SCOMM

78:43

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

Volume IV: (A) Consideration of SCS CSHB 567 by the Senate Special Committee on Oil and Gas

1. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 4/30/90.

2. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/2/90.

3. Chart entitled "Financial Responsibility Requirements" showing the differences in requirements between CS HB 567 (Finance) and SCS HB 567 (Oil & Gas) (undated).

4. Draft of SCS for CS for HB 567 (Oil & Gas) (undated).

5. "Letter of Intent for Senate CS for CS for HB 567 (Oil and Gas)" (undated).

6. Amendment Nos. 1 through 8 to 5/3/90 draft for SCS CSHB 567.

7. Three amendments to SCS CSHB 567 (Oil & Gas) (undated).

8. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/3/90.

9. Fiscal notes from ADF&G (4/23/90), DEC (5/4/90) and DNR for SCS CSHB 567 (Oil & Gas) (5/5/90).

10. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/7/90.

11. Sectional analysis of SCS CS HB 567 (Oil & Gas) (5/8/90).

12. Draft of SCS for CS for HB 567 (Oil & Gas) (5/8/90).

13. Senate Finance Committee Report from Senate Special Committee on Oil and Gas on CS HB 567 (Finance) (5/8/90).

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

Volume IV: (B) Attorney General Review and Enactment of SCS CS HB 567 (Finance)

1. Letter from Kari Repplinger, Legislative Staff Assistant, Office of the Governor to Attorney General Douglas B. Baily re transmitting SCS CS HB 567 (Finance) for review by his office (6/4/90).

2. PROFS note from Assistant Attorney General Arthur H. Petersen to John McDonagh regarding review of SCS CSHB 566 (Finance) and SCS CSHB 567 (Finance) (6/4/90).

3. Draft letter from Attorney General Douglas B. Baily to Governor Steve Cowper regarding review of SCS CSHB 567 (Finance) (6/12/90).

4. Letter from Attorney General Douglas B. Baily to Governor Steve Cowper regarding review of SCS CSHB 567 (Finance) (6/15/90).

5. SCS CSHB 567 (Finance) as passed by the Alaska House and Senate on 5/8/90.

6. Letters to Speaker of the House Sam Cotten and President of the Senate Tim Kelly from Governor Steve Cowper regarding signing of SCS CS HB 567 (Finance) and forwarding to Lieutenant Governor's office for permanent filing (6/26/90).

A1

CHAMBER = S
SOURCE = SO&G
DATE = 900430
YEAR = 90
TIME = 0917
DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
April 30, 1990
9:17 A.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Rick Halford
Senator Al Adams

MEMBERS ABSENT

Senator Paul Fischer
Senator Tim Kelly





OTHER MEMBERS PRESENT

Senator Bettye Fahrenkamp
Senator Mike Szymanski
Representative Curt Menard
Representative Kay Brown
Representative Mike Navarre

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"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."

SENATE BILL NO. 504
"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."

WITNESS REGISTER

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David Rogers, Legal Counsel
Senate Oil and Gas Committee





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PREVIOUS SENATE COMMITTEE ACTION

HB 56- No previous action to record.

SB 504 - See Special Committee on Oil & Gas minutes dated 2/28/90, 3/5/90, 3/6/90, 3/14/90, 4/10/90, 4/28/90, and 4/29/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee working group to order at 9:17 a.m. She announceHB 560IL SPILL CONTINGENCY PLANS/REQUIREMENTS to be up for consideration.

Denby Lloyd, Special Assistant for the Governor, commented





on proposed changes tHB 567.He said they included pipeline and exploration and production facilities for contingency planning requirements and had lowered the proof of financial responsibility for on-shore exploration facilities to $5 million.

Senator Szymanski asked about the changes on page 3. Mr. Lloyd explained there was a concern about whether or not a contingency plan could realistically be implemented before there was an oil spill. He said the intent was to have the equipment on hand and the personnel trained.

Mr. Lloyd said that page 13 described more adequately how DEC would implement their inspection authorities in coordination with other agencies with jurisdiction and said that the inspections would deal with structural integrity and the operating and mechanical systems of pipelines and facilities.

Senator Fahrenkamp asked how many agencies would do

inspections. Mr. Lloyd said the intent was not to duplicate, but to use the expertise in various agencies, and route those through the Pipeline Cordinator's Office. He said that inspections would be coordinated with federal and state agencies with jurisdiction.

Senator Pearce asked if a written determination were necessary in cases where there were no other coordinating agencies.

Larry Dietrick said the state would not do an inspection unless it was determined that the Coast Guard had done nothing to initiate an inspection. The state will not do substitute inspections. He said the determination would be a judgmental call and wouldn't necessarily need to be written. However, they had no objection to putting it in writing.

Senator Fahrenkamp said she was concerned with state liability and thought that advice to the Coast Guard should





always be written to protect the State.

Number 353

Mr. Lloyd said they modified the definition of "exploration facilities" to segregate different types of facilities so they could be dealt with appropriately in contingency planning requirements.

Number 496

Robert Shoaf, Alyeska Pipeline Service, said on page 9, line 8, in the proof of financial responsibility section, that "may not be less than" should be changed to "shall be" and suggested making the same change throughout the bill to make some sort of liability cap.

Senator Adams requested a range of figures for financial responsibility for the committee to refer to. Mr. Shoaf said that he didn't have one, but their main interest was

in marine terminals and pipelines and $50 million was appropriate for those facilities.

Mr. Shoaf said that his understanding of the "at or" phrase was that the terminal facilities become legally responsible for spills from vessels at the terminal. This is a change from federal and state law where the spiller is required to have a contingency plan. So they would want the "at or" phrase removed. Another reason to delete "at or" would be so that the small village terminals in western Alaska would not be liable for the barges that bring them fuel.

Senator Fahrenkamp said that was a good point and that she would have further questions on the subject of liability in small villages.

Number 694

Mr. Shoaf said on page 4, line 25 that they suggest adding "material" to make the phrase mean the ability to respond





to a spill would be impacted. He also suggested inserting after 90 (b) on page 5, line 19, "and except for reliance on a certificate of plan approval issued by the Department." On page 10, line 1 he suggested a similar phrase, "and except for reliance on a certificate that the state's financial responsibility requirements have been met."

TAPE 1, SIDE 2

Number 001

There was discussion on securing a financial letter of credit for the contractual relationship between a vessel and the terminal it ties up to. Senator Fahrenkamp was concerned with insurance for small operators.

Doug Mertz, Assistant Attorney General, commented that when you add "material" to "terms and conditions" you are insuring future legal controversies, because it is vague.

He added that he did not think the state would revcke a contingency plan on a mere technicality.

Number 375

Mr. Mertz said that a certificate as proof of having a plan was a good idea, but would not work as proof that the plan had been properly implemented.

Senator Pearce asked if the terminal operators could not rely on a certificate, but every time a vessel came in would have to verify implementation. Mr. Mertz said that was the way the bill stood currently. Senator Szymanski suggested having authorizations for each terminal on the certificate.

Mr. Dietrick said if you really want to keep check on oil response capability that the oil terminal operators of necessity have intimate knowledge of the contingency plans for vessels. So they are the best people for that job. He





said this would extend the responsibility from the state to the vessel owners and the terminal operators. Mr. Mertz added that the implementation could be documented with affidavits and be presented with the certificate.

Number 722

Chip Thoma, Juneau resident, commented that the terminal operators should be the responsible party.

There was discussion between Senator Fahrenkamp and Senator Szymanski about how the small terminal operators in the bush areas would be affected under the proposed scenario - without a cap on liability.

Senator Pearce asked if the storage barges had to have separate contingency plans and separate financial responsibility.

Marilyn Heiman, Legislative Aide for Representative Menard,

said that they assumed the language was clear enough in the statute that the bill was not covering those types of barges and tankers.

TAPE 2, SIDE 1

Number 001

Larry Smith, Oil Reform Alliance, indicated his concern for the small terminal owners in the villages who might be put out of business because of the high cost of maintaining a contingency plan.

John Tillinghast, representing Tesoro, questioned the "good samaritan amendment." Mr. Dietrick said that a significant starting point would be that there are exemptions for people participating in spill cleanups.

Mr. Tillinghast, commenting oHB 567,said that financial responsibility was expressed in minimums rather than





maximums and that there were no standards or guidelines on how high liability could go. He said that as you increase the responsibilities of the response contractors, they are going to want to know if there is a statute that would limit their liability as there is in the federal "super fund law." He said there is a state statute, but it is differs from the "super fund law" in that the third party liability is limited only if he is complying with a DEC response action contract remedial action plan.

Number 418

Senator Pearce recessed the meeting at 11:13 a.m.

Senator Pearce called the work session to order at 6:53 p.m. She said that Senator Fahrenkamp, Senator Halford, Senator Szymanski, Representative Navarre, Representative Brown, and Representative Menard were present. She briefly reviewed the earlier portion of the meeting.

Number 001

Senator Pearce asked if barges that are waiting to respond to a spill have to have their own contingency plans. Mr. Dietrick said that they are covered under a separate amendment which will be incorporated into the CS and would be exempted.

Number 191

Senator Szymanski said he did not agree with locking in the amount of financial responsibility. Senator Pearce suggested drafting "proof of $50 million."

Dave Parish suggested taking the current definition of self insurance from the Administrative Code and putting that in the bill. Senator Szymanski did not agree with that, because of the numerous questions it would raise.

Number 377





Mary Nordale, legal counsel for Alyeska, said she was concerned with being out of compliance with the contingency plans if material were loaned or given away.

Number 476

Mr. Mertz and Senator Szymanski discussed how materials would be replaced once they had been used for a spill response. Mr. Dietrick commented that in the case of the Exxon Valdez the replacement was worked out between DEC and Alyeska. He said that they would be concerned with exposing an area if its equipment were somewhere else being used. Mr. Williams commented that it wouldn't be fair to ask one company to shut down operations while its response equipment was being used elsewhere.

Senator Szymanski said he would prefer DEC to work that out in regulations.

Number 611

Mr. Mertz read a proposed insert, "and whose acts or omissions are not contrary to a response plan or orders via state or federal agency with jurisdiction over a discharge." Senator Pearce noted that the Administration supported the amendment. Mr. Mertz said this did not get anyone out of negligence or bad judgement.

Senator Pearce noted that there were no objections to Attachment #1 and went on the Attachment #2.

Number 681

Senator Szymanski asked what was meant by territorial jurisdiction of the state. Mr. Mertz said that was so the state would not go down and demand access to the vessel, for instance, if it's in dry dock in San Diego, outside the state. The point would be to not do something that would interrupt normal commerce.





Number 693

Ms. Heiman said that since vessels do not dry dock in Alaska, their only opportunity to look at a vessel may be in San Diego. Senator Szymanski asked Mr. Williams about that. Mr. Williams replied that the only place where you can actually inspect a ship is when it's in ballast on the voyage up to Alaska. They cannot be inspected very well in dry dock. Senator Szymanski suggested deleting the "territorial jurisdiction" language.

Senator Pearce reviewed how they would prepare for their next meeting.

TAPE 4, SIDE 1

Number 001

Senator Pearce adjourned the work session at 9:50 p.m.





END OF DOCUMENT

A2

CHAMBER = S
SOURCE = SO&G
DATE = 900502
YEAR = 90
TIME = 2112
DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
May 2, 1990
9:12 P.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Paul Fischer
Senator Tim Kelly

MEMBERS ABSENT

Senator Al Adams
Senator Rick Halford





OTHER MEMBERS PRESENT

Senator Bettye Fahrenkamp
Senator Mike Szymanski
Senator Jay Kerttula

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"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."

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Mike Williams
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PREVIOUS SENATE COMMITTEE ACTION

HB 56- See Senate Oil & Gas minutes dated 1/30/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee meeting to order at 9:12 p.m. She said they would be working from the Lauterbach workdraft of SCS CSHB 567 (O&G).

Senator Szymanski asked David Rogers, Legal Counsel for the Senate Oil and Gas Committee, if the title was alright.





Mr. Rogers replied that it was fine the way it was.

Denby Lloyd, Special Assistant to the Governor, began reviewing the workdraft and said that there had been a lot of discussion on Section 5, response contracts and whether a contractor should be liable or should be repayed for his efforts participating in someone else's oil spill clean up efforts.

Mr. Lloyd said page 4, beginning on line 13, dealt with what types of exemptions should be allowed for tank vessels or oil barges that are operating in response to an oil discharge. He said that they agree that these vessels should not be required to have a contingency plan, and their proposed language is in the attachment.

In the original discussion of response standards, land and water spills were separate. He said that after much debate there was still a problem with defining "land" and "water." The north slope producers suggested having an allowable

exemption for spills on land exceeding the 72 hour cleanup deadline, and they agree with that. However, most of the lands under discussion are "wetlands" which in federal regulations are defined as water. Mr. Lloyd said that they decided to have exemptions for all spills based on the DEC review of each plan and that that language is in another attachment.

Number 221

Mr. Lloyd highlighted the language that discussed how agencies were to coordinate their inspections.

On the subject of pipelines, he said the top of page 19 has a definition for pipelines. He said there was concern about pipelines that lead off and return between TAPS and refineries. He said it was not their intent to treat the return lines separately for a financial responsibility requirement. To take care of that problem he suggested deleting "oil refineries" on page 4. However, the returns





lines need to be included with either TAPS or the refineries financial responsibility requirement.

Mr. Lloyd said they disagreed with repealing a paragraph on page 23, line 14.

Mr. Lloyd agreed there should be a standard for containment and cleanup equal to the maximum crude oil volume on board crude tank vessels and oil barges. That standard would be amplified by a specific requirement that there must be located in the applicable region all equipment and resources necessary to attain an oil recovery rate comparable to the manufacturer's rated oil skimming capacity that is equal to the crude oil volume divided by 72 hours. The intent is to deal with all the oil within 72 hours. He said they discussed the possibility of having along with the equipment on hand access to equipment outside the region of responsibility. He said that this idea was favored by the state, but was not agreed upon by all parties.

Number 431

Bill Schoephoester, representing Petro Marine Services, said they were concerned that the standards were different for shipment of crude and non-crude oil.

Larry Dietrick, Director of Environmental Control, said that they agree with the concept of separate standards, but haven't had a chance to review their proposal.

Number 535

Mr. Lloyd said that they approved of the good samaritan clause.

Doug Mertz, Assistant Attorney General, commented that their concern was with the significant departure from present standards of liability for people who are involved in the business of transporting or dealing with oil. He





said that the proposed standard broadens liability to any response contractor, and the biggest problem they have with that, in the case of Alyeska for instance, is that it can diminish the liability of the parent corporations. Senator Szymanski said the intent behind that language was to try to protect the response action contractor from having the liability of the spiller.

Gene Burden, Tesoro Alaska Petroleum Company, said that federal law extends that liability limitation to response contractors who are under contract to federal authorities like the Coast Guard. The response contractor's liability has no bearing on the spillers' liability. So he didn't understand how the spillers liability could be changed.

Mr. Mertz commented that (c) and (d) on page 3 were not appropriate, because the legislature decided that a break in liability should only exist if there is departmental oversite. Providing it to someone under contract with a federal agency would take control away from the state.

TAPE 1, SIDE 2

Number 001

There was discussion between Senator Szymanski, Mr. Burden, and Mr. Mertz on how to divide up liability.

Robert Shoaf, Alyeska Pipeline Service, explained that the liability language was developed to create within the state the capability of assisting others in responding to spills with equipment as well as personnel. The basic statutory frame work was in the proposal.

He said that tanker ownership and operations are separate from pipeline ownership and operations, simply because there are multiple owners of the pipeline and single ownership of the vessel. He commented that he thought a spiller was responsible for the actions of its agent, and he didn't think that would diminish the liability to





Alyeska.

Number 259

Senator Szymanski said the language was not clear about whether the liability would go back to the tanker and he thought that should be worked out.

Number 326

Mike Williams, Alyeska, said that he did not oppose the language "except a tank vessel or oil barge that has received prior department approval to conduct response operations of a prevention and contingency plan."

Mr. Lloyd said they envisioned the expertise from various departments to be coordinated under the State Pipeline Coordinating Office.

John Walsh, Legislative Aide for Representative Foster,

said the insurance company, in order to give proof of financial responsibility had to have inspected the vessel. If for some reason something happens to the vessel after the state inspection, he wanted to know what the state would be liable for. Mr. Mertz said that their inspections are backed up by the authority to shut something down if necessary. The inspections are usually information gathering, so their exposure is minimal.

Senator Fahrenkamp asked if the state would report to the insurer. Mr. Mertz replied that they report to the vessel owner and many times do not know who the insurance carrier is.

Bev Ward, ARCO, asked what kind of resolution process there existed if the Coast Guard didn't inspect a vessel in a timely manner. Mr. Mertz replied it depends on what comes after the inspection and how the owner responded to the inspection. He said the ultimate remedy would involve going to court.





Ms. Ward said that ARCO was mainly concerned with vessel inspections and the possibility that they would delay their loading or unloading process. They were also concerned that the state might have too much say in the designing of ships.

Mr. Mertz said the State had no interest in getting into design inspections and this draft did not give them the authority to do that. Mr. Rogers said that the "reasonable time" language would deal with what was reasonable time for interference with normal activities.

TAPE 2, SIDE 1

Number 001

Senator Fahrenkamp commented that she was concerned how this legislation would affect getting fuel and electricity into Alaska's remote areas and the cost to the consumer.

She said that she had talked to the Senate Resource Committee's oil tax consultants and they said that the state of Alaska would have a hard time attracting independent oil companies if this legislation were in effect.

Mr. Mertz said inspections were more difficult to carry out under the proposed legislation than is currently the law.

Number 250

Steve Lewis, Petro-Star Corporation, said striking the word "refinery" from the definition of pipeline does not deal with the Golden Valley pipeline which comes off TAPS.

Senator Pearce said that the pipeline is part of their refinery and its financial responsibility is included along with their facility. Financial responsibility does not increase because they have a pipeline that gets their oil from TAPS to the facility.





Mr. Lloyd said that the definition of pipeline #1 deals only with crude oil and pipelines that only go between production facilities to marine vessels (the 48 inch line from Prudhoe to Valdez). He said the intent is to allow the operators of those pipelines to hold themselves under the umbrella of whomever they wish.

Ms. Ward commented that it seemed to her that everyone had to have some responsibility for common carrier pipelines.

Number 320

Senator Fahrenkamp asked what was the financial responsibility for docks and barges on the Yukon River. Mr. Lloyd answered that they were included in the non-crude portion of the bill.

Mr. Lewis said he was concerned for the barges on the Yukon and Tanana which generally carry more than 5,000 barrels.

Senator Pearce answered that there was a small increase in liability for them, but not a large one as had been discussed.

Senator Pearce said for the record that she had in past interims and will again be working for Arctic Slope Consulting Group which is a fully owned subsidiary of the Arctic Slope Regional Corporation which also owns Petro Star.

Senator Pearce said that Mr. Dietrick had a list of all the barges and exactly how large they are and what their financial responsibility is currently and under the proposed version. There was discussion of contingency plans for small villages and barges.

Number 454

Charley Neal, Crowley Maritime Corporation, said they operate terminals in Kotzebue and deliver non-crude oil to





130 villages in Alaska. He asked if the PNI's would issue certificates of insurance to their operators. Mr. Mertz said that they had accommodated the state's requirements to what was acceptable with the insurance companies.

Number 501

Larry Markley, representing the Alaska Electrical Cooperatives, said their rural members were concerned that there might be liability through equipment they paid to have stockpiled if it were used in a negligent way during a cleanup operation. Mr. Markley handed out language to the committee that would expand the definition of response action contractor to help clarify the situation.

Mr. Mertz's response to the suggestion was that it wasn't necessary, because it would be covered under the response action contractor any way. However, he said it was a good idea to clarify that point.

Number 001

Mr. Humphrey said his concern was that there may be promises made in the contingency plan process that in reality might be hard to live up to. Mr. Lloyd said that they would discuss this with him, but the intent is to leave the final requirements for each situation up to the discretion of the DEC.

Number 135

Senator Pearce adjourned the meeting at 12:25 p.m.

END OF DOCUMENT

A3

# Financial Responsibility Requirements

| TYPE OF FACILITY | CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS | CS HB 567 (Finance) | SCS HB 567 (Oil & Gas) |
|---|---|---|---|
| **Crude Oil Terminals** | | | |
| >10,000 bbl. | $1 million up to $50 million @ $10/bbl. capacity | $50 million | $50 million |
| 5 - 10,000 bbl. | None | $50 million | $50 million |
| **Non-Crude Terminals** | | | |
| >10,000 bbl. | $1 million up to $50 million @ $10/bbl. capacity | $1 million up to $50 million @ $25/bbl. capacity | Same as the H Finance version |
| 5 to 10,000 bbl. | None | None | None |
| Offshore exploration and production facilities | $35 million | $50 million | $50 million |
| Pipelines | Not specifically addressed | Not addressed | $50 million |
| Onshore production facilities | None | $20 million | $20 million |
| Onshore exploration facilities | None | $20 million | $ 5 million |
| Crude Oil Tank Vessels and Barges | TAPS = $14 million, Non-TAPS = $20 million. TAPS covered for an additional $86 million per vessel. | $500 million | $100+ million @ $300/bbl. capacity |
| Non-Crude Oil Tank Vessels and Barges | Tank Vessels = $20 million, Barges = $1 million | $1 million up to $35 million @ $100/bbl. capacity | Same as the H Finance version |

A4

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Oil & Gas)

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) 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 facility or pipeline based on the size, location, and capacity of the facility or pipeline; on the department's knowledge and experience with the facility or pipeline or with similar facilities or pipelines; and on the department's analysis of possible mishaps at the facility or pipeline 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 to the department, and the department has approved, proof of financial ability to respond in damages. 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 [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 (a) 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 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. 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 [illegible] 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 [illegible] 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) the 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).

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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.

A6

Senate Special Committee On Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

**AMENDMENT # 1**

Page 2, Lines 21-26: Delete current language and replace with the following:

(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.

Page 25, Line 13: DELETE THE EXISITNG LANGUAGE.

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT #2

Page 9, Lines 3 and 4: DELETE: "extend beyond 72 hours; however, the contingency plan must be designed so that cleanup will"; continue with rest of sentence.

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CSHB 567

**Amendment # 3**

Page 25, Line 8: DELETE: "January 1, 1991"; REPLACE WITH: "June 1, 1991"; DELETE: "January 1, 1991"; REPLACE WITH: "June 1, 1991."

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 4

Page 7, Line 20: after "operation" ADD "or in another region of operation approved by the Department"; continue with rest of sentence.

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 5

Page 9, Lines 13-21: REPLACE entire subsection with the following: "(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."

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDENT # 6

Page 22, Lines 8-14: Delete Section 27

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CS HB 567

Amendment # 7

Page 8, Lines 6-21, replace subsection (3) as follows:

For a discharge of crude oil from a tank vessel or oil barge, contain or control, and clean up a realistic maximum oil discharge, as provided in (a), (b) and (c) of this subsection:

(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 subsection, 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.

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 8

Page 2, Line 27: Add the following language:

(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 and conditions of a response action contract or a remedial action plan if one has been approved by the department or a contingency plan approved by the department where the response action contractor is the plan holder.

A7

# A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 567(O&G)

Page 11, after line 11:

Insert a new subsection to read:

"(p) A person who intends to commence operations for which approved contingency plan is required under this section shall subt the proposed contingency plan to the department so that it is recei by the department at least 65 days before the date on which the pers intends to commence the operations. The department shall approve disapprove the proposed contingency plan within 65 days after receives a complete application for approval under this subsection.'

Reletter the following subsections accordingly.

go0530hPc
Lauterbach

A Lapke 6

# A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 567 (O&G)

In the amendment that adds a new subsection (p) on page 11, after line 11

Delete "A person who intends to commence operations for which approved contingency plan is required under this section shall submit t proposed contingency plan to the department so that it is received by t department at least 65 days before the date on which the person intends commence operations."

In the remaining sentence of subsection (p):

Delete "the"

Insert "a"

Delete "subsection"

Insert "section"



5/8/90

TO: SCS CS HB 567 (Oil and Gas)

# AMENDMENT

page 12, line 3, insert after "of the"

"tank vessel, oil barge,"

page 12, line 4, insert after "of the"

"tank vessel, oil barge,"

page 12, line 5, insert after "with the"

"tank vessel, oil barge,"

page 12, line 6, insert after "similar"

"tank vessels, oil barges,"

page 12, line 7, insert after "mishaps"

"to the tank vessel or oil barge, or"

page 12, line 7, insert after "pipeline or"

"to similar tank vessels or oil barges, or"

A8

CHAMBER = S
SOURCE = SO&G
DATE = 900503
YEAR = 90
TIME = 1915

DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
May 3, 1990
7:15 P.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Al Adams
Senator Paul Fischer
Senator Rick Halford

MEMBERS ABSENT

Senator Tim Kelly





OTHER MEMBERS PRESENT

Senator Bettye Fahrenkamp
Senator Mike Szymanski

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"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."

WITNESS REGISTER

David Rogers, Counsel
Senate Oil & Gas Committee
P.O. Box V
Juneau, Alaska 99811
POSITION STATEMENT: Commented oHB 567.

John McDonagh, Assistant Attorney General
Department of Law
P.O. Box K
Juneau, Alaska 99811
POSITION STATEMENT: Commented oHB 567.

John Tillinghast, Counsel
Tesoro Alaska Petroleum Company
P.O. Box 190272
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POSITION STATEMENT: Commented oHB 567.

Denby Lloyd, Special Assistant for the Governor
Office of the Governor
P.O. Box A
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POSITION STATEMENT: Commented oHB 567.

Chip Toma
Box 338
Douglas, Alaska
POSITION STATEMENT: Commented oHB 567.

Riki Ott
Oil Reform Alliance
Box 1271
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POSITION STATEMENT: Commented oHB 567.

Bill Schoephoester
Petro Marine
1600 A St., Suite 309





Anchorage, Alaska 99501
POSITION STATEMENT: Commented oHB 567.

Steve Lewis
ASRC
Box 56239
North Pole, Alaska 99705
POSITION STATEMENT: Commented oHB 567.

Larry Dietrick, Director
Division of Environmental Quality
Department of Environmental Conservation
P.O. Box O
Juneau, Alaska 99811-1800
POSITION STATEMENT: Commented oHB 567.

Mike Kelly, General Manger
Golden Valley Electric Association
P.O. Box 71249
Fairbanks, Alaska

POSITION STATEMENT: Commented oHB 567.

Mike Williams
Alyeska Pipeline Service Company
Anchorage, Alaska
POSITION STATEMENT: Commented oHB 567.

Robert Shoaf
Alyeska Pipeline Service Company
Anchorage, Alaska
POSITION STATEMENT: Commented oHB 567.

Mike Smith
EXXON Company, U.S.A
P.O. Box 240409
Anchorage, Alaska 99524-0409
POSITION STATEMENT: Commented oHB 567.

Beverly Ward
ARCO Alaska, Inc.




134 N. Franklin
Juneau, Alaska 99801
POSITION STATEMENT: Commented oHB 567.

Mr. Lawn
Teleconference
POSITION STATEMENT: Commented oHB 567.

PREVIOUS SENATE COMMITTEE ACTION

HB 90 - See Senate Oil & Gas minutes dated 1/30/90 and 2/2/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee meeting to order at 7:15 p.m.

frames for applications and approval of contingency plans.

Senator Pearce asked if the intent of the three year review was to require equipment to be updated every three years. Mr. Dietrick said that that requirement is in existing law, but it is more specific in this bill and at the request of the industry. He didn't expect there to be any changes on this issue.

Number 477

Mike Kelly, General Manager of Golden Valley Electric Association, said that the intent of deleting "or refineries" on page 20, line 16 was to exempt Golden Valley from being covered by this bill.

Mr. Lloyd reemphasized that their definition of pipeline deals with crude pipelines taking oil from production facilities to marine vessels. They do not intend to include the trunk lines in the financial responsibility





requirements. Their intent is that the contingency plans for those pipelines can be covered under the plans for the refineries.

Number 512

Mike Williams, Alyeska Pipeline Service Corporation, commented on some of the assumptions that might be erroneous. One was that all the oil is discharged from a ship at once during a spill. He said that definitely was not the case. He said during explosions, a large portion of the oil burns up. He said that other methods of cleaning up the oil had not been considered. He said the most important point of all was risk assessment; and they had taken numerous steps to improve the risk and none of those had been taken into account.

Mr. Williams said the annual cost of the proposed legislation would be $150 million.

Mr. Lawn, testifying via teleconference, commented on the risk analysis sheet that Riki Ott had passed to the committee.

Senator Pearce thanked everyone for their participation and adjourned the meeting at 9:05 p.m.

END OF DOCUMENT

A9

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB 567(
PUBLISH DATE: 5-9-90

# 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

Adopted

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)

* 011 and Hazardous Substance Release Response Fund

Prepared by: House Finance Committee
Division: Co-Chairman Ron Larson
Phone: 465-3727
Date: 4/23/90

Approved by Commissioner: Co-Chairman Lyman Hoffman
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 of 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

Continuation of Explanation

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

# STATE OF ALASKA
# 1990 LEGISLATIVE SESSION

BILL VERSION: SCSCSHB 567 (O&G)
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 Dilyle
Date: 5/4/90
Agency: Environmental Conservation

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

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 ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCSCS HB 567 (RES)
PUBLISH DATE: 5-8-90

# FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Oil Spill Contingency Plans

Agency Affected: Natural Resources
BRU: Petroleum Management

Sponsor: Rules Committee (Governor)
Requester: Senate Oil & Gas

Component:

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)

Adopted

Prepared by: Carol Wilson
Phone: 465-2400
Division: Commissioner's Office
Date: 5/5/90

Approved by Commissioner: Dennis Groves
Date: 5/5/90
Agency: Natural Resources

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

Changes in SCS CS HB 567 (Fin) have no fiscal impact. This fiscal note is appropriate. 5/8/90 LL

A10

CHAMBER = S
SOURCE = SO&G
DATE = 900507
YEAR = 90
TIME = 1945
DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
May 7, 1990
7:45 P.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Paul Fischer
Senator Rick Halford
Senator Tim Kelly

MEMBERS ABSENT

Senator Al Adams





OTHER MEMBERS PRESENT

Senator Mike Szymanski
Representative Peter Goll

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"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."

WITNESS REGISTER

David Rogers, Counsel
Senate Oil and Gas Committee
P.O. Box V
Juneau, Alaska 99811
POSITION STATEMENT: Commented oHB 567.

Robert Shoaf
Alyeska Pipeline Service
Anchorage, Alaska
POSITION STATEMENT: Commented oHB 567.

Denby Lloyd, Special Assistant to the Governor
Office of the Governor
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POSITION STATEMENT: Commented oHB 567.

Commissioner Dennis Kelso




Department of Environmental Conservation
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POSITION STATEMENT: Commented oHB 567.

Larry Dietrick, Director
Division of Environmental Conservation
Department of Environmental Conservation
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POSITION STATEMENT: Commented oHB 567.

Pam Brody
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POSITION STATEMENT: Commented oHB 567.

Loren Flag
Kenai Peninsula Fisherman's Association

Soldotna, Alaska 99669
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Mike Williams
Alyeska Pipeline Service
Anchorage, Alaska
POSITION STATEMENT: Commented oHB 567.

Mike Smith
EXXON Company, U.S.A
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Ken Humphrey
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POSITION STATEMENT: Commented oHB 567.





PREVIOUS SENATE COMMITTEE ACTION

HB 56 - See Senate Oil & Gas minutes dated 4/30/90, 5/2/90 and 5/3/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee meeting to order at 7:45 p.m.

David Rogers, Counsel for the Senate Special Committee on Oil and Gas, explained that amendment #1, dealing with response action contractors, was agreed upon by the administration and industry.

Senator Kelly moved to adopt amendment #1. There were no objections and it was so ordered.

Mr. Rogers explained that amendment #2 was another agreement between the administration and industry which clarified a response standard requirement.

Senator Kelly moved to adopt amendment 2# and asked for unanimous consent. There were no objections and it was so ordered.

Number 63

Mr. Rogers explained that amendment #3 provided the extent of the transition period for compliance with the financial responsibility requirements. He said there was agreement on this amendment, also.

Senator Kelly moved to adopt amendment #3 and asked for unanimous consent. There were no objections and it was so ordered.





Mr. Rogers explained that amendment #4 gave the administration flexibility to expand a region in terms of equipment requirements.

Senator Kelly moved to adopt amendment #4. There were no objections and it was so ordered.

Number 111

Mr. Rogers explained that amendment #5 provided greater flexibility to give credits for prevention measures that are established by third parties.

Senator Kelly moved to adopt amendment #5. There were no objections and it was so ordered.

Number 135

Mr. Rogers and Senator Pearce explained that amendment #6 deleted Section 27 (the Rieger amendment), because it was

in direct conflict with SB 359. She said that the main concern of the Rieger amendment was dealt with in HB 556, in case SB 359 didn't pass.

Senator Kelly moved to adopt amendment #6. There were no objections and it was so ordered.

Number 109

Senator Pearce explained that amendment #7 on page 5, lines 8 - 21, was the proposed response standard which she reviewed.

Senator Fischer asked how the standard could be demonstrated. Senator Pearce read on page 5, lines 8 - 21 how DEC could ask for a demonstration of training through periodic training and exercises and verifying inventory and personnel, etc.

Senator Halford moved to adopt amendment #7. Senator Kelly





objected.

Senator Halford withdrew his motion.

Number 327

Mr. Rogers explained amendment #8 or "the good samaritan amendment."

Robert Shoaf, Alaska Pipeline Service, Michelle Brown, ADC, and Jean Burden, Tesoro, joined this discussion of amendment #8.

Ms. Brown said that under this amendment the plan holder and the response contractor would still be responsible for following the contingency plan. Mr. Shoaf and Mr. Burden agreed with the language.

Senator Kelly moved to adopt amendment #8. There were no objections and it was so ordered.

Quality, joined the discussion and said there is no requirement for tank vessels or barges carrying non-crude under 5,000 barrels. There was a discussion of requirements for small villages.

Senator Pearce said that there was a formula for financial responsibility requirements on page 12, lines 20 - 29.

Senator Kelly suggested establishing a minimum requirement of $1 million on page 12, lines 25 - 28. There was further discussion.

TAPE 1, SIDE 2

Number 001

Senator Kelly mentioned they could create a new category of barges of between 1,000 and 5,000 barrels.

Senator Fischer said that he wanted the minimums to remain





what they are currently.

Senator Kelly moved to establish a $1 million financial responsibility requirement for barges carrying over 1,000 barrels of non-crude oil on page 12, lines 25 - 29. There were no objections and it was so ordered.

Mr. Rogers asked Mr. Dietrick if he had any problems with equipment sharing agreements. He answered that he didn't.

Mr. Rogers asked Commissioner Kelso if he would develop inspection standards. He answered that DEC would develop specific regulations.

Mr. Rogers asked Commissioner Kelso if he intended to change the self insurance regulations. He responded that there were no plans to do that.

Number 159

would need the normal window of time that is provided in the Administrative Procedures Act.

Senator Kelly reiterated that he wanted a 65 day approval period in statute and he wanted to see the final CS.

Number 200

Senator Pearce said they would have another meeting in the morning when the CS was finished and adjourned the meeting at 9:30 p.m.

END OF DOCUMENT

A11

5/8/90

# SECTIONAL ANALYSIS
# SCS CS HB 567 (Oil & Gas)

Section 1 - Local Governments and Vessel Traffic Control

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

Section 2 - Penalty Multiplier for the Discharge of Oil

Adds language to include prevention requirements in contingency plans.

Section 3, 4, 5, 6 & 7 - Response Action Contractors

Provides for the limitation of liability of response action contractors.

Section 8 - Cooperative Agreements for Vessel Traffic Control in State Waters

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

Section 9 - Implementation of Prevention and Contingency Plans

Requires that persons may not operate a tank vessel or oil barge unless they have and are in compliance with a prevention and contingency plan. Amends language in present law to clarify that a prevention and contingency plan provide for the best available technology at the time the plan was submitted or renewed. Failure to respond to a spill in the "shortest possible time" is a violation of the chapter. Holder of a plan may request, or the department may make on its own initiative, modifications to a plan upon a determination that a change has occurred in the operation of a facility of that the operators discharge experience demonstrates the need for change. Certificates will be provided to plan holders upon approval of the plan by the department. These certificates may be relied upon unless a person knows or has reason to know that the plan was revoked or the plan holder was out of compliance.

Section 10 - Contingency Plan Approvals

Provides DEC with state authority to approve, revoke or modify or contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires that DEC exercise its powers in a timely manner.

Provides that it is a defense to rely on a certificate issued by the department unless a person knows or has reason to know that the plan was revoked or the plan holder was not capable of carrying out the plan.

Requires an applicant for a contingency plan to plan for the clean up of a discharge.

Requires that an **oil terminal facility** plan must provide for containment or control and clean up of a discharge equal to the largest tank at the facility within 72 hours.

Requires that **exploration or production facility or pipeline** contingency plans provide for containment or control and clean up to the realistic maximum discharge within 72 hours.

Requires that an **oil tank vessel or barge** plan to have resources within the region of operation to contain or control and clean up within 72 hours, in the case of vessels larger than 500,000 barrels, a 300,000 barrel discharge and, in the case of vessels smaller than 500,000 barrels, a 50,000 barrel discharge. Additionally, the plan holder shall demonstrate access to other equipment located within or outside the region of operation, and the ability to have that equipment deployed at the discharge within 72 hours, necessary to accomplish containment and clean up of the maximum realistic discharge within the shortest possible time.

For a **non-crude tank vessel or barge**, the contingency plan must provide for containment and control of 15% of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment.

In the case of discharges into a receiving environment other than open water, the time requirement for clean up may, in the department's discretion extend beyond 72 hours. Failure to actually remove oil within the 72 hours does not constitute a failure to implement a plan properly. Defines "in compliance with the plan," "maximum realistic discharge" and region of operation." When considering whether to approve or modify a plan, the department may give credit for preventive measures such as double hull, double bottoms, secondary containment. Vessels that are used only for response operations can be exempted from the contingency planning requirements with prior approval of the department. Provision made for a plan holder, with departmental approval, to furnish equipment and resources to another plan holders in a response.

Requires that DEC approve or disapprove contingency plans within 65 days.

Section 11 through 13 - Amount of Financial Responsibility Established

(see attached chart)

Section 14 - Defense Standard

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

Section 15 - Methods to Demonstrate of Financial Responsibility

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

Section 16 and 17 - Conforming Amendments/Letter of Credit

Conforming amendments providing for use of letter of credit.

Section 18 - Certificate for Proof of Financial Responsibility

Provides that the department will formally acknowledge a determination of financial responsibility with a certificate of approval from the department acknowledging that the proof requirement has been satisfied. It is a defense to rely on a certificate of approval issued by the department unless a person knows or has reason to know that the approval had been revoked. Adds language that allows use of P&I's and exempts them from direct action requirements if the department is satisfied with the coverage, there is at least $50,000,000 in coverage and that there is a sworn affidavit provided that the required coverage is not otherwise available. Barges or tank vessels that are conducting or available for conducting response operations are exempt from these requirements subject to departmental approval.

Section 19 - Financial Responsibility and the CPI

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

Section 20 - Small Facility Exemption

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

Sections 21 and 22 - Facility Inspections

Authorizes DEC to participate in the examination of vessels, barges, pipelines and facilities by federal and state agencies with jurisdiction and to independently inspect oil terminal facilities, exploration and production facilities, tank vessels and barges only if the department determines that federal or state agencies with jurisdiction are not performing timely and adequate inspections.

Sections 23 and 24 - Prevention Language

Includes "prevention" planning in the state's master and regional contingency plans.

Sections 25, 26 and 27 - Definitions

Defines an exploration facility, production facility, pipeline and tank vessel.

Section 28 - Use of Oil and Hazardous Substance Release Response Fund

Allows DEC to use money from the Oil and Hazardous Substance Release Response Fund to review industry contingency plans, 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 verify proof of financial responsibility.

Section 29 - Oil and Hazardous Substance Release Response Fund Reporting

Requires detailed reporting of uses of the Oil and Hazardous Substance Release Response Fund expenditures for contracts greater than $20,000 and purchases greater than $10,000.

Section 30 - Survey of Small Non-Crude Oil Terminal Facilities

Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for small non-crude oil terminal facilities.

Section 31 - Study Concerning Non-Crude Tank Vessels and Oil Barges

Requires DEC to study and make recommendation to the legislature concerning the oil discharge response capabilities relating to non-crude tank vessels and barges.

Section 32 - Transitional Provisions

New planning standards take effect on June 1, 1991. New financial responsibility requirements take effect June 1, 1991.

Section 33 - Effective Date

Immediate effective date.

A12

Offered: 5/8/90
Referred: Finance

go0530hP

DP Adopted

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Oil & Gas)

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



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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(a) is amended to read:

(a) 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 (a) 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 (b) 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 respon capabilities.

(e) Failure of a holder of an approved or modified [OIL DISCHARGE] contingency plan to comply with the plan, or to have access the quality or quantity of resources identified in the plan or [AN IN THE EVENT OF A SPILL,] to respond with those resources within t shortest possible [FEASIBLE] time in the event of a spill is a vi lation of this chapter for purposes of AS 46.03.760(a), 46.03.76 46.03.790, and any other applicable law. If the holder of an approv or modified [OIL DISCHARGE] contingency plan fails to respond or t conduct cleanup operations at an unpermitted discharge of crude o with the quality and quantity of resources identified in the plan o in a manner required under the plan, the holder is strictly liabl jointly and severally, for the civil penalty assessed under AS 46.03 759, 46.03.759, or 46.03.760 against any other person for that di charge.

* 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 pow to approve, modify, or revoke a contingency plan for the purposes o this section. The department shall exercise its power under thi 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 defense to an action brought for a violation of (a) - (e) of thi section that the person charged believed that a current contingenc plan had been approved by the department.

(i) It is a defense to an action brought for a violation o (a) - (e) of this section that the person charged relied on a certifi cate of approval issued by the department under (d) of this sectio unless the person knew or had reason to know at the time of th

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, a 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;

(2) 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, or 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 the 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 a presentation of information required by the department.

(c) A holder of an approved contingency plan does not violat the terms of the contingency plan by furnishing to another plan hol er, with the approval of the department, equipment, materials, personnel to assist the other plan holder in a response to an oi discharge. The plan holder shall replace or return the transferr equipment, materials, and personnel as soon as feasible. The depart ment shall by regulation determine the maximum amount of equipment materials, or personnel and the maximum amount of time for which i will approve a transfer.

(d) In this section,

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

(2) "in compliance with the plan" means, with respect to contingency plan, to

(A) establish and carry out procedures identified i 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 identifie 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 (c) of this section; and

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

(2) "realistic maximum oil discharge" means the maximum or most damaging oil discharge that the department estimates could occu during the lifetime of the facility or pipeline based on the size location, and capacity of the facility or pipeline; on the depart ment's knowledge and experience with the facility or pipeline or wit similar facilities or pipelines; and on the department's analysis o possible mishaps at the facility or pipeline 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 to the department, and the department has approved, proof of financial ability to respond in damages. 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 [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 facili stores more renerude oil than crude oil, the $25 per incident, p barrel requirement of this subsection applies to each barrel of s 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 th operation of a pipeline or an [OFFSHORE] exploration or productio facility in the state unless the person has furnished to the depart ment, and the department has approved, proof of financial ability t respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof o financial responsibility required for a pipeline or an offshore explo ration or production facility is $50,000,000 [MAY NOT BE LESS THA $35,000,000] per incident. Proof of financial responsibility require for an onshore production facility is $20,000,000 per incident. Proo of financial responsibility required for an onshore exploration facil ity 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 abil- ity 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 o $35,000,000, for a tank vessel or barge carrying noncrude oil [RESPON SIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN TH FOLLOWING AMOUNTS:

(1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-PORTATION 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 RESPON-SIBILITY 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 46.03.75 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR COLLECT PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in state court directly against the insurer, the group, or another pers providing evidence of financial responsibility. The applicant, and insurer, surety, [OR] guarantor, person furnishing an approved lett of credit, or other group or person providing proof of financi responsibility approved by the department shall appoint an agent f service of process in the state. For purposes of this subsection, [AN] insurer, other than a group of insureds whose agreement has be approved by the department, must either be authorized by the Depar ment of Commerce and Economic Development to sell insurance in t state or be an unauthorized insurer listed by the Department of Co merce and Economic Development as not disapproved for use in t 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 bon guarantee, [OR] insurance agreement, letter of credit, or other proo of financial responsibility; or

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

* Sec. 17. AS 46.04.040(g) is amended to read:

(g) The person whose proof of financial responsibility is ac cepted by the department under this section shall notify the depart ment at least 30 days before the effective date of a change, expira tion or cancellation in the surety bond, guarantee, [OR] insuranc

agreement, letter of credit, or other proof of financial responsibi ity. Application for renewal of acceptance of proof of financi responsibility under this section must be filed at least 30 da 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 respons bility under this section, the department shall issue to the applica a certificate stating that the state's financial responsibility r quirements have been satisfied. The certificate must include the na of the facility, pipeline, tank vessel, or oil barge for which it 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 approval issued under (j) of this section unless the person knew had reason to know at the time of the alleged violation that th approval had been revoked or was expired.

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

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

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

(3) the applicant provides a sworn statement or affidavi

that insurance or other form of financial responsibility that meet the requirements of (e) of this section is not available in greate amounts.

(m) A tank vessel or oil barge that is conducting, or is avail able only for conducting, oil discharge response operations is exemp from the requirements of (c) of this section if the tank vessel or oi barge has received prior approval of the department. The departmen may approve an exemption under this subsection upon application an 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 dolla amounts in AS 46.04.040 change, as provided in this section, accordin to and to the extent of changes in the Consumer Price Index for al urban consumers for the Anchorage metropolitan area compiled by th Bureau of Labor Statistics, United States Department of Labor (th index). The index for January of the year in which this sectio becomes effective is the reference base index.

(b) The dollar amounts change on October 1 of each third yea according to the percentage change between the index for January o 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 t dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

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

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

(e) The department shall also provide notification of a chang in dollar amounts required under (b) of this section to the clerks c 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 TH RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO TH ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, an 46.04.060 do not apply to an oil terminal facility that has an effec tive storage capacity of less than 5,000 [10,000] barrels of crude oi 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 o: access or inspection conferred upon the department by law or other- wise, 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

(?) participate in an examination of the structural inte rity and the operating and mechanical systems of those vessel barges, pipelines, and facilities by federal and state agencies wi 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 sta agencies with jurisdiction are performing timely and adequate inspe tions of an oil terminal facility, pipeline, exploration or producti facility, tank vessel, or oil barge, it may perform its own inspecti of the structural integrity and operating and mechanical systems of facility, pipeline, tank vessel, or oil barge by using personnel wi 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 shal prepare and annually review and revise a statewide master oil ar 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 dis charge prevention and contingency plan approved or submitted fo approval under AS 46.04.030;

(2) clarify and specify the respective responsibilities o each of the following in the assessment, containment, and cleanup of catastrophic oil discharge or of a significant discharge of a hazard ous 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 ma

be affected by the oil or hazardous substance discharge; and

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

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

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

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

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

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

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

(4) require or schedule unannounced oil spill drills t test the sufficiency of an oil discharge prevention and contingenc plan approved under AS 46.04.030 or of the cleanup plans of a part 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 ar 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 depart- ment 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" mean 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 th state; the term does not include platforms or vessels used for strati graphic drilling or other operations that [WHICH] are not authorize 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 vesse that is constructed or converted to carry liquid bulk cargo in tank and includes tankers, tankships, and combination carriers when carry ing oil; the term does not include vessels carrying oil in drums barrels, or other packages, or vessels carrying oil as fuel or store 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 crud oil and associated hydrocarbons between production facilities or fro 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 us money from the fund to

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

(2) pay all costs incurred

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

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

(C) to conduct training, response exercises, inspec tions, 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 respon sibility 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 threaten release of oil or a hazardous substance; [.]

(5) prepare, review, and revise

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

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

(6) restore the environment by addressing the effects of 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 legislatu not later than the 10th day following the convening of each regul session of the legislature. The report may include information co sidered significant by the commissioner but must include:

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

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

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

(4) a detailed summary of department activities in re sponses funded by the fund during the preceding fiscal year, includin response descriptions and statements outlining the nature of th threat; in this paragraph, "detailed" includes information describin each personal services position and total compensation for that posi tion, 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) 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 in spection; and

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

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

* Sec. 31. STUDY RELATING TO NONCRUDE OIL TANKERS AND BARGES. B July 1, 1991, the Department of Environmental Conservation shall conduct study and report to the legislature its recommendations concerning th following issues related to oil discharge prevention and contingency plan ning for tank vessels and oil barges carrying noncrude oil in bulk a cargo:

(1) appropriate locations for regional response depots, based o an assessment of historical evidence of where noncrude oil discharges ar most likely to occur and the needs of remote areas of the state such a western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

(3) requirements for personnel and equipment that should b 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 renewa 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 thi Act, do not apply to persons required to show proof of financial respon sibility until June 1, 1991. On and after June 1, 1991, proof of financia responsibility must comply with AS 46.04.040, as amended by secs. 11 - 1 of this Act, regardless of whether acceptance of proof of financial respon sibility has expired under AS 46.04.040(f), as amended by sec. 16 of thi Act.

* Sec. 33. This Act takes effect immediately under AS 01.10.070(c).

A13

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/8/90 FURTHER:

DATE TURNED INTO OFFICE: 5/8/90

The Finance Committee considered CSHB 567 (Finance) am

Oil discharge prevention and contingency plan requirements.

and recommended:

[✓] replace with SCS CSHB567(Fin) [ ] same title
[ ] or adopt ____ CS ____ [✓] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[✓] Oil & Gas letter of intent adopted

[ ] do pass

[ ] do not pass

[✓] no recommendation

[ ] individual recommendations

[ ] further referral to ____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

[ ] fiscal note(s) ____
DEC 1,371.0 DNR
DEC 156.5

[ ] zero fiscal note(s) ____

[ ] appropriation-no fiscal note

APPROVES PREVIOUS: Dept/Date:

[ ] fiscal note(s) ____

[ ] zero fiscal note(s) ____

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

J. Duncan No Rec.
No Rec
No Rec
(NO REC)

1. No Rec -- 2.

Co-Chairs' Signatures and Recommendations

B1

STEVE COWPER
GOVERNOR

Amendola/Baily/
Mertz/McDonagh
(Gov's bill)
6/12/90

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 4, 1990

RECEIVED
DEPT. OF LAW
Legis/Regs Section
June MAY 04 1990

6 7 8 9 10 11 12 1 2 3 4 5 6

The Honorable Doug Baily
Attorney General
Department of Law
P.O. Box K
Juneau, AK 99811

Dear Attorney General Baily:

I am transmitting the following bill passed by the Second Session of the Sixteenth Legislature to your office for review:

SENATE COMMITTEE SUBSTITUTE
FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
(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.)

Under the authority of art. II, sec. 17 of the Alaska Constitution, the last day for the Governor to take action on this bill is June 27, 1990. It will become law without the Governor's signature on June 28, 1990. We would appreciate your review by June 14, 1990, so that appropriate action can be taken.

Sincerely,

Kari Repplinger

Kari Repplinger
Legislative Staff Assistant

John —
We'll need a diskette with your letter on it. Carroll's PC uses the 5½" diskettes. Call if you have questions.
Thanks — BJ

B2

VIEW THE NOTE E20

From: WPFCAHP --JDCVM1 Date and time 06/04/90 18:21:30
To: WPFCJDL --JDCVM1

From: Arthur H. Peterson (WPFCAHP)
Legislation/Regulations Attorney
Subject: Review of oil spill bills

TO: JOHN MCDONAGH.URGENT!!!

We just received the following from the gov's. office:

SCS CSHB 566(Fin) (efd fld H) -- oil spill response;
SCS CSHB 567(Fin) -- oil spill prevention, etc.

Carroll will not be here tomorrow, but B. J. and I will try to get these two bill-review assignment files opened for you tomorrow. You probably won't receive them until Wednesday or Thursday, but you could begin your review letters now. They'll have a short deadline. PLEASE keep the letters SHORT (but don't fail to deal with ESSENTIAL issues). You should already have my February and May 1990 memos on the subject of bill reviews. Call if you have a question.
Art

PF1 Alternate PFs PF2 Copy to PF3 Keep PF4 Erase PF5 Forward Note
PF6 Reply PF7 Resend PF8 Print PF9 Help PF10 Next PF11 Previous PF12 Return

B3

Document HB567
Diskette BJ #4

June 12, 1990

The Honorable Steve Cowper
Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 567(Fin) -- oil spill contingency plan requirements
Our file no.: 883-90-0183

Dear Governor Cowper:

At ~~your~~ (Kari Reppinger's) request, on your behalf, we have reviewed SCS CSHB 567(Fin), which strengthens the contingency planning and financial responsibility requirements for oil and hazardous substance spills. The bill, originally introduced ~~by~~ at your request, underwent close scrutiny during the legislative process. The final version is the result of extensive negotiation between the administration, the oil industry, environmental groups, and the legislature. Nevertheless, the final version retains the three main components of the original bill in an acceptable form. First, the bill strengthens the Department of Environmental Conservation's ("DEC's") authority to require and enforce oil discharge contingency plans. Second, the bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Third, the bill authorizes DEC to inspect the structural integrity of tank vessels and oil barges. These components are discussed below.

(Our file 773-90-0053; see your February 22, 1990 transmittal letter, at 1990 House Jour. ~~2~~ 2515 and 2513.)

Oil Spill Contingency Plans.

The bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has a DEC-approved contingency plan and is in compliance with the plan.

The bill broadens DEC's authority to revoke its approval of a contingency plan. Under the bill, DEC may revoke its approval if the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

The bill requires a contingency plan holder to plan to clean up ~~the following~~ discharges:

* Oil terminal facilities: The plan holder must plan to clean up a discharge equal to the largest tank at the facility within 72 hours.

* Oil exploration facilities, production facilities, and pipelines: The plan holder must plan to clean up a realistic

maximum discharge within 72 hours.

Crude oil tank vessels and barges: For tank vessels and barges with a cargo volume of less than 500,000 barrels, the plan holder must plan to clean up a 50,000-barrel discharge within 72 hours. For tank vessels and barges with a cargo capacity equal to or greater than 500,000 barrels, the plan holder must plan to clean up a 300,000-barrel discharge within 72 hours.

Non-crude oil tank vessels and barges: The plan holder must plan to contain or control 15 percent of the maximum capacity of the vessel or barge within 48 hours, and to clean up the discharge within the shortest possible time consistent with minimizing danger to the environment.

Financial responsibility.

The bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has furnished to DEC, and DEC has approved, proof of financial responsibility. The bill sets the financial responsibility requirements at the following levels:

| | |
|---|---|
| Crude oil terminals<br>Offshore exploration facilities<br>Offshore production facilities<br>Pipelines | $50,000,000 |
| Crude oil tank vessels<br>Crude oil barges | $100,000,000 or $300 per bbl. of storage capacity, whichever is greater |
| Non-crude oil tankers<br>Non-crude oil barges | $1,000,000 or $100 per bbl., whichever is greater, up to a maximum of $35,000,000 |
| Non-crude oil terminals | $1,000,000 or $25 per bbl., whichever is greater, up to a maximum of $50,000,000. |
| Onshore production facilities | $20,000,000 |

Onshore exploration facilities $5,000,000

For the first time, the bill would link the financial responsibility levels ~~are linked~~ to the United States Department of Labor Consumer Price Index for Anchorage. The amounts will be adjusted every three years. The applicant may demonstrate financial responsibility by a wide variety of methods, all of which are subject to DEC's approval. DEC will acknowledge its approval of the proof by issuing the applicant a certificate of approval.

Inspection authority.

The bill authorizes DEC to participate in state and federal agencies' inspections of oil terminal facilities, pipelines, exploration facilities, production facilities, tank vessels, and oil barges. If DEC determines that no state or federal agency is performing timely and adequate inspections, DEC may conduct the inspection on its own. It is important to note that this authority is in addition to existing authority, and DOC already has broad powers to inspect regulated facilities.

As noted above, the legislation is a result of compromise. Hence, its contingency planning, financial responsibility, and inspection provisions are not as stringent as in the original version. Nevertheless, the bill contains important

improvements over the existing law in these areas. In addition, the bill presents no ~~serious~~ constitutional problems or other legal difficulties. We therefore recommend that you sign the bill into law.

are there non-serious ones? None are mentioned in the letter.

Sincerely,

Douglas B. Baily
Attorney General

JAM:jah

B4

June 15, 1990

The Honorable Steve Cowper
Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 567(Fin) -- oil spill contingency plan requirements
Our file no.: 883-90-0183

Dear Governor Cowper:

At Kari Repplinger's request on your behalf, we have reviewed SCS CSHB 567(Fin), which strengthens the contingency planning and financial responsibility requirements for oil and hazardous substance spills. The bill, originally introduced by you, underwent close scrutiny during the legislative process. (Our file 773-90-0053; see your February 22, 1990 transmittal letter, at 1990 House Jour. 2515 and 2513.)

The final version is the result of extensive negotiation between the Administration, the oil industry, environmental groups, and the legislature. Nevertheless, the final version retains the three main components of the original bill in an acceptable form. First, the bill strengthens the Department of Environmental Conservation's ("DEC's") authority to require and enforce oil discharge contingency plans. Second, the bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Third, the bill authorizes DEC to inspect the structural integrity of tank vessels and oil barges. These components are discussed below.

Oil Spill Contingency Plans.

The bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has a DEC-approved contingency plan and is in compliance with the plan.

The bill broadens DEC's authority to revoke its approval of a contingency plan. Under the bill, DEC may revoke its approval

if the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

The bill requires a contingency plan holder to plan to clean up discharges at certain levels. The bill is clear, however, that these are planning requirements, and a plan holder is not liable under this bill for failure to actually clean up a spill at these levels. Failure to implement the plan and failure to conduct a cleanup are already offenses under current law. The specified planning levels are:

- Oil terminal facilities: The plan holder must plan to clean up, within 72 hours, a discharge equal to the largest tank at the facility.

- Oil exploration facilities, production facilities, and pipelines: The plan holder must plan to clean up a realistic maximum discharge within 72 hours.

- Crude oil tank vessels and barges: For tank vessels and barges with a cargo volume of less than 500,000 barrels, the plan holder must plan to clean up a 50,000-barrel discharge within 72 hours. For tank vessels and barges with a cargo capacity equal to or greater than 500,000 barrels, the plan holder must plan to clean up a 300,000-barrel discharge within 72 hours.

- Non-crude oil tank vessels and barges: The plan holder must plan to contain or control, within 48 hours, 15 percent of the maximum capacity of the vessel or barge, and to clean up the discharge within the shortest possible time consistent with minimizing danger to the environment.

Financial responsibility.

The bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has furnished to DEC, and DEC has approved, proof of financial responsibility. The bill sets the financial responsibility requirements at the following levels:

- Crude oil terminals $50,000,000
  Offshore exploration facilities
  Offshore production facilities
  Pipelines

| | |
|---|---|
| - Crude oil tank vessels<br>Crude oil barges | $100,000,000 or $300 per bbl. of storage capacity, whichever is greater |
| - Non-crude oil tankers<br>Non-crude oil barges | $1,000,000 or $100 per bbl., whichever is greater, up to a maximum of $35,000,000 |
| - Non-crude oil terminals | $1,000,000 or $25 per bbl., whichever is greater, up to a maximum of $50,000,000. |
| - Onshore production facilities | $20,000,000 |
| - Onshore exploration facilities | $5,000,000 |

For the first time, the bill would link the financial responsibility levels to the United States Department of Labor Consumer Price Index for Anchorage. The amounts will be adjusted every three years. The applicant may demonstrate financial responsibility by a wide variety of methods, all of which are subject to DEC's approval. In response to industry requests, the bill makes letters of credit and "any other proof . . . approved by the department" an acceptable means of proving financial responsibility. DEC will acknowledge its approval of the proof by issuing the applicant a certificate of approval.

Inspection authority.

The bill authorizes DEC to participate in state and federal agencies' inspections of oil terminal facilities, pipelines, exploration facilities, production facilities, tank vessels, and oil barges. If DEC determines that no state or federal agency is performing timely and adequate inspections, DEC may conduct the inspection on its own. It is important to note that this authority is in addition to existing authority, and DEC already has broad powers to inspect regulated facilities.

As noted above, the legislation is a result of compromise. Hence, its contingency planning, financial responsibility, and inspection provisions are not as stringent as in the original version. Nevertheless, the bill contains important improvements over the existing law in these areas. In addition,

the bill presents no constitutional problems or other legal difficulties. We therefore recommend that you sign the bill into law.

Sincerely,

for Douglas B. Baily
Attorney General

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# LAWS OF ALASKA

1990

**Source** SCS CSHB 567(Fin)

**Chapter No.**

## 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:**

THE ACT FOLLOWS ON PAGE 1, LINE 18

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

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.

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* 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).

# AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, Senate CS for Committee Substitute for House Bill No. 567 (Finance), consisting of 26 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

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

ACTION BY GOVERNOR

Approved by the Governor _____ 19 ____

_____
Governor of Alaska

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Leg

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 26, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

On this date I have signed the following bill and am transmitting the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE COMMITTEE SUBSTITUTE
FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
(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.)

Chapter No. 191, SLA 1990

Sincerely,

Steve Cowper
Governor

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 26, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

On this date I have signed the following bill and am transmitting the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE COMMITTEE SUBSTITUTE
FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
(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.)

Chapter No. 191, SLA 1990

Sincerely,

Steve Cowper
Governor

# LAWS OF ALASKA

1990

| Source | Chapter No. |
| --- | --- |
| SCS CSHB 567(Fin) | 191 |

**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:**

THE ACT FOLLOWS ON PAGE 1, LINE 18

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

# AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, Senate CS for Committee Substitute for House Bill No. 567 (Finance), consisting of 26 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

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

ACTION BY GOVERNOR

Approved by the Governor 26 May 19 90

Governor of Alaska