

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2078 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

96

DRAFT

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

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

(2) on the effective date of a change in the surety bond, guarantee, [OR] insurance agreement, or 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) [(g)] The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, [OR] insurance agreement, 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) [(h)] The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

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

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

(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:

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Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of 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.

4. AS 46.04.060 is amended to read:

Sec. 46.04.060. INSPECTIONS. In addition to any other rights of inspection or inspection conferred upon the department by law or otherwise, the department may at reasonable times enter and inspect 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;
- (2) examine the structural integrity of tank vessels and barges.

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

- (18) ^{greatest catastrophic discharge} "worst case oil discharge" means the maximum and most likely oil discharge that the department estimates could occur during the lifetime of the vessel or facility based on the size, tonnage, and capacity of the vessel or facility; on the department's knowledge and experience with the vessel or facility or with similar vessels or facilities; and on the department's analysis of possible discharges at the vessel or facility or at similar vessels or facilities.

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

~~"greatest catastrophic discharge"~~

~~maximum potential discharge~~

"Maximum potential discharge"

4



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

17 Feb. 90

OIL SPILL LEGISLATION:

Major remaining policy questions -

comerback 1. Apply only to offshore facilities,
or include onshore and offshore?

add DNR 2. Add DNR (and AOGCC) to
contingency plan review?

add AG new layup 3. Allow regional pooling of response
equipment?

Leave 72 Change layup 4. Relate requirements to worst case
scenario?

5. Require response capability for
clean-up within 72 hours?

6. Apply \$50 million financial
responsibility to onshore facilities?

5

Jeff -

4:36pm
2-17-90

Here are the sectional
analyses and bill for the
conforming phase / financial reg.
legislation. The draft
bill contains the changes
agreed to at the Saturday
cabinet mtg. As a result of
the meeting, both the "72 hr"
and "on shore" requirements
were removed.

You need to get the:

- ① Have your secy make the
changes as indicated on
the bill draft; and
- ② Give a copy of the
bill (w/changes) & the
sec. analyses to Art.

The gov's office fully
intends to go forward
with this bill, on
Tuesday, with the
rest of the package
(i.e. all 3 bills) --

so it needs to get
through Art's steps
ASAP.

I'll come back ^{late} ~~late~~
Monday unless you
need me sooner. To
reach me:

479-6523 (Flx Home)

452-1568 (Flx Off)

SECTIONAL ANALYSIS

The following is a sectional analysis of a bill that strengthens DEC's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04.

Section 1: Section 1 strengthens DEC's authority to require and enforce oil discharge contingency plans. Section 1 requires that contingency plans be properly implemented; clarifies and strengthens DEC's authority to approve, modify, or revoke contingency plans; requires contingency plan applicants to maintain in their areas of operation sufficient resources to contain and remove a realistic maximum oil discharge within the shortest possible time; provides the Department of Fish and Game and the Department of Natural Resources an opportunity to comment on contingency plans; and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented.

Section 2: Section 2 strengthens the financial responsibility requirements of AS 46.04.040. Section 2 establishes a \$50,000,000 financial responsibility requirement for crude oil terminal facilities; establishes a \$1,000,000 financial responsibility limit for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels; establishes a \$50,000,000 financial responsibility limit for terminal facilities with a storage capacity of more than 10,000 barrels; establishes a \$50,000,000 financial responsibility requirement for offshore exploration and production facilities; establishes a \$500,000,000 financial responsibility requirement for crude oil tank vessels and barges; establishes a \$20,000,000 financial responsibility requirement for large (greater than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances; establishes a \$1,000,000 financial responsibility requirement for smaller (less than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances.

Section 3. Section 3 lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Section 4. Section 4 authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels, and oil barges to ensure compliance with AS 46.04 and to examine the structural integrity of tank vessels and oil barges.

Section 5. Section 5 defines "realistic maximum oil discharge."

Section 6. Section 6 provides that the act takes effect immediately.

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DATE: 2/20/90

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Carroll, 2/20/90
9:26 a.m.

Might as well

BY THE RULES COMMITTEE B make the 20 ERROR

or so corrections

IN THE HOUSE

IN THE L
SIXTEEI've noted,
while we're
waiting for Jean
to complete the
proofreading.

ATE OF ALASKA

COND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the
state's
A Department of Environmental Conservation's oil
contingency plan requirements, financial
responsibility requirements, and inspection 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
may
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.]

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

(c) A person 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 the tank
vessel or oil barge has been approved by the department and has been
properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),

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DATE: 2/20/90

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APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the
state's
A Department of Environmental Conservation's oil
contingency plan requirements, financial
responsibility requirements, and inspection 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
may
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.]

(b) [AFTER JANUARY 1, 1931, A] A person may not cause or permit
the operation of an offshore exploration or production facility in the
state unless an oil discharge contingency plan for the facility has
been approved by the department and has been properly implemented.

(c) A person 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 the tank
vessel or oil barge has been approved by the department and has been
properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),

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1 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS
2 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
3 DISCHARGE CONTINGENCY PLAN FOR A TANK VESSEL OR OIL BARGE HAD BEEN
4 APPROVED BY THE DEPARTMENT.]

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

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

18 (f) An applicant for an oil discharge contingency plan required
19 by this section shall maintain in its area of operation, singly or in
20 conjunction with other operators in its area of operation, sufficient
21 oil discharge containment, storage, transfer, and removal equipment,
22 manpower, and resources to rapidly contain a realistic maximum oil
23 discharge and to remove that discharge within the shortest possible
24 time.

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

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

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insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within the shortest 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.

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(j) [(g)] Failure of a holder of an approved or modified oil discharge contingency plan to properly implement the plan, or to have access to the quality or quantity of resources identified in the plan [ANDY, 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 ^{may} ~~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. ^{SP} 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 ^{may} ~~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 ^{may} ~~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) ^{may} ~~shall~~ ^{may} [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~~ ^{may} not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person ^{may} ~~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

(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

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

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
 5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
 7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
 8 GREATER.]

9 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is
 10 not a defense to an action brought for violation of [(c)] ^{SP-4} (a) ^{USF} (c) of
 11 this section that the person charged believed in good faith that [THE
 12 VESSEL OPERATOR POSSESSED PROOF OF FINANCIAL RESPONSIBILITY ACCEPTED
 13 BY THE DEPARTMENT] proof of financial ability to respond in damages
 14 had been furnished to, and approved by, the department.

15 (f) [(e)] Financial responsibility may be demonstrated by
 16 self-insurance, insurance, surety, [OR] guarantee, or other security
 17 approved by the department under terms the department may prescribe.
 18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
 19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
 20 AS 46.03.759] may be brought in a state court directly against the
 21 insurer or another person providing evidence of financial
 22 responsibility. The applicant, and an insurer, surety, [OR]
 23 guarantor, or other person providing security approved by the
 24 department shall appoint an agent for service of process in the state.
 25 An insurer must either be authorized by the Department of Commerce and
 26 Economic Development to sell insurance in the state or be an
 27 unauthorized insurer listed by the Department of Commerce and Economic
 28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

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1 expires

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

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

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

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

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

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

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

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

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

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

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

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

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

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

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

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

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

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

Marked up by Jean
2/20/90 by Jean
Feather & H.P.

DEPARTMENT OF LAW

DRAFT 530h 4 CL

DATE: 2/20/90

BOOKPROOFED: [initials]

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND 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 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 ^{Discharge} CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

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

(c) A person 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 the tank vessel or oil barge has been approved by the department and has been properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),

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1 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS
2 ~~SUBSECTION~~ THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
3 DISCHARGE CONTINGENCY PLAN FOR ^{THE} A TANK VESSEL OR OIL BARGE HAD BEEN
4 APPROVED BY THE DEPARTMENT.]

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

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

18 (f) An applicant for an oil discharge contingency plan required
19 by this section shall maintain in its area of operation, singly or in
20 conjunction with other operators in its area of operation, sufficient
21 oil discharge containment, storage, transfer, and removal equipment,
22 manpower, and resources to rapidly contain a realistic maximum oil
23 discharge and to remove that discharge within the shortest possible
24 time.

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

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

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insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within the shortest 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 trainings;
- (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.

DRAFT

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(j) [(g)] Failure of a holder of an approved or modified oil 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 may not be less than \$50,000,000} ~~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 GREATER².

(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 ^{MAY} ~~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, [X 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 ^{FOR THE TANK VESSEL OR BARGE} [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

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TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY
THE FEDERAL MARITIME COMMISSION UNDER 1653(c)(3) (SEC.
204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION)

(2) FOR ANY OTHER OIL BARGE, 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)] ^{SP4} (a) ^{4-SF} (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.

(g) [(f)] Acceptance of proof of financial responsibility

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1 expires

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

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

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

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

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

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

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

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

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

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

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

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

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

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

13 or

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

16 * Sec. 5. AS 46.04.120⁷⁰⁰ is amended by adding a new ^{paragraph} subsection to read:

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

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

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DATE: 2/20/90

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APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection 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 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 DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit the operation of an offshore exploration or production facility in the state unless an oil discharge *is there an* *action* *space* *here machine* *space, delete* *or* *the facility has* *been approved by the department* *properly implemented.*

(c) A person may not or *del* *or an oil barge* *the transfer of oil* *to or from a tank vessel or* *[, OR, AFTER JANUARY 1, 1981, TO OR FROM]* *an oil barge, unless an oil discharge contingency plan for the tank vessel or oil barge has been approved by the department and has been properly implemented.* [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

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DATE: 2/30/90

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection 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 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 DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit the operation of an 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.

(c) A person 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 [, OR , AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge contingency plan for the tank vessel or oil barge has been approved by the department and has been properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

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1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
3 APPROVED BY THE DEPARTMENT.]

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

11 (e) Before the department approves or modifies an oil discharge
12 contingency plan under this section, the department shall provide a
13 copy of the oil discharge contingency plan to the Department of Fish
14 and Game and to the Department of Natural Resources and shall provide
15 those departments a reasonable opportunity to review and comment on
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required
18 by this section shall maintain in its area of operation, singly or in
19 conjunction with other operators in its area of operation, sufficient
20 oil discharge containment, storage, transfer, and removal equipment,
21 manpower, and resources to rapidly contain a realistic maximum oil
22 discharge and to remove that discharge within the shortest possible
23 time.

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 the department [IT] determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

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1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ^einsure that the applicant properly implements the
5 oil discharge ^Acontingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 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
10 plan, including

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

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

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

28 (4) the plan has not been properly implemented.

29 (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 or [AND 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.

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

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
16 person may not cause or permit the operation of a crude [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 may 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 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 ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility 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) A [AFTER JULY 1, 1981, 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 ~~may not~~ be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person 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 [FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility 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:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

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

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

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

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

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1 expires

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

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

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

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

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

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

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

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

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

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

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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 [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] 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 46.04.900 is amended by adding a new paragraph to read:

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

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

7

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 20, 1990

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

M E M O R A N D U M

TO: Honorable Steve Cowper
Governor

FROM: *Douglas B. Baily*
Douglas B. Baily
Attorney General

RE: Three attached final bills in response to
Oil Spill Commission Report
Our files: 773-90-0051
773-90-0052
773-90-0053

Attached are three bills implementing the recommendations of the Alaska Oil Spill Commission contained in the commission's "Executive Summary" issued in January.

These bills have been prepared on relatively short notice, after extensive input from several agencies, including the Departments of Environmental Conservation, Law, Fish and Game, Natural Resources, and Community & Regional Affairs, the Division of Emergency Services, and your Oil Spill Coordinating Office. Additionally, staff of the Oil Spill Commission worked with our department to formulate specific ideas from the general recommendations contained in the Executive Summary. Drafts of these bills have been provided to Walt Parker, commission chairman, and representatives of the oil industry.

A single draft transmittal letter to the legislature, covering all three bills, and a sectional analysis for each bill are also attached.

DBB:JWB:jf

cc w/enc.:

Alison Elgee, Director
Division of Budget Review
Mary Halloran, Director
Division of Policy
Office of Management & Budget
Office of the Governor

Dennis Kelso, Commissioner
Department of Environmental Conservation

Honorable Steve Cowper, Governor
Our files: 773-90-0051, 773-90-0052,
and 773-90-0053

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Page 2

Lennie Boston Gorsuch, Commissioner
Department of Natural Resources

Don Collinsworth, Commissioner
Department of Fish & Game

Robert LeResche, Oil Spill Coordinator
Office of the Governor

D R A F T

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

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

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

The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee

that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, are attached.

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

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

Sincerely,

Steve Cowper

Governor

773-90-0053

(orig del to
Gov. ofc & with
final bill)

773-90-0053

SECTIONAL ANALYSIS

The following is a sectional analysis of a bill that strengthens the Department of Environmental Conservation's ("DEC") oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04.

Section 1 strengthens DEC's authority to require and enforce oil discharge contingency plans. Section 1 requires that contingency plans be properly implemented; clarifies and strengthens DEC's authority to approve, modify, or revoke contingency plans; requires contingency plan applicants to maintain in their areas of operation sufficient resources to contain and remove a realistic maximum oil discharge within the shortest possible time; provides the Department of Fish and Game and the Department of Natural Resources an opportunity to comment on contingency plans; and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented.

Section 2 strengthens the financial responsibility requirements of AS 46.04.040. Section 2 establishes a \$50,000,000 financial responsibility requirement for crude oil terminal facilities; establishes a \$1,000,000 financial responsibility limit for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels; establishes a \$50,000,000 financial responsibility limit for non-crude terminal facilities with a storage capacity of more than 10,000 barrels; establishes a \$50,000,000 financial responsibility requirement for offshore exploration and production facilities; establishes a \$500,000,000 financial responsibility requirement for crude oil tank vessels and barges; establishes a \$20,000,000 financial responsibility requirement for large (greater than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances; establishes a \$1,000,000 financial responsibility requirement for smaller (less than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances.

Section 3 lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Section 4 authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels, and oil barges to ensure compliance with AS 46.04 and to examine the structural integrity of tank vessels and oil barges.

Section 5 defines "realistic maximum oil discharge," as used in sec. 1.

Section 6 provides that the Act takes effect immediately.

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the strengthening of the state's
7 oil contingency plan requirements, financial respon-
8 sibility requirements, and inspection authority under
9 AS 46.04; and providing for an effective date."

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

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

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

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
20 the operation of an offshore exploration or production facility in the
21 state unless an oil discharge contingency plan for the facility has
22 been approved by the department and has been properly implemented.

23 (c) A person may not operate a tanker vessel or an oil barge
24 within the waters of the state, or cause or permit the transfer of oil
25 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
26 an oil barge, unless an oil discharge contingency plan for the tank
27 vessel or oil barge has been approved by the department and has been
28 properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),
29 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
3 APPROVED BY THE DEPARTMENT.]

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

11 (e) Before the department approves or modifies an oil discharge
12 contingency plan under this section, the department shall provide a
13 copy of the oil discharge contingency plan to the Department of Fish
14 and Game and to the Department of Natural Resources and shall provide
15 those departments a reasonable opportunity to review and comment on
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required
18 by this section shall maintain in its area of operation, singly or in
19 conjunction with other operators in its area of operation, sufficient
20 oil discharge containment, storage, transfer, and removal equipment,
21 manpower, and resources to rapidly contain a realistic maximum oil
22 discharge and to remove that discharge within the shortest possible
23 time.

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 the department [IT] determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ensure that the applicant properly implements the
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 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
10 plan, including

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

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

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

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

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 or [AND, 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, 46.03.759, or 46.03.760 against any other person for
13 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 may not cause or permit the operation of a crude [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 may 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 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 ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility may 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) A [AFTER JULY 1, 1981, 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 may not be less than \$50,000,000 (\$35,000,000) per incident.

(d) [(c)] A person 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 [FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility 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:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

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

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

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

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

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

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

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

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

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

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

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

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

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

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

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

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

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
7 access or inspection conferred upon the department by law or
8 otherwise, the department may at reasonable times enter and inspect
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production
10 facilities, tank vessels, and oil barges within the territorial
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE
12 DEPARTMENT] 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 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum
19 and most damaging oil discharge that the department estimates could
20 occur 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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29

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection 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 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 DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit the operation of an 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.

(c) A person 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 [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge contingency plan for the tank vessel or oil barge has been approved by the department and has been properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.!

(d) The department is the only state agency that has the power to approve, modify, or revoke an oil 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 departments a reasonable opportunity to review and comment on the plan.

(f) An applicant for an oil discharge contingency plan required by this section shall maintain in its area of operation, singly or in conjunction with other operators in its area of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a realistic maximum oil discharge and to remove that discharge within 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 the department [(IT)] determines are necessary to insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ensure that the applicant properly implements the
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 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
10 plan, including

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

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

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

(4) the plan has not been properly implemented.

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

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 or [AND, 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, 46.03.759, or 46.03.760 against any other person for
13 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 may not cause or permit the operation of a crude [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 may 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 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 ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility may 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) A [AFTER JULY 1, 1981, 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 may not be less than \$50,000,000 [\$35,000,000] per incident.

(d) [(c)] A person 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 [FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility 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:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

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

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

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

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

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

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

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

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

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

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

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

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

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

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

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

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

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

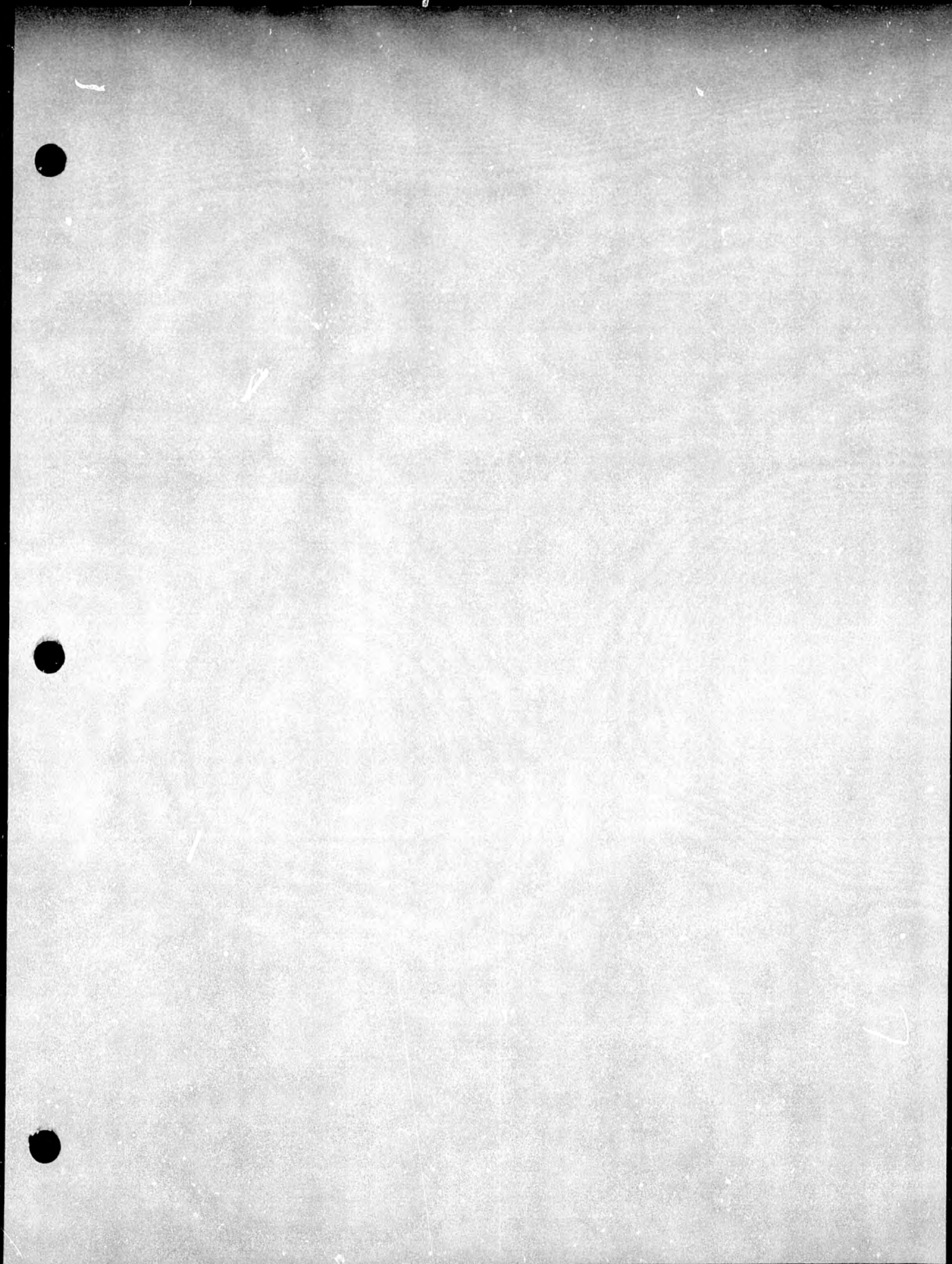
13 (1) ensure compliance with the provisions of this chapter;
14 or

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

17 * Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum
19 and most damaging oil discharge that the department estimates could
20 occur 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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Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 567 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil, civil penalties
9 for discharges of crude oil, and inspection authority
10 of the Department of Environmental Conservation; au-
11 thorizing certain additional uses of the oil and
12 hazardous substance release response fund and re-
13 stricting use of the fund for municipal grants and
14 reimbursable service agreements; authorizing the
15 Department of Environmental Conservation and munic-
16 ipalities to enter into agreements pertaining to
17 vessel traffic control and monitoring systems; relat-
18 ing to reporting requirements; and providing for an
19 effective date."

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

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

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

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

29 (c) Subject to the \$500,000,000 maximum set under (a) of this

1 section the court shall assess five [FOUR] times the penalty set out
2 in (a) of this section if the court finds

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

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

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

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

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

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

19 (2) provide for cooperative review of oil discharge preven-
20 tion and contingency plans submitted to the department under AS 46.-
21 04.030;

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

25 (4) provide for cooperative oil discharge notification
26 procedures.

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

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

29 (a) A person may not cause or permit the operation of an oil terminal

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

6 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
7 the operation of an [OFFSHORE] exploration or production facility in
8 the state unless an oil discharge prevention and contingency plan for
9 the facility has been approved by the department and has been properly
10 implemented.

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

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

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

1 section, and to ensure that the applicant properly implements the
2 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
3 CHARGE] contingency plan must provide for the use [OF THE BEST AVAIL-
4 ABLE TECHNOLOGY] by the applicant of the best technology that was
5 available at the time the contingency plan was submitted or renewed.
6 The 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 (f) Upon request of a plan holder or on the department's own
14 initiative, the [THE] department, after notice and opportunity for
15 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
16 plan if the department [IT] determines that a change has occurred in
17 the operation of a facility [, MARINA] or vessel necessitating an
18 amended or supplemented plan, or the operator's discharge experience
19 demonstrates a necessity for modification. The department, after
20 notice and opportunity for hearing, may revoke its approval of a [AN
21 OIL DISCHARGE] contingency plan if the department [IT] determines that

- 22 (1) approval was obtained by fraud or misrepresentation;
23 (2) the operator does not have access to the quality or
24 quantity of resources identified in the plan; [OR]

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

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

29 (g) Failure of a holder of an approved or modified [OIL

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

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

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

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

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

1 in its region of operation, singly or in conjunction with other opera-
2 tors in its region of operation, sufficient oil discharge containment,
3 storage, transfer, and removal equipment, personnel, and resources to
4 rapidly contain a

5 (1) realistic maximum oil discharge and to remove that
6 discharge within 72 hours if the contingency plan is for an explora-
7 tion or production facility;

8 (2) discharge in an amount equal to the capacity of the
9 largest oil storage tank at the facility and to remove that discharge
10 within 72 hours if the contingency plan is for an oil terminal facil-
11 ity; if the department determines that the oil terminal facility is
12 located in an area of high risk because of natural or manmade condi-
13 tions outside of the facility, the department may increase the volume
14 requirement under this paragraph so that the contingency plan must be
15 designed for response to a discharge that is greater in amount than
16 the capacity of the largest oil storage tank at the facility;

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

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

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

1 (m) In this section

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

4 (2) "properly implement" means, with respect to a contin-
5 gency plan, to

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

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

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

13 (D) comply with terms and conditions attached to the
14 plan by the department under the authority of (e) of this sec-
15 tion; and

16 (E) successfully demonstrate the ability to carry out
17 the plan when required by the department under (e) of this sec-
18 tion;

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

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

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

2 (a) A person may not cause or permit the operation of an oil
3 terminal facility in the state unless the person has furnished to the
4 department, and the department has approved, proof of financial abil-
5 ity to respond in damages. Proof of financial responsibility for a
6 crude oil terminal may not be less than \$50,000,000 per incident.
7 Proof of financial responsibility for a noncrude oil terminal may not
8 be less than \$25, per incident, for each barrel of total noncrude oil
9 storage capacity at the terminal or [WHICH HAS BEEN ACCEPTED BY THE
10 DEPARTMENT. ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000
11 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH
12 BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)]
13 \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000.
14 For purposes of this subsection, an oil terminal facility that stores
15 both crude oil and noncrude oil is subject to the financial responsi-
16 bility requirements applicable to the type of facility that corre-
17 sponds to the type of oil storage that predominates at the facility.
18 However, if the facility stores more noncrude oil than crude oil, the
19 \$25 per incident, per barrel requirement of this subsection applies to
20 each barrel of oil storage capacity at the facility.

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

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

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

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

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

10 (1) \$300, per incident, for each barrel of storage capacity
11 or \$100,000,000, whichever is greater, for a tank vessel or barge
12 carrying crude oil;

13 (2) \$100, per incident, for each barrel of storage capacity
14 or \$1,000,000, whichever is greater, subject to a maximum of
15 \$35,000,000, for a tank vessel or barge carrying noncrude oil in an
16 amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR
17 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY
18 UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

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

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

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

8 (e) Financial responsibility may be demonstrated by (1) self-
9 insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter
10 of credit approved by the department, or (6) other proof of financial
11 responsibility approved by the department, including proof of finan-
12 cial responsibility provided by a group of insureds who have agreed to
13 cover pollution risks of members of the group under terms the depart-
14 ment may prescribe. An action brought under AS 46.03.758, 46.03.759,
15 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT
16 PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court
17 directly against the insurer, the group, or another person providing
18 evidence of financial responsibility. The applicant, and an insurer,
19 surety, [OR] guarantor, person furnishing an approved letter of cred-
20 it, or other group or person providing proof of financial respon-
21 sibility approved by the department shall appoint an agent for service
22 of process in the state. For purposes of this subsection, an [AN]
23 insurer, other than a group of insureds whose agreement has been
24 approved by the department, must either be authorized by the Depart-
25 ment of Commerce and Economic Development to sell insurance in the
26 state or be an unauthorized insurer listed by the Department of Com-
27 merce and Economic Development as not disapproved for use in the
28 state.

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

1 (f) Acceptance of proof of financial responsibility expires

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

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

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

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

10 (g) The person whose proof of financial responsibility is ac-
11 cepted by the department under this section shall notify the depart-
12 ment at least 30 days before the effective date of a change, expira-
13 tion or cancellation in the surety bond, guarantee, [OR] insurance
14 agreement, letter of credit, or other proof of financial responsibil-
15 ity. 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 * Sec. 13. AS 46.04.040 is amended by adding new subsections to read:

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

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

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

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

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

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

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

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

25 (c) If the index is revised, the percentage of change is cal-
26 culated on the basis of the revised index. If a revision of the index
27 changes the reference base index, a revised reference base index is
28 determined by multiplying the reference base index applicable by the
29 rebasing factor furnished by the United States Bureau of Labor

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

5 (d) The department shall adopt a regulation announcing

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

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

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

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

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

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

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

1 DEPARTMENT] to

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

3 (2) examine the structural integrity of tank vessels, oil
4 barges, oil terminal facilities, oil exploration and production facil-
5 ities, pipelines, and other facilities related to the exploration,
6 production, storage, and transportation of oil; or

7 (3) participate in an examination of the structural integ-
8 egrity of tank vessels and oil barges by the United States Coast Guard.

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

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

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

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

17 (2) clarify and specify the respective responsibilities of
18 each of the following in the assessment, containment, and cleanup of a
19 catastrophic oil discharge or of a significant discharge of a hazard-
20 ous substance into the environment of the state:

21 (A) agencies of the state;

22 (B) municipalities of the state;

23 (C) appropriate federal agencies;

24 (D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) investigate and evaluate the release or threatened
16 release of oil or a hazardous substance, and contain, clean up, and
17 take other necessary action, such as monitoring and assessing, to
18 address a release or threatened release of oil or a hazardous sub-
19 stance that poses an imminent and substantial threat to the public
20 health or welfare, or to the environment;

21 (2) pay all costs incurred

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

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

28 (C) to conduct training, response exercises, inspec-
29 tions, and tests, in order to verify equipment inventories and

1 ability to prevent and respond to oil and hazardous substance
2 release emergencies, and to undertake other activities intended
3 to verify or establish the preparedness of the state, a munic-
4 ipality, or a party required by AS 46.04.030 to have an approved
5 contingency plan to act in accordance with that plan; and

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

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

12 (4) recover the costs to the state or to a municipality of
13 a containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance; [.]

15 (5) prepare, review, and revise

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

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

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

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

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

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

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

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

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

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

13 (4) a detailed summary of department activities in re-
14 sponses funded by the fund during the preceding fiscal year, including
15 response descriptions and statements outlining the nature of the
16 threat; in this paragraph, "detailed" includes information describing
17 each personal services position and total compensation for that
18 position, each contract in excess of \$20,000, and each purchase in
19 excess of \$10,000; and

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

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

28 (1) its actual storage capacity;

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

- 1 (3) its age, design, construction, and general condition;
- 2 (4) the design and construction standards applicable or rele-
- 3 vant;
- 4 (5) the presence or absence of containment structures and equip-
- 5 ment;
- 6 (6) its ability to respond to a release or threatened release;
- 7 (7) the environmental sensitivity of the surrounding area and
- 8 the potential risk to the environment if a release occurs;
- 9 (8) the presence or absence of surface and subsurface pipelines
- 10 and storage tanks; and
- 11 (9) other appropriate information.

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

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

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

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

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

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

29

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 567 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil, civil penalties
9 for discharges of crude oil, and inspection authority
10 of the Department of Environmental Conservation; au-
11 thorizing certain additional uses of the oil and
12 hazardous substance release response fund and re-
13 stricting use of the fund for municipal grants and
14 reimbursable service agreements; authorizing the
15 Department of Environmental Conservation and munic-
16 ipalities to enter into agreements pertaining to
17 vessel traffic control and monitoring systems; relat-
18 ing to reporting requirements; and providing for an
19 effective date."

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

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

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

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

29 (c) Subject to the \$500,000,000 maximum set under (a) of this

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

6 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
7 the operation of an [OFFSHORE] exploration or production facility in
8 the state unless an oil discharge prevention and contingency plan for
9 the facility has been approved by the department and has been properly
10 implemented.

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

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

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

CORRECTION

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

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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16 ipalities to enter into agreements pertaining to
17 vessel traffic control and monitoring systems; relat-
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19 effective date."

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

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

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

29 (c) Subject to the \$500,000,000 maximum set under (a) of this

1 section the court shall assess five [FOUR] times the penalty set out
2 in (a) of this section if the court finds

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

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

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

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

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

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

19 (2) provide for cooperative review of oil discharge preven-
20 tion and contingency plans submitted to the department under AS 46.-
21 04.030;

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

25 (4) provide for cooperative oil discharge notification
26 procedures.

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

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

29 (a) A person may not cause or permit the operation of an oil terminal

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

6 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
7 the operation of an [OFF-SHORE] exploration or production facility in
8 the state unless an oil discharge prevention and contingency plan for
9 the facility has been approved by the department and has been properly
10 implemented.

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

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

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

1 section, and to ensure that the applicant properly implements the
2 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-
3 CHARGE] contingency plan must provide for the use [OF THE BEST AVAIL-
4 ABLE TECHNOLOGY] by the applicant of the best technology that was
5 available at the time the contingency plan was submitted or renewed.
6 The 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 (f) Upon request of a plan holder or on the department's own
14 initiative, the [THE] department, after notice and opportunity for
15 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
16 plan if the department [IT] determines that a change has occurred in
17 the operation of a facility [, MARINA] or vessel necessitating an
18 amended or supplemented plan, or the operator's discharge experience
19 demonstrates a necessity for modification. The department, after
20 notice and opportunity for hearing, may revoke its approval of a [AN
21 OIL DISCHARGE] contingency plan if the department [IT] determines that

22 (1) approval was obtained by fraud or misrepresentation;
23 (2) the operator does not have access to the quality or
24 quantity of resources identified in the plan; [OR]

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

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

29 (g) Failure of a holder of an approved or modified [OIL