SCOMM

78:41

LEGISLATIVE HISTORY OF AMENDMENT
TO AS 46.04.040
PROOF OF FINANCIAL RESPONSIBILITY
(HB 567: 1990)

Volume II: Correspondence and Drafts from the Department of Law's File No. 883-90-0183 Assigned to Assistant Attorney General John McDonagh re HB 567

1. Memorandum from Shari Kochman, legislative Staff Assistant to Assistant Attorney General Arthur H. Peterson regarding opening of new file with handwritten notations by John McDonagh (2/13/90).

2. Department of Law Drafts of HB 567, some with handwritten editorial notes (2/15/90).

3. Memorandum from Commissioner Lennie Gorsuch, Department of Natural Resources to Denby Lloyd, Special Staff Assistant, Office of the Governor providing comments and recommended changes to oil spill bills; includes handwritten notes (2/16/90).

4. Handwritten note on Office of the Governor letterhead listing major remaining policy questions on the oil spill legislation (2/17/90).

5. Handwritten note to Assistant Attorney General Jeff Bush providing instructions as to procedures for making changes on bill draft and enclosing a sectional analysis of the contingency plan/financial responsiblity proposed legislation (2/17/90).

6. Department of Law Drafts of HB 567 with handwritten editorial notes (2/20/90).

7. Memorandum from Attorney General Douglas B. Baily to Governor Steve Cowper enclosing proposed oil spill legislation implementing the Alaska Oil Spill Commission's recommendations in its Executive Summary report issued in January 1990, enclosing draft transmittal leter to the legislature and a sectional analysis for each billl (2/20/90).



STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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

MEMORANDUM

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

FROM: Shari Kochman
Legislative Staff Assistant

DATE: February 13, 1990

RE: New Drafting Files

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

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

(1) ~~An Act relating to the strengthening of the Department of Environmental Conservation's~~ civil liability ~~penalty and damage provisions concerning the~~ discharge of oil and other environmental violations . . .

(2) An Act authorizing ~~the~~ governor to expend money from the oil ~~and~~ Hazardous Substance Release Response Fund during disasters; expanding the role of the division of emergency services during oil spill-related disasters; establishing in statute the Alaska State Emergency Response Commission . . .

~~An Act related to the strengthening of the Department of Environmental Conservation's [redacted] requirements, financial responsibility requirements, and [redacted] requirements under HB 4004~~

~~An Act authorizing~~ private suits to enforce environmental laws; . . .

Art P.:
- The Gov's office wanted a draft bill on this ... but it has not yet decided to introduce it.
- John M.

2

DEPARTMENT OF LAW

DRAFT # 2

DATE 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

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

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

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

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

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

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

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

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

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

access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

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

INSERT a-d from attached sheet

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

INSERT

Section 2. AS 46.04.040 is amended to read:

Sec. 46.04.040. Proof of financial responsibility.

(a) A person [MAY] shall not cause or permit the operation of [AN] a crude oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than $500,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY; OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

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

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

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

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

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

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

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

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

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

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

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

responsibility shall not be less than $50,000,000 [$35,000,000] per incident.

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

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

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

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

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

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

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 insureer, 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 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:

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

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

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

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

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

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

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

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).

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

INSERT REVISED subparagraphs (a) → (d) from separate sheet

[AND], or [IN THE EVENT OF A SPILL,] to respond with those resources within the shortest feasible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified oil discharge contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of ~~crude~~ [CRUDE] oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758 or 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 not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than $50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

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

DEPARTMENT OF LAW

DRAFT

DATE:

BOOKPROOFED:

APPROVED:

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

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

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

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

(d) (c) 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.

(e) (f) 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 insureer, surety, [OR] guarantor, or other person providing security approved by the department shall appoint an agent for service of process in the state. An insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

(g) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

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

warranted denial of the application.

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

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

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

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

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

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

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

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

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

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

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

DEPARTMENT OF LAW

2/14/90 **DRAFT** # 1

DATE:

BOOKPROOFED:

APPROVED:

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

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

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

(c) A person [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 an oil discharge contingency plan for the tank

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

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

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

CM suggests we strike the requirement that their oil discharge plans meet the requirements of this section.

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

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

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

areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within ~~the shortest feasible time~~ a 72-hour period after the discharge (~~72 hours 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 marina] or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification. The department, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if [IT] the department determines that

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

OIL SPILL LEG:

POTENTIAL-POLICY-LEVEL QUESTIONS.

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [MAY] not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [IN THE DEPARTMENT'S REASONABLE DISCRETION, THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person shall [MAY] not cause or permit the operation of an [OFFSHORE] exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [IN THE DEPARTMENT'S REASONABLE DISCRETION]

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

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

the tank vessel or oil barge has been approved by the department and has been properly implemented. [IN ANY PROSECUTION] [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

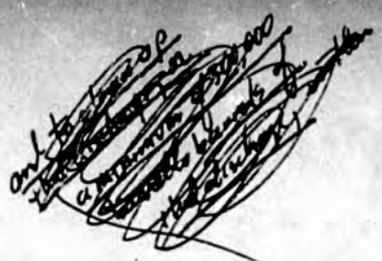
(d) The department is the only state agency which has the power to approve, modify, and revoke an oil contingency plan for the purposes of this section. Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for a violation of (a)--(c) of this section that the person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

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

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

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

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



DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

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

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

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

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

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

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

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

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

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

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

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

(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 insureer, 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 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:

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ 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).

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ~~requirements~~ 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 [BY THE DEPARTMENT AS PROVIDED IN THIS SECTION]. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ may [NOT] not cause or permit the operation of an [~~OFFSHORE~~] offshore exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented [BY THE DEPARTMENT AS PROVIDED IN THIS SECTION].

(c) A person ~~shall~~ may [NOT] 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), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]~~

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 ~~the Department of Fish and Game~~ those departments a reasonable opportunity to review and comment upon the plan.

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

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

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

2

[redacted] singly or in conjunction with other operators in its area of operation,

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.

(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]. [illegible] FINANCIAL RESPONSIBILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY; OR (2) $1,000,000, WHICHEVER IS GREATER.

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

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

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

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

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

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

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

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

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

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ calculate 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).

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the Department of Environmental Conservation's oil contingency plan requirements, financial responsibility requirements, and inspection ~~requirements~~ 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 ~~by the department~~. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ may [MAY] not cause or permit the operation of an offshore [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 ~~by the department~~.

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

DEPARTMENT OF LAW

DRAFT

DATE:

BOOKPROOFED:

APPROVED:

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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 ~~the Department of Fish and Game~~ those departments a reasonable opportunity to review and comment upon the plan.

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

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

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

[redacted] singly or in conjunction with other operators in its area of operation,

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.

(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]. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

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

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

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

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

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

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

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

(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 insureer, 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 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:

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ 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).

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

Hurst mark-up 4/6/90. AHP/Sate 2/15 or 2/16/90.

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

* Section 1. AS 46.04.030 is amended to read:

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

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

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

03-038

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

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

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

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

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

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

access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

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

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

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

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

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

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

(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 insureer, 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 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:

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

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

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

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

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

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

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

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

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

John McDonagh's mark-up 2/17/90 (or later) to produce Draft # 4 2/20/90.

IN THE _____ BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [MAY] not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [IN THE DISCRETION OF THE DEPARTMENT, A CONTINGENCY PLAN MAY BE APPROVED FOR ANY OIL TERMINAL FACILITY. THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ may not cause or permit the operation of an [OFFSHORE] offshore exploration or production facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [IN THE DISCRETION OF THE DEPARTMENT, A CONTINGENCY PLAN MAY BE APPROVED FOR ANY OFFSHORE FACILITY.]

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

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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 ~~the Department of Fish and Game~~ those departments a reasonable opportunity to review and comment upon the plan.

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

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

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

[redacted] singly or in conjunction with other operators in its area of operation,

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.

(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 shall not be less than ...]~~ [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

(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 [redacted] exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than $50,000,000 [$35,000,000] per incident.

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

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

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

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

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

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ calculate 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).

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person shall [MAY] not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented, [IN THE DEPARTMENT'S DISCRETION. [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION.]

(b) [AFTER JANUARY 1, 1981, A] A person ~~shall~~ may [MAY] not cause or permit the operation of an [~~OFFSHORE~~] 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. [IN THE DEPARTMENT'S DISCRETION.]

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

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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 ~~the Department of Fish and Game~~ a reasonable opportunity to review and comment upon the plan.

(f) An applicant for all oil discharge contingency plans required by this section shall maintain in its ~~their~~ areas of operation sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to rapidly contain a realistic maximum [redacted] oil discharge and to remove that discharge within the shortest possible time [redacted].

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

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

2

[redacted] singly or in conjunction with other operators in its area of operation,

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.

(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]. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

DEPARTMENT OF LAW

DRAFT

DATE:

BOOKPROOFED:

APPROVED:

(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 [redacted] exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than $50,000,000 [$35,000,000] per incident.

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

DEPARTMENT OF LAW

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 insureer, 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 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:

DEPARTMENT OF LAW

DRAFT

DATE:

BOOKPROOFED:

APPROVED:

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ 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).

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

Mark-up by John McDonagh 2/17/90 to produce (or later) Draft #4 on 2/22/90.

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

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

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

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

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 A TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT.]

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 ~~the Department of Fish and Game~~ a reasonable opportunity to review and comment upon the plan.

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

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

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

[redacted] singly or in conjunction with other operators in its area of operation,

access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within ~~[THE SHORTEST FEASIBLE TIME]~~ the shortest possible time after the discharge ~~discharge~~ and to insure that the applicant properly implements the oil discharge contingency plan. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

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]. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

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

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

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

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

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

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

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

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

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

DEPARTMENT OF LAW

DRAFT

DATE:

BOOKPROOFED:

APPROVED:

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

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

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

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

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

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

(18) "~~worst case oil discharge~~ calculate 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).

3

MEMORANDUM

State of Alaska

Alaska Department of NATURAL RESOURCES

TO: Denby Lloyd
Special Staff Assistant
Office of the Governor

DATE: February 16, 1990

FILE NO:

TELEPHONE: 465-2400

FROM: Lennie Gorsuch
Commissioner

SUBJECT: Oil Spill Bills
Suggested Wording Changes

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

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

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

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

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

Section 1. (f) -- delete all proposed language and replace with language directing the department to adopt regulations, in consultation with the Department of Natural Resources, that define the objective standards an oil spill contingency plan must meet for approval, as well as procedures the department must follow to suspend or revoke approval.

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

Add DNR to C-Plan review

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

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

Section 4. -- delete proposed additions and changes.

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

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

Discharge
-offshore
-onshore
Cost family defense

DEPARTMENT OF LAW

DRAFT # 3

DATE: 2-15-90

BOOKPROOFED: _____

_____

APPROVED: _____

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 46.04.030 is amended to read:

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

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

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

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

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

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

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

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

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

access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel within a 72-hour period after the discharge [THE SHORTEST FEASIBLE TIME] and to insure that the applicant properly implements the oil discharge contingency plan. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

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

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

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

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

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

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

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

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

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

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

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

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

(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 insureer, 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 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:

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of operations and the minimal danger to the environment posed by the cities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an terminal facility that has an effective storage capacity of less 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 s or inspection conferred upon the department by law or wise, the department may at reasonable times enter and inspect oil terminal facilities, [OFFSHORE] exploration and production ities, tank vessels, and oil barges within the territorial diction of the state in order to

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

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

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

(18) "worst case oil discharge" means the maximum and most ng oil discharge that the department estimates could occur the lifetime of the vessel or facility based on the size, on, and capacity of the vessel or facility; on the department's dge and experience with the vessel or facility or with similar s or facilities; and on the department's analysis of possible s at the vessel or facility or at similar vessels or facilities.

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

4

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

17 Feb. 90

OIL SPILL LEGISLATION:

Major remaining policy questions -

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

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

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

Leave 72 Change language. (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

4:36pm
2-17-90

Jeff -

Here are the sectional analyses and bill for the contingency plan / financial recap. 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 "onshore" requirements were removed.

You need to get to:

① Have your secty make the changes as indicated on the bill draft; and

② Give a copy of the bill (w changes) + the sec. analysis to Art.

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

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

I'll come back late monday unless you need me sooner. To reach me:

479-0523 (Flx Home)
452-1568 (Flx Office)

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 (provides that the act takes effect immediately.

6

DEPARTMENT OF LAW

DRAFT 530h # 4 CL

DATE: 2/20/90

BOOKPROOFED: _____

APPROVED: _____

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

Might as well make the 20 or so corrections I've noted, while we're waiting for Jean to complete the proofreading.

BY THE RULES COMMITTEE B ERNOR

IN THE HOUSE

IN THE L 'ATE OF ALASKA

SIXTEE :COND SESSION

A BILL

For an Act entitled: "An Act relating to the strengthening of the ~~Department of Environmental Conservation's~~ 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 ~~shall [MAY]~~ may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [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 explcration 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),

DEPARTMENT OF LAW

DRAFT 530h

DATE: 2/20/90

BOOKPROOFED: _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

APPROVED: _____

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~~ 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 ~~shall [MAY]~~ may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge contingency plan for the facility has been approved by the department and has been properly implemented. [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, 1991, 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),

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

(d) The department is the only state agency ~~which~~ 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 upon 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 [IT] the department determines are necessary to

insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive 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.

DEPARTMENT OF LAW

DRAFT #_____

DATE:_____

BOOKPROOFED:_____

_____

APPROVED:_____

(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 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. sf 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

(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]~~ 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 ~~shall [MAY]~~ may not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel, [, OR, AFTER JANUARY 1, 1981, TO OR FROM] or an oil barge, unless 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

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

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

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

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

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

(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:

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

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

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

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

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

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

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

(18) "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).

Marked up Joan 2/20/90 by Feales * AHP.

DEPARTMENT OF LAW

DRAFT 530h 4 CL

DATE: 2/20/90

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 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),

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

(d) The department is the only state agency which has the power to approve, modify, or revoke an oil contingency plan for the purposes of this section, 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 upon 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 [IT] the department determines are necessary to

insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive 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.

(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. 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]. Proof of financial responsibility may not be less than $50,000,000 per incident. [

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

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

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

(c) [AFTER JULY 1, 1981, A] 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 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 FOR THE TANK VESSEL OR BARGE [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility shall not be less than

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

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

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

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

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

(2) FOR ANY OTHER OIL BARGE, REQUIRED BY SEC 311(p)(1) OF THE CLEAN WATER ACT, OR $1,000,0 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.

(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; or

(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:

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

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

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

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

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

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

* Sec. 5. AS 46.04.~~120~~ 900 is amended by adding a new ~~subsection~~ 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).

DEPARTMENT OF LAW

DRAFT 0530h

#5 CL

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 [illegible] or the facility has been approved by the departmen[illegible]rly implemented.

(c) A person may not o[illegible]el or an oil barge within the waters of the state [illegible] 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

is there an actual "space" or machine here, or did I spread it? If a space, delete

DEPARTMENT OF LAW

DRAFT 0530h

5 CL

DATE: 2/20/90

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 depart[illegible]nd 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

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 and to ensure that the applicant properly implements the oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

(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 or [AND 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 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 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

(b) A person may 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 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

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

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

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

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

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

(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; or

(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:

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

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

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

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

STEVE COWPER, GOVERNOR

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

February 20, 1990

M E M O R A N D U M

TO: Honorable Steve Cowper
Governor

FROM: for 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

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 bill 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

IN THE SENATE

SENATE 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

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 and to ensure that the applicant properly implements the oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

(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 or [AND, 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, 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 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 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) $1,000,000, WHICHEVER IS GREATER.]

(b) A person may 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 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

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

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

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

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

(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

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; or

(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:

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

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

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

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

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

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 and to ensure that the applicant properly implements the oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the plan has not been properly implemented.

(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 or [AND, 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, 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 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 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL FACILITY; OR (2) $1,000,000, WHICHEVER IS GREATER.]

(b) A person may 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 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

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

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

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

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

(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

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; or

(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:

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

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

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

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

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

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

(4) provide for cooperative oil discharge notification procedures.

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

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal

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

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

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

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

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

section, and to ensure that the applicant properly implements the contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contingency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY] by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) In this section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The department shall adopt a regulation announcing

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

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

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

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

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

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

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

DEPARTMENT] to

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

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

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

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

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

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

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

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

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) pay all costs incurred

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

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

(C) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and

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

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

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

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

(5) prepare, review, and revise

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) its actual storage capacity;

(2) the type of noncrude oil products stored;

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

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

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

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

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

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

(9) other appropriate information.

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

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

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

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

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

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

Offered: 4/24/90
Referred: Rule

go0530hG

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

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

(4) provide for cooperative oil discharge notification procedures.

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

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal

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

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

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

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

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

section, and to ensure that the applicant properly implements the contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contingency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY] by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) In this section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The department shall adopt a regulation announcing

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

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

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

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

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

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

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

DEPARTMENT] to

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

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

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

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

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

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

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

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

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) pay all costs incurred

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

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

(C) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and

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

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

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

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

(5) prepare, review, and revise

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) its actual storage capacity;

(2) the type of noncrude oil products stored;

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

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

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

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

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

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

(9) other appropriate information.

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

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

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

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

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

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

Amended: 4/30/88
Offered: 4/24/
Referred: Rules

go0530hG

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 567 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; and authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems."

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

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

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

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

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

(1) the discharge was caused by the gross negligence or

intentional act of the defendant;

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

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

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

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

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

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

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

(4) provide for cooperative oil discharge notification procedures.

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

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE

AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

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

(c) Except for a tank vessel or oil barge operating only in response to an oil discharge, a [A] person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and has been properly implemented [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) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipe line, tank vessel, or oil barge for which it is issued and the date by which the contingency plan must be submitted for renewal.

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

(f) The department may attach reasonable terms and conditions to its approval or modification of a [AN OIL DISCHARGE] contingency plan that the department [WHICH IT] determines are necessary to ensure

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

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of available equipment, supplies, and personnel.

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

(1) approval was obtained by fraud or misrepresentation;

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

(3) a term or condition of approval or modification has

been violated; or

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

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

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

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

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

regulation establish the procedures and time limits applicable to agency review of contingency plans.

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

(1) realistic maximum oil discharge and to clean up that discharge within 72 hours if the contingency plan is for an exploration or production facility;

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

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

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

(l) Notwithstanding (j) of this section, the department may approve a contingency plan for a noncrude oil terminal facility or for a tank vessel or barge carrying noncrude oil that provides for the

holder of the plan to maintain the equipment, personnel, and resources required under (j) of this section outside the holder's region of operation upon a showing satisfactory to the department that the planning requirements of (j) of this section are otherwise satisfied.

(m) In this section

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

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

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

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

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

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

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

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

(4) "region of operation," with respect to the holder of a

contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210.

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

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

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

(b) A [AFTER JULY 1, 1981, A] person may not cause or permit the operation of an [OFFSHORE] exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in

damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility for an offshore exploration or production facility may not be less than $50,000,000 [$35,000,000] per incident. Proof of financial responsibility for an onshore exploration or production facility may not be less than $20,000,000 per incident.

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

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

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

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

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

(2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY

SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR $1,000,000, WHICHEVER IS GREATER;

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

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

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

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

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [OR] guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an [AN] insurer, other than a group of insureds whose agreement has been

approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

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

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

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

expiration date of the certificate.

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

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

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

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

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

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

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

resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge <u>prevention and</u> contingency plan submitted by a person under AS 46.04.030, the

department shall prepare and annually review and revise a regional master oil and hazardous substance discharge [AND] prevention and contingency plan.

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

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

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

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

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

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

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

(2) pay all costs incurred

(A) to establish and maintain the oil and hazardous substance response office and for the expenses of the oil and

hazardous substance response corps and the oil and hazardous substance response depots established by that office;

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

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

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

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

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

(5) prepare, review, and revise

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

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

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

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

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

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

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

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

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

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

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; <u>in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000;</u> and

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

* Sec. 24. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By

January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 to 10,000 barrels in order to determine for each facility

(1) its actual storage capacity;

(2) the type of noncrude oil products stored;

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

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

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

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

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

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

(9) other appropriate information.

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

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

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

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

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

* Sec. 25. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(j) - (l), enacted by sec. 5 of this Act, do not apply to oil discharge prevention and contingency plans until June 1, 1991. On and after June 1, 1991, a contingency plan must comply with AS 46.04.030(j) - (l), enacted by sec. 5 of this Act, regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec. 4 of this Act.

(b) The amendments to AS 46.04.040, made by secs. 6 - 13 of this Act, do not apply to persons required to show proof of financial responsibility until January 1, 1991. On and after January 1, 1991, proof of financial responsibility must comply with AS 46.04.040, as amended by secs. 6 - 13 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 11 of this Act.

Offered: 5/8/90
Referred: Rules

go0530hF

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date."

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

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

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

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

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

(1) the discharge was caused by the gross negligence or

ORIGINAL

Passed by the House May 8, 1990

Samuel R. Cotten
Speaker of the House

ATTEST:

Irene Cashen
Chief Clerk of the House

Passed by the Senate May 8, 1990

Tim Kelly
President of the Senate

ATTEST:

Nancy Quinto
Secretary of the Senate

SCSCSNB 567(Tim) -27-

Engrossed

Letter of Intent for Senate CS for CS for HB 567 (Oil and Gas)

Subsection (k) (3) (C) of HB 567 provides that a contingency plan holder must demonstrate that the equipment, personnel, and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours.

Like all other provisions in Section (k), subsection (k) (3) (C) is subject to Section (l) which provides that the Section (k) provisions are not clean up or performance standards for the discharge response. Rather, the Section (k) requirements, including those in subsection (k) (3) (C), are planning requirements for determining what will be in any particular contingency plan.

The subsection (k) (3) (C) planning provisions require a demonstrated plan for moving equipment, personnel, and other resources necessary to deploy and operate that equipment and personnel to the discharge site. The provision includes deployment and operation of the equipment and personnel to ensure that there are systems and plans to actually use the additional equipment in a manner that is well orchestrated to supplement and enhance the equipment and personnel from the plan holder's region of operation.

However, both segments of the contingency plan -- the deployment of the in-region equipment and the transportation and deployment of the out-of-region equipment -- are subject to Section (l). Neither segment creates a performance standard under the terms of HB 567. So, if a contingency plan has been approved, based upon a demonstrated plan of action to get equipment, personnel, and other resources to the site, it would not be a violation of the terms of A.S. 46.04.030 if unforeseeable circumstances result in a failure to actually deploy and operate all equipment within 72 hours.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 565
HB 566
HB 567

February 21, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

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, will be provided by my staff.

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 bill 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

STATE OF ' 'ASKA
1990 LEGISLAT. .E SESSION

' '. VERSION : SCSCSHB 567 (FIN) xa
PUBLISH DATE : 5-8-90

FISCAL NOTE

REQUEST:

Revision Date: 5/3/90
Agency Affected: Environ. Conservation
Title: An Act relating to contingency plan requirements, financial responsibility...
BRU: Environmental Quality
Sponsor: Rules/Governor
Components: Environmental Quality
Requestor: Senate Oil and Gas

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	665.0	614.0	563.0	563.0	563.0	563.0
TRAVEL	60.0	52.5	45.0	45.0	45.0	45.0
CONTRACTUAL	562.0	554.0	546.0	546.0	546.0	546.0
SUPPLIES	14.0	13.0	12.0	12.0	12.0	12.0
EQUIPMENT	70.0	65.0	60.0	60.0	60.0	60.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
CAPITAL	0.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
TOTAL	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0

POSITIONS:

FULL-TIME	12.0	12.0	12.0	12.0	12.0	12.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	2.0	1.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Larry Dietrick
Phone : 465-2640
Division: Environmental Quality
Date : 5/4/90

Approved by Commissioner: A Dilg
Date: 5/4/90
Agency: Environmental Conservation

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

Changes in SCSCSHB 567(Fin) have no fiscal impact. This fiscal note is appropriate. 5/8/90

FISCAL ANALYSIS

The legislation requires certain facilities and vessels to include prevention measures in their contingency plans. One Ecologist II is necessary to develop prevention regulations such as design, construction and operation standards for the various types of facilities and vessels. In addition, field staff will require additional time to review the prevention portions of the plan and to perform more detailed facility inspections. Statewide, this will increase the workload by two FTE (Environmental Field Officer II's).

In addition, this legislation this section requires a new class of facilities - onshore exploration and production facilities - to develop oil discharge prevention and contingency plans. There are approximately 60 sites with multiple facilities currently operating in the state. Two Environmental Field Officers are necessary to evaluate these contingency plans, inspect facilities for compliance with the approved contingency plans, and to develop and participate in spill drills designed to test the ability of the contingency plans.

The legislation requires the Department to provide a copy of a contingency plan to the Departments of Fish and Game and Natural Resources and provide those agencies with an opportunity to review and comment on the plans. The coordination of review for over 70 plan reviews annually will require one additional FTE (Ecologist II).

The legislation requires proof of financial responsibility for responding to discharge incidents. One-half of an Administrative Assistant III is necessary to carry out the additional workload reviewing and approving the financial responsibility documentation for facilities covered by the section.

The legislation broadens the forms of security acceptable to demonstrate financial responsibility. The Department will need to evaluate what forms of security will be acceptable to the state and define those by regulation (.5 Administrative Assistant III).

The legislation provides authority to the Department to inspect the structural integrity of tank vessels, oil barges, oil terminal facilities, and pipelines. Outside expertise is necessary for some inspections. The Department will require two FTE (Environmental Field Officer III) and contractual funds ($350.0) to implement this section.

The legislation requires the Department to conduct a survey of small non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. There are over 30 of these facilities, most of which are located in rural areas. The inspections will involve a technical review of facility design and construction, prevention measures, and spill response capability. The Department will provide technical assistance to the facility owners/operators to enhance their spill prevention and response capabilities. In addition, the Department will submit a report to the legislature outlining the types of problems at these facilities and suggestions for improvement. The inspections and technical assistance will require two Environmental Field Officers. Compilation of the statewide inspection information and recommendations report to the legislature will require one Ecologist II. The survey is required to be done within two years.

The legislation requires the Department to study oil discharge prevention and contingency planning issues associated with tank vessels and oil barges carrying noncrude oil. Based on the study results, the Department must report to the legislature with recommendations for locating regional response depots, defining operator response times including equipment and personnel requirements, and assigning industry and government roles in response efforts. The study must be completed no later than July 1, 1991. The Department will require contractual funds ($100.0) to manage the study required by this section and prepare a report to the legislature.

Position	100	200	300	400	500	Total
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Env. Field Ofc II's	102.0	10.0	16.0	2.0	10.0	140.0
2 Env. Field Ofc III's	102.0	10.0	16.0	2.0	20.0	140.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
1 Admin. Asst. III	36.0	0.0	8.0	1.0	5.0	50.0
2 Env. Field Ofc III	102.0	10.0	16.0	2.0	10.0	140.0
Contractual (inspections)			450.0			450.0
2 Env. Field Ofc III	102.0	15.0	16.0	2.0	10.0	145.0
1 Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Clerk Typist III's	68.0	0.0	16.0	2.0	10.0	96.0
TOTALS	665.0	60.0	562.0	14.0	70.0	$1,371.0

STATE OF A' 'SKA
1990 LEGISLATI SESSION

F '. VERSION: SCSCS HB 527 FW (c
PUBLISH DATE: 5-8-90

FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Oil Spill Contingency Plans

Sponsor: Rules Committee (Governor)
Requester: Senate Oil & Gas

Agency Affected: Natural Resources
BRU: Petroleum Management

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Changes in SCSCS HB 527(FIN) have no fiscal impact. This fiscal note is appropriate. 5/9/90 ml

Prepared by: Carol Wilson
Phone: 465-2400
Division: Commissioner's Office
Date: 5/5/90

Approved by Commissioner: Dennis Gorsuch
Date: 5/5/90
Agency: Natural Resources

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

LL VERSION: SCS CSHB 567(FIN)
PUBLISH DATE: 5-8-90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act strengthening DEC's contingency plan and inspection requirements.
Sponsor: Rules Committee/Governor
Requestor: House Finance

Agency Affected: Fish and Game
BRU: Habitat Division
Components: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER *	156.5					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

* Oil and Hazardous Substance Release Response Fund

Prepared by: House Finance Committee
Division: Co-Chairman Ron Larson
Co-Chairman Lyman Hoffman
Phone: 465-3727
Date: 4/23/90

Approved by Commissioner: _____
Agency: _____
Date: 4/23/90

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

Changes in SCS CSHB 567(Fin) have no fiscal impact. This fiscal note is appropriate. 5/8/90

5/8/90

Continuation : fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. the state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date."

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

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

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

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

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

(1) the discharge was caused by the gross negligence or

intentional act of the defendant;

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

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

* Sec. 3. AS 46.03.823(a) is amended to read:

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

* Sec. 4. AS 46.03.823(b) is amended to read:

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law [STRICTLY LIABLE UNDER THIS SECTION].

* Sec. 5. AS 46.03.823(e) is amended to read:

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

* Sec. 6. AS 46.03.823(g)(2) is amended to read:

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

(A) the department; [OR]

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

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release under state or federal law;

* Sec. 7. AS 46.03.823(g)(3) is amended to read:

(3) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release; and

(B) a person who is retained or hired by and is under

the control of a person described in (A) of this paragraph to provide services related to the response action contract.

* Sec. 8. AS 46.04.020(e) is amended to read:

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

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

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

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

(4) provide for cooperative oil discharge notification procedures.

* Sec. 9. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan [. 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 a pipeline or an [OFFSHORE] exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a [A] person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan [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) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A [AN OIL DISCHARGE] contingency plan must be submitted for renewal [RENEWED AT LEAST] every three years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a [AN OIL DISCHARGE] contingency plan that the department [WHICH IT] determines are necessary to ensure [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil

discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contingency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY] by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

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

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

(1) approval was obtained by fraud or misrepresentation;

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

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

(4) the person is not in compliance with the contingency

plan and the deficiency materially affects the plan holder's response capability.

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

* Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

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

(i) It is a defense to an action brought for a violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the

alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

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

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is

greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) - (3) of this subsection that enters a receiving environment other than open water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department

may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) The department shall approve or disapprove a proposed contingency plan within 65 days after it receives a complete application for approval under this section.

(q) In this section,

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

(2) "in compliance with the plan" means, with respect to a contingency plan, to

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

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

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

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

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

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

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

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

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished <u>to the department, and the department has approved,</u> proof of financial ability to respond in damages<u>. Proof of financial responsibility required for a crude oil terminal is $50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is $25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or</u> [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED $50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN $10, PER INCIDENT, FOR EACH BARREL OF STORAGE

CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] $1,000,000, whichever is greater, subject to a maximum of $50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the $25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

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

(b) A [AFTER JULY 1, 1981, A] person may not cause or permit the operation of a pipeline or 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 required for a pipeline or an offshore exploration or production facility is $50,000,000 [MAY NOT BE LESS THAN $35,000,000] per incident. Proof of financial responsibility required for an onshore production facility is $20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is $5,000,000 per incident.

* Sec. 13. AS 46.04.040(c) is amended to read:

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

under this subsection is

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

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

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

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

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

* Sec. 14. AS 46.04.040(d) is amended to read:

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

* Sec. 15. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by (1) self-

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

* Sec. 16. AS 46.04.040(f) is amended to read:

(f) Acceptance of proof of financial responsibility expires

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

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

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

* Sec. 17. AS 46.04.040(g) is amended to read:

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

* Sec. 18. AS 46.04.040 is amended by adding new subsections to read:

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

(k) It is a defense to an action brought for violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

(l) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not agree to be subject to direct action in state courts or to appoint an agent for service of process if

(1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;

(2) the applicant provides proof of $50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and

(3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department.

* Sec. 19. AS 46.04 is amended by adding a new section to read:

Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on October 1 of each third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index

changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state.

* Sec. 20. AS 46.04.050 is amended to read:

Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels of noncrude oil.

* Sec. 21. AS 46.04.060 is amended to read:

Sec. 46.04.060. INSPECTIONS. In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner

enter and inspect oil [OIL] terminal facilities, pipelines, [OFFSHORE] exploration and production facilities, tank vessels, and oil barges in order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

(1) ensure compliance with the provisions of this chapter; or

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

* Sec. 22. AS 46.04.060 is amended by adding a new subsection to read:

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected.

* Sec. 23. AS 46.04.200 is amended to read:

Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge [AND] prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of a catastrophic oil discharge or of a significant discharge of a hazardous substance into the environment of the state:

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commissioner as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response; and

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances.

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan; and

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge <u>prevention and</u> contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section.

* Sec. 24. AS 46.04.210(a) is amended to read:

(a) For any region of the state, the boundaries of which are

determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge [AND] prevention and contingency plan.

* Sec. 25. AS 46.04.900(8) is amended to read:

(8) "[OFFSHORE] exploration [OR PRODUCTION] facility" means a platform, vessel, or other facility used to explore for [OR PRODUCE] hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that [WHICH] are not authorized or intended to drill to a producing formation;

* Sec. 26. AS 46.04.900(15) is amended to read:

(15) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

* Sec. 27. AS 46.04.900 is amended by adding new paragraphs to read:

(18) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(19) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons

in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

* Sec. 28. AS 46.08.040 is amended to read:

Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred

(A) to establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office;

(B) to review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(C) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) to verify or establish proof of financial responsibility required by AS 46.04.040;

(3) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); [AND]

(4) recover the costs to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance; [.]

(5) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge [AND] prevention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge [AND] prevention and contingency plan required by AS 46.04.210; and

(6) restore the environment by addressing the effects of an oil or hazardous substance release.

* Sec. 29. AS 46.08.060(a) is amended to read:

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year;

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.-020;

(3) a summary of municipal participation in responses funded by the fund;

(4) a detailed summary of department activities in

responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000; and

(5) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

* Sec. 30. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 to 10,000 barrels in order to determine for each facility

(1) its actual storage capacity;

(2) the type of noncrude oil products stored;

(3) its age, design, construction, and general condition;

(4) the design and construction standards applicable or relevant;

(5) the presence or absence of containment structures and equipment;

(6) its ability to respond to a release or threatened release;

(7) the environmental sensitivity of the surrounding area and the potential risk to the environment if a release occurs;

(8) the presence or absence of surface and subsurface pipelines and storage tanks; and

(9) other appropriate information.

(b) By January 31, 1992, the Department of Environmental Conservation shall report to the legislature the results of the survey required under

(a) of this section and its written recommendations concerning discharge prevention and contingency requirements or design review requirements that should be enacted for noncrude oil terminal facilities with storage capacities of less than 10,000 barrels.

(c) Upon completion of the survey required under (a) of this section, the Department of Environmental Conservation may

(1) notify each facility of the results of the facility's inspection; and

(2) provide each facility with recommendations and technical assistance concerning identified deficiencies.

(d) The Department of Environmental Conservation may conduct the inspections required under this section notwithstanding the provisions of AS 46.04.050. The department shall conduct the inspections at reasonable times.

* Sec. 31. STUDY RELATING TO NONCRUDE OIL TANKERS AND BARGES. By July 1, 1991, the Department of Environmental Conservation shall conduct a study and report to the legislature its recommendations concerning the following issues related to oil discharge prevention and contingency planning for tank vessels and oil barges carrying noncrude oil in bulk as cargo:

(1) appropriate locations for regional response depots, based on an assessment of historical evidence of where noncrude oil discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

(3) requirements for personnel and equipment that should be imposed on contingency plan holders;

(4) appropriate roles for industry and state and local governments in the purchase, ownership, and positioning of discharge response

efforts.

* Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, do not apply to oil discharge prevention and contingency plans until June 1, 1991. On and after June 1, 1991, a contingency plan must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec. 9 of this Act.

(b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply to persons required to show proof of financial responsibility until June 1, 1991. On and after June 1, 1991, proof of financial responsibility must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

* Sec. 33. This Act takes effect immediately under AS 01.10.070(c).

ACCPT
U.C.

AMENDMENT #1

P.10, line 18

by BROWN

HB567 CS HB 567 (FIN)

46.04.040. Add a new subsection, to read:

(f) Notwithstanding the requirements of (e), the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not agree to be subject to direct action in state courts or to appoint an agent for service of process, if (1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e); (2) proof of at least $50 million, or the amount required by (a)-(c) of this section, whichever is less, in insurance or other form of financial responsibility which meets the requirements of (e) is provided; and (3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility which meets the requirements of (e) is not available in greater amounts.

Renumber accordingly

A:\HB567.OIL

Doc 1 Pg 1 Ln 1" Pos 1.

go0530Ma
Lauterba

By Brow
ACIP+

AMENDMENT #2

OFFERED IN THE HOUSE

TO: CSHB 567( )

Page 5, line 24:

Delete "The"

Insert "Except as provided in (1) of this section, the"

Page 6, after line 17:

Insert a new subsection to read:

"(1) Notwithstanding (j) of this section, the department ma approve a contingency plan for a noncrude oil terminal facility or fc a tank vessel or barge carrying noncrude oil that provides for th holder of the plan to maintain the equipment, personnel, and resource required under (j) of this section outside the holder's region c operation upon a showing satisfactory to the department that th planning requirements of (j) of this section are otherwise satisfied.

Reletter the following subsection accordingly.

Adpt
4 C

Amendment #4 By Rieger

To: CSHB 567

Page 16, Line 25 Add a new section to read:

"* Sec. 10. AS 46.08.060(a)(4) is amended to read:

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response and descriptions and statements outlining the nature of the threat; for purposes of this section, "detailed includes each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000; and"

4/23/90

adpt

AMENDMENT

by RIEGER

Page 16, line 26

insert new subsection (b) to AS 46.08.040:

"(b) Except for direct response to a declared disaster emergency relating to an oil or hazardous substance discharge or for specific projects authorized by the legislature, the department may not receive and expend funds as grants to municipalities or reimbursable service agreements to any state agency."