
90. State financial participation in grants to disaster victims	190. Right of entry
100. Temporary housing	200. Limitations
	210. Relationship to civil defense statute
	220. Administration
	230. Definitions

Sec. 26.23.010. Purposes. The purposes of this chapter are to:

- (1) reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from a disaster;
- (2) prepare for the prompt and efficient rescue, care, and treatment of persons victimized or threatened by a disaster;
- (3) provide a setting conducive to the rapid and orderly start of rehabilitation of persons and restoration of property affected by a disaster;
- (4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to and recovery from a disaster;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for the coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of the state, and similar state-local, inter-state, federal-state, and foreign activities in which the state and its political subdivisions may participate; and
- (7) assist in the prevention of disasters caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use. (§ 3 ch 104 SLA 1977)

Cross references. — For disaster relief fund, see AS 44.19.048 et seq.

Sec. 26.23.020. The governor and disaster emergencies. (a) The governor is responsible for meeting the dangers presented by disasters to the state and its people.

(b) The governor may issue orders, proclamations, and regulations necessary to carry out the purposes of this chapter, and amend or rescind them. These orders, proclamations, and regulations have the force of law.

(c) A condition of disaster emergency shall be declared by proclamation of the governor if the governor finds that a disaster has occurred or that such an occurrence is imminent or threatened. If the legislature is not in session when a proclamation is issued, concurrently with the issuance of the proclamation, a call shall be issued by the governor to convene a special session of the legislature to consider ratification of actions taken under this chapter. A call for a special session under this section may be cancelled by the unanimous agreement of the presiding officers of the senate, house of representatives and the governor before the actual convening of the special session. If a special session is held, actions taken by the governor under this chapter that are not ratified by the legislature within 15 days of its convening are

void. The disaster emergency so declared remains in effect until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the disaster emergency by proclamation; but a proclamation of disaster emergency does not remain in effect for longer than 30 days unless renewed by the legislature. The legislature, by concurrent resolution, may terminate a disaster emergency at any time. All proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened or affected, and the conditions that have brought it about or which make possible the termination of the disaster emergency.

(d) An order or proclamation issued under this chapter shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless prevented or impeded by circumstances attendant upon the disaster, promptly filed with the Alaska division of emergency services, the lieutenant governor, and the municipal clerk in the area to which it applies.

(e) A proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or any other provision of law relating to disaster emergency response.

(f) During the effective period of a disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. The governor may delegate or assign command authority by appropriate orders or regulations.

(g) In addition to any other powers conferred upon the governor by law, the governor may, under this chapter,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for

all news media other than as specifically provided for in this chapter, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state, if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing; and

(10) allocate or redistribute food, water, fuel, or clothing. (§ 3 ch 104 SLA 1977)

Sec. 26.23.030. Creation of the Alaska division of emergency services. There is created in the Department of Military and Veterans' Affairs the Alaska division of emergency services possessing the powers and duties set out in AS 26.23.040. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 16 (1984))

Cross references. — For the status of catastrophic oil discharge as a disaster emergency, see AS 46.04.080. **Effect of amendments.** — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.040. Duties of the Alaska division of emergency services. (a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semi-permanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) preparation and distribution to the appropriate state and local officials of catalogs or extracts listing federal, state, and private assistance programs;

(9) organization of manpower and chains of command;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state emergency plan with the disaster plans of the federal government; and

(12) other matters necessary to carry out the purposes of this chapter.

(b) The Alaska division of emergency services shall play an integral part in the development and revision of local and interjurisdictional disaster plans prepared under AS 26.23.060. To this end, it may employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with political subdivisions and agencies on a regular basis and shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest or require revisions.

(c) In preparing and maintaining the state emergency plan, the Alaska division of emergency services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the office shall encourage them also to seek advice from these sources.

(d) The state emergency plan or any part of it may be incorporated in regulations or orders of the Alaska division of emergency services. Regulations and orders of the Alaska division of emergency services have the force and effect of law.

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training and public information programs;

(7) make surveys of industries, resources, and facilities in the state, both public and private, as are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(9) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(13) develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;

(14) do other things necessary or proper for the implementation of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.050. Financing. (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

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

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986)

Cross references. — For the status of catastrophic oil discharge as a disaster emergency, see AS 46.04.080.

Effect of amendments. — The 1986 amendment, in subsection (b), inserted "or the oil and hazardous substance release response fund, as appropriate" at the end of the second sentence.

Sec. 26.23.060. Local and interjurisdictional disaster agencies and services. (a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. An incorporated municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as otherwise provided in this chapter, has jurisdiction over and serves the entire borough.

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that city in the work of disaster prevention, preparedness, response, and recovery.

(d) The principal executive officer of each political subdivision in the state shall notify the Alaska division of emergency services of the manner in which the political subdivision is providing or securing disaster planning and intends to provide or secure emergency services, identify the person who heads the agency from which the services are or will be obtained, and furnish additional information relating to the services as the Alaska division of emergency services requires.

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(f) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials. (§ 3 ch 104 SLA 1977)

Sec. 26.23.070. Establishment of interjurisdictional disaster planning and service areas. (a) If the governor finds that two or more adjoining political subdivisions would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, the governor may designate by order an interjurisdictional area adequate to plan for, prevent, or respond to a disaster in that area, and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency

planning and services. A finding by the governor under this subsection must be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system without an interjurisdictional relationship, such as

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the political subdivisions in an area; or
- (5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within the state and includes territory in a foreign jurisdiction, and that it would be desirable to establish an international relationship, mutual aid, or an area organization for disaster, the governor shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact substantially as contained in AS 26.23.130, any resulting agreement may be considered a supplemental agreement under Article VI of that compact.

(c) If a jurisdiction with which the governor proposes to cooperate under (b) of this section has not enacted the Interstate Civil Defense and Disaster Compact, the governor may negotiate a special agreement with that jurisdiction. (§ 3 ch 104 SLA 1977)

Sec. 26.23.080. Community disaster loans. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant local government;

(2) determine the amount needed by any applicant local government to restore or resume its governmental functions, and to certify the amount to the federal government; however, an application amount may not exceed 25 per cent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurred;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the local government is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character. (§ 3 ch 104 SLA 1977)

Sec. 26.23.090. State financial participation in grants to disaster victims. (a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 per cent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants, the total of federal and state shares not to exceed \$5,000, to an individual or family in any single major disaster declared by the President, to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance.

(c) A person who fraudulently or wilfully makes a misstatement of fact in connection with an application for financial assistance under this chapter is, upon conviction, punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. (§ 3 ch 104 SLA 1977)

Sec. 26.23.100. Temporary housing. (a) Whenever the governor has proclaimed a disaster emergency, or the President, at the request of the governor, has declared an emergency or a major disaster to exist in this state, the governor may

(1) purchase, lease, or make other arrangements with any agency of the United States or state for temporary housing units to be occupied by disaster victims and to make those units available to any political subdivision of the state;

(2) assist any political subdivision of this state that is the location of temporary housing for disaster victims to acquire sites necessary for the temporary housing and do all things necessary to prepare the site to receive and use temporary housing units by

(A) advancing or lending funds available to the governor from an appropriation made by the legislature or from any other source;

(B) "passing through" funds made available by any agency, public or private; or

(C) becoming a copartner with a political subdivision for the execution and performance of any temporary housing for disaster-victim projects and, for those purposes, pledging the credit of the state on terms considered appropriate, having due regard for current debt transactions of the state;

(3) under whatever relevant regulations the governor may adopt, temporarily suspend or modify, for not more than 60 days, any public health, safety, zoning, transportation, or other requirement of law or regulation of the state, when by proclamation, the governor declares a suspension or modification essential to provide temporary housing for disaster victims.

(b) A political subdivision of this state may acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip those sites to receive and use the housing units. (§ 3 ch 104 SLA 1977)

Sec. 26.23.110. Debris and wreckage removal in disaster emergency or major disaster. (a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under (a)(1) of this section may not be exercised unless the affected local government, corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal. (§ 3 ch 104 SLA 1977)

Sec. 26.23.120. Intergovernmental arrangements. The Interstate Civil Defense and Disaster Compact is hereby enacted into law and entered into with all jurisdictions legally joining in it in a form substantially as contained in AS 26.23.130. (§ 3 ch 104 SLA 1977)

Sec. 26.23.130. Interstate Civil Defense and Disaster Compact. The terms and provisions of the compact referred to in AS 26.23.120 are as follows:

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

ARTICLE I

PURPOSE

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster resulting from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts, direct attacks by bombs, shellfire, and nuclear, radiological, chemical or bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective states, including the resources that may be available from the United States government or any other source, are essential to the safety, care, and welfare of the people of the respective states in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan, or plans, of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties to this compact. The directors of civil defense of all party states constitute a committee to formulate plans to take all necessary steps for the implementation of this contract.

ARTICLE II

CIVIL DEFENSE PLANS AND PROGRAMS

It is the duty of each party state to formulate civil defense plans and programs for application within that state. There shall be frequent consultation between the representatives of the states and with the United States government, and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out these civil defense plans and programs, the party states shall, so far as possible, provide and follow uniform standards, practices, and regulations, including:

(1) distinctive insignia or articles to designate and distinguish the different civil defense services;

(2) practice air attack drills, mobilization of civil defense forces, and other tests and exercises;

(3) warnings and signals for drills or attacks, and the mechanical devices to be used in connection with them;

(4) shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

(5) all materials or equipment used, or to be used, for civil defense purposes, in order to assure that those materials and that equipment will be easily and freely interchangeable when used in, or by, any other party state;

(6) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, before, during, and after drills or attacks;

(7) the safety of public meetings or gatherings; and

(8) mobile support units.

ARTICLE III

ASSISTANCE TO PARTY STATE

Any party state requested to render mutual aid shall take the action necessary to provide and make available the resources covered by this compact in accordance with its terms; however, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for itself. Each party state shall extend to the civil defense forces of any other party state, while operating within its state boundaries under the terms and conditions of this compact, the same powers (except that of arrest, unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in their home state. Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

ARTICLE IV

INTERSTATE RECOGNITION OF INDIVIDUAL QUALIFICATIONS

If a person holds a license, certificate, or other permit issued by any state or political subdivision of a state evidencing the meeting of qualifications for professional, mechanical or other skills, that person may render aid involving that skill in any party state to meet an emergency or disaster, and that state shall give due recognition to the license, certificate, or other permit as if issued in the state in which aid is rendered.

ARTICLE V

LIABILITY

No party state or its officers or employees rendering aid in another state pursuant to this compact is liable on account of any act or omission in good faith on the part of those forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering that aid.

ARTICLE VI

SUPPLEMENTAL AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other party states, this compact contains elements of a broad base common to all states, and nothing in this compact precludes any state from entering into supplementary agreements with other states. The supplementary agreements may comprehend, but are not limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment and supplies.

ARTICLE VII

INJURY AND DEATH COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of those forces, in case those members sustain injuries or are killed while rendering aid under this compact, in the same manner and on the same terms as if the injury or death were sustained within that state.

ARTICLE VIII

COMPENSATION TO ASSISTING STATE

A party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to, or expense incurred in, the operation of any equipment answering a request for aid, and for the cost incurred in connection with the request; however, an aiding party state may assume in whole or in part the loss, damage, expense, or other costs, or may loan the equipment or donate the services to the receiving party state without charge or cost; in addition, any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may re-

lieve the party state receiving aid from any liability, and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of those forces during the time of rendering the aid or assistance outside the state, and may also pay fair and reasonable compensation for the use of the supplies, materials, equipment, or facilities so used or consumed.

ARTICLE IX

CRISES RELOCATION PLANS

Plans for the orderly relocation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas of those states. These plans shall include the manner of transporting the persons being relocated, the number of people to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of those relocated, the provision of facilities for the notification of relatives or friends, the provision of additional materials and supplies, and all other relevant factors. These plans shall provide that the party state receiving persons relocated shall be reimbursed generally for the out-of-pocket expenses incurred for transportation, food, clothing, medicines, medical care and like items. These expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster, the party state from which the people relocated shall assume the responsibility for their ultimate support or return.

ARTICLE X

AVAILABILITY OF COMPACT

(a) This compact is available to any state, territory, or possession of the United States, and the District of Columbia.

(b) The term "state" also includes any neighboring foreign country and a province or state of one.

ARTICLE XI

NON-BORDERING STATES

The governor may enter into this compact with any state that does not border this state if the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

ARTICLE XII

UNITED STATES CIVIL DEFENSE AGENCY PARTICIPATION

The committee established under Article I of this compact may request the Civil Defense Agency of the United States government to act as an informational and coordinating body under this compact, and representatives of that agency may attend meetings of the committee.

ARTICLE XIII

ENTRY INTO FORCE

This compact becomes operative immediately upon its ratification by any state as between it and any other state or states so ratifying, and is subject to approval by Congress, unless prior Congressional approval has been given. Duly authenticated copies of this compact, and of supplementary agreements that may be entered into, shall, at the time of their approval, be deposited with each of the party states, the Civil Defense Agency and other appropriate agencies of the United States government.

ARTICLE XIV

WITHDRAWAL

This compact continues in force and remains binding on each party state until the legislature or the governor of a party state takes action to withdraw from it. Withdrawal is not effective until 30 days after notice of that action has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ARTICLE XV

SEVERABILITY

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is held unconstitutional, or its applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and its applicability to other persons and circumstances are not affected by that holding.

ARTICLE XVI

COVERAGE

(a) This Article is in effect only as among those states that have enacted it into law or in which the governors have adopted it under constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this Article or in

any supplementary agreement made in implementation of it abridges, impairs, or supersedes any other provision of this compact or any obligation undertaken by a state pursuant to it, except that if its terms so provide, a supplementary agreement in implementation of this Article may modify, expand, or add to any such obligation as among the parties to the supplementary agreement.

(b) In addition to the occurrences, circumstances and subject matter to which preceding Articles of this compact make it applicable, this compact and its authorizations, entitlements, and procedures apply to:

(1) searches for and rescue of persons who are lost, marooned, or otherwise in danger;

(2) action useful in coping with disasters arising from any cause or designed to increase the capability to cope with any such disasters;

(3) incidents, or the imminence of them, that endanger the health or safety of the public and that require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger;

(4) the giving and receiving of aid by political subdivisions of party states;

(5) exercises, drills or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

(c) Except as expressly limited by this compact or a supplementary agreement in force pursuant to it, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party state, by a political subdivision of a party state, or by a joint agency; such an agency or political subdivision is entitled to reimbursement for the aid to the same extent and in the same manner as a state. The personnel of a joint agency, when rendering aid under this compact, have the same rights, authority and immunity as personnel of party states.

(d) Nothing in this Article excludes from the coverage of Articles I — XV of this compact any matter that, in the absence of this Article, could reasonably be construed to be covered by Articles I — XV.

ARTICLE XVII

CONSTRUCTION

Nothing in this compact limits previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states. (§ 3 ch 104 SLA 1977)

Sec. 26.23.140. Local disaster emergencies. (a) A local disaster emergency may be declared only by the principal executive officer of a political subdivision. It may not be continued or renewed for a period in excess of seven days, except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity, and shall be filed promptly with the Alaska division of emergency services and the appropriate municipal clerk.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans, and to authorize the furnishing of aid and assistance under those plans.

(c) No interjurisdictional agency or official of one may declare a local disaster emergency unless expressly authorized by the agreement under which the agency functions. An interjurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions. (§ 3 ch 104 SLA 1977)

Sec. 26.23.150. Disaster prevention. (a) In addition to disaster prevention measures as included in the state, local and interjurisdictional disaster plans, the governor shall consider, on a continuing basis, steps that could be taken to prevent or reduce the harmful consequences of disasters. At the governor's direction, and under any other authority and competence they have, state agencies, including but not limited to those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning and construction standards, shall make studies of disaster-prevention-related matters. The governor, from time to time, shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for the prevention or reduction of the harmful consequences of disasters.

(b) Appropriate departments, in conjunction with the Alaska division of emergency services, shall keep land uses and location of structures and other facilities under continuing study, and identify areas that are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences of it.

(c) If the Alaska division of emergency services believes, on the basis of the studies or other competent evidence and after consultation with the appropriate local planning agencies, that an area is susceptible to a disaster of catastrophic proportions without adequate warning,

that existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. (§ 3 ch 104 SLA 1977)

Sec. 26.23.160. Compensation. (a) Personal services may not be compensated by the state or any political subdivision or agency of it, except in accordance with Alaska law or a local ordinance.

(b) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency, and its use or destruction was ordered by the governor or by a member of the disaster emergency forces of this state who is authorized by the Alaska division of emergency services to issue such an order.

(c) Any person claiming compensation for the use, damage, loss, or destruction of property occasioned by action taken under this chapter shall file a claim for that compensation with the Alaska division of emergency services in the form and manner required by the division.

(d) Unless the amount of compensation resulting from property damaged, lost, or destroyed is agreed upon between the claimant and the Alaska division of emergency services, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property under the condemnation laws of this state. (§ 3 ch 104 SLA 1977)

Sec. 26.23.170. Communications. The Alaska division of emergency services shall ascertain what means exist for rapid and efficient communications in times of disaster emergency. The division shall consider the desirability of supplementing these communications resources, or of integrating them into a comprehensive state or state-federal telecommunications network or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of multipurpose use of it or its parts for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate. (§ 3 ch 104 SLA 1977)

Sec. 26.23.180. Mutual aid. (a) Political subdivisions not participating in interjurisdictional arrangements under this chapter nevertheless shall be encouraged and assisted by the Alaska division of emergency services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employment.

(b) In concurring with local disaster plans, the governor shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor to require an interjurisdictional agreement or arrangement under AS 26.23.070 that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis, and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring an interjurisdictional arrangement in order to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes. (§ 3 ch 104 SLA 1977)

Sec. 26.23.190. Right of entry. If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of this chapter shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings. (§ 3 ch 104 SLA 1977)

Sec. 26.23.200. Limitations. Nothing in this chapter

(1) interferes with or allows interference with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interferes with or allows interference with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency, in a manner that encroaches as little as possible upon the normal functions of the news media;

(3) affects the jurisdiction or responsibilities of police forces, fire-fighting forces, units of the armed forces of the United States, or of any personnel of them, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) limits, modifies, or abridges the authority of the governor to proclaim martial law, or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.210. Relationship to civil defense statute. The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary manmade disasters. (§ 3 ch 104 SLA 1977)

Sec. 26.23.220. Administration. This chapter shall be administered by the Department of Military and Veterans' Affairs, which is responsible to, and which may receive delegations of authority from, the governor. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 17 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.230. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

(2) "disaster emergency" means the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief Act of 1974);

(4) "major disaster" has the meaning given in 42 U.S.C. 5122;

(5) "political subdivision" means a home rule or general law borough or city including a unified municipality, an unincorporated village, or other unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143);

(7) "unorganized militia" means all able-bodied persons between the ages of 17 and 59 years, inclusive, who reside in the state. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986)

Revisor's notes. — With regard to (6) of this section, provisions related to temporary housing assistance can be found at 42 U.S.C. 5174 and in 44 C.F.R. 205.52 implementing that section.

Effect of amendments. — The 1985 amendment rewrote paragraph (5).

The 1986 amendment, in paragraph (1), deleted "oil spill or other water contami-

nation requiring emergency action to avert danger or damage" preceding "volcanic activity" and added the language beginning "or the release" at the end of the paragraph.

Chapter 25. National Guard Mutual Assistance Compact.

Section

10. Entry into Compact

20. Terms and provisions of Compact

Section

30. Rights and benefits

Sec. 26.25.010. Entry into Compact. The National Guard Mutual Assistance Compact is enacted into law and entered into on behalf of the State of Alaska with all other states and jurisdictions legally joining in it in a form substantially as contained in AS 26.25.020. (§ 1 ch 77 SLA 1968)

Sec. 26.25.020. Terms and provisions of Compact. The terms and provisions of the Compact referred to in AS 26.25.010 are as follows:

ARTICLE I. PURPOSES.

The purposes of this Compact are to:

- (1) provide for mutual aid among the party states in the utilization of the National Guard to cope with emergencies;
- (2) permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency;
- (3) maximize the effectiveness of the National Guard in those situations that call for its utilization under this Compact; and
- (4) provide protection for the rights of National Guard personnel when serving in other states on emergency duty.

ARTICLE II. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This Compact shall enter into force when enacted into law by any two states. Thereafter, this Compact becomes effective as to any other state upon its enactment in that state.

(b) A party state may withdraw from this Compact by enacting a statute repealing it, but the withdrawal does not take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

ARTICLE III. MUTUAL AID.

(a) In this Article:

- (1) "emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally