

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80/2

4279 SRES SB 375 158

Proposed CS for HB 470 (Resources)

Page 5, Line 16

Corrects a typographical error, in which the word 'or' had inadvertently been omitted.

Page 7, Line 7

Expands language allowing the commissioner to enter into agreements with other persons and municipalities.

Page 7, Line 12

Allows the commissioner to enter into agreements with other persons and municipalities in order to provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Page 8, Line 12

New language, stating that the authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority.

Page 9, Line 10

Corrects a typographical error, in which a definition was numbered incorrectly.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or
2 from a private donor;

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

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

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

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

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 (3) "department" means the Department of Environmental
2 Conservation;

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;
16 or

17 (B) a substance defined as a hazardous substance under
18 state or federal law or by regulations adopted under state or
19 federal law;

20 (8) "oil" means petroleum products of any kind and in any
21 form, whether crude, refined, or a petroleum by-product, including
22 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
23 refuse, oil mixed with other wastes, liquified natural gas, propane,
24 butane, and other liquid hydrocarbons regardless of specific gravity;

25 (9) "release" means an intentional or unintentional release
26 into the environment of the state.

27 * Sec. 2. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

29 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

1 Except as provided in (b) of this section, a person in charge of a
2 vehicle, vessel or container from which, or a place at which, a haz-
3 arduous substance is released shall report the release to the depart-
4 ment promptly after learning of the release.

5 (b) The commissioner may enter into an agreement with a person
6 for the periodic reporting of a controlled release of a hazardous
7 substance if the release is not into the water of the state.

8 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
9 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
10 stance shall make reasonable efforts to contain and clean up the
11 hazardous substance promptly after learning of the release, unless the
12 commissioner determines

13 (1) after consulting the Environmental Protection Agency,
14 that containment or cleanup is technically infeasible; or

15 (2) that containment or cleanup would cause greater en-
16 vironmental damage than the release would cause if unabated.

17 (b) The commissioner shall adopt regulations prescribing proce-
18 dures and methods to be used in the containment and cleanup of a
19 hazardous substance and in the disposal of waste from the containment
20 or cleanup.

21 (c) If the commissioner determines that the containment or
22 cleanup of a hazardous substance undertaken is inadequate, the commis-
23 sioner may direct the person undertaking the containment or cleanup to
24 cease and may undertake the containment or cleanup directly or by
25 contract.

26 (d) If it appears to the commissioner that the cause or respon-
27 sibility for the release of a hazardous substance is unclear or unex-
28 plained, the commissioner may immediately undertake the containment
29 and cleanup of the release unless the commissioner determines

1 (1) after consulting the Environmental Protection Agency,
2 that containment or cleanup is technically infeasible; or

3 (2) that containment or cleanup would cause greater en-
4 vironmental damage than the release would cause if unabated.

5 (e) The commissioner shall enter into agreement with the En-
6 vironmental Protection Agency, and may enter into agreements with
7 other persons and municipalities, in order to

8 (1) facilitate a coordinated and effective hazardous sub-
9 stance release response in the state;

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

12 (3) provide for cooperative review of hazardous substance
13 release response contingency plans submitted to the department.

14 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
15 request the governor to determine that an actual or imminent release
16 of a hazardous substance constitutes a disaster emergency under
17 AS 26.23. If the governor declares a disaster emergency under AS 26.-
18 23, the commissioner may assist the adjutant general in the relief of
19 the emergency.

20 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
21 The commissioner may contract with a person or a municipality for
22 personnel, equipment, or services that may be useful to carry out the
23 requirements of this chapter. If the commissioner determines that it
24 is infeasible to contract with a person or a municipality, the commis-
25 sioner may establish and maintain containment and cleanup personnel,
26 equipment, and supplies necessary to carry out the requirements of
27 this chapter.

28 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
29 designated by the commissioner as enforcement officers in the

1 implementation of this chapter are peace officers of the state.

2 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
3 into supplementary agreements, reciprocal arrangements, and compacts
4 with another state or country for the implementation of this chapter
5 subject to the approval of the Congress of the United States, if
6 required, under the Constitution of the United States.

7 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
8 chapter or of a regulation adopted by the commissioner under this
9 chapter conflicts with the charter, ordinance, or regulation of a
10 municipality, the provision of this chapter or of the regulation
11 adopted by the commissioner under this chapter prevails.

12 (b) Authority to contain, clean up, or prevent a release or
13 threatened release of oil or of a hazardous substance, and to exercise
14 other powers necessary to implement AS 46.08 - AS 46.09, are granted
15 to municipalities that do not otherwise have that authority. Except
16 as provided in (a) of this section, a municipality may exercise its
17 police power within the area of the municipality.

18 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
19 regulations necessary to implement the provisions of this chapter.

20 Sec. 46.09.900. DEFINITIONS. In this chapter

21 (1) "commissioner" means the commissioner of environmental
22 conservation;

23 (2) "containment and cleanup" includes the direct and
24 indirect efforts associated with the prevention, abatement, contain-
25 ment, or removal of a hazardous substance, the restoration of the
26 environment to its former state, and incidental administrative costs;

27 (3) "department" means the Department of Environmental
28 Conservation;

29 (4) "hazardous substance" means

1 (A) an element or compound that, when it enters into
2 or on the surface or subsurface land or water of the state,
3 presents an imminent and substantial danger to the public health
4 or welfare, or to fish, animals, vegetation, or any part of the
5 natural habitat in which fish, animals, or wildlife may be found;
6 or

7 (B) a substance defined as a hazardous substance under
8 state or federal law or by regulations adopted under state or
9 federal law;

10 (5) "release" means an intentional or unintentional release
11 into the environment of the state.

12 * Sec. 3. AS 26.23.230(1) is amended to read:

13 (1) "disaster" means the occurrence or imminent threat of
14 widespread or severe damage, injury, or loss of life or property
15 resulting from any natural or nonmilitary man-made cause including,
16 but not limited to, fire, flood, earthquake, landslide, mudslide,
17 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
18 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
19 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
20 blight, infestation, explosion, riot, equipment failure, or shortage
21 of food, water, fuel, or clothing, or the release of oil or a hazard-
22 ous substance requiring prompt action to avert environmental danger or
23 damage;

24 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

25 (g) Notwithstanding the provisions of (b) of this section and
26 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
27 during a fiscal year from the reserve for emergency operating expenses
28 account to the oil and hazardous substance release response fund
29 (AS 46.08).

1 * Sec. 5. AS 44.19.050 is amended to read:

2 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
3 "disaster" means the occurrence or imminent threat of widespread or
4 severe damage, injury, or loss of life or property resulting from any
5 natural or man-made cause including, but not limited to, fire, flood,
6 earthquake, landslide, avalanche, wind-driven water, weather condi-
7 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
9 contamination, blight, infestation, explosion, [OR] riot, or the
10 release of oil or a hazardous substance requiring prompt action to
11 avert environmental danger or damage.

12 * Sec. 6. AS 46.03.290(a) is amended to read:

13 (a) When the department finds that an actual or imminent dis-
14 charge of oil, a hazardous substance, or low level radioactive mate-
15 rials to the air, water, land or subsurface land of the state poses an
16 immediate threat to the public health or welfare, or the environment
17 of the state, it may issue an order declaring an emergency and direct-
18 ing a person or persons to take action the department believes neces-
19 sary to meet the emergency, and protect the public health, welfare, or
20 environment.

21 * Sec. 7. AS 46.03.760(a) is amended to read:

22 (a) A person who violates or causes or permits to be violated a
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
24 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
25 the department, or a permit, approval, or acceptance, or term or
26 condition of a permit, approval, or acceptance issued under this
27 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
28 state for a sum to be assessed by the court of not less than \$500 nor
29 more than \$100,000 for the initial violation, nor more than \$5,000 for

1 each day after that on which the violation continues, and that shall
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that shall be determined by the court according to the toxicity,
6 degradability and dispersal characteristics of the substance dis-
7 charged, the sensitivity of the receiving environment, and the degree
8 to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation;

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

13 * Sec. 8. AS 46.03.765 is amended to read:

14 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
15 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
16 or of a regulation, a lawful order of the department, or permit,
17 approval, or acceptance, or term or condition of a permit, approval,
18 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
19 In actions brought under this section, temporary or preliminary relief
20 may be obtained upon a showing of an imminent threat of continued
21 violation, and probable success on the merits, without the necessity
22 of demonstrating physical irreparable harm. The balance of equities
23 in actions under this section may affect the timing of compliance, but
24 not the necessity of compliance within a reasonable period of time.

25 * Sec. 9. AS 46.03.780(a) is amended to read:

26 (a) A person who violates a provision of this chapter, [OR]
27 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
28 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
29 order, permit, or other determination of the department made under the

1 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
2 and thereby causes the death of fish, animals, or vegetation or other-
3 wise injures or degrades the environment of the state is liable to the
4 state for damages.

5 * Sec. 10. AS 46.03.790(a) is amended to read:

6 (a) Except as provided in (d) - (f) of this section, a person
7 who negligently violates a provision of this chapter, [OR] AS 46.04,
8 or AS 46.09, or of a regulation, lawful order of the department, or
9 permit, approval, or acceptance, or term or condition of a permit,
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
11 AS 46.09 is guilty of a class B misdemeanor.

12 * Sec. 11. AS 46.03.790(b) is amended to read:

13 (b) Except as provided in (d) - (f) of this section, a person
14 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
15 AS 46.09, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
18 AS 46.09 is guilty of a class A misdemeanor.

19 * Sec. 12. AS 46.03.790(d) is amended to read:

20 (d) Notwithstanding (a) and (b) of this section, a person who
21 fails to provide or falsely states information required under AS 46.-
22 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
23 upon conviction, is punishable by a fine of not more than \$25,000, or
24 by imprisonment for not more than one year, or by both. Each unlawful
25 act constitutes a separate offense.

26 * Sec. 13. AS 46.04.010 is amended to read:

27 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
28 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
29 760(e), AS 46.08.070, or from an applicable federal fund, for the

1 expenses it incurs in cleaning up or containing a discharge of oil.
2 If the department obtains reimbursement for a portion of its expenses
3 from a federal fund, the remainder of the expenses incurred may be
4 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
5 the department under this section shall be deposited in the general
6 fund and may be appropriated by the legislature to the oil and hazar-
7 dous substance release response fund (AS 46.08).

8 * Sec. 14. AS 46.03.758(k) is repealed.

9 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)
Address:

465-2600

February 10, 1986

The Honorable Arliss Sturgulewski
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

Thank you for providing me with an opportunity to comment on SB 375, proposed legislation establishing a State Oil and Hazardous Substance Release Response Fund. Enclosed is a fiscal note, along with associated forms. Administration of this fund will require additional staff. I have requested nine month funding in FY 87 with full funding in subsequent years.

The fiscal note requests a program manager to establish and manage the program, and one clerk typist to provide clerical support. We anticipate that it would take at least one year to establish the program. After that, management of this program will require a reassessment of how the activities and workload should be integrated with other closely related federal and State programs.

I am requesting additional field staff to respond to incidents involving materials which are sufficiently dangerous to require trained investigators for safety reasons. We have found that well-trained investigators are needed to manage cleanup efforts efficiently, even those conducted through contractors. Current staff are unavailable for this purpose. I propose to add one and one-half positions in Anchorage for the South-central Region, a full-time position in Fairbanks for the Northern Region, and a half-time position in Juneau for Southeastern Alaska.

As the Legislature considers providing increased resources at the State level for cleanup of hazardous substances, you might be interested to know we are also increasing our involvement in the federal "Superfund" program. The Governor's FY 87 operating budget includes an increment for a new federally funded position. If approved, this federally funded position would work closely with any positions established as a result of SB 375.

The Honorable Arliss Sturgulewski

- 2 -

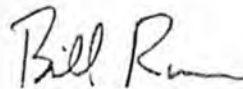
February 4, 1986

As you know the U.S. Environmental Protection Agency awarded us \$300,000 of their FY 85 appropriation to investigate about a dozen sites which may have had inappropriate management of hazardous waste in the past. They are offering \$500,000 in FY 86 to investigate about fifteen more sites. EPA has lent DEC an employee to manage these contracts for the past several months, until we establish a position to manage these site investigations ourselves. The EPA position will be reassigned in May of this year.

The federal Superfund program is likely to provide limited resources for cleanup of many of these sites, even if problems are discovered. Funding under the federal Superfund requires a ranking high enough to place the site on a national priority list. This ranking gives great weight to the population of areas affected by a site, and probably could be expected to result in very few Alaska sites being eligible for federal cleanup. Consequently, the State fund as proposed in SB 375 would provide a vehicle to allow more rapid cleanup of sites not eligible for Superfund monies.

Thank you for the opportunity to provide this information. My staff is available to continue working with you as this proposal moves through the legislative process.

Sincerely,



Bill Ross
Commissioner

Enclosures

cc: The Honorable Mike Davis
The Honorable Richard Schultz
The Honorable Adelheid Herrmann
Jim Ayers, Director of Legislative Relations
Office of the Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 375
 Title : An Act Relating to the
Release of Oil and Hazardous
Substance
 Sponsor : Senate Resources Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Quality

 Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|--------------|--------------|--------------|-------|-------|
| PERSONAL SERVICES | | 182.7 | 227.3 | 227.3 | | |
| TRAVEL | | 25.0 | 28.0 | 28.0 | | |
| CONTRACTUAL | | 48.5 | 53.5 | 53.5 | | |
| SUPPLIES | | 22.0 | 23.5 | 23.5 | | |
| EQUIPMENT | | 12.0 | 2.0 | 2.0 | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 290.2 | 334.3 | 334.3 | | |

| CAPITAL | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|-----------------------------|-------|---------|----------------------------------|-------|-------|-------|
| RESPONSE FUND (non-lapsing) | | 1,000.0 | (replenishment to 1,000.0 level) | | | |
| REVENUE | | | | | | |

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|--------|-------|-------|--|--|
| GENERAL FUND | | 1290.2 | 334.3 | 334.3 | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

*5.0 FTE

| | | | | | | |
|-----------|--|---|---|---|--|--|
| FULL-TIME | | 4 | 4 | 4 | | |
| PART-TIME | | 2 | 2 | 2 | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by : Stan Hungerford Phone : 465-2666
 Division : Environmental Quality Date : 2/4/86

Approved by Commissioner : *Ralph N.* Date : 2/4/86
 Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 375

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 182.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 25.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. 48.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies. 22.0

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 12.0

290.2

Note: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

| | | | | | | | | | |
|---|---------------------------|-------------|--|--------------------------|--------------------------|---------------------|---------|---------|------|
| Position Title Clerk Typist III | | | No. of Positions One | Range/Step 8 A | Borg. Unit GGU | Clas. 141 | Approv. | Disapp. | |
| Time Status Full Time | Staff Months 12 | RP Number | Location Juneau | | Election District | | | | |
| Type of Expenditures | | | Justification | | | | | | |
| | | Amount | <p>This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p> | | | | | | |
| 1 | 2 | 3 | | | | | | | |
| Salary | 14.7 | | | | | | | | |
| Benefits | 5.3 | | | | | | | | |
| Premium Pay | | | | | | | | | |
| Other | | | | | | | | | |
| Total Personal Services | | 20.0 | | | | | | | |
| Travel | | | | | | | | | |
| Contractual | | 3.5 | | | | | | | |
| Commodities | | 1.5 | | | | | | | |
| Equipment | | 2.0 | | | | | | | |
| Other | | | | | | | | | |
| Total Cost | | 27.0 | | | | | | | |
| Receipt Code | Funding Source | | | | | | | | |
| | Federal Receipts | 1002 | | | | | | | |
| | G. F. Match | 1003 | | | | | | | |
| | General Funds | 1004 | | | | | | | 27.0 |
| | I-A Receipts | 1005 | | | | | | | |
| | Program Receipts | 1028 | | | | | | | |
| | CIP Receipts | 1061 | | | | | | | |
| | Other | | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | | |

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

Page 4 of 8
 Revised Date

| | | | | | | | | |
|---|--------------------------|------------------|--|---------------------------|--------------------------|-------------|----------------|----------------|
| Position Title Environmental Field Officer III | | | No. of Positions One | Range/Step 18 A | Borg. Unit GGU | Gov. | Approv. | Disapp. |
| Time Status Perm. Part Time | Staff Months 6 | RP Number | Location Juneau | | Election District | Exp. | | |
| Type of Expenditure | | | Justification | | | | | |
| | | Amount | <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 18.7 | | | | | | | |
| Benefits | 5.6 | | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 24.3 | | | | | | |
| Travel | | 5.0 | | | | | | |
| Contractual | | 5.0 | | | | | | |
| Commodities | | 3.5 | | | | | | |
| Equipment | | 2.0 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 39.8 | | | | | | |
| Receipt Code | | | Funding Source | | | | | |
| | | | Federal Receipts 1002 | | | | | |
| | | | O. F. Match 1003 | | | | | |
| | | | General Funds 1004 | | | | | |
| | | | I-A Receipts 1005 | | | | | |
| | | | Program Receipts 1028 | | | | | |
| | | | CIP Receipts 1061 | | | | | |
| | | | Other | | | | | |
| | | | 39.8 | | | | | |
| Per B&M Use Only | | | | | | | | |
| Key Number | | | | | | | | |

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

Page 5 of 8
 Revised Date

FY 87

| | | | | | | | | |
|--|---------------------------|-----------|--|---------------------------|--------------------------|--------------------|---------|---------|
| Position Title Environmental Field Officer III | | | No. of Positions One | Range/Step 18 A | Barg. Unit GGU | Gov. 148 | Approv. | Disapp. |
| Time Status Full Time | Staff Months 12 | RP Number | Location Anchorage | Election District | | | | |
| Type of Expenditure | | | Justification | | | | | |
| | | Amount | <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p> | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 28.1 | | | | | | | |
| Benefits | 8.3 | | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 36.4 | | | | | | |
| Travel | | 5.0 | | | | | | |
| Contractual | | 5.0 | | | | | | |
| Commodities | | 3.5 | | | | | | |
| Equipment | | 2.0 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 51.9 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts 1002 | | | | | | | |
| | G. F. Match 1003 | | | | | | | |
| | General Funds 1004 | | 51.9 | | | | | |
| | I-A Receipts 1005 | | | | | | | |
| | Program Receipts 1028 | | | | | | | |
| | CIP Receipts 1061 | | | | | | | |
| | Other | | | | | | | |
| <div style="border: 1px solid black; padding: 5px; width: fit-content;"> For B&M Use Only Key Number _____ </div> | | | | | | | | |

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

Page 6 of 8
 Revised Date

FY 87

| | | | | | | | | |
|---|--------------------------|------------------|--|---------------------------|---------------------------|-------------|----------------|----------------|
| Position Title Environmental Field Officer III | | | No. of Positions One | Range/Step 18 A | Barg. Unit GGII | Dev. | Approv. | Disapp. |
| Time Status Perm. Part Time | Staff Months 6 | RP Number | Location Anchorage | Election District | | Leg. | | |
| Type of Expenditure | | | Justification | | | | | |
| | 1 | 2 | <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> | | | | | |
| Salary | | 18.7 | | | | | | |
| Benefits | | 5.6 | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 24.3 | | | | | | |
| Travel | | 5.0 | | | | | | |
| Contractual | | 5.0 | | | | | | |
| Commodities | | 3.5 | | | | | | |
| Equipment | | 2.0 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 39.8 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts | 1002 | | | | | | |
| | G. F. Match | 1003 | | | | | | |
| | General Funds | 1004 | 39.8 | | | | | |
| | I-A Receipts | 1005 | | | | | | |
| | Program Receipts | 1028 | | | | | | |
| | CIP Receipts | 1061 | | | | | | |
| | Other | | | | | | | |
| For BAAI Use Only | | | | | | | | |
| Key Number _____ | | | | | | | | |

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 7 of 8
 Revised Date _____

| | | | | | | | | | |
|--|---------------------------|------------------|--|---------------------------|--------------------------|-------------|----------------|----------------|------|
| Position Title Environmental Field Officer III | | | No. of Positions One | Range/Step 18 A | Borg. Unit GGD | Gov. | Approv. | Disapp. | |
| Time Status Full Time | Staff Months 12 | RP Number | Location Fairbanks | Election District | | | | | |
| Type of Expenditure | | | Justification | | | | | | |
| 1 | 2 | 3 | <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p> | | | | | | |
| Salary | 32.1 | | | | | | | | |
| Benefits | 9.2 | | | | | | | | |
| Pension Pay | | | | | | | | | |
| Other | | | | | | | | | |
| Total Personal Services | | 41.3 | | | | | | | |
| Travel | | 5.0 | | | | | | | |
| Contractual | | 5.0 | | | | | | | |
| Commodities | | 3.5 | | | | | | | |
| Equipment | | 2.0 | | | | | | | |
| Other | | | | | | | | | |
| Total Cost | | 56.8 | | | | | | | |
| Receipt Code | Funding Source | | | | | | | | |
| | Federal Receipts | 1002 | | | | | | | |
| | O. P. Match | 1003 | | | | | | | |
| | General Funds | 1004 | | | | | | | 56.8 |
| | I-A Receipts | 1005 | | | | | | | |
| | Program Receipts | 1028 | | | | | | | |
| | CSP Receipts | 1061 | | | | | | | |
| | Other | | | | | | | | |
| Per BAM Use Only | | | | | | | | | |
| Key Number | | | | | | | | | |

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Northern Region

FY 87

Page 8 of 8
 Revised Date

SUGGESTED LEGISLATIVE HISTORY FOR PROPOSED AMENDMENT TO H.B. 470

This provision of the statute is intended to facilitate agreements of indemnification within the private sector regarding clean up of toxic and hazardous substances. It clarifies that a hazardous waste clean up contract is not a "construction contract" and therefore is not subject to the restrictions upon indemnification agreements found in A.S. 45.45.900. The statute provides certainty for parties who voluntarily enter into indemnification agreements, and therefore will allow parties to freely negotiate such protections as between themselves. Typically, such an indemnification clause will be negotiated between the private party responsible for the creation and discharge of the hazardous private substance (e.g., an oil company which has oil contaminated with PCB's) and the private party hired by that company to clean up or eliminate the hazardous substance. Such clauses will operate in lieu of liability insurance, which is at present exceptionally difficult to acquire in this area.

It also is important to confirm what the provision does not do. The provision does not provide in any way for an exemption from liability for mishandling of hazardous substances. Any injured party -- members of the public, the State, or other companies -- will have all their rights to pursue their full legal remedies. The provision will operate, in effect, to enhance legal remedies for injured persons by facilitating an additional layer of "deep pockets" behind the clean up company. Moreover, the provision does not require any entity, private or public, to enter into an indemnification agreement. The statute confirms that such agreements are legal, but preserves the complete freedom of all parties to decline to enter into such an agreement.

SCH:sj
(19/32)

Proposed amendments to CSHB 470.

Sec. 46.08.010. A new subsection (c) is added to read:

①

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Page 9, Line 26

②

The governor may transfer \$1,000,000

Page 9

③

AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous release response fund, whichever is appropriate.

... substance
rest of section

Proposed amendments to CSHB 470

Page 1, Line 28

Sec. 46.08.010. A new subsection (c) is added to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Page 2, Line 29

Sec. 46.08.040. Subsection (2) is amended to read:

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and cleanup releases or threatened releases of oil or hazardous substances;

Page 6, Line 13

Sec. 46.09.020 (a) (1) is amended to read:

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

Page 6, Line 17

Sec. 46.09.020 (b) is amended to read:

(b) The commissioner shall adopt [regulations] guidelines prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

Page 7, Line 1

Sec. 46.09.020 (d) (1) is amended to read:

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

Page 9, Line 12

Sec. 26.23.050 (b) is amended to read:

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

Page 9, Line 24

Sec. 37.05.159 (g) is amended to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer [a maximum of \$10,000,000] \$1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

Introduced: 1/30/86
Referred: Resources and
Finance

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 375

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or
2 from a private donor;

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 (1) money received from federal, state, or other sources or
2 from a private donor;

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

~~17 (b) Notwithstanding the establishment of the fund under AS 46.08.010, the commissioner shall, to the extent available, prefer funds
18 appropriated to the department in the abatement of a release of oil or
19 a hazardous substance. If appropriated funds are not available, then
20 the commissioner may use money from the fund or, if the governor
21 issues a proclamation of a disaster emergency under AS 26.23, funds
22 available for disaster relief under AS 26.23.050 may be used in the
23 abatement of a release of oil or a hazardous substance.~~

24
25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

Introduced: 1/30/86
Referred: Resources and
Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

SENATE BILL NO. 375

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

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

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

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

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

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

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

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

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 (3) "department" means the Department of Environmental
2 Conservation;

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;
16 or

17 (B) a substance defined as a hazardous substance under
18 state or federal law or by regulations adopted under state or
19 federal law;

20 (8) "oil" means petroleum products of any kind and in any
21 form, whether crude, refined, or a petroleum by-product, including
22 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
23 refuse, oil mixed with other wastes, liquefied natural gas, propane,
24 butane, and other liquid hydrocarbons regardless of specific gravity;

25 (9) "release" means an intentional or unintentional release
26 into the environment of the state.

27 * Sec. 2. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

29 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

1 Except as provided in (b) of this section, a person in charge of a
2 vehicle, vessel or container from which, or a place at which, a haz-
3 arduous substance is released shall report the release to the depart-
4 ment promptly after learning of the release.

5 (b) The commissioner may enter into an agreement with a person
6 for the periodic reporting of a controlled release of a hazardous
7 substance if the release is not into the water of the state.

8 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
9 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
10 stance shall make reasonable efforts to contain and clean up the
11 hazardous substance promptly after learning of the release, unless the
12 commissioner determines

13 (1) after consulting the Environmental Protection Agency,
14 that containment or cleanup is technically infeasible; or

15 (2) that containment or cleanup would cause greater en-
16 vironmental damage than the release would cause if unabated.

17 (b) The commissioner shall adopt regulations prescribing proce-
18 dures and methods to be used in the containment and cleanup of a
19 hazardous substance and in the disposal of waste from the containment
20 or cleanup.

21 (c) If the commissioner determines that the containment or
22 cleanup of a hazardous substance undertaken is inadequate, the commis-
23 sioner may direct the person undertaking the containment or cleanup to
24 cease and may undertake the containment or cleanup directly or by
25 contract.

26 (d) If it appears to the commissioner that the cause or respon-
27 sibility for the release of a hazardous substance is unclear or unex-
28 plained, the commissioner may immediately undertake the containment
29 and cleanup of the release unless the commissioner determines

1 Except as provided in (b) of this section, a person in charge of a
2 vehicle, vessel or container from which, or a place at which, a haz-
3 arduous substance is released shall report the release to the depart-
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11 hazardous substance promptly after learning of the release, unless the
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13 (1) after consulting the Environmental Protection Agency,
14 that containment or cleanup is technically infeasible; or

15 (2) that containment or cleanup would cause greater en-
16 vironmental damage than the release would cause if unabated.

17 ~~(b) The commissioner shall adopt regulations prescribing proce-~~
18 ~~dures and methods to be used in the containment and cleanup of a~~
19 ~~hazardous substance and in the disposal of waste from the containment~~
20 ~~or cleanup.~~ *New language*

21 (c) If the commissioner determines that the containment or
22 cleanup of a hazardous substance undertaken is inadequate, the commis-
23 sioner may direct the person undertaking the containment or cleanup to
24 cease and may undertake the containment or cleanup directly or by
25 contract.

26 (d) If it appears to the commissioner that the cause or respon-
27 sibility for the release of a hazardous substance is unclear or unex-
28 plained, the commissioner may immediately undertake the containment
29 and cleanup of the release unless the commissioner determines

1 (3) "department" means the .Department of Environmental
2 Conservation;

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;
16 or

17 (B) a substance defined as a hazardous substance under
18 state or federal law or by regulations adopted under state or
19 federal law;

20 (8) "oil" means petroleum products of any kind and in any
21 form, whether crude, refined, or a petroleum by-product, including
22 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
23 refuse, oil mixed with other wastes, liquified natural gas, propane,
24 butane, and other liquid hydrocarbons regardless of specific gravity;

25 (9) "release" means an intentional or unintentional release
26 into the environment of the state.

27 * Sec. 2. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

29 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

1 (1) after consulting the Environmental Protection Agency,
2 that containment or cleanup is technically infeasible; or

3 (2) that containment or cleanup would cause greater en-
4 vironmental damage than the release would cause if unabated.

5 (e) The commissioner shall enter into agreement with the En-
6 vironmental Protection Agency, and may enter into agreements with
7 other persons and municipalities, in order to

8 (1) facilitate a coordinated and effective hazardous sub-
9 stance release response in the state;

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

12 (3) provide for cooperative review of hazardous substance
13 release response contingency plans submitted to the department.

14 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
15 request the governor to determine that an actual or imminent release
16 of a hazardous substance constitutes a disaster emergency under
17 AS 26.23. If the governor declares a disaster emergency under AS 26.-
18 23, the commissioner may assist the adjutant general in the relief of
19 the emergency.

20 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
21 The commissioner may contract with a person or a municipality for
22 personnel, equipment, or services that may be useful to carry out the
23 requirements of this chapter. If the commissioner determines that it
24 is infeasible to contract with a person or a municipality, the commis-
25 sioner may establish and maintain containment and cleanup personnel,
26 equipment, and supplies necessary to carry out the requirements of
27 this chapter.

28 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
29 designated by the commissioner as enforcement officers in the

1 implementation of this chapter are peace officers of the state.

2 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
3 into supplementary agreements, reciprocal arrangements, and compacts
4 with another state or country for the implementation of this chapter
5 subject to the approval of the Congress of the United States, if
6 required, under the Constitution of the United States.

7 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
8 chapter or of a regulation adopted by the commissioner under this
9 chapter conflicts with the charter, ordinance, or regulation of a
10 municipality, the provision of this chapter or of the regulation
11 adopted by the commissioner under this chapter prevails.

12 (b) Authority to contain, clean up, or prevent a release or
13 threatened release of oil or of a hazardous substance, and to exercise
14 other powers necessary to implement AS 46.08 - AS 46.09, are granted
15 to municipalities that do not otherwise have that authority. Except
16 as provided in (a) of this section, a municipality may exercise its
17 police power within the area of the municipality.

18 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
19 regulations necessary to implement the provisions of this chapter.

20 Sec. 46.09.900. DEFINITIONS. In this chapter

21 (1) "commissioner" means the commissioner of environmental
22 conservation;

23 (2) "containment and cleanup" includes the direct and
24 indirect efforts associated with the prevention, abatement, contain-
25 ment, or removal of a hazardous substance, the restoration of the
26 environment to its former state, and incidental administrative costs;

27 (3) "department" means the Department of Environmental
28 Conservation;

29 (4) "hazardous substance" means

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26 environment to its former state, and incidental administrative costs;

27 (3) "department" means the Department of Environmental
28 Conservation;

29 (4) "hazardous substance" means

1 (1) after consulting the Environmental Protection Agency,
2 that containment or cleanup is technically infeasible; or

3 (2) that containment or cleanup would cause greater en-
4 vironmental damage than the release would cause if unabated.

5 (e) The commissioner shall enter into agreement with the En-
6 vironmental Protection Agency, and may enter into agreements with
7 other persons and municipalities, in order to

8 (1) facilitate a coordinated and effective hazardous sub-
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25 sioner may establish and maintain containment and cleanup personnel,
26 equipment, and supplies necessary to carry out the requirements of
27 this chapter.

28 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
29 designated by the commissioner as enforcement officers in the

1 (A) an element or compound that, when it enters into
2 or on the surface or subsurface land or water of the state,
3 presents an imminent and substantial danger to the public health
4 or welfare, or to fish, animals, vegetation, or any part of the
5 natural habitat in which fish, animals, or wildlife may be found;
6 or

7 (B) a substance defined as a hazardous substance under
8 state or federal law or by regulations adopted under state or
9 federal law;

10 (5) "release" means an intentional or unintentional release
11 into the environment of the state.

12 * Sec. 3. AS 26.23.230(1) is amended to read:

13 (1) "disaster" means the occurrence or imminent threat of
14 widespread or severe damage, injury, or loss of life or property
15 resulting from any natural or nonmilitary man-made cause including,
16 but not limited to, fire, flood, earthquake, landslide, mudslide,
17 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
18 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
19 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
20 blight, infestation, explosion, riot, equipment failure, or shortage
21 of food, water, fuel, or clothing, or the release of oil or a hazard-
22 ous substance requiring prompt action to avert environmental danger or
23 damage;

24 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

25 (g) Notwithstanding the provisions of (b) of this section and
26 AS 37.07.080(e), the governor may transfer ~~a maximum of \$10,000,000~~ \$1,000,000
27 during a fiscal year from the reserve for emergency operating expenses
28 account to the oil and hazardous substance release response fund
29 (AS 46.08).

1 * Sec. 5. AS 44.19.050 is amended to read:

2 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
3 "disaster" means the occurrence or imminent threat of widespread or
4 severe damage, injury, or loss of life or property resulting from any
5 natural or man-made cause including, but not limited to, fire, flood,
6 earthquake, landslide, avalanche, wind-driven water, weather condi-
7 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
9 contamination, blight, infestation, explosion, [OR] riot, or the
10 release of oil or a hazardous substance requiring prompt action to
11 avert environmental danger or damage.

12 * Sec. 6. AS 46.03.290(a) is amended to read:

13 (a) When the department finds that an actual or imminent dis-
14 charge of oil, a hazardous substance, or low level radioactive mate-
15 rials to the air, water, land or subsurface land of the state poses an
16 immediate threat to the public health or welfare, or the environment
17 of the state, it may issue an order declaring an emergency and direct-
18 ing a person or persons to take action the department believes neces-
19 sary to meet the emergency, and protect the public health, welfare, or
20 environment.

21 * Sec. 7. AS 46.03.760(a) is amended to read:

22 (a) A person who violates or causes or permits to be violated a
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
24 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
25 the department, or a permit, approval, or acceptance, or term or
26 condition of a permit, approval, or acceptance issued under this
27 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
28 state for a sum to be assessed by the court of not less than \$500 nor
29 more than \$100,000 for the initial violation, nor more than \$5,000 for

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5 natural or man-made cause including, but not limited to, fire, flood,
6 earthquake, landslide, avalanche, wind-driven water, weather condi-
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8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
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3 presents an imminent and substantial danger to the public health
4 or welfare, or to fish, animals, vegetation, or any part of the
5 natural habitat in which fish, animals, or wildlife may be found;
6 or

7 (B) a substance defined as a hazardous substance under
8 state or federal law or by regulations adopted under state or
9 federal law;

10 (5) "release" means an intentional or unintentional release
11 into the environment of the state.

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21 of food, water, fuel, or clothing, or the release of oil or a hazard-
22 ous substance requiring prompt action to avert environmental danger or
23 damage;

24 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

25 (g) Notwithstanding the provisions of (b) of this section and
26 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
27 during a fiscal year from the reserve for emergency operating expenses
28 account to the oil and hazardous substance release response fund
29 (AS 46.08).

1 each day after that on which the violation continues, and that shall
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that shall be determined by the court according to the toxicity,
6 degradability and dispersal characteristics of the substance dis-
7 charged, the sensitivity of the receiving environment, and the degree
8 to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation;

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

13 * Sec. 8 AS 46.03.765 is amended to read:

14 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
15 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
16 or of a regulation, a lawful order of the department, or permit,
17 approval, or acceptance, or term or condition of a permit, approval,
18 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
19 In actions brought under this section, temporary or preliminary relief
20 may be obtained upon a showing of an imminent threat of continued
21 violation, and probable success on the merits, without the necessity
22 of demonstrating physical irreparable harm. The balance of equities
23 in actions under this section may affect the timing of compliance, but
24 not the necessity of compliance within a reasonable period of time.

25 * Sec. 9. AS 46.03.780(a) is amended to read:

26 (a) A person who violates a provision of this chapter, [OR]
27 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
28 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
29 order, permit, or other determination of the department made under the

1 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
2 and thereby causes the death of fish, animals, or vegetation or other-
3 wise injures or degrades the environment of the state is liable to the
4 state for damages.

5 * Sec. 10. AS 46.03.790(a) is amended to read:

6 (a) Except as provided in (d) - (f) of this section, a person
7 who negligently violates a provision of this chapter, [OR] AS 46.04,
8 or AS 46.09, or of a regulation, lawful order of the department, or
9 permit, approval, or acceptance, or term or condition of a permit,
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
11 AS 46.09 is guilty of a class B misdemeanor.

12 * Sec. 11. AS 46.03.790(b) is amended to read:

13 (b) Except as provided in (d) - (f) of this section, a person
14 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
15 AS 46.09, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
18 AS 46.09 is guilty of a class A misdemeanor.

19 * Sec. 12. AS 46.03.790(d) is amended to read:

20 (d) Notwithstanding (a) and (b) of this section, a person who
21 fails to provide or falsely states information required under AS 46.-
22 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
23 upon conviction, is punishable by a fine of not more than \$25,000, or
24 by imprisonment for not more than one year, or by both. Each unlawful
25 act constitutes a separate offense.

26 * Sec. 13. AS 46.04.010 is amended to read:

27 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
28 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
29 760(e), AS 46.08.070, or from an applicable federal fund, for the

1 each day after that on which the violation continues, and that shall
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that shall be determined by the court according to the toxicity,
6 degradability and dispersal characteristics of the substance dis-
7 charged, the sensitivity of the receiving environment, and the degree
8 to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation;

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

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16 or of a regulation, a lawful order of the department, or permit,
17 approval, or acceptance, or term or condition of a permit, approval,
18 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
19 In actions brought under this section, temporary or preliminary relief
20 may be obtained upon a showing of an imminent threat of continued
21 violation, and probable success on the merits, without the necessity
22 of demonstrating physical irreparable harm. The balance of equities
23 in actions under this section may affect the timing of compliance, but
24 not the necessity of compliance within a reasonable period of time.

25 * Sec. 9. AS 46.03.780(a) is amended to read:

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27 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
28 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
29 order, permit, or other determination of the department made under the

1 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
2 and thereby causes the death of fish, animals, or vegetation or other-
3 wise injures or degrades the environment of the state is liable to the
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5 * Sec. 10. AS 46.03.790(a) is amended to read:

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9 permit, approval, or acceptance, or term or condition of a permit,
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
11 AS 46.09 is guilty of a class B misdemeanor.

12 * Sec. 11. AS 46.03.790(b) is amended to read:

13 (b) Except as provided in (d) - (f) of this section, a person
14 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
15 AS 46.09, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
18 AS 46.09 is guilty of a class A misdemeanor.

19 * Sec. 12. AS 46.03.790(d) is amended to read:

20 (d) Notwithstanding (a) and (b) of this section, a person who
21 fails to provide or falsely states information required under AS 46.-
22 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
23 upon conviction, is punishable by a fine of not more than \$25,000, or
24 by imprisonment for not more than one year, or by both. Each unlawful
25 act constitutes a separate offense.

26 * Sec. 13. AS 46.04.010 is amended to read:

27 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
28 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
29 760(e), AS 46.08.070, or from an applicable federal fund, for the

1 expenses it incurs in cleaning up or containing a discharge of oil.
2 If the department obtains reimbursement for a portion of its expenses
3 from a federal fund, the remainder of the expenses incurred may be
4 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
5 the department under this section shall be deposited in the general
6 fund and may be appropriated by the legislature to the oil and hazar-
7 dous substance release response fund (AS 46.08).
8 ~~* Sec. 4. AS 46.03.758(k) is repealed.~~
9 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/14/86

REQUEST

Bill/Resolution No. : SB 375
 Title : An act Relating to the Release of Oil and Hazardous Substance
 Sponsor : Senate Resources Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Quality
 Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|--------------|--------------|--------------|-------|-------|
| PERSONAL SERVICES | | 182.7 | 227.3 | 227.3 | | |
| TRAVEL | | 25.0 | 28.0 | 28.0 | | |
| CONTRACTUAL | | 48.5 | 53.5 | 53.5 | | |
| SUPPLIES | | 22.0 | 23.5 | 23.5 | | |
| EQUIPMENT | | 12.0 | 2.0 | 2.0 | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 290.2 | 334.3 | 334.3 | | |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|--|--|
| GENERAL FUND | | 290.2 | 334.3 | 334.3 | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

*5.0 FTE

| | | | | | | |
|-----------|--|---|---|---|--|--|
| FULL-TIME | | 4 | 4 | 4 | | |
| PART-TIME | | 2 | 2 | 2 | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by : Stan Hungerford Phone : 465-2666
 Division : Environmental Quality Date : 2/14/86

Approved by Commissioner : Bill Km Date : 2/14/86
 Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MARKED TO
SHOW AMENDMENTS

Offered: 2/10/86
Referred: Finance

Original sponsors: Davis, Koponen,
Hurley, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

CS FOR HOUSE BILL NO. 470 (Resources)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the release of oil and hazardous

7

substances; and providing for an effective date."

8

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

9

* Section 1. AS 46 is amended by adding a new chapter to read:

10

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11

Sec. 46.08.005. PURPOSE. The legislature finds and declares

12

that the release of oil or hazardous substances into the environment

13

presents a real and substantial threat to the public health and wel-

14

fare, to the environment, and to the economy of the state. The legis-

15

lature therefore concludes that it is in the best interest of the

16

state and its citizens to provide a readily available fund for the

17

payment of the expenses incurred by the Department of Environmental

18

Conservation in the protection of the environment of the state from

19

the release of oil or hazardous substances.

20

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in

21

the state general fund the oil and hazardous substance release re-

22

sponse fund. The fund shall be administered by the commissioner of

23

environmental conservation, but the commissioner of revenue shall be

24

the custodian of the fund.

25

(b) Money from an appropriation made to the fund remaining in

26

the fund at the end of a fiscal year remains available for expenditure

27

in successive fiscal years.

28

(c) The fund shall be used for actual expenses incurred under

29

AS 46.08.040. The fund may not be used for capital improvements.

1 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
2 appropriate from the following sources to the fund:

3 (1) money received from federal, state, or other sources or
4 from a private donor;

5 (2) money recovered or otherwise received from parties
6 responsible for the containment and cleanup of oil or a hazardous
7 substance at a specific site, but excluding funds from performance
8 bonds and other forms of financial responsibility held in escrow
9 pending satisfactory performance of a privately financed response
10 action;

11 (3) fines, penalties, or damages recovered under this
12 chapter or other law for costs incurred by the state as a result of
13 the release or threatened release of oil or a hazardous substance.

14 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
15 SUBSTANCE RELEASES. It is the intent of the legislature and declared
16 to be the public policy of the state that funds for the abatement of a
17 release of oil or a hazardous substance will always be available.

18 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
19 of the governor, the commissioner may use money from the fund to

20 (1) contain and clean up releases or threatened releases of
21 oil or a hazardous substance;

22 (2) undertake plans, inspections, sampling, tests, inves-
23 tigation, public notification, damage assessment, surveys, analyses,
24 engineering, construction, operations, and maintenance necessary or
25 appropriate to contain and clean up releases or threatened releases of
26 oil or hazardous substances;

27 (3) help the Department of Labor to assist emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

1 oil or a hazardous substance;

2 (4) provide matching funds for participation in federal oil
3 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
4 hensive Environmental Response, Compensation and Liability Act of
5 1980); and

6 (5) recover the cost to the state or to a municipality of a
7 containment and cleanup resulting from the release or the threatened
8 release of oil or a hazardous substance.

9 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
10 maintain accounting records showing the income and expenses of the
11 fund.

12 (b) By July 1 of each year, the department shall determine the
13 projected cost for the following fiscal year of monitoring, operating,
14 and maintaining sites where response has been completed or is expected
15 to be continued during the fiscal year.

16 (c) The commissioner shall consult with the commissioner of
17 revenue and the governor before adopting regulations governing fund
18 accounting. The department shall develop procedures and adopt rules
19 governing the expenditure of, and accounting for, money expended from
20 the fund, and may not delay implementation of this chapter pending the
21 effective date of the procedures and rules.

22 (d) The proper state officer shall pay disbursements from the
23 fund on presentation of vouchers signed by the governor or the gover-
24 nor's authorized representative.

25 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
26 shall submit a report to the governor and to the legislature not later
27 than the 10th day following the convening of each regular session of
28 the legislature. The report may include information considered sig-
29 nificant by the commissioner but must include:

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

3 (2) the amount and source of money received and money
4 recovered during the preceding fiscal year as specified in AS 46.08.-
5 020.

6 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
7 The commissioner shall seek reimbursement promptly under this section,
8 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
9 or containment of oil or a hazardous substance that has been released.

10 (b) The attorney general, at the request of the commissioner,
11 may seek to recover money expended by the department under this chap-
12 ter or other law to contain and clean up oil or a hazardous substance
13 that has been released or to control the threatened release of oil or
14 a hazardous substance.

15 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
16 regulations necessary to implement the provisions of this chapter.

17 Sec. 46.08.900. DEFINITIONS. In this chapter

18 (1) "capital improvement" includes construction,
19 renovation, repair of, and improvement to, a building, but does not
20 include other improvements to real property, such as construction of a
21 dike or retaining wall;

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

24 (3) "containment and cleanup" includes the direct and
25 indirect efforts associated with the prevention, abatement, contain-
26 ment, or removal of a hazardous substance, the restoration of the
27 environment to its former state, and incidental administrative costs;

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

1 (5) "employee" means a person who works for an employer in
2 a place that is not used primarily as a personal residence;

3 (6) "employer" means a person, including the state and a
4 political subdivision of the state, who has one or more employees
5 working in a place that is not used primarily as a personal residence;

6 (7) "fund" means the oil and hazardous substance release
7 response fund;

8 (8) "hazardous substance" means

9 (A) an element or compound that, when it enters into
10 or on the surface or subsurface land or water of the state,
11 presents an imminent and substantial danger to the public health
12 or welfare or to fish, animals, vegetation, or any part of the
13 natural habitat in which fish, animals, or wildlife may be found;

14 or

15 (B) a substance defined as a hazardous substance under
16 state or federal law or by regulations adopted under state or
17 federal law;

18 (9) "oil" means petroleum products of any kind and in any
19 form, whether crude, refined, or a petroleum by-product, including
20 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
21 refuse, oil mixed with other wastes, liquified natural gas, propane,
22 butane, and other liquid hydrocarbons regardless of specific gravity;

23 (10) "release" means an intentional or unintentional release
24 into the environment of the state.

25 * Sec. 2. AS 46 is amended by adding a new chapter to read:

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

27 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

28 Except as provided in (b) of this section, a person in charge of a
29 vehicle, vessel or container from which, or a place at which, a

1 hazardous substance is released shall report the release to the
2 department and appropriate public safety agencies promptly after
3 learning of the release.

4 (b) The commissioner may enter into an agreement with a person
5 for the periodic reporting of a controlled release of a hazardous
6 substance if the release is not into water.

7 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
8 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
9 stance shall make reasonable efforts to contain and clean up the
10 hazardous substance promptly after learning of the release, unless the
11 commissioner determines

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

15 (2) that containment or cleanup would cause greater en-
16 vironmental damage than the release would cause if unabated; or

17 (3) that containment or cleanup would pose a greater threat
18 to human life or health than the release itself.

19 (b) The commissioner shall develop guidelines prescribing
20 general procedures and methods to be used in the containment and
21 cleanup of a hazardous substance.

22 (c) If the commissioner determines that the containment or
23 cleanup of a hazardous substance undertaken is inadequate, the commis-
24 sioner may direct the person undertaking the containment or cleanup to
25 cease and may undertake the containment or cleanup directly or by
26 contract.

27 (d) If it appears to the commissioner that the cause or respon-
28 sibility for the release of a hazardous substance is unclear or unex-
29 plained, the commissioner may immediately undertake the containment

1 and cleanup of the release unless the commissioner determines

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

5 (2) that containment or cleanup would cause greater en-
6 vironmental damage than the release would cause if unabated; or

7 (3) that containment or cleanup would pose a greater threat
8 to human life or health than the release itself.

9 (e) The commissioner shall enter into agreement with the En-
10 vironmental Protection Agency, and may enter into agreements with
11 other persons and municipalities, in order to

12 (1) facilitate a coordinated and effective hazardous sub-
13 stance release response in the state;

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

16 (3) provide for cooperative review of hazardous substance
17 release response contingency plans submitted to the department.

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

24 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
25 The commissioner may contract with a person or a municipality for
26 personnel, equipment, or services that may be useful to carry out the
27 requirements of this chapter. If the commissioner determines that it
28 is infeasible to contract with a person or a municipality, the commis-
29 sioner may establish and maintain containment and cleanup personnel,

1 equipment, and supplies necessary to carry out the requirements of
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
4 designated by the commissioner as enforcement officers in the imple-
5 mentation of this chapter are peace officers of the state.

6 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
7 into supplementary agreements, reciprocal arrangements, and compacts
8 with another state or country for the implementation of this chapter
9 subject to the approval of the Congress of the United States, if
10 required, under the Constitution of the United States.

11 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
12 chapter or of a regulation adopted by the commissioner under this
13 chapter conflicts with the charter, ordinance, or regulation of a
14 municipality, the provision of this chapter or of the regulation
15 adopted by the commissioner under this chapter prevails.

16 (b) Authority to contain, clean up, or prevent a release or
17 threatened release of oil or of a hazardous substance, and to exercise
18 other powers necessary to implement AS 46.08 - AS 46.09, are granted
19 to municipalities that do not otherwise have that authority. Except
20 as provided in (a) of this section, a municipality may exercise its
21 police power within the area of the municipality.

22 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
23 regulations necessary to implement the provisions of this chapter.

24 Sec. 46.09.900. DEFINITIONS. In this chapter

25 (1) "commissioner" means the commissioner of environmental
26 conservation;

27 (2) "containment and cleanup" includes the direct and
28 indirect efforts associated with the prevention, abatement, contain-
9 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

2 (3) "department" means the Department of Environmental
3 Conservation;

4 (4) "hazardous substance" means

5 (A) an element or compound that, when it enters into
6 or on the surface or subsurface land or water of the state,
7 presents an imminent and substantial danger to the public health
8 or welfare, or to fish, animals, vegetation, or any part of the
9 natural habitat in which fish, animals, or wildlife may be found;
10 or

11 (B) a substance defined as a hazardous substance under
12 state or federal law or by regulations adopted under state or
13 federal law;

14 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

16 * Sec. 3. AS 26.23.050(b) is amended to read:

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

29 * Sec. 4. AS 26.23.230(1) is amended to read:

1 (1) "disaster" means the occurrence or imminent threat of
2 widespread or severe damage, injury, or loss of life or property
3 resulting from any natural or nonmilitary man-made cause including,
4 but not limited to, fire, flood, earthquake, landslide, mudslide,
5 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
6 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
7 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
8 blight, infestation, explosion, riot, equipment failure, or shortage
9 of food, water, fuel, or clothing, or the release of oil or a hazard-
10 ous substance requiring prompt action to avert environmental danger or
11 damage;

12 * Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

13 (g) Notwithstanding the provisions of (b) of this section and
14 AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal
15 year from the reserve for emergency operating expenses account to the
16 oil and hazardous substance release response fund (AS 46.08).

17 * Sec. 6. AS 44.19.050 is amended to read:

18 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
19 "disaster" means the occurrence or imminent threat of widespread or
20 severe damage, injury, or loss of life or property resulting from any
21 natural or man-made cause including, but not limited to, fire, flood,
22 earthquake, landslide, avalanche, wind-driven water, weather condi-
23 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
24 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
25 contamination, blight, infestation, explosion, [OR] riot, or the
26 release of oil or a hazardous substance requiring prompt action to
27 avert environmental danger or damage.

28 * Sec. 7. AS 46.03.290(a) is amended to read:

29 (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive
2 materials to the air, water, land or subsurface land of the state
3 poses an immediate threat to the public health or welfare, or the
4 environment of the state, it may issue an order declaring an emergency
5 and directing a person or persons to take action the department
6 believes necessary to meet the emergency, and protect the public
7 health, welfare, or environment.

8 * Sec. 8. AS 46.03.760(a) is amended to read:

9 (a) A person who violates or causes or permits to be violated a
10 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
11 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
12 the department, or a permit, approval, or acceptance, or term or
13 condition of a permit, approval, or acceptance issued under this
14 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
15 state for a sum to be assessed by the court of not less than \$500 nor
16 more than \$100,000 for the initial violation, nor more than \$5,000 for
17 each day after that on which the violation continues, and that shall
18 reflect, when applicable,

19 (1) reasonable compensation in the nature of liquidated
20 damages for any adverse environmental effects caused by the violation,
21 that shall be determined by the court according to the toxicity,
22 degradability and dispersal characteristics of the substance dis-
23 charged, the sensitivity of the receiving environment, and the degree
24 to which the discharge degrades existing environmental quality;

25 (2) reasonable costs incurred by the state in detection,
26 investigation, and attempted correction of the violation;

27 (3) the economic savings realized by the person in not
28 complying with the requirement for which a violation is charged.

29 * Sec. 9. AS 46.03.765 is amended to read:

1 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
2 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
3 or of a regulation, a lawful order of the department, or permit,
4 approval, or acceptance, or term or condition of a permit, approval,
5 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
6 In actions brought under this section, temporary or preliminary relief
7 may be obtained upon a showing of an imminent threat of continued
8 violation, and probable success on the merits, without the necessity
9 of demonstrating physical irreparable harm. The balance of equities
10 in actions under this section may affect the timing of compliance, but
11 not the necessity of compliance within a reasonable period of time.

12 * Sec. 10. AS 46.03.780(a) is amended to read:

13 (a) A person who violates a provision of this chapter, [OR]
14 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
15 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
16 order, permit, or other determination of the department made under the
17 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
18 and thereby causes the death of fish, animals, or vegetation or other-
19 wise injures or degrades the environment of the state is liable to the
20 state for damages.

21 * Sec. 11. AS 46.03.790(a) is amended to read:

22 (a) Except as provided in (d) - (f) of this section, a person
23 who negligently violates a provision of this chapter, [OR] AS 46.04,
24 or AS 46.09, or of a regulation, lawful order of the department, or
25 permit, approval, or acceptance, or term or condition of a permit,
26 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
27 AS 46.09 is guilty of a class B misdemeanor.

28 * Sec. 12. AS 46.03.790(b) is amended to read:

29 (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
2 AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class A misdemeanor.

6 * Sec. 13. AS 46.03.790(d) is amended to read:

7 (d) Notwithstanding (a) and (b) of this section, a person who
8 fails to provide or falsely states information required under AS 46.-
9 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
10 upon conviction, is punishable by a fine of not more than \$25,000, or
11 by imprisonment for not more than one year, or by both. Each unlawful
12 act constitutes a separate offense.

13 * Sec. 14. AS 46.04.010 is amended to read:

14 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
15 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
16 760(e), AS 46.08.070, or from an applicable federal fund, for the
17 expenses it incurs in cleaning up or containing a discharge of oil.
18 If the department obtains reimbursement for a portion of its expenses
19 from a federal fund, the remainder of the expenses incurred may be
20 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
21 the department under this section shall be deposited in the general
22 fund and may be appropriated by the legislature to the oil and hazar-
23 dous substance release response fund (AS 46.08).

24 * Sec. 15. Not later than January 1, 1987, the commissioner of
25 environmental conservation shall develop guidelines under AS 46.09.020,
26 added by sec. 2 of this Act.

27 * Sec. 16. Not later than October 1, 1987, the commissioner of
28 environmental conservation shall adopt regulations under AS 46.09.080,
29 added by sec. 2 of this Act.

1 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).

CSHB 470 (Finance)
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CSHB 470 (Finance)
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. CSHB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. CSHB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

CSHB 470 (Finance)
Question and Answer Overview

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How does the funding mechanism of the response fund work?

The response fund will be capitalized during FY 87 through reappropriations from the oil spill reserve, a transfer from the oil spill mitigation account, and a one-time reappropriation from the Rainy Day Fund to bring the initial balance of the response fund to the \$1,000,000 level.

Future funding will rely solely upon legislative appropriations. However, money recovered by the state for containment and cleanup expenses, as well as money received as penalties, fines, and damages associated with a release or threatened release, will be placed in an account within the general fund called the oil and hazardous substance mitigation account.

The legislature may appropriate money from the mitigation account to the response fund for the purposes outlined in AS 46.08. Money not appropriated to the response fund within one year lapses back to the general fund.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, and the department must develop procedures governing the expenditure of, and accounting for, money expended from the fund. The commissioner must also submit a fiscal report regarding the response fund to the legislature no later than the 10th day of each regular legislative session.

The report shall list the amount of money received and expended during the preceding fiscal year, a summary of municipal participation in responses funded by the fund, a summary of department activities in responses funded by the fund, and the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been initiated.

How does the response fund affect businesses and local communities?

The commissioner shall enter into agreement with EPA, and may enter into agreement with a municipality, public or private corporation, or other entity in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures, or for the cooperative review of hazardous substance release response contingency plans submitted to the department.

How can a municipality be reimbursed for responding to a release?

The department may reimburse a municipality for actual expenses incurred in response to a release or threatened release of oil or a hazardous substance if the municipality had previously entered into an agreement with the commissioner under provisions in AS 46.09, and if the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare or to the environment.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

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CSHB 470 (Finance)
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, and may be used only for those purposes outlined in AS 46.08.040. The fund may not be used for capital improvements except for improvements to real property such as dikes and retaining walls.

Sec. 46.08.020. (a) Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

(b) Establishes the Oil and Hazardous Substance Release Mitigation Account. Money received by the state from persons responsible for the containment and cleanup of oil or a hazardous substance, including money received from fines, penalties, and damages, shall be deposited in the general fund and credited to the mitigation account. The legislature may annually appropriate to the fund from this account a sum equal to the amount of money recovered during the calendar year preceding the legislative session in which the appropriations are to be made.

Sec. 46.08.030. Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

Sec. 46.08.040. Lists acceptable expenditures from the fund. Expenditures may be made to contain, cleanup, and take other necessary action to abate releases or threatened releases of oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare or to the environment, provide matching funds to participate in federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs to the state or a municipality resulting from the release or threatened release of oil or hazardous substances.

Sec. 46.08.050. Outlines accounting procedures of the fund. ADEC must maintain accounting records and develop procedures governing the expenditure of, and accounting for, money expended from the fund.

Sec. 46.08.060. (a) No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature. The report must include the amount of money expended from the fund and the amount and source of money recovered or received by the fund, during the previous fiscal year. The report must also include a summary of the department's fund-related activities during the preceding fiscal year, and the projected costs for the next fiscal year of monitoring, operating, and maintaining sites where response has been initiated.

(b) As part of the department's on-going site investigation program, the report must also include a summary of oil spill or hazardous waste sites identified by the department, the immediate and long-term threats posed by these sites, and the appropriate actions and estimated cost of abating these threats.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

(c) The department may reimburse a municipality for actual expenses incurred in response to a release or threatened release of oil or a hazardous substance if the municipality had previously entered into an agreement with the commissioner under AS 46.09.020(e), and if the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare or to the environment.

Sec. 46.08.080. The commissioner may adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. (a) A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release.

(b) Notwithstanding (a) of this section, persons may enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into water.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm or a greater threat to human life or health than the release itself.

(b) The commissioner shall develop guidelines prescribing general procedures and methods for containing and cleaning up releases of hazardous substances.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation either directly or by contract.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner shall enter into agreement with the EPA, and may enter into agreements with municipalities or other persons, including a public or private corporation or an entity within an unincorporated community, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with municipality or a person, including a public or private corporation or an entity within an unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. For the purposes of this chapter, the governor may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.060. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail. Municipalities are granted the authority to exercise those powers necessary to implement the provisions of this chapter and AS 46.08.

Sec. 46.09.070. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 3.

Sec. 26.23.050. (b) In the event that money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate.

* Section 4.

Sec. 26.23.230. (1) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 45.45.900. Clarifies that an oil or hazardous substance cleanup contract is not a construction contract, and is therefore not subject to the restrictions upon indemnification agreements found in this section. This provision allows an indemnification agreement to be negotiated between the parties responsible for a release of oil or a hazardous substance and the parties contracting to cleanup the release. However, this provision does not mandate that such an agreement be entered into between the parties. Nor does this provision provide in any way for an exemption from liability for negligence or gross misconduct resulting from cleanup activities conducted under authority of the contract.

* Section 7.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 8.

Sec. 46.03.745. Except for a controlled release approved by the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance.

* Section 9.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 10.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 11.

Sec. 46.03.780. (a) Provides for liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 12.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 13.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 14.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both.

* Section 15.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section shall be deposited in the general and credited to the Oil and Hazardous Substance Release Mitigation Account.

* Section 16.

Sec. 46.04.090. (b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter.

* Section 17.

Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020.

* Section 18.

Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.070.

* Section 19.

During FY 87, the governor may transfer from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund amounts that, when added to the amounts appropriated, reappropriated or transferred to the response fund in laws enacted by the legislature during the 1986 regular legislative session, do not exceed \$1 million.

* Section 20.

The oil spill mitigation account (AS 46.03.758(k)) is repealed.

* Section 21.

Sec. 01.10.070. (c) Sections 1 - 18 and 20 of this Act take effect immediately.

* Section 22

Section 19 of this Act takes effect July 1, 1986.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 470 (Fin)
 Title : An Act Relating to the Release
 of Oil and Hazardous Substances
 Sponsor : Rep. Mike Davis
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Quality
 Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|----------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 0 | 100.8 | 132.2 | 132.2 | 132.2 | 132.2 |
| TRAVEL | 0 | 13.0 | 15.0 | 15.0 | 15.0 | 15.0 |
| CONTRACTUAL | 0 | 21.0 | 21.0 | 21.0 | 21.0 | 21.0 |
| SUPPLIES | 0 | 8.5 | 10.0 | 10.0 | 10.0 | 10.0 |
| EQUIPMENT | 0 | 6.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 149.3 | 180.2 | 180.2 | 180.2 | 180.2 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|----------|-------|-------|-------|-------|-------|
| GENERAL FUND | 0 | 149.3 | 180.2 | 180.2 | 180.2 | 180.2 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | | | | | |

POSITIONS : *3.0 FTE

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 3 | 3 | 3 | 3 | 3 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by : _____ Phone : _____
 Division : _____ Date : _____

Approved by Commissioner : _____ Date : _____
 Agency : _____

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