

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8047

HOUSE RESOURCES

312

WHAT'S BEEN DONE...

Progress by Local Emergency Planning Districts

| LOCAL EMERGENCY PLANNING DISTRICT (DISTRICT NO.) | HAZARDS ANALYSIS | RESPONSE CAPABILITY ASSESSED | LOCAL EMERGENCY RESPONSE PLAN |
|--------------------------------------------------|------------------|------------------------------|-------------------------------|
| Aleutians East Borough (10) | | | |
| Aleutians and Pribilof Islands (11) | | | |
| Anchorage (Municipality of) (22) | | | |
| Bristol Bay (12) | | | |
| Copper River (26) | | | ** |
| Denali Borough (24) | | | |
| Fairbanks North Star Borough (20) | | | |
| Interior Alaska (19)* | | | ** |
| Juneau (City and Borough of) (4) | | | |
| Kenai Peninsula Borough (8) | | | |
| Ketchikan Gateway Borough (1) | | | |
| Kodiak Island Borough (9) | | | |
| Matanuska-Susitna Borough (21) | | | |
| North Slope Borough (18)* | | | ** |
| Northern Southeast (5) | | | |
| Northwest Arctic Borough (16) | | | |
| Northwestern (15) | | | |
| Petersburg/Wrangell (25) | | | |
| Prince William Sound (7)* | | | ** |
| Prudhoe Bay (17) | | | ** |
| Sitka (City and Borough of) (2) | | | |
| Southeastern Interior (23)* | | | ** |
| Southern Southeast (3) | | | |
| Southwestern Interior (14)* | | | ** |
| Yakutat Borough (6) | | | |
| Yukon Delta (13)* | | | ** |

To be completed in FY 1994

To be completed in FY 1995

* These districts would be combined into a single LEPD under proposed legislation.

** Plans in these areas may not be completed until FY 1996.



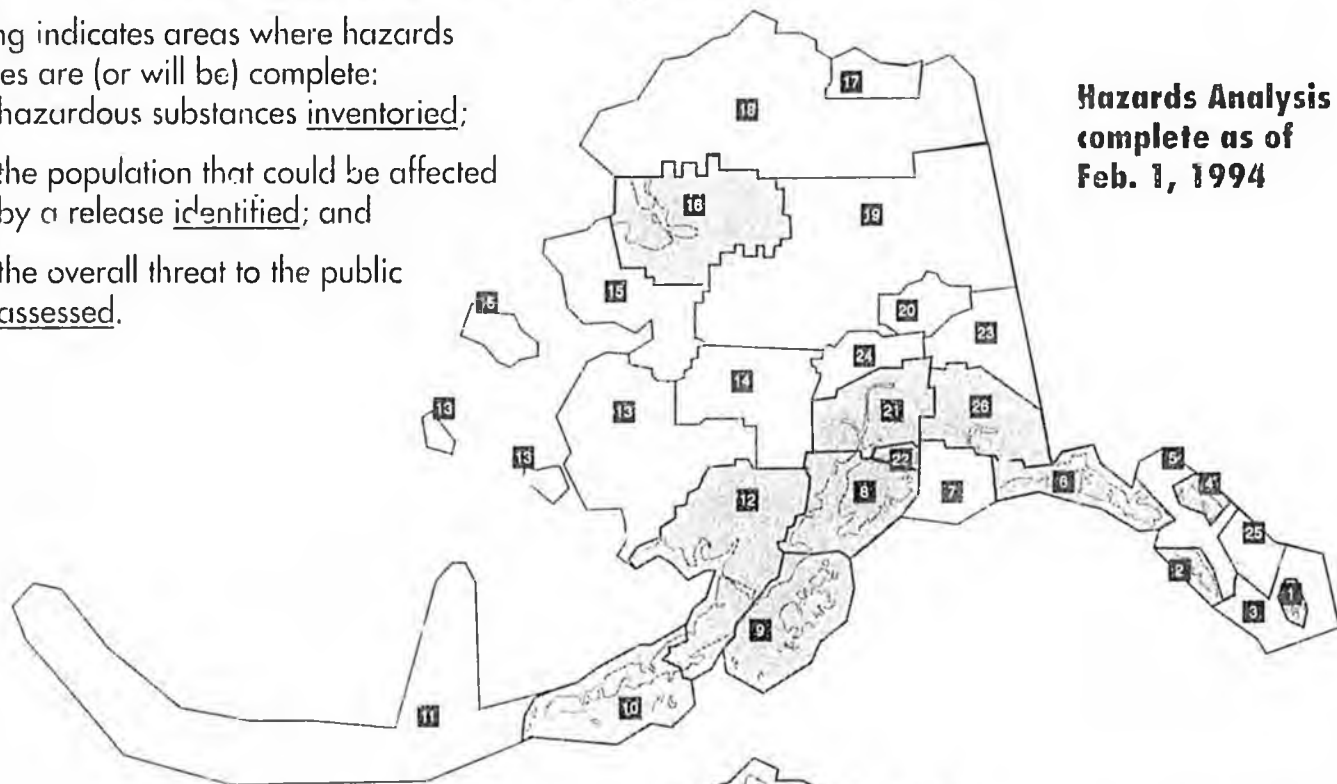
WHAT'S BEEN DONE...

Hazards Analyses

Shading indicates areas where hazards analyses are (or will be) complete:

- hazardous substances inventoried;
- the population that could be affected by a release identified; and
- the overall threat to the public assessed.

Hazards Analysis complete as of Feb. 1, 1994



Hazards Analysis complete by July 1, 1994



- | | |
|-----------------------------------|-------------------------------|
| 10 Aleutians East Borough | 21 Matanuska-Susitna Borough |
| 11 Aleutians and Pribilof Islands | 18 North Slope Borough |
| 22 Anchorage (Municipality of) | 5 Northern Southeast |
| 12 Bristol Bay | 16 Northwest Arctic Borough |
| 26 Copper River | 15 Northwestern |
| 24 Denali Borough | 25 Petersburg/Wrangell |
| 20 Fairbanks North Star Borough | 7 Prince William Sound |
| 19 Interior Alaska | 17 Prudhoe Bay |
| 4 Juneau (City and Borough of) | 2 Sitka (City and Borough of) |
| 8 Kenai Peninsula Borough | 23 Southeastern Interior |
| 1 Ketchikan Gateway Borough | 3 Southern Southeast |
| 9 Kodiak Island Borough | 14 Southwestern Interior |
| | 6 Yakutat Borough |
| | 13 Yukon Delta |

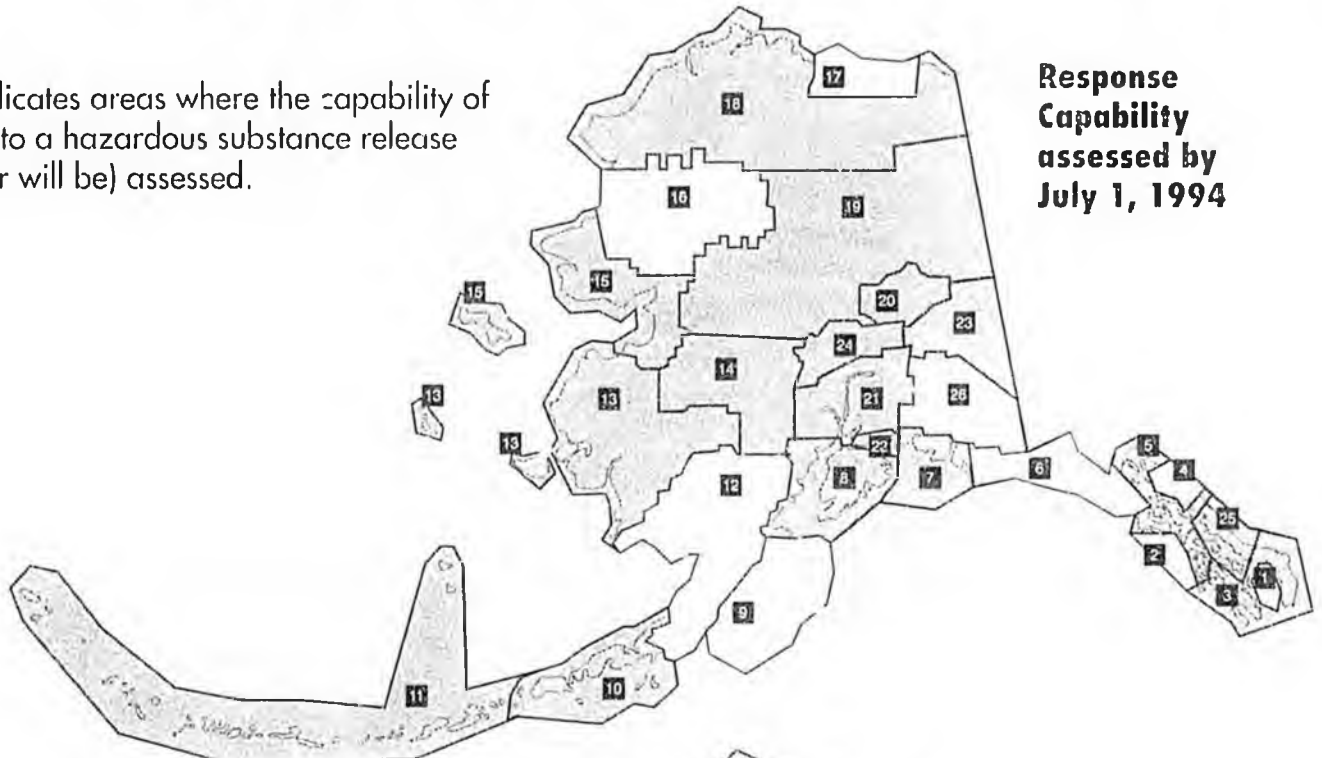


WHAT'S BEEN DONE...

Response Capability Assessments

Shading indicates areas where the capability of responding to a hazardous substance release has been (or will be) assessed.

**Response
Capability
assessed by
July 1, 1994**



- | | |
|-----------------------------------|-------------------------------|
| 10 Aleutians East Borough | 21 Matanuska-Susitna Borough |
| 11 Aleutians and Pribilof Islands | 18 North Slope Borough |
| 22 Anchorage (Municipality of) | 5 Northern Southeast |
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| 9 Kodiak Island Borough | 14 Southwestern Interior |
| | 6 Yakutat Borough |
| | 13 Yukon Delta |

**Response
Capability
assessed by
January 1995**

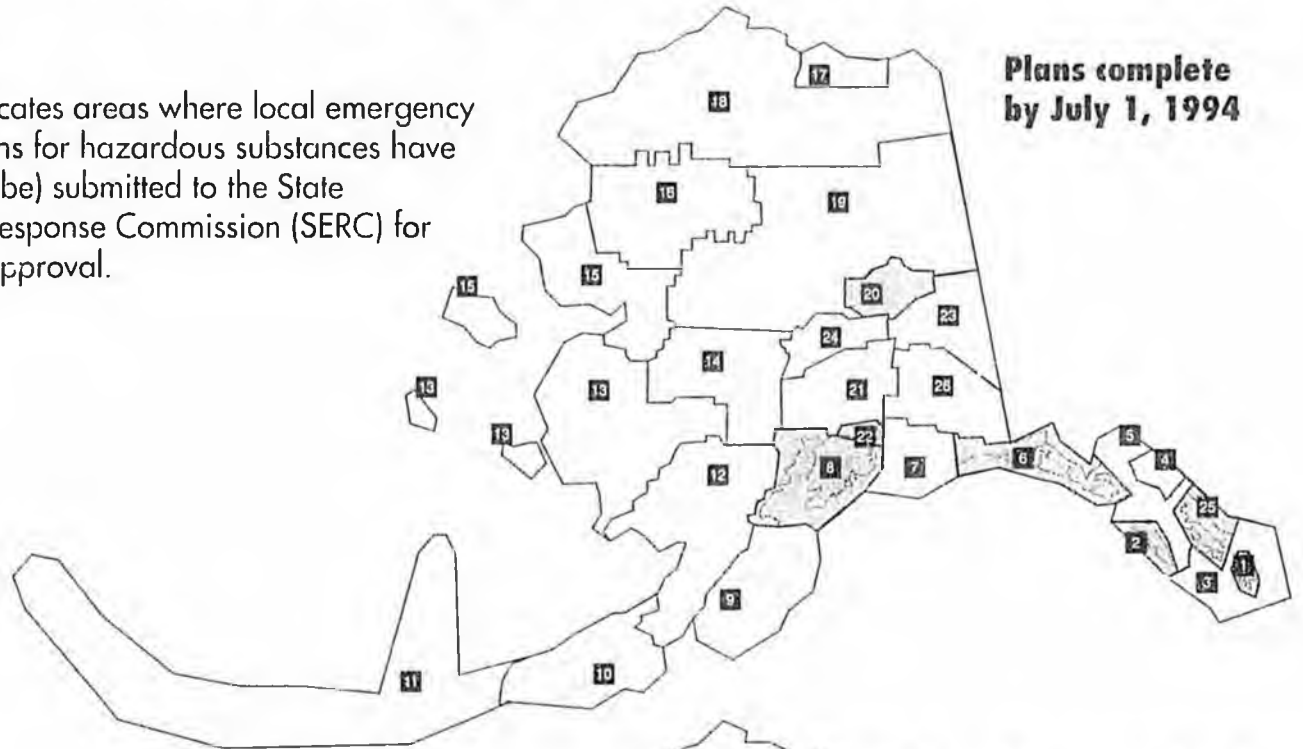


WHAT'S BEEN DONE...

Local Emergency Response Plans

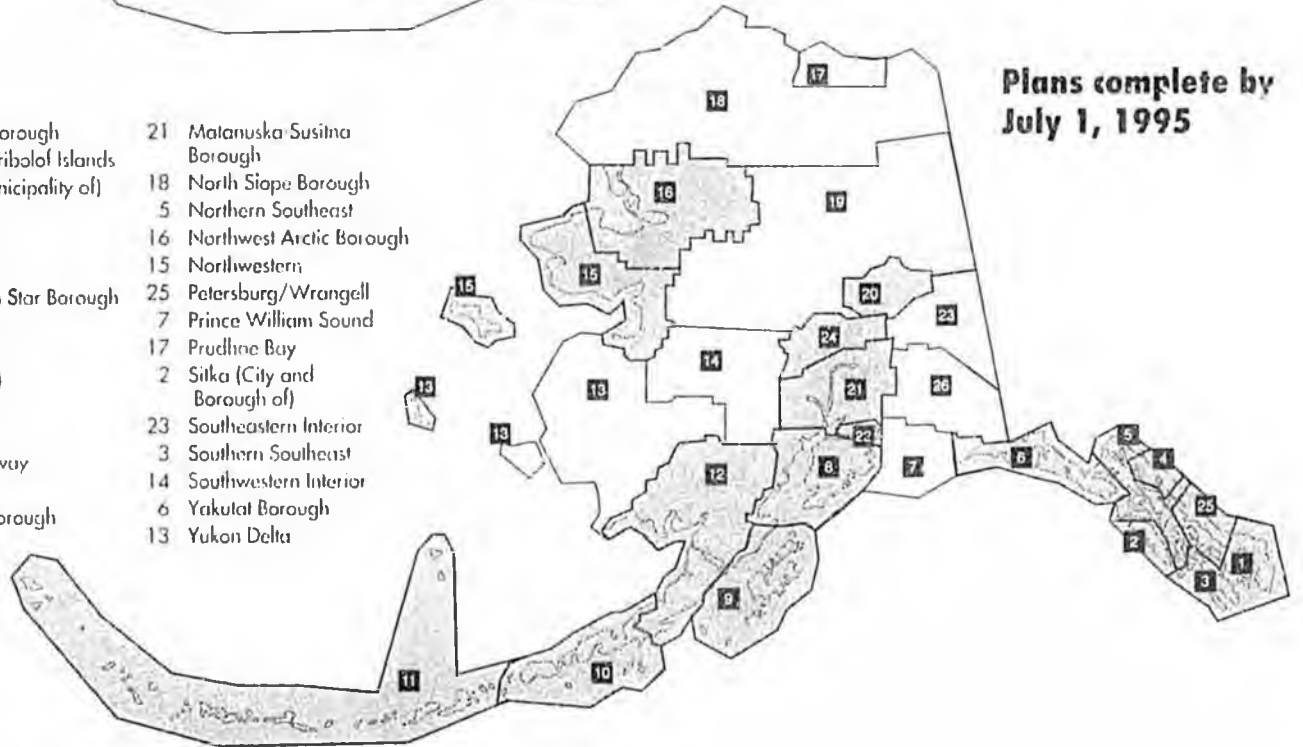
Shading indicates areas where local emergency response plans for hazardous substances have been (or will be) submitted to the State Emergency Response Commission (SERC) for review and approval.

Plans complete by July 1, 1994



Plans complete by July 1, 1995

- | | |
|-----------------------------------|-------------------------------|
| 10 Aleutians East Borough | 21 Matanuska-Susitna Borough |
| 11 Aleutians and Pribilof Islands | 18 North Slope Borough |
| 22 Anchorage (Municipality of) | 5 Northern Southeast |
| 12 Bristol Bay | 16 Northwest Arctic Borough |
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| 24 Denali Borough | 25 Petersburg/Wrangell |
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| 9 Kodiak Island Borough | 14 Southwestern Interior |
| | 6 Yakutat Borough |
| | 13 Yukon Delta |



WHAT WE'VE LEARNED

■ Information

- Chlorine and ammonia are the hazardous substances that pose the greatest public health threats to communities around the state.

■ Preparedness

- Response to chlorine and ammonia releases can be effectively managed by a response plan that has simple notification, evacuation and shelter-in-place procedures.
- Local emergency response plans for most communities in the state will be short documents that include notification, evacuation and shelter-in-place procedures.
- Only a handful of communities will need to be able to respond to a release of hazardous substances beyond being able to evacuate and shelter-in-place.
- The Community Right-to-Know database is important in determining how best to invest limited resources.

■ Prevention and Risk Reduction

- In many instances throughout the state, prevention and risk reduction will be the cost effective choice in addressing hazardous substances threats.

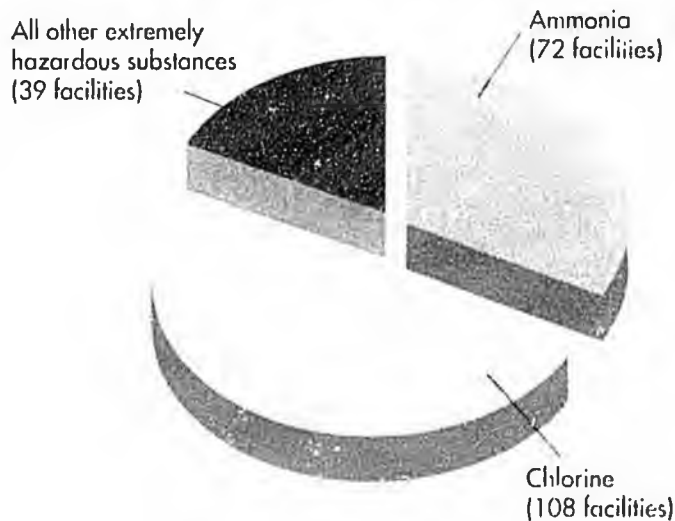


WHAT WE'VE LEARNED

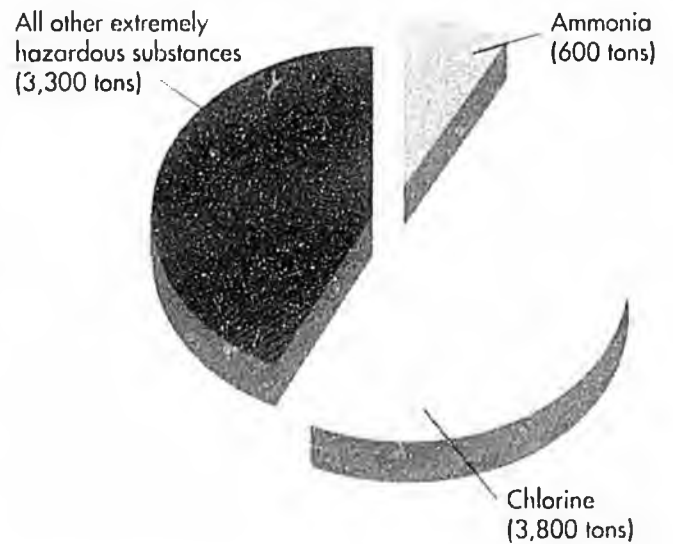
Hazardous Substance Summary

- Chlorine and Ammonia are, by far, the most prevalent extremely hazardous substances in Alaska.
- Both are toxic gasses and are often stored under pressure.
- Chlorine is a disinfectant and often found in large quantities at pools, and wastewater and water treatment facilities.
- Ammonia is a refrigerant and is often found in large quantities at seafood processing and other types of cold storage facilities.

**DISTRIBUTION OF
EXTREMELY HAZARDOUS
SUBSTANCES BY FACILITY**



**DISTRIBUTION OF
EXTREMELY HAZARDOUS
SUBSTANCES BY WEIGHT**



NOTES:

- These charts only include information for those areas where hazards analysis have been completed.
- Some facilities may have more than one extremely hazardous substance.
- Tons of ammonia does not include the 90,000 tons present at the Unocal facility on the Kenai Peninsula. Including this in the chart so distorts the summary, it was omitted.



WHAT WE'VE LEARNED

Extremely Hazardous Substances in Alaska

MOST COMMON

| Substances | Uses | Facilities | Hazards |
|----------------|--------------------------------------|------------------------------------------|--------------------------------------------|
| Chlorine | Water & wastewater disinfection | Pools, treatment facilities | Toxic gas |
| Ammonia | Refrigerant, industrial uses | Seafood processors | Toxic gas |
| Sulfuric Acid | Battery electrolyte, industrial uses | Industrial facilities, maintenance shops | Toxic liquid and solution emits toxic gas |
| Formaldehyde | Biocide | Hatcheries, industrial facilities | Toxic liquid and solution, emits toxic gas |
| Sulfur Dioxide | Wastewater treatment | Treatment facilities | Toxic gas |

LESS COMMON

| | | | |
|-------------------|-------------------|------------------------------|---------------------------|
| Arsenic Trioxide | Hydrazine | Nitric Acid | Sodium Azide |
| Bromine | Hydrofluoric Acid | Phenol | Sodium Cyanide |
| Carbon Bisulfide | Hydrogen Peroxide | Phenylmercuric Acetate | Tetraethyl Lead |
| Chloroacetic Acid | Hydrogen Sulfide | Phosphoric Acid, Dimethyl... | Thiosemicarbazide |
| Chloroform | Hydroquinone | Phosphorus | Toluene 2, 4-Diisocyanate |
| Cyclohexylamine | Mercuric Chloride | Potassium Cyanide | Vinyl Acetate Monomer |
| Ethylene Oxide | Mercuric Oxide | Sodium Arsenite | Xylylene Dichloride |



WHAT WE'VE LEARNED

Extremely Hazardous Substances by Planning District

| LOCAL EMERGENCY PLANNING DISTRICT* | CHLORINE (FACILITIES/LBS) | AMMONIA (FACILITIES/LBS) | OTHER (FACILITIES/LBS) |
|------------------------------------|---------------------------|----------------------------|------------------------|
| ALEUTIANS EAST | 6 / 15,200 | 4 / 58,250 | 0 / 0 |
| ANCHORAGE | 29 / 167,750 | 9 / 45,000 | 9 / 64,300 |
| BRISTOL BAY | 5 / 4,000 | 13 / 130,500 | 1 / 1,000 |
| COPPER RIVER | 0 / 0 | 0 / 0 | 0 / 0 |
| FAIRBANKS** | 6 / 67,700 | 3 / 1,250 | 5 / 297,700 |
| JUNEAU | 5 / 55,800 | 1 / 800 | 4 / 30,900 |
| KENAI | 16 / 45,050 | 14 / 180,094,000*** | 6 / 878,500 |
| KETCHIKAN | 9 / 5,670,700 | 5 / 633,050 | 4 / 1,221,650 |
| KODIAK | 6 / 18,150 | 7 / 116,700 | 4 / 5,650 |
| MAT-SU | 5 / 2,550 | 0 / 0 | 0 / 0 |
| NORTHERN SOUTHEAST** | 2 / 1,950 | 1 / 13,000 | 0 / 0 |
| NORTHWEST ARCTIC | 1 / 4,500 | 1 / 200 | 2 / 3,105,365 |
| PETERSBURG/WRANGELL** | 5 / 26,300 | 3 / 20,100 | 0 / 0 |
| PRUDHOE BAY | 5 / 11,150 | 3 / 9,900 | 3 / 592,900 |
| SITKA | 5 / 1,605,850 | 4 / 179,900 | 1 / 502,000 |
| VALDEZ | 3 / 2,450 | 2 / 13,200 | 0 / 0 |
| YAKUTAT | 0 / 0 | 2 / 11,000 | 0 / 0 |
| TOTAL | 108 / 7,699,100 | 72 / 181,326,850*** | 39 / 6,699,965 |

* LOCAL EMERGENCY PLANNING DISTRICTS WHERE EXTREMELY HAZARDOUS SUBSTANCES HAVE BEEN IDENTIFIED. SOME DATA ARE PRELIMINARY.

** EXTREMELY HAZARDOUS SUBSTANCES HAVE NOT BEEN IDENTIFIED FOR THE ENTIRE DISTRICT.

*** OF THIS AMOUNT, 180,000,000 LBS ARE PRESENT AT A SINGLE FACILITY — THE UNOCAL FACILITY IN NIKISKI.



WHAT'S NEXT...

■ Information

- State needs to keep track of changes in threat so that project can adapt and allocate funds and personnel where they are needed most.

■ Preparedness

- Establish and maintain a base level response capability statewide by completing basic local response plans. The state does not need to purchase a large amount of specialized local response equipment or provide highly technical response training to most communities.

■ Prevention and Risk Reduction

- State needs to emphasize prevention and risk reduction through facility maintenance, industry training, facility planning, and pollution prevention.



WHAT'S NEXT...

Local Hazardous Substance Response Plans

One of the results of the Community Hazardous Substance Planning Process is the development of local hazardous substance response plans. An effective plan need not be lengthy or complex, and should build on a community's basic plan for responding to fires and other emergencies.

THE PLANS INCLUDE THESE BASIC ELEMENTS

THEY IDENTIFY

- Facilities with hazardous substances
- Transportation routes for hazardous substances
- Populations at risk
- Emergency response resources and organization

THEY DESCRIBE

- Procedures for notifying proper authorities and the public of an accident
- Procedures for protecting the public through evacuation or shelter-in-place



WHAT'S NEXT...

Community Incident Response

Through development of local hazardous substance response plans, the project needs to establish in all Alaskan communities A BASE LEVEL RESPONSE CAPABILITY.

In the vast majority of Alaska's communities this means that if a release is detected, the community is able to:

1. Notify proper authorities, and
2. Take immediate measures to protect the public through evacuation or shelter-in-place.

COMMUNITY INCIDENT RESPONSE ELEMENTS

PLANNING

- Simple local emergency response plans that build on community's plan for responding to other emergencies.

RESOURCES

- Readily available local resources: firefighters, police, village public safety officers, local public health officials.

RESPONSE

- Defensive and intended to protect the public through evacuation and shelter-in-place.



WHAT'S NEXT...

Prevention and Risk Reduction

- The focus of the Clean Air Act Amendments on facility effort: combined with the Community Right-To-Know Project's focus on community efforts will yield locally integrated programs to prevent and reduce the risk of uncontrolled releases.
- When implemented, the 1990 Clean Air Act Amendments will require that each facility have a risk management program.

1990 Clean Air Act Amendments



FOCUS ON FACILITIES

- Facility Prevention Programs
- Facility Emergency Response Programs

1986 Emergency Planning and Community Right-to-Know Act



FOCUS ON COMMUNITIES

- Community Awareness
- Community Base-Level Response Programs (Evacuate or Shelter-In-Place)



The Juneau Report is published by the BP Exploration Government and Public Affairs Department to provide an overview of issues and legislation as they relate to the petroleum industry. Opinions of authors expressed here do not necessarily reflect the opinions of the company. Inquiries should be directed to BP Exploration Government and Public Affairs: 564-5403.

JUNEAU REPORT

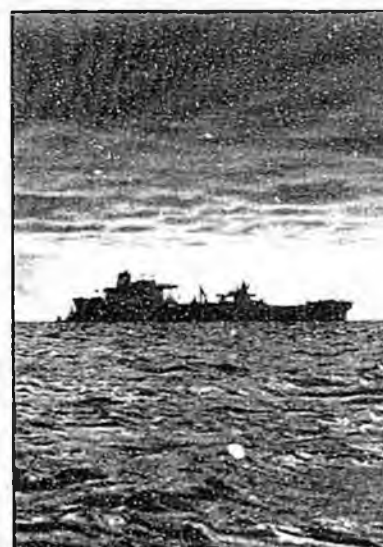
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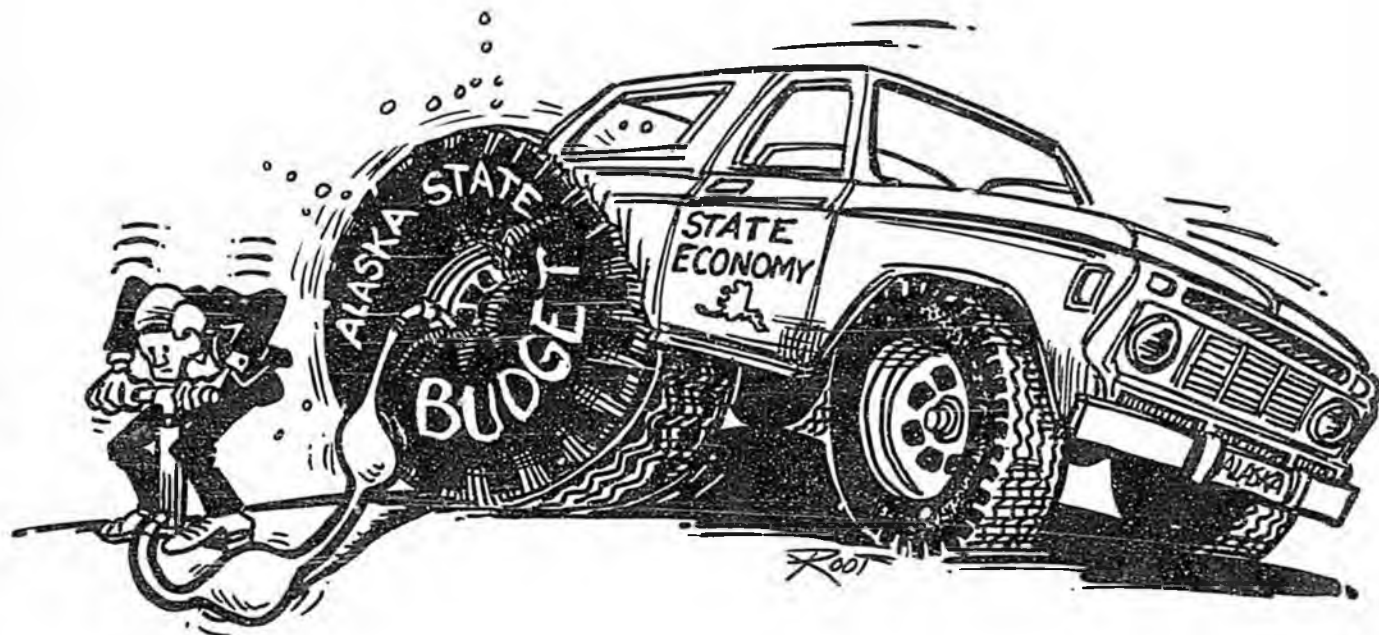
Industry's new investments in Prudhoe Bay
page 2



Health insurance, other issues face state lawmakers
... page 3



Those tough new spill regs — will they work?
... page 4



Governor backs off on cuts

Hickel's Budget: Up 5.7%

In the face of public antipathy, Governor Walter Hickel put aside last year's goal of a series of gradual cuts in state spending, instead embracing a "maintenance" FY 1993 state budget intended to keep state programs at current levels through the budget year beginning next July 1.

"Government is about dollars and bottom lines," the governor said in mid-December. "But government is also about people...Alaska's government is not going to abandon those in need."

With those words, Governor Hickel became the latest among Alaska governors to initially propose cuts in spending in the face of impending revenue declines, and then, facing a legislature hostile to the idea and an apathetic public, prove unable to do it. Former governors Cowper and Sheffield both made similar proposals at the start of their terms.

The \$2.24 billion state operating budget introduced by Hickel in December is 5.7 percent over current-year FY '92 operating expenses. The governor blamed much of the growth on required increases in state "formula" programs like Medicaid, welfare, the school foundation program and longevity bonuses, for much of the budget increase. These account for about \$41 million. But Hickel is also asking for about \$35 million for increases to a variety of other programs, although he has held most state agencies at current-year levels.

Formula programs are those where spending is controlled by specific requirements in state law, which can only be changed by the legislature. Some formulas are linked to population growth, while others are tied to inflation. Some, like welfare and Medicaid, are influenced by new federal requirements.

Overall, formula programs amount to about half the operating budget.

Formula increases next year include aid to families with dependent children, up \$9.3 million; adult public assistance,

up \$3 million; Medicaid, up \$15.7 million with higher costs of medical care; the school foundation program up \$10 million, due to higher enrollments; long-term care, up \$10 million.

Continued on Page 6

In Juneau: Who's in, who's out?

In his first year in office Governor Hickel moved a number of people in key administration positions.

Despite the press attention, the changes are not particularly unusual for the first year of a new administration.

In the governor's office, Joe Holbert is now Deputy Chief of Staff; Paul Fuhs is the governor's liaison with the legislature; among commissioners, Millet Keller and Lee Fisher are out; Nancy Usera switched from Commissioner of Labor, to take Keller's job at Administration.

An incoming governor brings a new team to Juneau, including many inexperienced in government and politics. Adjusting to new roles, some decide the complexities and frustrations of senior government service just don't fit. Former governors Bill Sheffield and Steve Cowper made their share of top personnel changes, as did preceding chief state executives.

But most of Hickel's initial choices for key positions — the administration's heavy hitters — are still in their jobs. These include Chief of Staff Max Hodel; Attorney



General Charles Cole; Resources Commissioner Harold Heinze; Environment Commissioner John Sandor; Frank Turpin, Commissioner of Transportation and Public Facilities; Glen Olds, who heads Commerce and Economic Development.

Continued on Page 6

Commentary**Alaska's fiscal gap**

By Scott Goldsmith

During the last two years my colleagues and I have attempted to increase public awareness of the problems associated with declining state revenues, in an ISER publication series entitled the Fiscal Policy Papers. In them we projected that the state would face a fiscal gap of \$400 million by 1992, increasing to \$1 billion by 2000.



Recent events have lulled many Alaskans into the belief that the fiscal gap is the figment of academic imagination. This is primarily due to the oil price spike from the Iraqi war, which generated a substantial state revenue surplus in FY 1991. In addition, the petroleum production decline which began in 1989 has been slower than anticipated. The price of oil continues to cycle, but has averaged \$18 over the last 6 years. Litigation settlement dollars from the petroleum industry have augmented revenues on a regular basis. The result has been revenues sufficient to fuel continued growth in the state budget. No change in the direction of spending is being signaled from Juneau. But a closer look reveals the fiscal gap exists in several dimensions.

Projected revenues to fund the current \$2.8 billion budget are \$2.3 billion. Without the one-time windfall from the Iraqi war to balance the budget, we would be faced to face with a fiscal gap today.

The gap is now appearing close to home. Local governments are finding it increasingly difficult to finance basic services like education, road maintenance, and public protection because the state is reducing the aid programs that fund the major portion of local government activities.

The state continues to budget about \$1 billion annually in excess of the sustainable spending level, based on the inevitable decline in petroleum revenues as production continues to fall. Potential sources of revenues, be they from the Permanent Fund, diversification of the economy, ANWR, a gas pipeline, or taxation of households, will be insufficient to replace the loss in petroleum revenues.

The fiscal gap should be of concern to all Alaskans for several reasons. First, by ignoring it we are perverting the budget process—cutting spending for needs while increasing spending on wants. Second, our economy, which is overly dependent on state spending, could be derailed by mismanagement of the gap. Third, potential investors will be spooked by a fear that state government will close the fiscal gap by placing the burden on their shoulders.

Restructuring state and local government budgets to live within our means and using our public resources wisely is a major challenge for this decade. If we can make that transition successfully, Alaska could still be the envy of the nation. But it won't happen unless we get started soon.

Scott Goldsmith

Scott Goldsmith
Professor of Economics
Institute of Social and Economic Research
University of Alaska Anchorage

North Slope producers will expand Prudhoe's enhanced oil recovery

Prudhoe Bay producing companies are continuing to make major investments to slow the gradual decline of the big North Slope oil field. The latest projects include the \$1.5 billion GHX-2 gas project previously announced, but also a major expansion of the field's enhanced oil recovery (EOR) project.

When it is complete, Prudhoe's EOR program will be one of the largest of its type in the world. The planned expansion is expected to result in an additional 150 to 220 million barrels of oil recovery.

That is the equivalent of discovery of a giant oilfield, explains Dave Szabo, BP Exploration's manager for Prudhoe Bay Reservoir Engineering. BP and ARCO Alaska, Prudhoe field operators, manage the enhanced recovery program.

While 110 to 150 million barrels are expected to be recovered by expanding the area covered by the EOR in the main part of the field, another 40 to 70 million barrels of reserves are expected through "infill expansion." This involves drilling more producing wells and converting others to injection wells in a section of the field known as the "Northwest Fault Block."

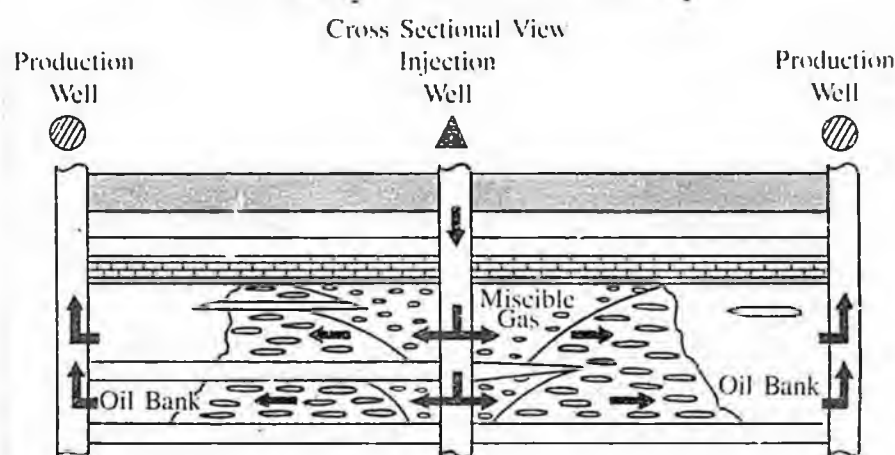
Overall, the expanded project is aimed at improving oil recovery from areas not covered by the EOR, and from areas with relatively thin layers of oil-producing rock, which until recently were considered uneconomical. Prudhoe Bay producing companies have had enhanced oil recovery under way in the field since 1982. The program involves pumping a mixture of natural gas liquids into the underground producing formation as a supplement to the waterflood program, which flushes oil from the reservoir rock. The gas liquid mixture and water alternate with each other, pushing oil remaining in the underground rock toward nearby producing wells.

EOR expansion will require the drilling or conver-

sion of about 100 new wells and will expand the area covered from 21,600 acres to 58,600 acres, almost tripling its size. The volume of natural gas injected, in the form of a liquid mixture, will increase from 450 to 700 million cubic feet daily.

The project is linked to the new GHX-2 gas project in that it will depend on the new gas project for a supply

Prudhoe Bay Enhanced Oil Recovery



Prudhoe's EOR Project injects a liquid mixture to flush oil from tight rock.

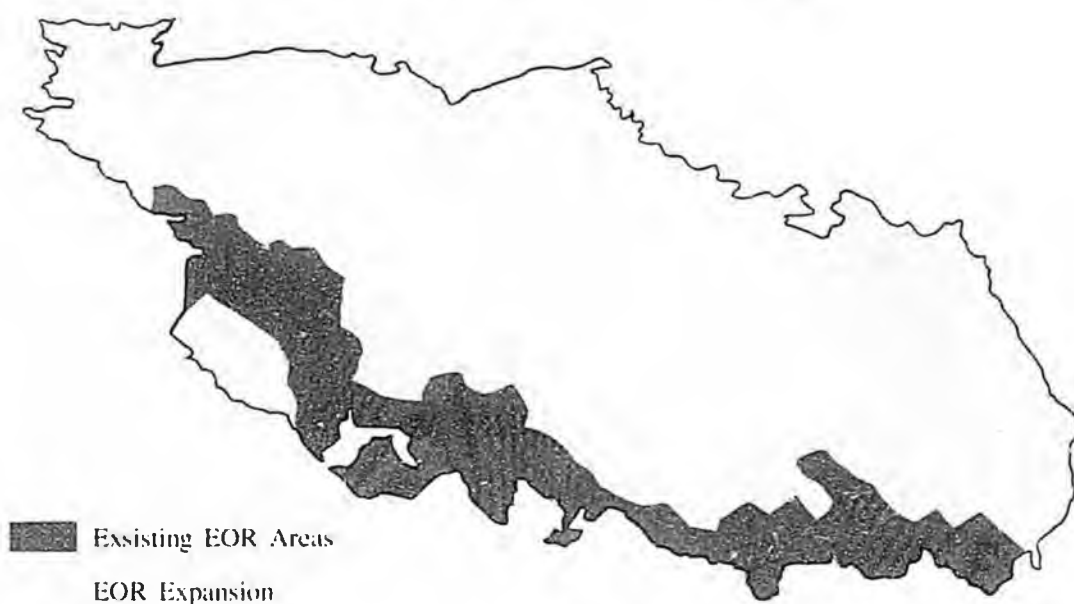
of natural gas to use as an injectant. GHX-2 is an expansion of Prudhoe's gas handling facilities from 5.5 billion to 7.5 billion cubic feet a day.

Through the life of Prudhoe Bay, the existing and planned waterflood and EOR projects are estimated to contribute between 1.5 and 2 billion barrels of the 12 billion barrels of oil now estimated "recoverable" from the field.

In a related development, Szabo said the Prudhoe Bay operators will continue an experimental program of "in-fill" production wells, drilled on a 40-acre spacing grid in selected areas of the field. These wells are drilled closer together than wells previously drilled at intervals of 80 acres and 160 acres.

Drilling wells in a tighter grid of is a common industry practice in a maturing oil field. But each new phase of drilling must also justify itself economically, in that the amount of new oil resulting from new wells must justify the expense.

Prudhoe Bay Miscible Gas Project
Vertical Delineation of Expansion Areas



Producers will triple the area of the Prudhoe Bay field covered by an Enhanced Oil Recovery project.

Lawmakers will tackle insurance coverage, soaring medical costs

In the 1992 session, Alaska lawmakers will again tackle health insurance and control of skyrocketing medical costs. It's a national problem that is particularly acute in Alaska, where small populations and high costs drive up medical expenses, and seasonal employment leaves thousands of Alaskans uninsured or underinsured.



Jim Duncan

The legislature has grappled with the problem for several years, with different approaches proposed by Sen. Jim Duncan of Juneau, Sen. Jalmar Kerttula, Palmer, and Sen. Virginia Collins, Anchorage. In the State House, Representatives Johnny Ellis and Mark Boyer have been leaders on the issue.

Duncan has been working on a plan that would pool thousands of state, local and school workers under one state insurance authority, negotiating for better coverage and rates with insurers offering health and medical coverage. Private employers could also join the pool.

Duncan's plan goes one step further, using the pool to bargain with health care providers for ceilings on medical costs, a move that prompted sharp opposition from the state's medical community.

Kerttula has long advocated universal health care, using a state health authority to extend affordable medical coverage to the uninsured Alaskans. This plan has the support of the medical community, because it solves one serious problem hospitals and clinics now face. They must absorb losses of uninsured patients who can't pay, spreading those costs through higher rates to those who are insured, raising costs for everyone.

Collins has a proposal that allows insurers to form a reinsurance association to extend special coverage to high-risk employees or groups in risky occupations, a serious problem for small businesses. This allows insurers to spread coverage for high risk employees among all in the industry. Collins' plan is based on model insurance developed by the insurance industry and adopted in some other states.

A state health cost containment task force, made up of legislators, administration officials, labor and business leaders concerned with the issue, met several times through 1991 to gather information. It was to convene just before the legislature's Jan. 13 start to make recommendations for legislation.

Sen. Duncan said he doubted the legislature will be able to pass major health

insurance proposals in 1992, including his own proposal for mandatory pooling and medical cost "containment," as well as Kerttula's plan for universal health care. But it is possible that parts of the package could be enacted, he said, such as another proposal by Collins, also put forth by Johnny Ellis in the State House, that would extend health insurance to children enrolled in schools. This is

modeled after a University of Alaska program.

Lack of children's coverage creates an Alaskan version of the welfare mother problem, Collins points out. She knows mothers who go on welfare so their children will be covered by medicaid. If they worked, they would lose medicaid. Their employers, if they had employee health insurance at all, would not extend cov-

erage to families. Meanwhile, work on the bigger health issues will continue—employee pooling, cost containment and universal care — will go on, Duncan said. It usually takes several years for the legislature, and the constituent groups that influence lawmakers, to come to agreement on controversial issues. Medical insurance and cost containment are no different.

Transition

Sen. Shirley Craft continues Bettye Fahrenkamp's work



Bettye Fahrenkamp

Shirley Craft, long-time friend of the late Sen. Bettye Fahrenkamp and a fellow educator, was appointed by Gov. Hickel to serve through the remainder of Sen. Fahrenkamp's term. Fahrenkamp, who died of cancer in Fairbanks last year, was a veteran Senate Democrat who took great interest in resource, education and social policy issues, as well as matters of concern to her Interior Alaska constituents. She chaired the Senate Natural Resources Committee for many years and played a key role in legislation affecting the oil and mining industries. Her accomplishments were diversified, including laws dealing with hazardous waste, investment tax credits, land reclamation, creation of Tanana State Forest.

Shirley Craft came to Fairbanks in the



Shirley Craft

mid-1950s, where she met Fahrenkamp, a fellow teacher, the start of a lifelong friendship. Craft went on to become a school principal in the Fairbanks school system. Shirley Craft will serve through the 1992 session, to the end of Bettye Fahrenkamp's term. She expects to continue Fahrenkamp's work, particularly on education and issues that affect the Fairbanks area.

Other issues: Workers' compensation, school construction funding, 'in-place' resource taxes

State lawmakers face a variety of important issues this spring, including a proposed new workmen's compensation law, a massive rewrite of state laws covering insurance regulation, a new system for state financing of school construction, whether municipalities should be able to tax the value of undeveloped natural resources, powers of the state coastal policy council, and other legislation.

Governor

Hickel is proposing an alternative to a workmen's compensation bill he vetoed last year. His proposal incorporates parts of the 1991 legislation, such as provisions extending employers' health benefits for injured workers, limitations of liability for insurers and others partici-

pating in workplace safety inspections and clarification of liability for employer sponsorship of recreation, like softball teams. The governor's bill also tackles other issues, including the presumption requiring acceptance of evidence of injuries, which makes it difficult for em-

owners of undeveloped timber and sand and gravel deposits. Minerals firms hoping to develop major new mines are concerned that marginally economic or subeconomic ore deposits will be taxed, making it difficult for them to raise investment capital.

'Municipal taxes on undeveloped resources should arouse interest. Currently, local governments are blocked by state law from taxing resources like timber, sand and gravel.'

ployers to contest a claim for compensation. Municipal taxation of undeveloped resources should arouse considerable interest. Currently, local governments are blocked by state law from taxing resources "in place," but that prohibition expires next summer. This issue affects

The legislature may also look at powers of the Alaska Coastal Policy Council, made up of local community leaders and state officials. State laws are currently unclear as to whether the council has authority to review and reject permits or other actions taken by state agencies — in effect becoming another regulatory agency — or whether the body should be advisory.



In what is now standard operating procedure, spill response vessels escort each tanker from Port of Valdez.

Alaska's tough new oil spill regulations

Almost two years after the nation's largest oil spill in Prince William Sound, new state regulations implementing a tough new state spill response law are set to go.

They may be Alaska's most substantial response to the spill, an event that prompted the legislature in 1990 to enact a new law — House Bill 567 — mandating the nation's highest standards of spill readiness.

Through much of last year the regulations — the detailed instructions for state officials as to how the law will be carried

out — were developed by the Department of Environmental Conservation (DEC) with the help of a citizen working group that involved interest groups at opposite ends of the issue.

These included the oil industry, fuel carriers and distributors, conservation groups, and others, like rural electric co-ops and municipal representatives.

Considering the feelings and polarization that followed the Prince William Sound spill, the level of consensus reached in the working group was a remarkable achievement. Issues on which

agreement could not be reached were left to DEC Commissioner John Sandor.

But the process could be considered a model for resolution of other controversial environmental policy issues. In fact, the U.S. Coast Guard will set up a similar working group this spring to develop federal oil spill regulations.

1990's HB 567 went into effect last June. It imposed tough new spill response planning standards on the oil industry, requiring them to show they have equipment in place to clean up an amount of oil that could realistically spill within 72 hours after an accident. After June, 1992, similar standards will apply to Alaska fuel transporters and distributors.

The regulations also establish a unique system of "prevention credits," incentives for the oil industry and fuel carriers to incorporate spill preventive measures into their operations.

"I was surprised at the productivity of the working group (developing the regulations) and how well we worked together," said Patti Saunders, a member of the group and an oil issues specialist for the Alaska Center for the Environment. "I've been involved in these things for years, and for the first time a working group was well balanced and big enough — but not too big — to handle different facets of the issue."

Saunders compared it to one other recent experiment in which differing interest groups — conservation groups, fishermen and the timber industry — worked to develop consensus on a new timber practices law. It was not a good experience, she said, and it caused environmental groups at first to view the spill regulations work group with suspicion.

But the process worked. "People were basically honest and put real concerns on the table. We worked them out. There wasn't much political grandstanding," she said.

Bill Schoephoester, projects and planning manager for Petro-Marine, Inc., a major Alaska fuel distributor, and another member of the work group, agreed with Saunders: "We resolved a lot of issues. It was slow and painful at times because people came at this thing from completely opposite ends of the spectrum. But DEC ran it well. Considering what we started with, I would rank it as pretty successful." DEC Commissioner Sandor has asked

the working group to continue work, reviewing how the law is administered and to help prepare new phases, such as application to tug and barge firms which move fuel oil, and operators of bulk fuel storage tanks. These will become subject to the planning standards of HB 567 next June.

Another area with ADEC wants help with are uniform statewide guidelines for agency review of spill contingency plans.

"Problems now develop because DEC staff in different regions look at spill contingency plans in different ways," Petro-Marine's Schoephoester says. "We can have our contingency plan approved in one region, but if we move in another region our plan may not meet their criteria. DEC wants to correct that."

Oil industry representatives in the group committed themselves to help the state develop a checklist for inspections and guidelines in training inspectors.

One substantial accomplishment is that the work group reached consensus on a

Nice on paper, but will they really work?

Alaska has now adopted the toughest oil spill law and regulations in the nation. But will they really work?

Two central themes of HB 567 and its regulations — tougher response planning standards and "credits" for prevention measures — may not mean much when it comes to dealing with an actual spill. In an emergency, companies and contractors need flexibility to respond quickly to conditions at hand, particularly weather. What is written in a detailed contingency plan may have little relevance to what people will really have to do.

Bill Schoephoester, Manager of Planning and Projects for Petro Marine, Inc., a major Alaska fuel distributor, says what really counts in dealing with a spill is having people, the equipment, and frequent training.

Beyond that, writing a detailed plan as to how his company would clean up 70,000 barrels of spilled fuel product if a large fuel barge goes on the rocks in Western Alaska, or spills fuel in the open ocean, may be just a paper exercise.

"The new planning requirements could just be a tremendous paper exercise, a lot of paperwork that will keep people busy writing it and reviewing it, but which doesn't have much to do with the real work of dealing with or cleaning up a spill.

More fundamentally, the frustration for Alaska fuel companies is that HB 567 was essentially written with Alyeska Pipeline and Prince William Sound in mind. Schoephoester says, "Ninety percent of the thinking in this was on what to do with one kind of petroleum — crude oil — spilled in protected, enclosed body of water near harbors for a standby fleet," of response vessels — Prince William Sound. That has little to do with Schoephoester's problem of how to respond to problems with small barges carrying different kinds of fuel products operating along thousands of miles of Alaska coast.

Meanwhile, Mark Hutton, a consultant who worked on the regulations, is critical of the entire concept of prevention credits. He believes they oversimplify a complex problem. He questions whether the state really has the resources to carry out the prevention regulation program across all of the industries affected, including petroleum companies handling crude oil and shippers and distributors carrying refined product.

The program could lead the public into a false sense of security that all catastrophic spills can be cleaned up in 72 hours, just because the regulations require the operators to be able to do it. Hutton says.



Spill drill in Prince William Sound

wide range of detailed spill response regulations covering crude oil and fuel storage tanks, secondary containment and piping. Had they been adopted as originally proposed in rough draft, they would have been very difficult to implement.

"If we had done nothing else, this was evidence the (working group) process made the effort worthwhile," said Mark Hutton, who was in the group as a consultant to the Alaska Oil and Gas Association.

Another important area of agreement, covering pipelines and oil exploration

Continued next page

spill regulations

Continued from left

and production site, was the "realistic maximum oil discharge," the largest amount of oil likely to be released in a spill. Called the "RMOD" in working group jargon, this is the oil volume an operator must demonstrate capability of handling in its spill contingency plan. The working group continued to disagree on the RMOD for tankers, however.

"There were a lot of small issues also agreed on," Hutton said. "For example, the new regulations provide for a preapplication conference between operators and DEC," a procedure not used before. "This allows operators to work out problems with the agency in advance, before the plan is submitted."

But there were also major issues over which the group could not reach agreement, and on which strong differences of opinion remain. DEC Commissioner Sandor made final decisions on these.

The biggest was the RMOD — "realistic maximum discharge" — for tankers. Environmental groups and the regional citizens' advisory committee pushed for the presumption that the total cargo of a ship could be lost in an accident. Thus, the shipowner, in its contingency plan, would have to show capability of having resources — the people and equipment — on site within 72 hours to clean up 100 percent of the cargo, for the largest tank ship operating from Valdez, that would involve about 1.8 million barrels.

Using research from the 50 worst tanker spills from around the world and risk analysis based on sophisticated tanker engineering modelling, industry argued that 33 percent was a more appropriate figure.

No agreement could be reached, so Sandor settled on 60 percent as a compromise. This prompted some criticism from both industry and conservation groups because DEC had decided on the figure without any basis in statistics or facts.

This was linked to another issue, prevention credits. These are incentive measures that allow reductions from the maximum discharge capability by incorporating specific prevention measures, such as double bottoms on tankers, escort vessels, crew training, alcohol and drug testing, with specified percentages for each measure.

Conservationists and the citizen advisory group were concerned that if companies undertook enough prevention measures their planning standard would be reduced, in theory, to zero. They pushed for a minimum of 30 percent of the cargo.

This became another area for disagreement. As this is written, this issue is unresolved. The regulations sent to the Attorney General's office did not have the minimum, although earlier versions did. DEC staff apparently felt the existing prevention credits would not reduce the planning standard below 30 percent.

But some work group members felt DEC staff may have overlooked other sections of the regulations, which allow operators to petition the agency for more credits on the basis of new technological developments. They are pushing DEC to restore the minimum requirement.

The oil industry remained lukewarm on the whole issue of prevention credits. It's industry's belief that responsible operators should incorporate the specified measures anyway, and that having them in a regulatory scheme detracts attention from other measures that help prevent spills, like drills and training. In fact, the industry first proposed a 33 percent response standard with no prevention credits other than those related to the physical structure of tankers like double hulls and bottoms, and hydrostatic testing.

Saunders, from Alaska Center for the Environment, says she doesn't want disagreements over the minimum to delay the regulations. "My fear is that glitches like this might delay approval of the regs, and I really don't want to see that happen," she said. "I'm willing to go forward (without the minimum) if I knew people would work on it and fix it. This apparently happened because people in DEC were in a rush. People make mistakes."

"What I want to make sure is that an inadvertent mistake doesn't turn into something people take advantage of. It's not a short-term problem because this won't affect anyone's current planning standard."

"Let's not hold up the regulations. Industry needs to know what they must do to comply with the law. They

470 Spill Fund — State's 'deep pocket'

The state's \$50 million emergency oil spill response fund is being increasingly tapped for programs not related to oil spills or environmental problems related to petroleum production. The so-called "470" spill fund is now being drawn down over \$30 million yearly to support a variety of environmental programs administered by the State Department of Environmental Conservation (DEC).

Because of that, a special nickel-a-barrel surtax on petroleum production, enacted in 1989 as a temporary measure to bring the emergency fund up to \$50 million, may become, in effect, a permanent tax.

Alaska's emergency spill response fund — named the 470 fund for the number of its enabling legislation — was created in 1986, but was given very little money until after the 1989 Prince William Sound oil spill, when state lawmakers appropriated \$50 million, financed by the oil production surtax.

In 1989, legislators also added to the activities that could be financed. The fund was always intended to help pay spill containment and cleanup costs. But other expenses, like litigation, restoration and remediation work, and preventative measures like review of contingency plans, exercises, drills and equipment inspections, were added that year to help insure a spill like the *Exxon Valdez* never occurred again.

To pay for this, legislators added the five cents per barrel surtax to the state's oil severance tax. The tax was to remain in effect as long as it took to get \$50 million into the fund. After that, it was to cease, then "kick on" again if the fund dipped below \$50 million.

It is the amount of the "dip" that troubles some. Spill restoration work was to be paid from the fund, but after that, many thought only one or two million dollars a year would be spent for plan review or stocking regional spill response depots. Annual expenditure of \$30 million and more a

year, an amount which almost doubles the Dept. of Environmental Conservation budget, was never contemplated. Many now think the "470" fund may become an ongoing source of funding for a variety of environmental projects, many with little or no connection to petroleum producers who pay the tax.

Over the last two years, a growing amount of money was spent from the fund to do restoration work on sites contaminated by hazardous wastes or leaking fuel oil leaks. More such spending is planned for next year. Proposed projects have included auto salvage yards and battery repair shop cleanups.

The DEC, which administers the 470 fund, also supports a bill in the State House that would allow money from the fund to be used for a state program providing grants and loans for repair and rehabilitation of leaking underground fuel storage tanks. This is potentially a \$100 million problem in Alaska.

Some critics question whether it is good to have a fund that once had a narrow focus — oil spill cleanup and restoration — being increasingly used to fund a wide variety of environmental programs otherwise funded from the general budget, and scrutinized closely by legislative finance committees. While not a dedicated fund, the 470 fund still gives DEC an indirect way of financing some of its programs "off budget."

are as anxious as we are (to get the regulations in effect)," she said.

The work group did reach consensus, however, that a minimum spill response standard was not needed for pipeline and oil exploration or production sites.

Two other areas of disagreement, in which Commissioner Sandor made decisions, were over relief well capability in offshore drilling and the application of the state Coastal Management Program to spill contingency plans.

ACE's Saunders said she and other public members pushed strongly to have relief wells or other blowout-control measures dealt with in the regulations. Industry argued those are now evaluated on a case-by-case basis under existing state and federal permit requirements, which can put specific requirements on an exploration project through permit stipulations. DEC decided it wasn't appropriate to include it in the regulations.

"We want some assurance that a relief well (to control an offshore blowout) can be drilled or that a blowout can be controlled in some other way in the same (drilling) season, without waiting until the next year. We want it in the regulations, and the contingency plan must be able to do that," Saunders said the issue was kicked up to the cabinet level to be dealt with.

The coastal zone management issue is more muddled. The state coastal management act says major permits in coastal areas come under review of the coastal management program (which includes review by local coastal districts and municipalities) while the state administration argues DEC's review of contingency plans should substitute for coastal management review. But the issue hasn't really been settled.

The problem is serious because of potential for

delays of contingency plan approval, which can hold up an operation. "The coastal zone review process has provisions for open-ended delays," says Exxon's Re' Dragnich. "Many different parties (other state agencies or coastal resource districts) can protest through appeals, and stop the review clock."

That conflicts with the law established by HB 567, which guarantees DEC action on spill contingency plans in 65 days.

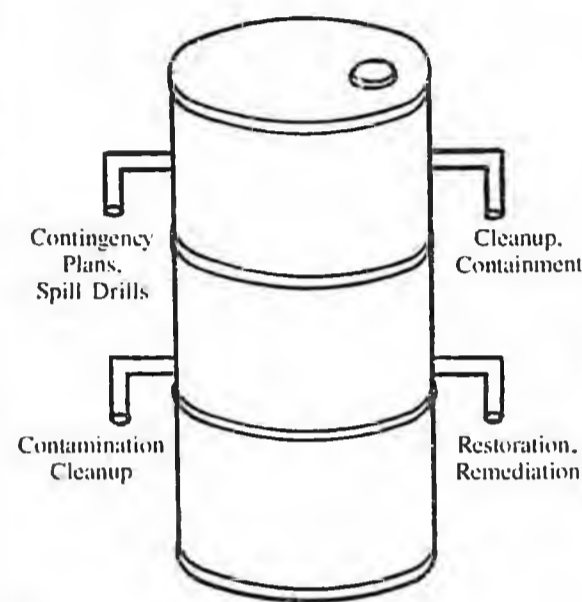
Another problem is that operators may get in a position where they have approval by DEC for their plan, but opposition from the local coastal resource district. Some Alaska bulk fuel operators now face this problem.

But overall, the regulations do follow the intent of HB 567, says State Sen. Drue Pearce, an Anchorage Republican who played a key role in development of final versions of the bill.

Pearce said she was pleased the issue of prevention credits was dealt with, though she was concerned about the DEC's cost of implementing the program. "From what I've seen of the regulations, they are a lot closer to our (state legislator's) intent than many thought they would be," she said.

Rob Dragnich of Exxon, who headed an Alaska Oil and Gas Association task force and was one of industry's representatives in the group, felt the working group process was constructive because in the past, industry's opportunity to talk to ADEC was in a formal rulemaking process in a formal procedure that isn't structured for informal discussion or negotiation between interest groups.

"This gave DEC a forum to listen to different points of view without taking a lot of heat."





Senate President Dick Eliason and Rules Chairman Sen. Fred Zharoff.

The governor's 'maintenance' budget

Continued from Page 1

gevity bonuses up \$2.9 million, with 1,200 more seniors in the program.

Of Governor Hickel's suggested program additions to current-year spending, the more significant include an additional \$13 million for state prisons, \$5 million for the University of Alaska, \$4.19 million for tourism marketing, \$2.3 million added for education reform initiatives, \$2.3 million added for state troopers, \$1.6 million more in international trade efforts, and \$525,000 for rural economic development.

Governor Hickel proposes that municipal assistance and revenue-sharing, which like the school foundation program extend state assistance to local governments, be held at FY '92 levels. He held most other state programs at existing levels.

By requiring most agencies to absorb an estimated \$23.2 million in cost-of-living adjustments mandated by negotiated state employee union contracts and another \$21.6 million in inflationary increases in costs for travel, contractual services, supplies and equipment, the governor imposed an indirect cut on those departments. To absorb the impact of the increased COLA in state union contracts, state agencies will have to eliminate an estimated 450 positions, the governor says.

To counter criticism that he has abandoned his goal of cutting spending, the governor points out that state employees, which are the largest part of agency costs, are being gradually reduced through attrition. "Today, we have roughly 500 fewer positions on the books in state government than when we came into office," a year ago, Governor Hickel said. "We should achieve approximately 500 fewer positions by mid-1992."

Last year, the governor proposed a series of five percent annual cuts in operating spending that were intended to bring spending within range of reduced oil revenues by the end of his first term. But \$100 million in proposed cuts hit heavy opposition from constituent groups and the legislature. By the end of the 1991 session, the governor largely abandoned the effort.

One administration cost-cutting initiative still underway is a state agency efficiency-review intended to spot duplicative and overlapping services. This is being done by consultants to the Office of Management and Budget; final reports and recommendations are due this spring.

As this is written, the governor is still working on a proposed capital budget

Revenues (Millions) FY '93*

\$2,374.3 Unrestricted
89.5 Revenue adjustments

\$2,463.8 Total available

**Assumes oil price average \$18.90/barrel*

Expenditures (Millions) FY '93

\$2,241.3 Operating
76.0 FY '92 supplementals (est.)
198.7 Debt service
7.9 Loan programs
26.7 "470" special fund
5.0 New legislation (est.)
300.0 Capital budget (est.)

\$2,855.6 Total Expenditures

(-\$391.8 Deficit) Drawdown from budget reserve
Source: Office of Management and Budget, December 1991

expected to be in the \$300 million range, depending on revenues available. The capital budget is approved separately from the operating budget.

State income, mostly from oil and gas revenues, is expected to cover the operating budget. Administration officials indicate they would favor spending part of several hundred million dollars remaining in the Budget Reserve Fund to finance a capital budget.

While the press often portrays Governor Hickel as a booster of grandiose capital projects, what the governor has actually pushed in his capital budget is more down-to-earth. Last year much of what the governor asked for were relatively less glamorous maintenance projects, like repairs to state and university buildings, state highways, docks, harbors and airports. The governor's FY '93 capital budget is expected to call for more of the same.

This year, the governor is expected to push a revamped version of his community matching program that was rejected in its original form by the legislature. One new initiative may be a change in the way state grants are made for local school construction. The governor may include school construction among local projects for which state capital grants will require a percentage of matching participation by a local community.

In Juneau: Who's in? Who's out?

Continued from Page 1

ment; and others in the cabinet. In other key administration positions, Shelby Stastny remains in his job at the Office of Management and Budget, and Paul Rusanowski remains in the Division of Governmental Coordination.

In changes at the top, Joe Holbert came in as Deputy Chief of Staff to replace Malcolm Roberts, who moved to run the state's ANWR promotion campaign. Holbert, a Denver advertising executive, worked with Hickel in 1966. He has taken on day-to-day operational matters. This leaves Chief of Staff Max Hodel free to concentrate on policy.

Paul Fuhs, formerly head of Economic Development in the Department of Commerce, was recently named the governor's legislative liaison, a very sensitive position. Bruce Geraghty, named after Bruce Kendall's departure, remains as a deputy legislative liaison.

As legislative assistant, Fuhs is the governor's lobbyist and is responsible for pushing the administration's agenda with the legislature. Two young assistants who received lots of press attention — James Rockwell, a special assistant, and Eric Rehmann, press secretary — both quit recently to start an international trading company. Two other assistants, Don Tanner and Ric Davidge, took positions in other state agencies.

Two more important departures came last fall when Millet Keller, former Commissioner of Administration, and Lee Fisher, Commissioner of Revenue, resigned after questions were raised over technical violations of the state procurement code. Na Bear-Usara, formerly Commissioner of Labor, was shifted to take Keller's place as head of Administration. As this is written, the top positions at Revenue and Labor remain vacant, although they may be filled shortly.

Bear-Usara is in a key position. Her job in Department of Administration includes renegotiation of eight state employee union contracts after they expire, in the near future. Bear-Usara will make a substantial long-term contribution in bringing state expenses under control if she can persuade state employees, as union contracts are renegotiated, to be modest in their pay demands.

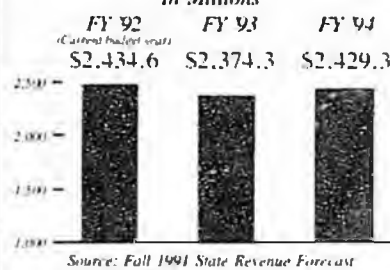
Former governors Sheffield and Cowper also made first-year changes: Larry Crawford, Sheffield's first chief-of-staff, and Dan Casey, a former oil industry manager who was DOTPF commissioner, left their jobs in the first year. Peter McDowell, a Juneau management consultant, left as Director of OMB. Early on, Governor Cowper lost his legislative assistant, Mike Bædner, as well as DOT commissioner Rocky Gutierrez. At the end of Cowper's first legislative session, Chief of Staff Pete Jeans shifted to another job. In the middle of his term, Judy Brady left her position as Commissioner of Natural Resources, as did Tony Smith, who headed Commerce and Economic Development.

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MAJOR OIL SPILLS AND RESULTING LEGISLATION 1899 to Present

- 1899 **Rivers and Harbors Act.** Also known as the Refuse Act. Prohibits discharge or deposit of trash or refuse that would cause obstruction to navigable waters.
- 1924 **Oil Pollution Act of 1924.** Prohibits offshore oil dumping to a perimeter of 3 miles off the U.S. shoreline. Gives the Department of Interior access to Department of Defense and U.S. Coast Guard resources to clean up oil spills.
- 1948 **Federal Water Pollution Control Act.** First broad Federal legislation addressing water pollution, particularly water pollution caused by waste disposal.
- 1961 **Oil Pollution Act.** Implements the 1954 International Convention for the Prevention of Pollution of the Sea by Oil in the U.S.
- 1965 **Water Quality Act.** Gives the Federal government power to set water quality standards for certain waters in the absence of State action.
- 1967 **Tanker *Torrey Canyon* wreck** occurs off the southern coast of England, spilling over 100,000 tons of oil.
- 1967 **President Johnson calls for assessment of U.S. legal/technical resources for preventing and responding to oil spills.**
- 1968 **Breakup of the *Ocean Eagle* tanker** in San Juan Harbor, Puerto Rico, releases approximately 3.48 million gallons of crude oil.
- 1968 **National Multiagency Oil and Hazardous Materials Contingency Plan (National Contingency Plan or NCP).** Assigns responsibilities for emergency responses to signatory agencies. Establishes hierarchical national response system and designates Federal on-scene responders.
- 1969 **Oil well blowout off the coast of Santa Barbara, California,** releases an estimated 3.15 million gallons of oil.

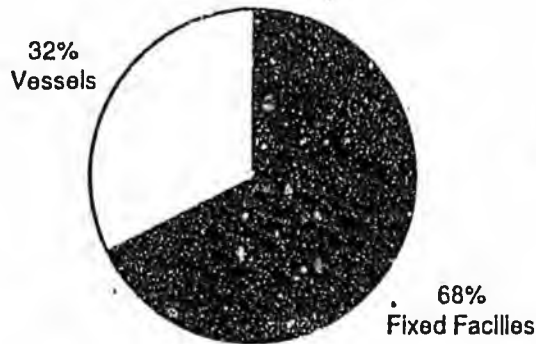
- August 1970 **Federal Water Pollution Control Act (Clean Water Act or CWA)**. Repeals OPA of 1924 and revises NCP. Establishes stricter liabilities and penalties for oil discharges and for failure to notify the government of an oil discharge. Gives the President authority to remove spilled oil and to sue the responsible party to recover cleanup costs. Establishes an oil spill cleanup fund and mandates that tanker owners provide evidence of financial responsibility to assume oil spill cleanup costs.
- October 1970 **Environmental Protection Agency (EPA)** created from the consolidation of the Federal Water Pollution Control Administration and other Federal offices.
- 1971 Collision between the *Arizona Standard* and *Oregon Standard* tankers in San Francisco Bay, California.
- 1972 **Ports and Waterways Safety Act**. Increases oil spill prevention by establishing navigational safety measures for tankers and mandating vessel improvements.
- 1972 **Federal Water Pollution Control Act Amendments of 1972**. Strengthens CWA section 311. Gives U.S. Coast Guard and EPA authority to prevent and respond to accidental oil releases in navigable waters.
- 1974 **Deepwater Port Act of 1974**. Regulates the construction, operation, and licensing of deepwater ports and establishes strict liabilities for vessels or deepwater port licensees that discharge oil.
- 1976 Tanker *Argo Merchant* runs aground off the coast of Massachusetts, spilling 7.5 million gallons of oil.
- 1977 Tanker *Hawaiian Patriot* breaks up off the coast of the Hawaiian Islands, spilling its total oil cargo.
- 1977 **Federal Water Pollution Control Act Amendments of 1977**. Extends Federal government's jurisdiction to a boundary 200 miles off the U.S. coastline. NCP jurisdiction expanded to include (1) potential oil discharges and (2) the economic zone defined in 1976 Fishery Conservation and Management Act.
- 1978 Tanker *Amoco Cadiz* oil spill releases approximately 65 million gallons of oil off the coast of France.

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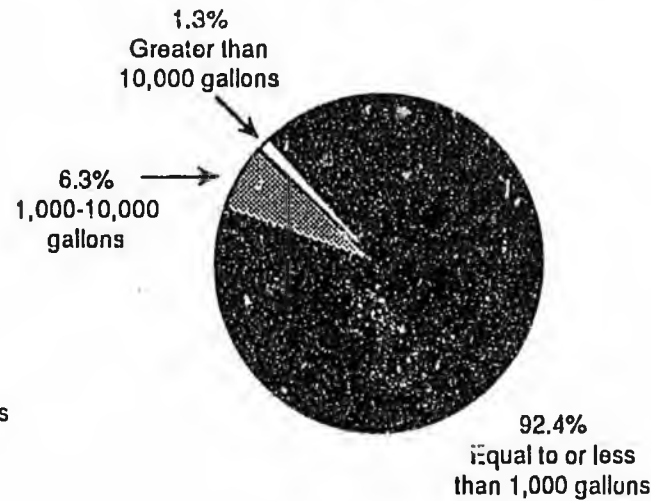
- 1978 **Port and Tanker Safety Act.** Amends Ports and Waterways Safety Act. Gives U.S. Coast Guard authority to establish, maintain, and operate vessel traffic services in ports; allows Captains of the Port to regulate movement in ports; and requires vessels to comply with vessel traffic systems.
- 1979 **Ixtoc I oil well blowout** off the coast of Mexico releases approximately 1.2 million gallons of oil per day for 60 days. The oil eventually reaches Texas beaches.
- 1980 **President Reagan issues 2-page declaration against comprehensive oil legislation.**
- 1988 **Aboveground tank collapse at the Ashland Oil Company** releases 750,000 gallons of diesel fuel into the Monongahela and Ohio Rivers in Pennsylvania.
- 1988 **Tanker *Arco Anchorage* spill** leaks approximately 189,000 gallons of crude oil into waters off the Washington State coast.
- 1989 ***Exxon Valdez* oil spill** in Prince William Sound, Alaska, spills over 10.5 million gallons of crude oil.
- 1990 **Tanker *Mega Borg* explodes** off the coast of Texas, releasing an estimated 4 million gallons of crude oil, most of which was burned or recovered.
- 1990 **Tanker *American Trader* runs aground** off the California coast, releasing approximately 400,000 gallons of crude oil.
- 1990 **Oil Pollution Act (OPA).** Amends CWA. Expands contingency planning requirements; enhances response authorities; adds new planning and response structures at the Federal and local levels; establishes drug testing for vessel pilots, manning standards, and double-hull requirement for oil tankers; mandates study on tanker navigation safety standards; and mandates additional vessel construction and marine traffic safety standards.

DISTRIBUTION OF OIL SPILLS By Source, Size, and Volume

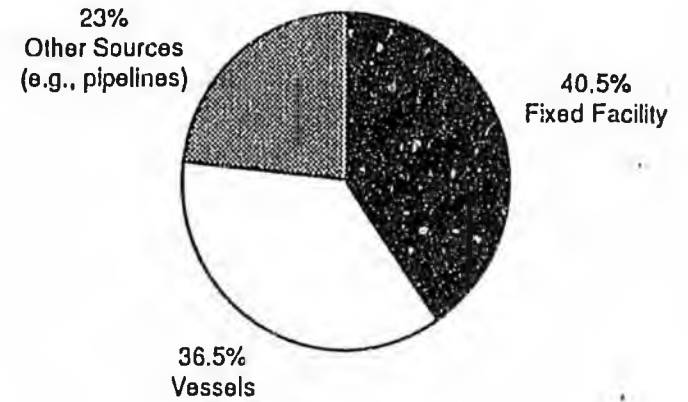
Distribution of Spills by Source



Distribution of Spills by Size



Distribution of Spill Volume by Source



Source: EPA's Emergency Response Notification System (ERNS) Data

Alaska State Legislature

Legislative Research Agency



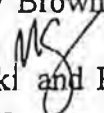
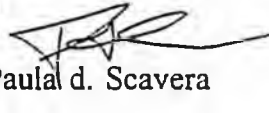
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March 23, 1993

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski  and Paul d. Scavera 
Legislative Analysts

RE: **Other States' Funds Similar to Alaska's Oil and Hazardous Spill Response Fund**
Research Request 93.186 (Preliminary Response)

You asked for information about funds established in other states that are similar to Alaska's Oil and Hazardous Spill Response Fund (the so-called "470 Fund" in Alaska). Within the time allotted for this request, we were able to contact six states (California, Florida, Louisiana, New Jersey, Texas, and Washington) to obtain the information which you requested. Although there may be others, these are a sample of states that tax oil, petroleum products or other pollutants to pay for a cleanup or response fund.

The attached table summarizes key features of oil spill funds in those states. We listed only those funds which are funded primarily by a tax and not by pollution fines or settlements. We have also attached relevant statutes from the six states listed above and a report from Texas, *Oil Spill Prevention and Response Act Progress Report*.

We hope this information is useful for your purposes. Please do not hesitate to contact us if you have additional questions.

Attachments

**SELECTED STATE FUNDS SIMILAR TO
ALASKA'S OIL & HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

| State Fund | Primary Revenue Source | Purpose / Use | Comments | Contact |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| California Oil Spill Response Trust Fund | 25 cents/barrel of crude oil or petroleum products received at a marine terminal or transported by pipeline | for cleanup of oil in marine waters or cleanup of oil that will impact marine waters. | Fund has reached its cap of \$50 million | Department of Fish and Game, Oil Spill Prevention and Response Office (916) 445-9338 |
| California Oil Spill Prevention Administrative Fund | 4 cents/barrel of crude oil or petroleum products received at a marine terminal or transported by pipeline | administering, operating, managing, staffing, and plan reviewing of oil spills in marine waters or impacting marine waters. | Approximate annual revenue = \$20 million Approximate number of personnel funded = 190 Approximate annual expenditures = \$18 million | |
| Florida Inland Protection Trust Fund (Chapter 376, Section 3071) | 80 cents/barrel tax on pollutants produced or imported into the state | cleanup of discharges of petroleum or petroleum products from stationary petroleum storage facilities; investigation and assessment of contaminated sites; restoration or replacement of potable water supplies; rehabilitation, maintenance and monitoring of contaminated sites; cost recovery expenses; administrative expenses including costs incurred by the Department of Health in providing field & laboratory services; some activities related to the removal and replacement of petroleum storage systems | Approximate annual revenue = \$155 million Approximate number of personnel funded = 50 Approximate annual expenditures = \$155 million | Department of Environmental Regulation, Division of Petroleum Cleanup (904) 487-3299 |
| Florida Water Quality Assurance Trust Fund (Chapter 376, Section 307) | varies with type of product and amount in fund; \$1 or \$2/lead acid battery 2.3 or 5.9 cents/gallon solvents 1 or 2.5 cents/gallon motor oil 2 to 5 cents/barrel petroleum products | to restore or replace potable water supplies; for the investigation, assessment, cleanup, restoration, maintenance, and monitoring of any site contaminated with hazardous wastes, hazardous substances as defined by CERCLA, pollutants, substances suspected to be carcinogenic or toxic to humans, or substances which pose a serious danger to public health or welfare | Approximate annual revenue = \$25 million Approximate number of personnel funded = n/a Approximate annual expenditures = \$25 million | |
| Florida Coastal Protection Trust Fund (Chapter 376, Section 11) | 2 cents/barrel tax on pollutants produced or imported into the state; tax suspended when fund reaches \$50 million, reimposed at \$40 million | to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages | Approximate annual revenue = n/a Approximate number of personnel funded = n/a Approximate annual expenditures = n/a | |
| Louisiana Oil Spill Contingency Fund (RS 30: 2451-2496) | 2 cents/barrel fee on all crude oil transferred to or from a vessel at a marine terminal within the state; fee suspended when fund reaches \$15 million, reimposed at \$8 million | administrative expenses of the office of the coordinator (not to exceed \$250,000 annually); removal costs and damages related to actual or threatened discharges of oil; removal costs related to abatement & containment of actual or threatened discharges of oil; protection, assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; operating costs & contracts for response and prevention (not to exceed \$500,000 annually); other costs and damages authorized by statute | Approximate annual revenue = \$12 million Approximate number of personnel funded = Approximate annual expenditures = | Office of the Louisiana Oil Spill Coordinator (504) 922-3230 |

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**SELECTED STATE FUNDS SIMILAR TO
ALASKA'S OIL & HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

| State Fund | Primary Revenue Source | Purpose / Use | Comments | Contact |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| New Jersey Spill Compensation Fund (NJSA 58:10-23.11) | 1.5 cents/barrel tax on oil and petroleum products transferred within state; 4 cents/barrel tax on all hazardous substances transferred within state. | all direct/indirect costs for oil and hazardous substance spills. | Approximate annual revenue = n/a Approximate number of personnel funded = 100 Approximate annual expenditures = n/a Approximately \$70 million currently in fund Interest from fund pays for research (approximately \$500,000 annually) | |
| Texas Coastal Protection Fund (Texas Natural Resource Code, Section 40.152) | 2 cents/barrel tax on all crude oil loaded or off-loaded in Texas ports; tax suspended when fund reaches \$25 million, reimposed at \$14 million | administrative expenses, personnel & training expenses, equipment maintenance, & operating costs related to implementation & enforcement of statute; response costs related to abatement & containment of actual or threatened discharges of oil; damages related to actual or threatened discharges of oil; assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; interagency contracts (not to exceed \$1.25 million annually); purchase of response equipment (not to exceed \$4 million) and the purchase of replacement equipment as necessary; other costs and damages authorized by statute | Approximate annual revenue = \$12 million Approximate number of personnel funded = 40 Approximate annual expenditures = \$6 million | General Land Office, Oil Spill Prevention & Response (512) 463-5329 |
| Washington Oil Spill Response Account (RCW Chapter 90.56) | 2 cents/barrel tax on all crude oil & petroleum products delivered to marine terminals in the state | for cleanup costs of oil and petroleum product spills, when the spill costs exceed \$50,000 | Approximate annual revenue = \$3 million Approximate number of personnel funded = 0 Approximate annual expenditures = | Department of Ecology Response to Hazard (206) 459-6658 |
| Washington Oil Spill Administration Account (RCW Chapter 90.56) | 3 cents/barrel tax on all crude oil & petroleum products delivered to marine terminals in the state | for routine cleanup response, management, staff, enforcement, plan review, coordination and public outreach. | Approximate annual revenue = \$4 million Approximate Number of personnel funded = 35 Approximate annual expenditures = \$4 million | |

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n/a = not available at this time

Sources: Statutes of, and interviews with officials in, states listed.

Prepared by the Legislative Research Agency, March 1993 (93.186).

DRAFT

Alaska State Legislature

Legislative Research Agency



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Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

December 28, 1992

MEMORANDUM

TO: Senator Rick Halford

FROM: Maria Gladziszewski *MG*
Legislative Analyst

RE: **Alaska's Oil and Hazardous Substance Release Response Fund: History, Expenditures and Reimbursements**
Research Request 93.062

You asked for the following information about the Oil and Hazardous Substance Release Response Fund (the "470 Fund"):

1. legislative history of the 470 Fund and a brief summary of all legislation passed since 1989 affecting the 470 Fund;
2. current balance of all accounts associated with the 470 Fund and the amount spent annually from the 470 Fund since 1989;
3. status of all expenditures from the 470 Fund associated with the state's response to the *Exxon Valdez* spill, reimbursement to the state of these funds from Exxon under the settlement, and reimbursement to the 470 Fund of this money as it is received by the state; and
4. procedure for reimbursing the fund for expenditures made from it.

Each question is discussed briefly below. Additional information is included in the attached tables and information. Question one is covered in Legislative Research Agency Memorandum 92.236 (Attachment A). In addition, sections of a draft report prepared by the Alaska Department of Environmental Conservation (DEC) chronicle the 470 Fund history (Attachment B, "*A Strategic Plan for the Oil & Hazardous Substance Release Response Fund*"). Tables One and Two address question two. Question three is addressed in Table Three and accompanying notes. Question four, regarding reimbursement procedures, is addressed at the end of this memorandum.

QUESTION ONE: Response Fund History

The Oil and Hazardous Substance Release Response Fund, dubbed the "470 Fund" after the house bill that established it in 1986, originally was used only for containment, cleanup or monitoring of oil or hazardous substance spills. After the 1989 *Exxon Valdez* oil spill, the legislature expanded the use of the fund to finance such additional functions as spill response training, response exercises, and inspections; preparation and review of spill contingency plans; operation of the spill response office, response corps and response depots; environmental restoration after an oil or hazardous substance release; and refurbishment of one or more vessels that have spill response capability.

The 470 Fund began in 1986 as the balance of the Spill Expense Reserve Account (an account established by the legislature in FY 81 and funded with a \$1 million appropriation), the balance in the Oil Spill Mitigation Account (a general fund account established in 1982 to accept deposits from oil discharge penalty payments¹) and an additional \$300,000 appropriation.

Between 1986 and 1989, 470 Fund deposits came from general fund appropriations and appropriations of money recovered from parties responsible for oil and hazardous substance spills. In 1989, new legislation required oil producers to pay a conservation surcharge of \$0.05 per barrel of oil produced from each lease of state property (AS 43.55.200). The commissioner of the Department of Administration was directed to account separately for all proceeds of the oil surcharge. Since FY 91, the primary funding source for the 470 Fund has been appropriations of receipts from this conservation surcharge.

See Legislative Research Agency Memorandum 92.236 (Attachment A) for a more detailed response fund history. In addition, sections of a draft report prepared by the Alaska Department of Environmental Conservation (DEC) chronicle 470 Fund history (Attachment B).

QUESTION TWO: Current Balance and Amount Spent from the 470 Fund

The lower portion of table 1A shows that on June 30, 1993, the end of FY 93, if all the appropriated money is spent and no additional deposits are made to the fund, the balance in the 470 Fund will be approximately \$100,000. This is based on an available fund balance at the beginning of FY 93 of \$52.8 million and FY 93 appropriations of \$52.7 million.

¹This account was repealed by the 1986 legislation establishing the 470 Fund and replaced with the Oil and Hazardous Substance Release Mitigation Account.

**TABLE 1A:
OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
BALANCE SHEET, FY 91 and FY 92**

| | JUNE 30, 1992 | JUNE 30, 1991 |
|---------------------------------------|------------------------|------------------------|
| Reserve for Encumbrances | \$13,911,537.91 | \$10,910,943.35 |
| Reserve for Prior Year Authorizations | \$ 1,822,446.72 | \$ 117,748.29 |
| Reserve for Restricted Revenue | (5,641,109.99) | 0.00 |
| Unreserved | \$23,951,883.94 | \$19,916,033.39 |
| TOTAL FUND BALANCE | \$34,044,758.58 | \$30,944,725.03 |

**OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
BALANCE SHEET, CURRENT and FY 93**

| | |
|------------------------------------------------------------------------|------------------------|
| Unreserved as of June 30, 1992 | \$24,000,000 (rounded) |
| Deposit July 1, 1992 from General Fund (Oil Surcharge Account Revenue) | \$27,000,000 |
| Deposit July 1, 1992 from General Fund (Mitigation Account Revenue) | \$ 1,800,000 |
| TOTAL UNRESERVED + DEPOSITS (July 1, 1992) | \$52,800,000 |
| Fiscal Year 1993 Authorized Expenditures | \$52,700,000 |
| Expenditures As of 12/09/92 | \$13,300,000 |
| BALANCE AS OF 12/09/92 | \$39,500,000 |
| BALANCE, END OF FY 93* | \$ 100,000 |

*This assumes that all authorized expenditures are made and there are no additional deposits.

SOURCE:

Alaska Department of Environmental Conservation, Division of Administrative Services

Prepared by the Legislative Research Agency, December 1992 (93.062).

TABLE 1B
SOURCES OF REVENUE FOR THE 470 FUND:
MITIGATION ACCOUNT BALANCE AND OIL SURCHARGE REVENUE

Oil & Hazardous Substance Release Mitigation Account
Balance as of 12/18/92

| | |
|---------------------------|-------------------|
| Cash Balance | \$2,016,000 |
| Obligations | \$1,822,000 |
| Available Balance* | \$ 194,000 |

*Exxon made a second settlement payment to the state in December 1992. Assistant Attorney General Craig Tillery expects that approximately \$12.3 million of the \$29 million payment will be deposited into the mitigation account as payment to the state for unreimbursed response costs.

Unrestricted General Revenue--Oil Surcharge Account
REVENUE COLLECTED

| | |
|-----------------------------------------------------------|---------------------|
| Fiscal Year 1990 | \$26,932,000 |
| Fiscal Year 1991 | \$27,965,000 |
| Fiscal Year 1992 | \$28,669,000 |
| July 1, 1992 - December 18, 1992 | \$ 8,463,000 |
| TOTAL REVENUE COLLECTED (Inception to 12/18/92) | \$92,029,000 |

TOTAL 470 FUND EXPENDITURES
Inception to December 9, 1992

| | |
|------------------------------------------|----------------------|
| Expenditures FY 87 - 92 | \$ 94,894,300 |
| Expenditures FY 93 as of 12/09/92 | \$ 13,300,000 |
| TOTAL Expenditures* | \$108,194,300 |

NOTE:

* This figure is according to the Department of Environmental Conservation. According to Response Fund Annual Reports, 470 Fund actual expenditures for FY 87 to FY 92 total \$94.9 million. According to DEC, additional expenditures and obligations of \$13.3 million for July 1, 1992 to December 9, 1992 bring the total expenditures (inception to December 9, 1992) to \$108.2 million. Total 470 Fund expenditures recorded by the Department of Administration (DOA) vary slightly from DEC records. According to DOA, total expenditures from inception to December 18, 1992 are \$107,146,000.

SOURCE:

Department of Administration, Division of Finance (Mitigation and Oil Surcharge accounts);
 Department of Environmental Conservation (Total 470 Fund expenditures).

Prepared by the Legislative Research Agency, December 1992 (93.062).

TABLE TWO
THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND ("470 Fund"):
ACTUAL EXPENDITURES, FISCAL YEARS 1987-1992

| | FY 92 | FY 91 | FY 90 | FY 89 | FY 88 | FY 87 | FY 87-92 TOTAL |
|------------------------------------------------------------------|-------------------|-------------------|-------------------|--------------------|----------------|----------------|-----------------------------------------------------|
| State & Regional Contingency Plans/Requirements | \$307.7 | \$556.7 | \$158.4 | | | | |
| Spill Response Office, Depots & Corps | \$1,125.1 | \$967.7 | \$199.8 | | | | |
| Spill Response Containment, Safety, Cleanup & Cost Recovery | \$4,224.7 | \$690.2 | \$211.0 | \$246.8 * | \$330.0 | \$428.8 | |
| State Emergency Response Commission & LEPCs (HB 566) | \$832.2 | \$399.6 | | | | | |
| Spill Response Drills | \$105.7 | \$448.5 | | | | | |
| Exxon Valdez Project - General | \$3,461.1 | \$11,977.7 | | | | | |
| Litigation | \$1,576.9 | \$4,100.0 | | | | | |
| Damage Assessment | \$8,012.8 | \$8,834.4 | | | | | |
| DEC Response | | | \$24,005.4 | \$5,456.3 | | | |
| Interagency Response | | | \$4,560.0 | \$609.7 | | | |
| Local Response | | | \$3,210.2 | \$205.6 | | | |
| | | | | | | | EXXON VALDEZ Subtotal \$76,010.1 |
| Contaminated Site Investigation, Safety, Cleanup & Cost Recovery | \$1,262.4 | \$1,671.7 | \$774.5 | | | | |
| Kenai Cleanup Project (Contaminated Sites) | \$555.9 | \$583.7 | | | | | |
| Spill Prevention & Response Preparedness (HB567) | | \$1,176.0 | | | | | |
| Spill Reserve | \$71.4 | \$313.6 | \$245.5 | | | | |
| Other | \$759.5 | \$124.3 | \$112.8 | | | | |
| TOTAL FY 87 - FY 92 | \$22,295.4 | \$31,844.1 | \$33,477.6 | \$6,518.4 * | \$330.0 | \$428.8 | \$94,894.3 |
| FY 93 Expenditures through December 9, 1992 | | | | | | | \$13,300.0 |
| TOTAL | | | | | | | \$108,194.3 |

NOTES:

Response Fund Annual Reports have not consistently reported all the categories listed above for the years 1988-1992.

LEPCs = Local Emergency Planning Committees

* By direction of DEC officials, these figures have been slightly modified from the FY 89 Response Fund Annual Report.

SOURCES:

Alaska Department of Environmental Conservation, Response Fund Annual Reports for the years 1987-1991; and
 Alaska Department of Environmental Conservation, Division of Administrative Services, for 1992, 1993 and modified 1989 data.

Prepared by the Legislative Research Agency, December 1992 (93.062).

According to DEC, FY 93 expenditures as of December 9, 1992 were approximately \$13.3 million.

Table 1B includes information about the two primary sources of 470 Fund deposits--the oil and hazardous substance release mitigation account and the account containing deposits from the \$.05 per barrel conservation surcharge. Table 1B shows that the available balance in the oil and hazardous substance release mitigation account as of December 18, 1992 was \$194,000. The table also shows that from July 1, 1992, to December 18, 1992, the revenue collected by the state from the \$0.05 per barrel surcharge on oil has been approximately \$8.5 million. Total revenue collected from the surcharge (inception to date) is approximately \$92 million.

Table Two shows that during the fiscal years 1987 - 1992, 470 Fund expenditures totaled approximately \$94.9 million. This with FY 93 expenditures to date of approximately \$13.3 million brings the total expenditures from the 470 Fund to \$108.2 million. Table Two also shows that *Exxon Valdez* oil spill-related expenditures for the same period totaled approximately \$76 million, or 80 percent of total fund expenditures through FY 92.

QUESTION THREE: Status of *Exxon Valdez* Expenditures

Table Three and accompanying notes show that approximately \$36.5 million, or 48 percent of the amount spent from the 470 Fund on *Exxon Valdez* oil spill-related expenditures, has been reimbursed to the fund from payments by Exxon. This amount includes the \$4 million that was deposited into the 470 Fund as a result of the first settlement payment made to the state from Exxon in December 1991.

Exxon made a second settlement payment of approximately \$29 million to the state in December 1992. Additional reimbursements to the fund are expected as a result of this payment. Assistant Attorney General Craig Tillery reports that preliminary calculations indicate that approximately \$12.3 million will be deposited into the mitigation account. If all \$12.3 million from the mitigation account were appropriated to the 470 Fund, payments from Exxon will have reimbursed the 470 Fund for approximately 64 percent of 470 Fund *Exxon Valdez* oil spill-related expenditures.

QUESTION FOUR: Procedures for Reimbursing the 470 Fund

Alaska Statute 46.04.010 states that DEC shall promptly seek reimbursement for expenses it incurs in cleaning up or containing an oil spill. "Money received by the department under this section shall be deposited in the general fund and credited to a special account called

TABLE THREE:
REIMBURSEMENTS TO THE 470 FUND RELATING TO
THE EXXON VALDEZ OIL SPILL
(Inception to June 30, 1992)

| | |
|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Actual Expenditures from the 470 Fund | \$76.0 million. |
| Revenue Deposited into the 470 Fund from the Mitigation Account (not including settlement payment deposits) | \$32.5 million |
| Deposit from First Settlement Payment, December 1991 | \$ 4.0 million |
| TOTAL DEPOSITS TO DATE * | \$36.5 million (48% of Fund expenditures on Exxon Valdez) |
| UNREIMBURSED EXPENDITURES | \$39.5 million |

SOURCE: Alaska Department of Environmental Conservation

* Assistant Attorney General Craig Tillery reports that settlement money to be received by the state from Exxon can be divided into reimbursements for litigation, damage assessment, and response costs. The first two, litigation and assessment costs, were addressed first because it was reasoned that these types of expenses were not likely to be recovered from Alyeska in subsequent litigation. According to a memorandum from Attorney General Charles Cole to OMB Director Shelby Stastny (dated January 21, 1992), approximately \$38.2 million was due to the state from Exxon for litigation and assessment costs--86.5 percent for litigation costs and 13.5 percent for 470 Fund expenditures on damage assessment. Approximately \$25.3 million (or 86.5 percent) of Exxon's first \$29.3 million settlement payment to the state (in December 1991), therefore, was deposited into the general fund as reimbursement for litigation costs (account #64030-Legal Services). The remaining \$4 million was deposited into the 470 Fund (see Attachment C, January 21, 1992 memorandum).

According to Assistant Attorney General Craig Tillery, Exxon made a second settlement payment a few weeks ago (December 1, 1992). As is specified in statute, that second payment (approximately \$29 million) has been deposited in the general fund until it can be determined into which other accounts deposits should be made. Legislation passed in June 1992 (Section 1 Chapter 1 FSSLA 1992, included as Attachment D) specifies that money received by the state as reimbursement for state expenses related to the *Exxon Valdez* oil spill be deposited into the general fund. The law also specifies how to determine the percentage of a given settlement payment to be deposited into the mitigation account.

Mr. Tillery reports that the state's oil spill accounting firm, the Seattle-based Peterson and Company, is in the process of determining how much of the second settlement payment should be deposited into the 470 Fund as reimbursement for response costs. Mr. Tillery expects that approximately \$12.3 million of the \$29 million will be deposited into the mitigation account. If all \$12.3 million is then deposited into the 470 Fund, reimbursements to the 470 Fund as a result of payments from Exxon would total \$48.8 million (64 percent of 470 Fund expenditures on *Exxon Valdez*) and the total 470 Fund unreimbursed expenditures would be reduced to \$27.2 million.

Senator Halford
December 28, 1992
Page 4

the 'oil and hazardous substance release mitigation account'." Christine Underwood, administrative officer with DEC's Division of Administrative Services, reports that all reimbursements received are deposited according to this statute. Deposits may be made to the mitigation account but the legislature must then appropriate that money to the 470 Fund.

The legislature authorized program receipt authority to the 470 Fund in 1989 and 1990. Special appropriations were made to the response fund in March of 1989, \$10 million of which were program receipts from Exxon. To date, the state has received \$7.7 million in payments on the promised \$10 million and the 470 Fund accounts still carry a \$2.3 million accounts receivable for these funds.

I hope this information is useful to you. Please do not hesitate to contact this office with additional questions.

Attachments

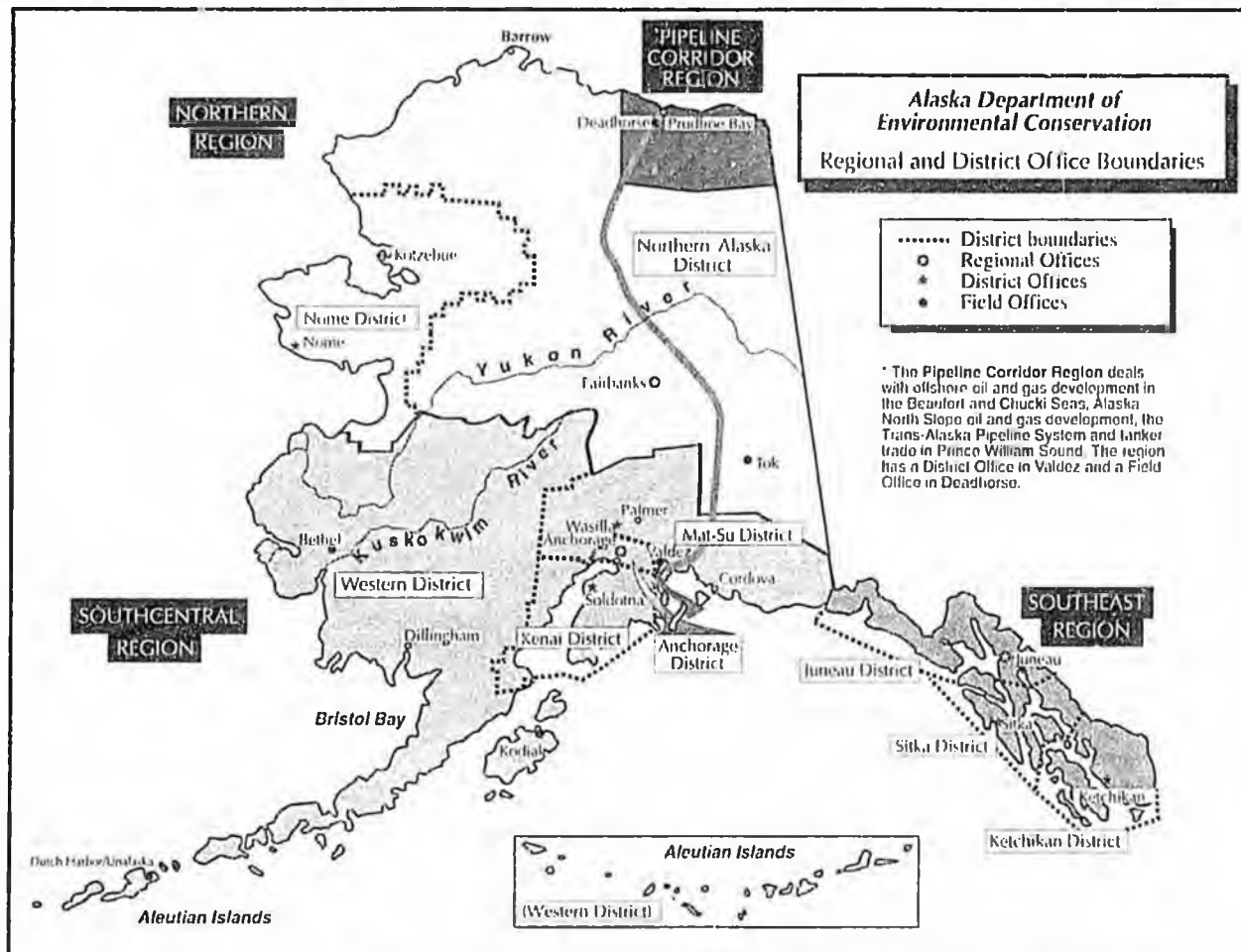
STATE OF ALASKA

Selected Oil and Hazardous Substance Pollution Control Statutes and Regulations



November, 1993

Alaska Department of Environmental Conservation



**Selected Alaska Oil and
Hazardous Substance
Pollution Control
Statutes and Regulations**



**Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
410 Willoughby Avenue
Juneau, Alaska 99801
(907) 465-5220**

November, 1993

NOTICE TO READERS:

This is a compilation of selected Alaska Statutes and regulations which pertain to or are closely associated with the protection of public health and the environment from oil and hazardous substance pollution. The summary was excerpted from the official codes on file with the Lieutenant Governor. Portions may not be complete nor quoted verbatim from the current state law. There may be errors or omissions that have not been identified and changes that have occurred after printing. This booklet is intended as an informational guide only and has been simplified for your convenience. To be certain of the current laws refer to the official codes.

For further details, contact your local office of the Alaska Department of Environmental Conservation in:

| | |
|--------------------------------------|----------|
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GOVERNOR OF ALASKA
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TABLE OF CONTENTS

| | |
|-----------------------------------------------------------------------------------------------|----|
| ALASKA STATUTES | 1 |
| TITLE 24. LEGISLATURE. | 1 |
| CHAPTER 20. AGENCIES OF THE LEGISLATURE. | 1 |
| ARTICLE 1. LEGISLATIVE COUNCIL. | 1 |
| TITLE 43. REVENUE AND TAXATION | 3 |
| CHAPTER 55. OIL AND GAS PRODUCTION TAXES AND OIL SURCHARGE. | 3 |
| ARTICLE 1. OIL AND GAS PROPERTIES PRODUCTION TAXES. | 3 |
| TITLE 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION. | 5 |
| CHAPTER 3. ENVIRONMENTAL CONSERVATION. | 5 |
| ARTICLE 1. DECLARATION OF POLICY. | 5 |
| ARTICLE 2. DEPARTMENT OF ENVIRONMENTAL CONSERVATION | 5 |
| ARTICLE 3. WATER POLLUTION CONTROL AND WASTE DISPOSAL. | 6 |
| ARTICLE 8. PROHIBITED ACTS AND PENALTIES. | 6 |
| ARTICLE 9. GENERAL PROVISIONS. | 22 |
| CHAPTER 4. OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTROL. | 27 |
| ARTICLE 1. OIL POLLUTION CONTROL. | 27 |
| ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION CONTINGENCY PLANS. | 39 |
| ARTICLE 3. GENERAL PROVISIONS. | 40 |
| CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES. | 42 |
| ARTICLE 1. RELEASE RESPONSE FUND. | 42 |
| ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE. | 46 |
| ARTICLE 3. GENERAL PROVISIONS. | 48 |
| CHAPTER 9. HAZARDOUS SUBSTANCE RELEASE CONTROL. | 50 |
| CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION. | 53 |

ALASKA ADMINISTRATIVE CODE 59

**TITLE 18. ENVIRONMENTAL
CONSERVATION..... 59**

CHAPTER 75. OIL AND HAZARDOUS SUBSTANCES

POLLUTION CONTROL. 59

ARTICLE 1. Oil Pollution Prevention Requirements. 59

ARTICLE 2. Financial Responsibility for Oil Discharges. 71

ARTICLE 3. Discharge Reporting, Cleanup, and Disposal. ... 81

**ARTICLE 4. Oil Discharge Prevention and Contingency
Plans. 85**

ARTICLE 5. Oil Spill Primary Response Action Contractors. . 111

**ARTICLE 6. Civil Penalties for Discharge of Petroleum
and Petroleum Products. 116**

ARTICLE 7. Surface Oiling. 121

ARTICLE 8. Oil Discharge for Scientific Purposes 123

ARTICLE 9. General Provisions. 124

ALASKA STATUTES

TITLE 24. LEGISLATURE.

CHAPTER 20. AGENCIES OF THE LEGISLATURE.

ARTICLE 1. LEGISLATIVE COUNCIL.

SECTION 24.20.600. CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES.

(a) There is created in the legislature the Citizens' Oversight Council on Oil and Other Hazardous Substances. The oversight council consists of five members appointed by the Alaska Legislative Council. The Alaska Legislative Council shall notify members of the public throughout the state that nominations for membership are being sought. Members of the oversight council serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(b) The oversight council shall elect a chair and other officers that the oversight council finds necessary to carry out its responsibilities.

(c) Members of the oversight council serve staggered terms of four years and, upon expiration of their terms, continue to serve until their successors qualify and are appointed. A member may serve no more than two consecutive terms.

(d) A member of the oversight council may not work as an independent contractor for or be employed by a federal, state, or municipal agency directly or indirectly involved in the oversight or regulation of industries engaged in the production, transport, or storage of oil or other hazardous substances; be an elected official of the state or of a political subdivision; or work as an independent contractor for or be employed by a person engaged in the production, transport, or storage of oil or other hazardous substances. The Alaska Legislative Council shall appoint as members of the oversight council persons who have an interest in and commitment to preventing oil and hazardous substance releases in the state.

(e) The oversight council shall make a formal request to the Alaska Legislative Council for money it considers necessary for staff, per diem, travel, and contractual expenses. Money distributed to the oversight council is to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The chair of the oversight council shall approve all expenditure documents.

SECTION 24.20.610 POWERS AND DUTIES OF THE OVERSIGHT COUNCIL.

(a) The oversight council shall

(1) determine whether state and federal agencies responsible for the prevention of the release of oil and other hazardous substances, and for responding to releases, are carrying out their duties in these areas;

(2) recommend to the legislature, the governor, agencies of the federal government, and private entities appropriate policies and actions to prevent releases of oil and other hazardous substances;

(3) assist the legislature and the governor in the development of interstate compacts and policy recommendations to the federal government regarding the prevention of releases of oil and other hazardous substances;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(4) file an annual report with the legislature and the governor assessing the status of major areas of risk, the performance of state and federal regulatory agencies, and changes in the long-term options for improving environmental safety;

5) request the attorney general to bring or request the attorney general to move to intervene in legal actions in order to ensure compliance with state laws and regulations regarding the release of oil and other hazardous substances;

(6) make recommendations to the legislature, the governor, and the federal government on the creation, funding, and composition of regional or local advisory committees and on the relationship between the oversight council, local advisory committees, and other citizens' oversight groups on oil and other hazardous substances; and

(7) schedule regular meetings with local and regional advisory committees as they are created to make sure that they complement each other and avoid overlap in oversight and advisory functions.

(b) The oversight council may

(1) hire an administrator and additional administrative staff, and enter into contracts for personal services that the oversight council finds necessary to carry out its responsibilities under this section; all employees of the oversight council are in the exempt service under AS 39.25.110;

(2) subpoena witnesses, administer oaths, take testimony, and require the production for examination and copying of books or papers relating to matters within the responsibility of the oversight council;

(3) conduct investigations, studies, and analyses necessary to enable the oversight council to carry out its duties under (a) of this section; and

(4) appoint advisory panels in specialized areas to include representatives of appropriate groups such as state and municipal regulatory agencies, oil spill prevention and response authorities, fishing and environmental groups, residents of areas of risk, scientists, and shippers and owners of oil and other hazardous substances produced or transported in the state.

SECTION 24.20.620 COOPERATION BY STATE AGENCIES.

Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the oversight council by providing information and assistance, including disclosure of records relating to the agency's enforcement of laws and regulations for the prevention of and response to releases of oil and other hazardous substances.

SECTION 24.20.630 DEFINITIONS.

In AS 24.20.600 - 24.20.630,

(1) "hazardous substance" has the meaning given in AS 46.08.900;

(2) "oil" has the meaning given in AS 46.08.900; and

(3) "oversight council" means the Citizens' Oversight Council on Oil and Other Hazardous Substances.

TITLE 43. REVENUE AND TAXATION.

**CHAPTER 55. OIL AND GAS PRODUCTION TAXES
AND OIL SURCHARGE.**

ARTICLE 1. OIL AND GAS PROPERTIES PRODUCTION TAXES.

SECTION 43.55.200. SURCHARGE LEVIED.

(a) Every producer of oil shall pay a surcharge of \$.05 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150.

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.150.

SECTION 43.55.210. DISPOSITION OF PROCEEDS OF SURCHARGE.

(a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.200 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge that are deposited into the general fund.

SECTION 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE.

The legislature may appropriate the annual estimated balance of the account established under AS 43.55.210 to the oil and hazardous substance release response fund established by AS 46.08.010.

SECTION 43.55.230. SUSPENSION AND REIMPOSITION OF THE SURCHARGE.

(a) Not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

(1) that has been deposited through that calendar quarter into the general fund under AS 43.55.210;

(2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.08.010.

(b) Within 15 days after making the determinations required by (a) of this section, the commissioner of administration shall report to the commissioner the difference between the amount determined under (a)(1) of this section and amount determined under (a)(2) of this section.

(c) If the commissioner of administration reports that the difference determined under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.200. Suspension of the imposition and collection of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of a suspension authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be paying the surcharge under AS 43.55.200 that the surcharge will be suspended.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(d) Except as provided in AS 43.55.240, if the commissioner of administration reports that the difference determined under (b) of this section is less than \$50,000,000, the commissioner of revenue shall require imposition and collection of the surcharge authorized under AS 43.55.200. Reimposition of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of reimposition of the surcharge authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be required to pay the surcharge under AS 43.55.200 that the surcharge will be reimposed.

SECTION 43.55.240 SURCHARGE NOT IMPOSED.

The surcharge authorized by AS 43.55.200 is not levied during any fiscal year for which the estimated revenue from the surcharge would be sufficient to restore the balance of the oil and hazardous substance release response fund on the first day of the fiscal year to at least \$50,000,000, and

(1) the legislature does not, during the regular legislative session preceding the first day of the fiscal year, appropriate money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least \$50,000,000; or

(2) the legislature, during the regular legislative session preceding the first day of the fiscal year, appropriates money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto or reduction in the amount of the appropriation, restoration of the balance of the fund to at least \$50,000,000 does not become law.

**TITLE 46. WATER, AIR, ENERGY, AND
ENVIRONMENTAL CONSERVATION.**

CHAPTER 3. ENVIRONMENTAL CONSERVATION.

ARTICLE 1. DECLARATION OF POLICY.

SECTION 46.03.010. DECLARATION OF POLICY.

(a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

ARTICLE 2. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

SECTION 46.03.030. POWERS OF THE DEPARTMENT.

The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers, and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

- (7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;
- (8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;
- (9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;
- (10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for
 - (A) control, prevention, and abatement of air, water, or land or subsurface land pollution;
 - (B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;
 - (C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;
 - (D) collection and disposal of sewage and industrial waste;
 - (E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;
 - (F) *[Repealed, Sec. 12 ch 172 SLA 1978.]*
 - (G) control of pesticides;
 - (H) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;
 - (I) handling, transportation, treatment, storage, and disposal of hazardous wastes;
- (11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits that have been included or deleted;
- (12) *[Repealed, Sec. 92 ch 36 SLA 1990.]*
- (13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715.

ARTICLE 3. WATER POLLUTION CONTROL AND WASTE DISPOSAL.

SECTION 46.03.050. AUTHORITY.

The department has jurisdiction to prevent and abate the pollution of the waters of the state.

ARTICLE 8. PROHIBITED ACTS AND PENALTIES

SECTION 46.03.710. POLLUTION PROHIBITED.

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

SECTION 46.03.740. OIL POLLUTION.

A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

SECTION 46.03.742. RECKLESS OPERATION OF TANK VESSEL.

(a) A person commits the crime of reckless operation of a tank vessel when, by recklessly operating, navigating, or piloting a tank vessel, the person causes a release of a hazardous substance and the release causes serious physical injury to another person or damage to the property of another.

(b) Reckless operation of a tank vessel is a class C felony.

(c) In this section, "reckless" has the meaning given in AS 11.81.900.

SECTION 46.03.743. NEGLIGENCE OPERATION OF TANK VESSEL.

(a) A person commits the crime of negligent operation of a tank vessel when, by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates an unjustifiable risk of a release of a hazardous substance or an unjustifiable risk of harm to a person or property.

(b) Negligent operation of a tank vessel is a class A misdemeanor.

(c) In this section, "criminal negligence" has the meaning given in AS 11.81.900.

SECTION 46.03.744. DEFINITIONS.

In AS 46.03.742 - 46.03.744,

(1) "hazardous substance" has the meaning given in AS 46.03.826;

(2) "tank vessel" means

(A) a vessel that is constructed or adapted to carry, or that carries, as a means of transportation by water, a hazardous substance in bulk as cargo or cargo residue;

(B) the vessel that propels the tank vessel if the tank vessel is a barge or other vessel that is not self-propelled.

SECTION 46.03.745. HAZARDOUS SUBSTANCE RELEASE.

Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

SECTION 46.03.750. BALLAST WATER DISCHARGE.

(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

SECTION 46.03.755. DISCHARGE REPORTING.

(a) A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of AS 46.03.740 or 46.03.750, shall immediately notify the department of the discharge.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

SECTION 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL.

(a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and the state's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking that poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) \$1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor will be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section.

(k) [Repealed, Sec. 19 ch 59 SLA 1986.]

(1) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

SECTION 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of \$500,000,000, in the amount of

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(1) \$8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) \$12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

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

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

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

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

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the State of Alaska or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

SECTION 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

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

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

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

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

(b) Except as determined by the court under (f)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(f) A person who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

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

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

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(4) the need for an enhanced civil penalty to deter future noncompliance.

SECTION 46.03.763. ATTORNEY FEES AND COSTS.

In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

SECTION 46.03.765. INJUNCTIONS.

The superior court has jurisdiction to enjoin a violation of this chapter, AS 46.04, AS 46.09, AS 46.14, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

SECTION 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES.

A vessel that is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g).

SECTION 46.03.780. LIABILITY FOR RESTORATION.

(a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, AS 46.04, AS 46.09, or AS 46.14, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

(b) Liability for damages under (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

degraded resource, or to otherwise restore the environment of the state to its condition before the injury

(c) Damages under (a) of this section shall be recovered by the attorney general on behalf of the state.

SECTION 46.03.790. CRIMINAL PENALTIES.

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence

(1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

(2) fails to provide information or provides false information required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.755, AS 46.04, or AS 46.09;

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a local air quality control program under AS 46.14.

(b) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(c) Each day on which a violation described in this section occurs is considered a separate violation.

(d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of

(1) a class C felony if the oil discharge is 10,000 barrels or more;

(2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.

(e) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(f) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(g) In this section,

(1) "barrel" has the meaning given in AS 46.04.900;

(2) "criminal negligence" has the meaning given in AS 11.81.900;

(3) *[Repealed, Sec. 62 ch 21 SLA 1991.]*

(h) Notwithstanding AS 12.55.035(b), upon conviction of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate violation.

SECTION 46.03.820. EMERGENCY POWERS.

(a) When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected has the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

(d) After a hearing the department may affirm, modify, or set aside the order. An order affirmed, modified, or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

SECTION 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES.

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(c), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 - 508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner, operator, or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) In this section, "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

(c) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

(f) This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

(g) In this section, "response action" means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

SECTION 46.03.824. DAMAGES.

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

SECTION 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(A) approved under AS 46.04.030 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

(b) The limitation on liability contained in (a) of this section does not apply to

(1) an action for personal injury or death or;

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 is in use.

(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission of the oil spill response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply to an oil spill response action contractor who would have been liable for the initial release or threatened release of oil under AS 46.03.822 even if that contractor had not carried out a response action.

(d) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(e) Except as provided in (d) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(f) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor

(g) In this section,

(1) "consistent" means in substantial compliance with a contingency plan;

(2) "primary response action contractor" has the meaning given in AS 46.04.035;

(3) "registered" means registered under AS 46.04.035;

(4) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, clean up, marine salvage, or removal of a release or threatened release of oil.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.03.826. DEFINITIONS.

In AS 46.03.822 - 46.03.828

- (1) "act of God" means an act of nature which is unforeseeable in kind or degree;
- (2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;
- (3) "facility"
 - (A) includes a
 - (i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;
 - (ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;
 - (B) does not include any consumer product in consumer use;
- (4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;
- (5) "hazardous substance" means
 - (A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;
 - (B) oil; or
 - (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);
- (6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;
- (7) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;
- (8) "owner" and "operator"
 - (A) mean
 - (i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;
 - (ii) in the case of facility, any person owning or operating the facility;
 - (iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and
 - (iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;
 - (B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;
- (9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and
(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

(10) "response action contract" means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release under state or federal law;

(11) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract; and

(C) a person who acts as a volunteer and is engaged in a response action.

(12) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(13) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(14) "vessel" means every description of watercraft or other artificial contrivance that is used, or is capable of being used, as a means of transportation on water, or that carries hazardous substances for the purpose of incineration of the hazardous substances;

(15) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska.

SECTION 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED.

The provisions of AS 46.03.822 - 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury.

SECTION 46.03.850. COMPLIANCE ORDER.

(a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter, AS 46.04, or AS 46.14, or a regulation or lawful

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

order of the department, or a permit or certificate, or a term or condition of a permit or certificate issued by the department under this chapter, AS 46.04, or AS 46.14, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under AS 46.03.820.

(b) The recipient of the determination shall file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in AS 46.03.010. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

ARTICLE 9. GENERAL PROVISIONS.

SECTION 46.03.360. INSPECTION WARRANT.

The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter.

SECTION 46.03.865. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY.

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. If there is an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 that is applicable to the situation for which the department issues an order under this subsection, the department's exercise of authority under this subsection shall be guided by the relevant provisions of the incident command system.

(b) A person to whom an order is directed shall comply with it immediately, but on application to the department shall be given a hearing under the Administrative Procedure Act (AS 44.62). Thereafter the department may affirm, revoke, or modify the order.

(c) During a period of emergency declared under (a) of this section, each state agency shall take whatever action the department finds necessary to meet the emergency and to protect the public health, welfare, or environment, consistent with the

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

responsibilities assigned to them under an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 if one is applicable to the situation.

SECTION 46.03.370. ACTIONABLE RIGHTS.

(a) Except as specified in AS 46.03.822 - 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 - 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons, or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

SECTION 46.03.875. REMEDIES CUMULATIVE.

All remedies provided by this chapter, AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of this chapter, AS 46.04, or AS 46.14.

SECTION 46.03.880. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.

Except as otherwise specifically provided in this chapter, the Administrative Procedure Act (AS 44.62) governs the activities and the proceedings of the department.

SECTION 46.03.890. ENFORCEMENT AUTHORITY.

(a) The following persons are authorized to enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.04, AS 46.09, and AS 46.14.

SECTION 46.03.900. DEFINITIONS.

In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

(5) "commissioner" means the commissioner of environmental conservation;

(6) "department" means the Department of Environmental Conservation;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and (C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste in the extraction, beneficiation and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.40.100;

(16) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(17) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other entity whatsoever;

(18) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides;

(19) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(20) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

processes or purposes and includes the reuse of materials or products to conserve natural resources;

(21) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(22) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(23) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(24) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(25) "solid waste" means all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source;

(26) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(27) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(28) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(29) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(30) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(31) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes;

(32) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(33) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means

(A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(34) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(35) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

CHAPTER 4. OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTROL.

ARTICLE 1. OIL POLLUTION CONTROL.

SECTION 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES.

The department shall promptly seek reimbursement under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account".

SECTION 46.04.020. REMOVAL OF OIL DISCHARGES.

(a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil shall be carried out in a manner approved by the department. Wastes generated as a result of containment or cleanup activities shall be disposed of in a manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of Sec. 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under Sec. 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

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

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

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

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

(4) provide for cooperative oil discharge notification procedures.

(f) In fulfilling its responsibilities under (c) of this section, the department shall consult with the governing bodies of municipalities and villages.

(g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska pipeline shall

(1) immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; and

(2) provide services required in a response action under contract terms as provided under AS 46.04.030(r). The obligations imposed under this subsection do not affect the response action duties of another person or the liability of another person for a discharge or threatened discharge. Upon the request of the person required to respond to a discharge or threatened discharge under this subsection, the obligation imposed by this subsection may be transferred to another person required by law to respond to the discharge or threatened discharge if the transfer is approved by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has the meaning given in AS 46.04.030(r).

(h) A charge, contract term, or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the holders and lessees' common operating agent, or the agent or representative of either the holders and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal and related to containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed under (g) of this section

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to a financial responsibility requirement in excess of \$10,000,000, must

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge or threatened discharge of oil from that vessel before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following the discharge or threat of discharge; and

(B) vary among each vessel in proportion to the volume of oil carried by each vessel per voyage from a marine terminal; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.

(i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

review and enjoin a charge, contract term, or financial responsibility requirement described under (h) of this section at the request of a vessel owner, operator, or charterer. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

SECTION 46.04.025. CONFIDENTIAL INFORMATION.

The department may maintain the confidentiality of a manufacturer's proprietary technical information relating to chemical and biological agents used to control or mitigate the effects of an oil discharge. The department may refuse to release the information unless the manufacturer authorizes its release or unless a court orders its release. The department may provide the information to the Department of Fish and Game and other state and federal agencies if the department or other agency requesting the information agrees to maintain its confidentiality.

SECTION 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every three years.

(e) *[Editor's note: oil spill primary response action contractor provisions of this subsection become effective January 1, 1994 -- other provisions are presently in effect. Consult the Department for clarification.]* The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(1) periodic training;
(2) response team exercises; and
(3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

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

(1) approval was obtained by fraud or misrepresentation;
(2) the operator does not have access to the quality or quantity of resources identified in the plan;
(3) a term or condition of approval or modification has been violated; or
(4) the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

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

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

(i) It is a defense to an action brought for a violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

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

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

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

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) - (3) of this subsection that enters a receiving environment other than open water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or repair the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) [Repealed, Sec. 1 ch 16 SLA 1993.]

(q) In this section,

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

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

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

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

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

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

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

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

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

(r) Except as provided in (n) of this section and in order to receive approval from the department for an oil discharge prevention and contingency plan submitted under this section, the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by the Trans Alaska Pipeline System shall obtain by contract the services required in a response action from the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System. The contract must contain the following provisions: (1) the common operating agent, as a primary response action contractor shall, unless services required in a response action are transferred as provided in (3) of this subsection, provide services required in a response action for a discharge or a threatened discharge of oil to the owner, operator,

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

or charterer of the vessel while the vessel is berthed at, en route to, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; (2) that its coverage for any particular vessel may not be terminated by the common operating agent while that vessel is within Prince William Sound; this provision may not be interpreted to limit the department's authority to revoke approval under this section for an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer of a vessel; and (3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators. In addition to the requirements of this subsection, the department may require individual vessels to submit additional contingency plans to cover specific vessel response, prevention equipment, and procedures. Nothing in this subsection is intended to preclude the federal or state government from assuming management and control of an oil spill response to a discharge or threatened discharge from a vessel under appropriate circumstances. In this subsection, "Prince William Sound" means all marine waters within the boundary line established at Cape Puget, southeasterly to Cape Clear, along Montigue Island to Zaikof Point, easterly to Cape Hinchinbrook, along Hinchinbrook Island to Point Bintinck, and easterly to Point Whitshed.

SECTION 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A person may apply to the department for registration as an oil spill primary response action contractor. The department shall adopt regulations governing the registration and approval of oil spill primary response action contractors. Regulations adopted by the department under this section must include

(1) minimum training standards for personnel;

(2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;

(3) minimum professional response action standards and practices; and

(4) minimum planning standards for oil spill primary response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(b) Notwithstanding (a) of this section, the department may substitute a primary response action contractor approval program, and a subsequent process to approve primary response action contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations required under (a)(1) - (3) of this section if the approval program and subsequent process are developed by the United States Coast Guard.

(c) The department shall establish fees applicable to registration under this section in an amount necessary to cover the costs of the registration program. The fees shall be collected by the department.

(d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations under this section.

(e) The department shall develop and maintain a list of oil spill primary response action contractors registered under this section. The department shall provide the list on request to interested persons.

(f) A primary response action contractor registered under this section shall annually provide to the department a list of all contingency plans approved under AS 46.04.030

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

in which the primary response action contractor has agreed in writing to be listed as a responder.

(g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or a response action contractor.

(h) In this section,

(1) "oil" has the meaning given in AS 46.03.826;

(2) "primary response action contractor" means a person who enters into a response action contract with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release of oil.

SECTION 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is \$50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is \$20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is \$5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

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

(2) \$100, per incident, for each barrel of storage capacity or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) - (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (c), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility; however, the liability under this section of a third-party insurer is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility furnished to and approved by the department. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state. In this subsection, "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of an applicant under this section; "third-party insurer" does not include the applicant.

(f) Acceptance of proof of financial responsibility expires

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

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

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

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

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

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

(2) a change of circumstance has occurred other than a change specified in (f)(1) -

(3) of this section, which would have warranted denial of the application.

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

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

(k) It is a defense to an action brought for violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

(l) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

agree to be subject to direct action in state courts or to appoint an agent for service of process if

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

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

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

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department.

[Editor's note: For provisions effective from June 1, 1992, to June 1, 1994, relating to proof of financial responsibility by certain noncrude oil operations, see Sec. 2, ch. 102, SLA 1992 in the Temporary and Special Acts.]

*[Chapter 102, SLA 1992. Source: CSSB405 (O&G). APPROVED DATE: June 20, 1992. * Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant*

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

** Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.*

** Sec. 6. Section 2 of this Act is repealed June 1, 1994.*

** Sec. 7. This Act takes effect immediately under AS 01.10.070(c.)*

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January 1990 is the reference base index.

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

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

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

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

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

SECTION 46.04.050. EXEMPTIONS.

(a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

SECTION 46.04.060. INSPECTIONS.

(a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

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

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected.

SECTION 46.04.070. SCOPE OF REGULATIONS.

The department shall adopt regulations that are necessary to carry out the purposes of this chapter and that do not conflict with and are not preempted by federal law or regulations.

SECTION 46.04.080. CATASTROPHIC OIL DISCHARGES.

(a) The commissioner of environmental conservation or the commissioner of military and veterans' affairs may request the governor to determine that an actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23. The commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent discharge under the relevant provisions of the applicable incident command system.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050.

SECTION 46.04.090. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EXPENSES.

The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

SECTION 46.04.100. COMPACTS AUTHORIZED.

The governor may execute supplementary agreements, reciprocal arrangements, or compacts with any other state or country, subject to the approval, if required by the United States Constitution, of the Congress of the United States, for the purpose of implementing this chapter.

SECTION 46.04.110. MUNICIPAL POWERS LIMITED.

If a conflict occurs between a provision of this chapter, or a regulation, order, decision, or other determination of the department under this chapter, and a charter, ordinance, permit, regulation, franchise, decision, or other determination of a municipality, the provisions of this chapter or the regulation, order, decision, or other determination of the department prevail. However, nothing in this chapter precludes a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION CONTINGENCY PLANS.

SECTION 46.04.200. STATE MASTER PLAN.

(a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge prevention and contingency plan.

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

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

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

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

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

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080; responsibilities assigned to each state agency must be consistent with its statutory authority;

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

(5) designate the locations where oil and hazardous substance emergency response depots should be established in the state and where emergency response corps personnel should be available.

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

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

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

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

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

(5) submit the plan and any annual revision to the Alaska State Emergency Response Commission for its review and approval under AS 46.13.045.

SECTION 46.04.210. REGIONAL MASTER PLAN.

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.04.900. DEFINITIONS.

In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "natural gas"

(A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;

(B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state.

(10) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(11) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(12) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(13) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(14) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(15) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(16) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;

(17) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal.

(18) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(19) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

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

(21) "vessel" includes tank vessels and oil barges;

(22) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

(23) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES.

ARTICLE 1. RELEASE RESPONSE FUND.

SECTION 46.08.005. PURPOSE.

The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation and the Department of Transportation and Public Facilities in the protection of the environment of the state from the release of oil or hazardous substances.

SECTION 46.08.010. FUND ESTABLISHED.

(a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner.

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

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(d)(2), the fund may not be used for capital improvements.

SECTION 46.08.020. FINANCING OF THE FUND.

(a) The legislature may appropriate from the following sources to the fund:

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

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

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

SECTION 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES.

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.08.040. PURPOSES OF THE FUND.

(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to

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

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

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

(C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

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

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

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

(5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.700; and

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

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

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2) - (7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

(d) Upon a request from

(1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

(2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

SECTION 46.08.050. RECORDS OF THE FUND.

(a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures.

SECTION 46.08.060. REPORT TO THE LEGISLATURE.

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

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

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020;

(3) a summary of municipal participation in the department's responses that were funded by the fund;

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

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

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous waste sites, the commissioner shall include in the report under this section

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b).

SECTION 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP.

(a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.76(c), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

(c) The department shall reimburse a municipality or village for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance if

(1) the municipality or village has entered into an agreement with the commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

(2) the commissioner determines that

(A) the expenses to be reimbursed were for a necessary emergency first response to a release or threatened release that, at the time of the release or threatened release, posed an imminent and substantial threat to the public health or welfare, or to the environment;

(B) the municipality or village has demonstrated a need for financial assistance, and the money to be advanced is necessary to enable the municipality or village to carry out an emergency first response to a release or threatened release that, at the time of the release or threatened release, poses an imminent and substantial threat to the public health or welfare, or to the environment; and

(C) containment and cleanup efforts paid for in whole or in part by a reimbursement or an advance made under this section were consistent with the regional master plan for the region in which the municipality or village is located if a plan has been prepared by the department under AS 46.04.210.

SECTION 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES.

(a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance.

SECTION 46.08.080. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which AS 46.08.005 - 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 - 46.08.080.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE.

SECTION 46.08.100. OFFICE ESTABLISHED.

There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances.

SECTION 46.08.110. RESPONSE CORPS.

(a) The division of emergency services, Department of Military and Veterans' Affairs, shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions.

SECTION 46.08.120. RESPONSE DEPOTS.

The division shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.08.130. DUTIES OF THE OFFICE.

(a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) - (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding.

SECTION 46.08.140. EMERGENCY POWERS.

(a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action.

SECTION 46.08.150. CONTRACTS.

The office or the division, as applicable, may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(1) provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology; the office shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.08.160. LIMITATION OF LIABILITY.

The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 - 46.08.190 in response to a release or threatened release unless, the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct.

SECTION 46.08.190. DEFINITIONS.

In AS 46.08.100 - 46.08.190

- (1) "corps" means the oil and hazardous substance response corps;
- (2) "depots" means the oil and hazardous substance supply and equipment storage depots;
- (3) "division" means the division of emergency services, Department of Military and Veterans' Affairs;
- (4) "office" means the oil and hazardous substance response office.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.08.900. DEFINITIONS.

In this chapter

- (1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;
- (2) "commissioner" means the commissioner of environmental conservation;
- (3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service;
- (4) "department" means the Department of Environmental Conservation;
- (5) "fund" means the oil and hazardous substance release response fund;
- (6) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;
- (7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity
- (8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;
- (9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;
- (10) "service"

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(A) means a function performed or service provided by a municipality under a duty or power authorized by AS 29 or by another provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village;

(B) includes functions not previously performed and services not previously provided by the municipality or village;

(11) "threatened release" means an imminent danger that a release will occur;

(12) "village" means a place within the unorganized borough or within a borough if the power, function, or service for which a grant application under AS 29.60.510 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application is submitted that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise in connection with the use of grant money under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b).

CHAPTER 9. HAZARDOUS SUBSTANCE RELEASE CONTROL.

SECTION 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES.

(a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel, or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

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

SECTION 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE.

(a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

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

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

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.09.030. DISASTER EMERGENCIES.

The commissioner of environmental conservation or the commissioner of military and veterans' affairs 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 under AS 26.23, the commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent release under the relevant provisions of the applicable incident command system.

SECTION 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.

The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

SECTION 46.09.050. COMPACTS AUTHORIZED.

The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

SECTION 46.09.060. MUNICIPALITIES.

(a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provisions of this chapter or of the regulation adopted by the commissioner under this chapter prevail.

(b) 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 this chapter, AS 46.04, and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

SECTION 46.09.070. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies. The commissioner shall adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

SECTION 46.09.900. DEFINITIONS.

In this chapter

(1) "commissioner" means the commissioner of environmental conservation,

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

in response to the release of the hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

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

(4) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(7) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(8) "threatened release" means an imminent danger that a release will occur.

CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

SECTION 46.13.010. ALASKA STATE EMERGENCY RESPONSE COMMISSION ESTABLISHED.

(a) There is established in the Department of Environmental Conservation the Alaska State Emergency Response Commission.

(b) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the commission.

SECTION 46.13.020. COMPOSITION OF THE COMMISSION.

The commission consists of the commissioners of community and regional affairs, environmental conservation, fish and game, health and social services, labor, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven public members to be appointed by the governor. To the extent practicable, the commission must include members with expertise in the emergency response field.

SECTION 46.13.030. OFFICERS, TERMS, AND COMPENSATION.

The commissioner of environmental conservation, or the commissioner's designee, shall chair the commission. The adjutant general of the Department of Military and Veterans' Affairs, or the adjutant general's designee, shall serve as vice-chair. Members of the commission other than those from the designated state departments serve at the pleasure of the governor for staggered terms of three years. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

SECTION 46.13.040. POWERS AND DUTIES OF COMMISSION.

The commission shall

(1) serve as the state emergency response commission required under 42 U.S.C. 11001 - 11005;

(2) designate, and revise as necessary, the boundaries of emergency planning districts, using the boundaries of regions established under AS 46.04.200 - 46.04.210 and of political subdivisions where appropriate;

(3) facilitate the preparation and implementation of emergency plans for hazardous substance response, including the statewide, interjurisdictional, and local plans prepared under AS 26.23, state and regional plans prepared under AS 46.04.200 - 46.04.210, and plans prepared under this chapter;

(4) review and approve or disapprove the plans described in (3) of this section according to the criteria established in AS 46.13.045;

(5) establish a local emergency planning committee for each emergency planning district, and appoint, and revise as necessary, the membership of each committee;

(6) supervise and coordinate the activities of local emergency planning committees;

(7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(8) perform other coordinating, advisory, or planning tasks related to hazardous

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances;

(9) recommend procedures to integrate, as appropriate, hazardous substance response planning under 42 U.S.C. 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous substance discharges, and state, regional, and local hazardous substance contingency planning under AS 26.23 and AS 46.04.200 - 46.04.210;

(10) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for state emergency response commissions under 42 U.S.C. 11001 - 11005; and

(11) adopt regulations necessary to carry out the purposes of this chapter and 42 U.S.C. 11001 - 11005.

SECTION 46.13.045. PLAN APPROVAL; INCIDENT COMMAND SYSTEMS.

(a) The commission shall review and exercise approval authority over local, interjurisdictional, regional, and state plans for hazardous substance discharge response, including plans prepared under AS 26.23, AS 46.04.200 - 46.04.210, and this chapter.

(b) Before approving a plan, the commission shall ensure that the plan includes an incident command system that describes the respective roles of affected persons and agencies in a clear and specific manner and that the respective roles of state agencies are consistent with their statutory duties. The commission shall also ensure that the plans are well-integrated with related plans.

(c) To the extent consistent with other law, an incident command system approved under this section must provide that the Alaska division of emergency services has a major role in mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a state response to an imminent or actual hazardous substance discharge.

SECTION 46.13.050. AGENCY COOPERATION.

The commission may request data, reports, or other information from a state agency. To the extent feasible and not otherwise prohibited by laws making specific information confidential and nondisclosable, a state agency shall cooperate with the commission and furnish the commission with the information and assistance necessary to accomplish the purposes of 42 U.S.C. 11001 - 11005 and this chapter.

SECTION 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES.

Boundaries for emergency planning districts are the regions designated by the Department of Environmental Conservation under AS 46.04.210, unless otherwise designated by the commission.

SECTION 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES.

The commission shall establish and appoint the members of a local emergency planning committee for each emergency planning district. Each committee must include, at a minimum, representatives from each of the following groups or organizations: elected state and local officials; law enforcement; civil defense; fire fighting; first aid; health; local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of 42 U.S.C. 11001 - 11005.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

SECTION 46.13.080. DUTIES OF LOCAL EMERGENCY PLANNING COMMITTEES.

Each local emergency planning committee shall

- (1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;
- (2) appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information;
- (3) prepare and periodically review an emergency plan in accordance with 42 U.S.C. 11003(a);
- (4) evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing the additional resources;
- (5) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for emergency planning committees in 42 U.S.C. 11001 - 11075; and
- (6) participate as a local advisory committee in the preparation of statewide regional contingency plans.

SECTION 46.13.090. EMERGENCY PLANS.

(a) An emergency plan prepared under AS 46.13.080 must include

- (1) identification of facilities subject to the requirements of 42 U.S.C. 11001 - 11005 that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of 42 U.S.C. 11001 - 11005 such as hospitals or natural gas facilities;
- (2) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of hazardous substances, and to a release of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a);
- (3) designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the emergency plan;
- (4) procedures providing reliable, effective, and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;
- (5) methods for determining the occurrence of a release, and the area or population likely to be affected by that release;
- (6) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of 42 U.S.C. 11001 - 11005, and an identification of the persons responsible for the equipment and facilities;
- (7) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;
- (8) training programs, including schedules for training of local emergency response and medical personnel; and
- (9) methods and schedules for exercising the emergency plan.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(b) Each emergency plan prepared under AS 46.13.080 must incorporate within it an incident command system. The incident command system must be substantially equivalent in relevant respects to the incident command systems established under AS 46.04.200 - 46.04.210 and meet the requirements of AS 46.13.045.

SECTION 46.13.100. FINDINGS AND PURPOSE.

The legislature

(1) finds and declares that there exists a lack of scientific knowledge concerning the availability, properties, and effectiveness of various hazardous substance containment and cleanup technologies; and

(2) concludes that it is in the best interest of the state and its citizens to establish a Hazardous Substance Spill Technology Review Council in the Alaska State Emergency Response Commission to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment.

SECTION 46.13.110. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL.

(a) There is established in the Alaska State Emergency Response Commission the Hazardous Substance Spill Technology Review Council.

(b) The council consists of the commissioner of environmental conservation, the adjutant general of the Department of Military and Veterans' Affairs, a representative of the University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the Environmental Protection Agency may each appoint a federal employee to the council to represent their agencies as nonvoting members. Appointed state members of the council serve overlapping three-year terms.

(c) The council members shall elect from among themselves a chair and vice-chair.

(d) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the council.

(e) State and federal members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(f) The council shall meet regularly at the call of the commission or the chair of the council.

(g) State members of the council are subject to AS 39.50.

SECTION 46.13.120. DUTIES OF THE COUNCIL.

The council shall

(1) review and recommend to the Department of Environmental Conservation research topics for it to pursue;

(2) establish testing protocols to be used by the Department of Environmental Conservation to evaluate the effectiveness of hazardous substance spill technologies for use in the state;

(3) identify sources of money that may be available for discharge-related research;

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes

(4) make proposals to the governor, commission, and other entities to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances;

(5) compile and maintain information relating to

(A) containment and cleanup technology that is available in the event of a hazardous substance discharge, the extent to which current containment and cleanup technology is available and may be applied in the state, and ways to improve hazardous substance spill response technology and procedures;

(B) steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substances and to improve the statewide ability of industry and governmental agencies to respond to discharges of hazardous substances;

(C) the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharges;

(D) hazardous substances spill technology research conducted by the Department of Environmental Conservation; and

(6) perform other functions as may be requested by the commission.

SECTION 46.13.130. INVESTIGATIONS; HEARINGS.

(a) The council may issue subpoenas, administer oaths, and conduct investigations related to its duties.

(b) The council may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the duties assigned to the council.

(c) On a majority vote of the council, subpoenas and subpoenas duces tecum may be issued and served in the manner prescribed by AS 44.62.430(b) and (c) and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(d) State agencies shall, to the extent permitted by law, cooperate with the council and provide it with information it requests for carrying out its duties.

SECTION 46.13.900. DEFINITIONS.

In this chapter,

(1) "commission" means the Alaska State Emergency Response Commission;

(2) "council" means the Hazardous Substance Spill Technology Review Council;

(3) "hazardous substance" has the meaning given in AS 46.03.826.

Selected Alaska Oil & Hazardous Substance Pollution Control Statutes