

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2077 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

95



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: Arthur H. Peterson
Assistant Attorney General
Department of Law

FROM: Shari Kochman *SK*
Legislative Staff Assistant

DATE: February 13, 1990

RE: New Drafting Files

Rec'd
Dept. of Law
Legis. / Regs. Sec.
2/13/90, ~ 9:00 a.m.

This is just a memo to confirm the opening of Law Log 0049, regarding enforcement of environmental laws. The Governor had requested a bill similar to HB 409 for his introduction.

Also, please formally open a file for the ~~oil spill bills~~ that John McDonough is presently drafting.

- ① ~~An Act relating to the strengthening of the Department of Environmental Conservation's civil liability provisions concerning the discharge of oil and other environmental violations...~~
- ② An Act authorizing the governor to expend money from the Oil and Hazardous Substance Release Response Fund during disasters; expanding the role of the division of emergency services during oil spill-related disasters; establishing in statute the Alaska State Emergency Response Commission...
- ~~An Act related to the strengthening of the Department of Environmental Conservation's contingency plan requirements, financial responsibility requirements, and notification requirements under AS 46.04.~~
- ④ An Act authorizing private suits to enforce environmental laws; --

Art P:

- They Gov's office wanted a draft bill on this ... but it has not yet decided to introduce it.

- John M.

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DRAFTDATE 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection requirements under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented to the department's reasonable satisfaction. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person shall [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 and has been properly implemented to the department's reasonable satisfaction.

(c) A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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1 the tank vessel or oil barge has been approved by the department and
2 has been properly implemented to the department's reasonable
3 satisfaction. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS
4 NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION
5 THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE
6 CONTINGENCY PLAN FOR A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY
7 THE DEPARTMENT.]

8 (d) The department is the only state agency which has the power
9 to approve, modify, or revoke an oil contingency plan for the purposes
10 of this section. Except for prosecutions under AS 46.03.790(b), it is
11 not a defense to an action brought for a violation of (a)--(c) of this
12 section that the person charged believed that a current oil discharge
13 contingency plan had been approved by the department.

14 (e) Before the department approves, or modifies, an oil
15 discharge contingency plan under this section, the department shall
16 provide a copy of the oil discharge contingency plan to the Department
17 of Fish and Game and shall provide the Department of Fish and Game a
18 reasonable opportunity to review and comment upon the plan.

19 (f) Applicants for oil discharge contingency plans required by
20 this section shall maintain in their areas of operation sufficient oil
21 discharge containment, storage, transfer, and removal equipment,
22 manpower, and resources to rapidly contain a worst case oil discharge
23 and to remove that discharge within a 72-hour period.

24 (g) An oil discharge contingency plan must be renewed at least
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and
27 conditions to its approval or modification of an oil discharge
28 contingency plan which [IT] the department determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

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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 a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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1 discharge contingency plan to properly implement the plan, or to have
 2 access to the quality or quantity of resources identified in the plan
 3 [AND], or [IN THE EVENT OF A SPILL,] to respond with those resources
 4 within the shortest feasible time in the event of a spill is a
 5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
 6 46.03.790, and any other applicable law. If the holder of an approved
 7 or modified oil discharge contingency plan fails to respond to and
 8 conduct cleanup operations of an unpermitted discharge of crude oil
 9 with the quality and quantity of resources identified in the plan and
 10 in a manner required under the plan, the holder is strictly liable,
 11 jointly and severally, for the civil penalty assessed under
 12 AS 46.03.758, AS 46.03.759 or 46.03.760 against any other person for
 13 that discharge.

1 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 16 person [MAY] shall not cause or permit the operation of an oil
 17 terminal facility in the state unless the person has furnished to the
 18 department, and the department has approved, proof of financial
 19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
 20 DEPARTMENT]. Proof of financial responsibility shall not be less than
 21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT
 22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
 23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
 24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) [AFTER JULY 1, 1981, A] A person may not cause or permit the
 26 operation of an [OFFSHORE] exploration or production facility in the
 27 state unless the person has furnished to the department, and the
 28 department has approved, proof of financial ability to respond in
 29 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial

INSERT

Section 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. Proof of financial responsibility.

(a) A person [MAY] shall not cause or permit the operation of [AN] a crude oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$500,000,000 per incident. [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) A person shall not cause or permit the operation of a non-crude oil terminal or storage facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility shall not be less than

(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

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

(d) A person [MAY] shall not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT

REQUIRED BY THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

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

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

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responsibility shall not be less than \$50,000,000 [\$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 the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 per incident. [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 MERITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),

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1 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
2 AS 46.03.759] may be brought in a state court directly against the
3 insurer or another person providing evidence of financial
4 responsibility. The applicant, and an insuror, surety, [OR]
5 guarantor, or other person providing security approved by the
6 department shall appoint an agent for service of process in the state.
7 An insurer must either be authorized by the Department of Commerce and
8 Economic Development to sell insurance in the state or be an
9 unauthorized insurer listed by the Department of Commerce and Economic
10 Development as not disapproved for use in the state.

11 (g) [(f)] Acceptance of proof of financial responsibility
12 expires

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

14 (2) on the effective date of a change in the surety bond,
15 guarantee, [OR] insurance agreement, or other security approved by the
16 department;

17 (3) on the expiration or cancellation of the surety bond,
18 guarantee, [OR] insurance agreement, or other security approved by the
19 department.

20 (h) [(g)] The person whose proof of financial responsibility is
21 accepted by the department under this section shall notify the
22 department at least 30 days before the effective date of a change,
23 expiration or cancellation in the surety bond, guarantee, [OR]
24 insurance agreement, or other security approved by the department.
25 Application for renewal of acceptance of proof of financial
26 responsibility under this section must be filed at least 30 days
27 before the date of expiration.

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

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(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.

(j) [(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).

* Sec. 3. AS 46.04.050 is amended to read:

Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of the operations and the minimal danger to the environment posed by the activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 [10,000] barrels of oil.

* Sec. 4. AS 46.04.060 is amended to read:

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

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

or

(2) examine the structural integrity of tank vessels and oil barges.

* Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

(18) "worst case oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur

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1 during the lifetime of the vessel or facility based on the size,
2 location, and capacity of the vessel or facility; on the department's
3 knowledge and experience with the vessel or facility or with similar
4 vessels or facilities; and on the department's analysis of possible
5 mishaps at the vessel or facility or at similar vessels or facilities.

6 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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INSERT REVISED
subparagraphs (a) → (d)
from separate sheet

[AND], or [IN THE EVENT OF A SPILL,] to respond with those resources within the shortest feasible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified oil discharge contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of ^[CRUDE] ~~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 46.03.789 or 46.03.760 against any other person for that discharge.

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A person [MAY] shall not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 per incident. [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] A person may not cause or permit the operation of an [OFFSHORE] exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 [\$35,000,000] per incident.

(c) A person may not cause or permit the transfer of oil to or

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1 from a tank vessel, or [, AFTER JANUARY 1, 1981,] to or from an oil
2 barge, unless the person has furnished to the department, and the
3 department has approved, proof of financial [RESPONSIBILITY] ability
4 to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of
5 financial responsibility shall not be less than \$50,000,000 per
6 incident. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN
7 THE FOLLOWING AMOUNTS:

8 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE
9 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY
10 THE FEDERAL MERITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.
11 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

12 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
13 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

14 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
15 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
16 GREATER.]

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

23 (f) Financial responsibility may be demonstrated by
24 self-insurance, insurance, surety, [OR] guarantee, or other security
25 approved by the department under terms the department may prescribe.
26 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
27 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
28 AS 46.03.759] may be brought in a state court directly against the
29 insurer or another person providing evidence of financial

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responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

(g)

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 other security approved by the department;

(3) on the expiration or cancellation of the surety bond, guarantee, [OR] insurance agreement, or other security approved by the department.

(h)

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, or other security approved by the department. 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.

(i)

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

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1 warranted denial of the application.

2 (4) Financial responsibility under this section extends to a
3 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
4 under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

5 * Sec. 3. AS 46.04.050 is amended to read:

6 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
7 the operations and the minimal danger to the environment posed by the
8 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
9 oil terminal facility that has an effective storage capacity of less
10 than ^{5,000}~~10,000~~ [10,000] barrels of oil.

11 * Sec. 4. AS 46.04.060 is amended to read:

12 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
13 access or inspection conferred upon the department by law or
14 otherwise, the department may at reasonable times enter and inspect
15 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
16 facilities, tank vessels, and oil barges within the territorial
17 jurisdiction of the state in order to

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

20 (2) examine the structural integrity of tank vessels and
21 oil barges.

22 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

23 (18) "worst case oil discharge" means the maximum and most
24 damaging oil discharge that the department estimates could occur
25 during the lifetime of the vessel or facility based on the size,
26 location, and capacity of the vessel or facility; on the department's
27 knowledge and experience with the vessel or facility or with similar
28 vessels or facilities; and on the department's analysis of possible
29 mishaps at the vessel or facility or at similar vessels or facilities.

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* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

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BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE _____

2 _____ BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the strengthening of the
7 Department of Environmental Conservation's oil
8 contingency plan requirements, financial
9 responsibility requirements, and inspection
10 requirements under AS 46.04; and providing for an
11 effective date."

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

13 * Section 1. AS 46.04.030 is amended to read:

14 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person
15 ~~may~~ ^{[MAY] shall} not cause or permit the operation of an oil terminal facility in
16 the state unless an oil discharge contingency plan for the facility
17 has been approved by the department and has been properly implemented
18 to the department's reasonable satisfaction. [THE DEPARTMENT IS THE
19 ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY
20 PLAN FOR THE PURPOSES OF THIS SECTION.]

21 (b) [AFTER JANUARY 1, 1981, A] ^{[MAY] shall} ~~may~~ not cause or permit
22 the operation of an [OFFSHORE] exploration or production facility in
23 the state unless an oil discharge contingency plan for the facility
24 has been approved by the department and has been properly implemented
25 to the department's reasonable satisfaction.

26 (c) A person ^{[MAY] shall} ~~may~~ not operate a tanker vessel or an oil barge
27 within the waters of the state, or cause or permit the transfer of oil
28 to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or
29 an oil barge, unless an oil discharge contingency plan for the tank

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vessel or oil barge has been approved by the department and has been properly implemented to the department's reasonable satisfaction.
 [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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

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

(e) Before the department approves, ^{or} modifies, ~~or revokes~~ an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game and shall provide the Department of Fish and Game a reasonable opportunity to review and comment upon the plan.

GA: suggest we strike this section in the Ly. H. Sec. 11
 (f) Applicants for oil discharge contingency plans required by this section shall maintain in their areas of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a worst case oil discharge and to remove that discharge within a 72-hour period.

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive

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1 areas and to contain, clean up, and mitigate potential oil ~~discharge~~
 2 from the facility or vessel within ~~the shortest feasible time~~ ^{a 72-hour or 72 hours after the discharge} ~~and to~~
 3 insure that the applicant properly implements the oil discharge
 4 contingency plan. The oil discharge contingency plan must provide for
 5 the use of the best available technology by the applicant. The
 6 department may require an applicant or holder of an approved
 7 contingency plan to take steps necessary to demonstrate its ability to
 8 carry out the contingency plan, including

- 9 (1) periodic training;
- 10 (2) response team exercises; and
- 11 (3) verifying access to inventories of available equipment,
 12 supplies, and personnel.

13 (i) [(f)] The department, after notice and opportunity for
 14 hearing, may modify its approval of an oil discharge contingency plan
 15 if [IT] the department determines that a change has occurred in the
 16 operation of a facility ^{MARINA} ~~marina~~ or vessel necessitating an amended or
 17 supplemented plan, or the operator's discharge experience demonstrates
 18 a necessity for modification. The department, after notice and
 19 opportunity for hearing, may revoke its approval of an oil discharge
 20 contingency plan if [IT] the department determines that

- 21 (1) approval was obtained by fraud or misrepresentation;
- 22 (2) the operator does not have access to the quality or
 23 quantity of resources identified in the plan; [OR]
- 24 (3) a term or condition of approval or modification has
 25 been violated; or
- 26 (4) the plan has not been properly implemented.

27 (j) [(g)] Failure of a holder of an approved or modified oil
 28 discharge contingency plan to properly implement the plan, or to have
 29 access to the quality or quantity of resources identified in the plan

OIL SPILL LEG:

POTENTIAL
POLICY-LEVEL
QUESTIONS.

DEPARTMENT OF LAW

DRAFT

DATE: 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection requirements under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~the department or a reasonable governmental agency~~ (THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.)

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ ^{may} not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~the department or a reasonable governmental agency~~

(c) A person ~~shall~~ ^{may} not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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APPROVED: _____

*Information by person to
require total containment
within 72 hours
After removal of
the greatest possible amount*

*One could then define 'shortest possible time'
in terms of cleanup*

the tank vessel or oil barge has been approved by the department and
has been properly implemented. ~~for the department's reasonable
discretion~~ (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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY
THE DEPARTMENT.)

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

*Adm 512
(Comm
AGCC)?*

(e) Before the department approves or modifies an oil
discharge contingency plan under this section, the department shall
provide a copy of the oil discharge contingency plan to the Department
of Fish and Game *and to the Department of Natural Resources* and shall provide ~~the Department of Fish and Game~~ *the department*
reasonable opportunity to review and comment upon the plan.

(f) *An* Applicants for oil discharge contingency plans required by
this section shall maintain in ~~their~~ *its* areas of operation sufficient oil
discharge containment, storage, transfer, and removal equipment,
manpower, and resources to rapidly contain ~~a worst case oil discharge~~ *realistic maximum oil discharge*
and to remove that discharge within ~~a 72 hour period~~ *the shortest possible time*.

(g) An oil discharge contingency plan must be renewed at least
every three years.

(h) [(e)] The department may attach reasonable terms and
conditions to its approval or modification of an oil discharge
contingency plan which [(i)] the department determines are necessary to
insure that the applicant for an oil discharge contingency plan has

*singly or in conjunction with
other operators in its area
of operation*

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1 access to sufficient resources to protect environmentally sensitive
 2 areas and to contain ~~clean up~~ ^{C, AND CLEAN UP} and mitigate potential oil discharges
 3 from the facility or vessel within a 72-hour period after the
 4 discharge [THE SHORTEST FEASIBLE TIME] and to insure that the
 5 applicant properly implements the oil discharge contingency plan. The
 6 oil discharge contingency plan must provide for the use of the best
 7 available technology by the applicant. The department may require an
 8 applicant or holder of an approved contingency plan to take steps
 9 necessary to demonstrate its ability to carry out the contingency
 0 plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of available equipment, supplies, and personnel.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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BOOKPROOFED: _____

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

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
person shall [MAY] not cause or permit the operation of a crude [AN]
oil terminal facility in the state unless the person has furnished to
the department, and the department has approved, proof of financial
ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
DEPARTMENT]. ~~Proof of financial responsibility shall not be less than~~
~~\$50,000,000 per incident~~ [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) A person shall not cause or permit the operation of a
non-crude oil terminal or storage facility in the state unless the
person has furnished to the department, and the department has
approved, proof of financial ~~ability~~⁹² to respond in damages. Proof of
financial responsibility shall not be less than

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BOOKPROOFED: _____

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

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

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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DATE: _____

BOOKPROOFED: _____

APPROVED: _____

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

0 (h) [(g)] The person whose proof of financial responsibility is
1 accepted by the department under this section shall notify the
2 department at least 30 days before the effective date of a change,
3 expiration or cancellation in the surety bond, guarantee, [OR]
4 insurance agreement, or other security approved by the department.
5 Application for renewal of acceptance of proof of financial
6 responsibility under this section must be filed at least 30 days
7 before the date of expiration.

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

0 (1) acceptance was procured by fraud or misrepresentation;
1 or

2 (2) a change of circumstance has occurred other than a
3 change specified in (f)(1)--(3) of this section, which would have
4 warranted denial of the application.

5 (j) [(i)] Financial responsibility under this section extends to
6 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
7 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
8 AS 46.04.030(g).

9 * Sec. 3. AS 46.04.050 is amended to read:

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APPROVED: _____

1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
0 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
1 facilities, tank vessels, and oil barges within the territorial
2 jurisdiction of the state in order to

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

5 (2) examine the structural integrity of tank vessels and
6 oil barges.

7 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

8 (18) "^{realistic maximum oil discharge}~~worst case oil discharge~~" means the maximum and most
9 damaging oil discharge that the department estimates could occur
0 during the lifetime of the vessel or facility based on the size,
1 location, and capacity of the vessel or facility; on the department's
2 knowledge and experience with the vessel or facility or with similar
3 vessels or facilities; and on the department's analysis of possible
4 mishaps at the vessel or facility or at similar vessels or facilities.

5 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
6
7
8
9

DRAFTDATE: 2-15-81

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ^{on the water} ~~requirements~~ under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~to the department for its approval~~ ^{may} (THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.)

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall not~~ ^{may} not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~the department for its approval~~

(c) A person ~~shall not~~ ^{may} not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented. ~~UNLESS OTHERWISE SPECIFIED BY THE DEPARTMENT~~

~~SECTION 46.03.790(b)~~ [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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game ~~and shall provide the Department of Fish and Game a~~ ^{and to the Department of Natural Resources} ~~those department's~~ reasonable opportunity to review and comment upon the plan.

(f) ~~Any~~ ^{an} applicant for ~~an~~ oil discharge contingency plan required by this section shall maintain in ~~its~~ ^{the} area of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a ~~maximum~~ ^{realistic maximum} oil discharge and to remove that discharge within ~~the shortest possible time.~~ ^{the shortest possible time.}

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

2
~~single or in~~
conjunction with other
operators in its area
of operation.

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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 possible time after the} ~~the shortest possible time after the~~ discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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BOOKPROOFED: _____

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

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 person shall [MAY] not cause or permit the operation of a crude [AN]
 oil terminal facility in the state unless the person has furnished to
the department, and the department has approved, proof of financial
ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
DEPARTMENT]. ~~PROOF OF FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~
~~PROOF OF FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~ 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) A person shall not cause or permit the operation of a
non-crude oil terminal or storage facility in the state unless the
person has furnished to the department, and the department has
approved, proof of financial ^{ability} to respond in damages. Proof of
financial responsibility shall not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

(c) [AFTER JULY 1, 1981, A] A person shall [MAY] not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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DATE: _____

BOOKPROOFED: _____

APPROVED: _____

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

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BOOKPROOFED: _____

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.
15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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DATE: _____

BOOKPROOFED: _____

APPROVED: _____

1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
11 facilities, tank vessels, and oil barges within the territorial
12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "~~worst case oil discharge~~ ^{realistic maximum oil discharge}" means the maximum and most
19 damaging oil discharge that the department estimates could occur
20 during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
26
27
28
29

DRAFTDATE: 2-15-81

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ^{authority} ~~requirements~~ under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~up to the department and has been properly implemented~~ (THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.)

(b) [AFTER JANUARY 1, 1981, A] A person ^{may} ~~shall~~ not cause or permit the operation of an ^{offshore} ~~offshore~~ exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~up to the department and has been properly implemented~~

(c) A person ^{may} ~~shall~~ not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented. ~~THE DEPARTMENT SHALL EXERCISE ITS POWER IN A TIMELY MANNER.~~

~~DEFENSE~~ (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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.)

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game ~~and shall provide the Department of Fish and Game a~~ ^{and to the Department of Natural Resources} ^{those department's} reasonable opportunity to review and comment upon the plan.

(f) ^{Any} ~~Applicants~~ ^{as} for oil discharge contingency plan required by this section shall maintain in ^{its} ~~their~~ areas of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a ~~realistic maximum~~ ^{realistic maximum} oil discharge and to remove that discharge within ^{the shortest possible time.} ~~the shortest possible time.~~

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

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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 possible time after the} ~~the shortest possible time after the~~ discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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1 discharge contingency plan to properly implement the plan, or to have
 2 access to the quality or quantity of resources identified in the plan
 3 [AND], or [IN THE EVENT OF A SPILL,] to respond with those resources
 4 within the shortest feasible time in the event of a spill is a
 5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
 6 46.03.790, and any other applicable law. If the holder of an approved
 7 or modified oil discharge contingency plan fails to respond to and
 8 conduct cleanup operations of an unpermitted discharge of crude oil
 9 with the quality and quantity of resources identified in the plan and
 10 in a manner required under the plan, the holder is strictly liable,
 11 jointly and severally, for the civil penalty assessed under
 12 AS 46.03.758, AS 46.03.759 or 46.03.760 against any other person for
 that discharge.

14 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 16 person shall [MAY] not cause or permit the operation of a crude [AN]
 17 oil terminal facility in the state unless the person has furnished to
 18 the department, and the department has approved, proof of financial
 19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
 20 DEPARTMENT]. ~~PROOF OF FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~
 21 ~~AS 46.04.040(a) (1) NOT LESS THAN \$10, PER~~ [ABILITY TO RESPOND IN DAMAGES NEED NOT
 22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
 23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
 24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person shall not cause or permit the operation of a
 26 non-crude oil terminal or storage facility in the state unless the
 27 person has furnished to the department, and the department has
 28 approved, proof of financial ^{ability} ~~ability~~ to respond in damages. Proof of
 29 financial responsibility shall not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

(c) [AFTER JULY 1, 1981, A] A person shall [MAY] not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.

15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
11 facilities, tank vessels, and oil barges within the territorial
12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "~~calculate maximum oil discharge~~" means the maximum and most
19 damaging oil discharge that the department estimates could occur
20 during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

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DATE: 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection requirements under AS 46.04; and providing for an effective date."

Are we really talking about the dept. requirements, or statutory or general requirements?

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person ~~shall~~ ^{may} [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 and has been properly implemented to the department's reasonable satisfaction. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ ^{may} [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 and has been properly implemented to the department's reasonable satisfaction.

(c) A person ~~shall~~ ^{may} [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented to the department's reasonable satisfaction. [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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game and shall provide the Department of Fish and Game a reasonable opportunity to review and comment upon the plan.

(f) Applicants for oil discharge contingency plans required by this section shall maintain in their areas of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a worst-case oil discharge and to remove that discharge within a 72-hour period.

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

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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 a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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1 discharge contingency plan to properly implement the plan, or to have
 2 access to the quality or quantity of resources identified in the plan
 3 [AND], or [IN THE EVENT OF A SPILL,] to respond with those resources
 4 within the shortest feasible time in the event of a spill is a
 5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
 6 46.03.790, and any other applicable law. If the holder of an approved
 7 or modified oil discharge contingency plan fails to respond to and
 8 conduct cleanup operations of an unpermitted discharge of crude oil
 9 with the quality and quantity of resources identified in the plan and
 10 in a manner required under the plan, the holder is strictly liable,
 11 jointly and severally, for the civil penalty assessed under
 12 AS 46.03.758, AS 46.03.759 or 46.03.760 against any other person for
 13 that discharge.

1 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 16 person ~~shall~~ ^{may} ~~[MAY]~~ not cause or permit the operation of a crude [AN]
 17 oil terminal facility in the state unless the person has furnished to
 18 the department, and the department has approved, proof of financial
 19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
 20 DEPARTMENT]. Proof of financial responsibility shall not be less than
 21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT
 22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
 23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
 24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person ~~shall~~ ^{may} not cause or permit the operation of a
 26 non-crude oil terminal or storage facility in the state unless the
 27 person has furnished to the department, and the department has
 28 approved, proof of financial ability to respond in damages. Proof of
 29 financial responsibility, ~~shall~~ ^{may} not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

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

(d) [(c)] A person ~~shall~~ ^{may} not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility ~~shall~~ ^{may} not be less than \$50,000,000 per incident. Proof of financial responsibility ~~shall~~ ^{may} not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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DATE: _____

BOOKPROOFED: _____

APPROVED: _____

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

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

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

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

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insuror, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.

15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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BOOKPROOFED: _____

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1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
11 facilities, tank vessels, and oil barges within the territorial
12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "worst case oil discharge" means the maximum and most
19 damaging oil discharge that the department estimates could occur
20 during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

DRAFT

DATE: 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ^{as follows to} ~~requirements~~ under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.~~ [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ^{may} ~~shall~~ not cause or permit the operation of an ^{offshore} ~~offshore~~ exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.~~

(c) A person ^{may} ~~shall~~ not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented. ~~WHEN THE DEPARTMENT HAS APPROVED THE OIL DISCHARGE CONTINGENCY PLAN, 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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.~~

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game ^{and to the Department of Natural Resources} and shall provide ^{those department heads} the Department of Fish and Game a reasonable opportunity to review and comment upon the plan.

(f) ^{Any} Applicants for ^{an} oil discharge contingency plan required by this section shall maintain in ^{its} ~~their~~ area of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain ^{realistic maximum} ~~a~~ oil discharge and to remove that discharge within ^{the shortest possible time.} ~~the shortest possible time.~~

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

~~single~~ singly or in conjunction with other operators in its area of operation.

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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 possible time after the discharge} ~~the shortest possible time after the discharge~~ [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 person shall [MAY] not cause or permit the operation of a crude [AN]
 oil terminal facility in the state unless the person has furnished to
 the department, and the department has approved, proof of financial
 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
 DEPARTMENT]. ~~ABOVE THE FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~
~~AS 46.03.758, 46.03.759, 46.03.760~~ ~~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. ⁽¹⁾

(b) A person shall not cause or permit the operation of a
non-crude oil terminal or storage facility in the state unless the
person has furnished to the department, and the department has
approved, proof of financial ^(ability) to respond in damages. Proof of
financial responsibility shall not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

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

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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APPROVED: _____

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insuror, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.
15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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BOOKPROOFED: _____

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1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read: *

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
11 facilities, tank vessels, and oil barges within the territorial
12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "~~control the maximum oil discharge~~
19 ~~water case oil discharge~~" means the maximum and most
20 damaging oil discharge that the department estimates could occur
21 during the lifetime of the vessel or facility based on the size,
22 location, and capacity of the vessel or facility; on the department's
23 knowledge and experience with the vessel or facility or with similar
24 vessels or facilities; and on the department's analysis of possible
25 mishaps at the vessel or facility or at similar vessels or facilities.

26 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

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DATE: 2-15-80

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ^{as per the} ~~requirements~~ under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~up to the Department of Environmental Conservation~~ (THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.)

(b) [AFTER JANUARY 1, 1981, A] A person ^{may} ~~shall~~ not cause or permit the operation of an ^{offshore} ~~offshore~~ exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~up to the Department of Environmental Conservation~~

(c) A person ^{may} ~~shall~~ not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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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 possible time after the} ~~discharge~~ discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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BOOKPROOFED: _____

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

(c) [AFTER JULY 1, 1981, A] A person shall [MAY] not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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DATE: _____

BOOKPROOFED: _____

APPROVED: _____

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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] proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.
15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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BOOKPROOFED: _____

APPROVED: _____

1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
2 the operations and the minimal danger to the environment posed by the
3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
4 oil terminal facility that has an effective storage capacity of less
5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
8 access or inspection conferred upon the department by law or
9 otherwise, the department may at reasonable times enter and inspect
10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
11 facilities, tank vessels, and oil barges within the territorial
12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "~~realistic maximum oil discharge~~" means the maximum and most
19 damaging oil discharge that the department estimates could occur
20 during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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DATE: 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

Mark-up by John
McDonagh 2/17/90
(or later) to produce
draft #4 on 2/24/90.

IN THE _____

BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ^{as previously} ~~requirements~~ under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented. ~~TOP THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]~~ [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ^{may} ~~shall~~ not cause or permit the operation of an ^{offshore} ~~offshore~~ exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. ~~THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]~~

(c) A person ^{may} ~~shall~~ not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented. ~~UNLESS OTHERWISE SPECIFIED~~
~~SECTION~~ (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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.)

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game ~~and to the Department of Natural Resources~~ ^{and to the Department of Natural Resources} ~~those departments~~ a reasonable opportunity to review and comment upon the plan.

(f) ^{Any} ~~Applicants~~ ^{an} for ~~an~~ oil discharge contingency plan required by this section shall maintain in ~~their~~ ^{its} area of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a ~~maximum~~ ^{realistic maximum} oil discharge and to remove that discharge within ~~the shortest possible time.~~ ^{the shortest possible time.}

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

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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 possible time after the} ~~the shortest possible time after the~~ discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
 person shall [MAY] not cause or permit the operation of a crude [AN]
 oil terminal facility in the state unless the person has furnished to
the department, and the department has approved, proof of financial
ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
DEPARTMENT]. ~~PROOF OF FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~
~~PROOF OF FINANCIAL RESPONSIBILITY SHALL NOT BE LESS THAN~~ [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) A person shall not cause or permit the operation of a
non-crude oil terminal or storage facility in the state unless the
person has furnished to the department, and the department has
approved, proof of financial ^{ability} ~~ability~~ to respond in damages. Proof of
financial responsibility shall not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

(c) [AFTER JULY 1, 1981, A] A person shall [MAY] not cause or permit the operation of an ~~offshore~~ ^{offshore} exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

(e) [(d)] Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of [(c)] (a)--(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! proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(f) [(e)] Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, or other person providing security approved by the department 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.

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1 (g) [(f)] Acceptance of proof of financial responsibility
2 expires

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

4 (2) on the effective date of a change in the surety bond,
5 guarantee, [OR] insurance agreement, or other security approved by the
6 department;

7 (3) on the expiration or cancellation of the surety bond,
8 guarantee, [OR] insurance agreement, or other security approved by the
9 department.

10 (h) [(g)] The person whose proof of financial responsibility is
11 accepted by the department under this section shall notify the
12 department at least 30 days before the effective date of a change,
13 expiration or cancellation in the surety bond, guarantee, [OR]
14 insurance agreement, or other security approved by the department.
15 Application for renewal of acceptance of proof of financial
16 responsibility under this section must be filed at least 30 days
17 before the date of expiration.

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

20 (1) acceptance was procured by fraud or misrepresentation;
21 or

22 (2) a change of circumstance has occurred other than a
23 change specified in (f)(1)--(3) of this section, which would have
24 warranted denial of the application.

25 (j) [(i)] Financial responsibility under this section extends to
26 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
27 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
28 AS 46.04.030(g).

29 * Sec. 3. AS 46.04.050 is amended to read:

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1 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
 2 the operations and the minimal danger to the environment posed by the
 3 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
 4 oil terminal facility that has an effective storage capacity of less
 5 than 5,000 [10,000] barrels of oil.

6 * Sec. 4. AS 46.04.060 is amended to read:

7 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
 8 access or inspection conferred upon the department by law or
 9 otherwise, the department may at reasonable times enter and inspect
 10 [OIL] oil terminal facilities, [OFFSHORE] exploration and production
 11 facilities, tank vessels, and oil barges within the territorial
 12 jurisdiction of the state in order to

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

14 or

15 (2) examine the structural integrity of tank vessels and
 16 oil barges.

17 * Sec. 5. AS 46.04.120 is amended by adding a new subsection to read:

18 (18) "~~maximum oil discharge~~ ^{realistic maximum oil discharge}" means the maximum and most
 19 damaging oil discharge that the department estimates could occur
 20 during the lifetime of the vessel or facility based on the size,
 21 location, and capacity of the vessel or facility; on the department's
 22 knowledge and experience with the vessel or facility or with similar
 23 vessels or facilities; and on the department's analysis of possible
 24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
 26
 27
 28
 29

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MEMORANDUM

State of Alaska



Alaska Department of
**NATURAL
RESOURCES**

TO: Denby Lloyd
Special Staff Assistant
Office of the Governor

DATE: February 16, 1990

FILE NO:

TELEPHONE: 465-2400

FROM: Lenn Gersdch
Commissioner

SUBJECT: Oil Spill Bills
Suggested Wording Changes

As requested, I am providing comments and suggested wording changes for, "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection requirements under AS 46.04."

Section 1. (a) -- delete "and has been properly implemented, to the department's reasonable satisfaction."

Polu
Section 1. (b) -- retain "offshore"; delete "and has been properly implemented, to the department's reasonable satisfaction." *Legislative History*

Section 1. (c) -- delete "and has been properly implemented, to the department's reasonable satisfaction." *Provisions for payments must be implemented; but not most discharge events in the discharge occurs*

Polu
Section 1. (e) -- add the Department of Natural Resources (and possibly the Alaska Oil and Gas Conservation Commission) to the list of agencies entitled to receive, review, and comment on oil discharge contingency plans. *(D.L.: add em)*

no. 72hr
72hr
must come
needs
144hr
Section 1. (f) -- delete all proposed language and replace with language directing the department to adopt regulations, in consultation with the Department of Natural Resources, that define the objective standards an oil spill contingency plan must meet for approval, as well as procedures the department must follow to suspend or revoke approval. *"Singly or in regional deposits"*

72hr
Section 1. (h) -- on page 3, lines 3 and 4, delete "a 72 hour period after the discharge" and retain "the shortest feasible time"; to line 5, page 3, add "will be able to" between applicant and properly.

Add DNR to AS C-Plan Review

Section 1. (i) (4) -- delete " the plan has not been properly implemented."

Policy Section 2. (c) -- retain the word "offshore" and indicate this is the existing section (b).

Section 4. -- delete proposed additions and changes.

Policy Section 5. (18) -- delete. Information concerning contingency plan standards should be in regulation.

The Department of Law's revisions to the financial responsibility sections of this bill appear to solve the problems of villages and small barge lines. Our concerns about the effects of the other financial requirements remain. The proposed financial responsibility and clean-up capability requirements may make it impossible for all but the very largest companies to explore for or produce oil in Alaska. And the requirements may be so difficult and costly to meet that even large companies may decide to invest elsewhere.

Distinguish

offshore

-onshore

Cost liability deferred

DRAFTDATE: 2-15-90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ~~requirements~~ ^{authority} under AS 46.04; and providing for an effective date."

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [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 and has been properly implemented to the department's reasonable satisfaction. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person shall [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 and has been properly implemented to the department's reasonable satisfaction.

(c) A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel[, OR , AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless an oil discharge contingency plan for

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the tank vessel or oil barge has been approved by the department and has been properly implemented to the department's reasonable satisfaction. [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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

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

(e) Before the department approves or modifies an oil discharge contingency plan under this section, the department shall provide a copy of the oil discharge contingency plan to the Department of Fish and Game and shall provide the Department of Fish and Game a reasonable opportunity to review and comment upon the plan.

(f) Applicants for oil discharge contingency plans required by this section shall maintain in their areas of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a worst case oil discharge and to remove that discharge within a 72-hour period.

(g) An oil discharge contingency plan must be renewed at least every three years.

(h) [(e)] The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which [IT] the department determines are necessary to insure that the applicant for an oil discharge contingency plan has

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*generally or in connection with
operation in the area
of operations.*

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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 a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. 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.

(i) [(f)] The department, after notice and opportunity for hearing, may modify its approval of an oil discharge contingency plan if [IT] the department 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] the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan; [OR]
- (3) a term or condition of approval or modification has been violated; or
- (4) the plan has not been properly implemented.

(j) [(g)] Failure of a holder of an approved or modified oil

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

* Sec. 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
person shall [MAY] not cause or permit the operation of a crude [AN]
oil terminal facility in the state unless the person has furnished to
the department, and the department has approved, proof of financial
ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
DEPARTMENT]. Proof of financial responsibility shall not be less than
\$50,000,000 per incident. [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) A person shall not cause or permit the operation of a
non-crude oil terminal or storage facility in the state unless the
person has furnished to the department, and the department has
approved, proof of financial ^{ability} to respond in damages. Proof of
financial responsibility shall not be less than

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(1) \$1,000,000 for terminal or storage facilities with a total storage capacity of 5,000 to 10,000 barrels; and

(2) \$50,000,000 for terminal or storage facilities with a total storage capacity of greater than 10,000 barrels.

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

(d) [(c)] A person shall [MAY] not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless the person has furnished to the department, and the department has approved, proof of financial [RESPONSIBILITY] ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. ~~Proof of financial responsibility shall not be less than \$50,000,000 per incident.~~ Proof of financial responsibility shall not be less than

(1) \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$20,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance greater than 300 gross tons;

(3) \$1,000,000 for a tank vessel or barge carrying non-crude oil or other hazardous substance less than or equal to 300 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS: