

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

0057 HOUSE RESOURCES

322

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;

(11) "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

(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;

(12) "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;

(13) "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.

* Sec. 7. AS 46.08 is amended by adding a new section to read:

Sec. 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

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1 discharging or partially releasing the lien. That certificate may
2 recorded in the office in which the certificate of lien was recorded.

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

14 (e) A person with an ownership interest in property against
15 which a lien is recorded may bring an action in a court of competent
16 jurisdiction to require that the lien be released. The lien may be
17 released to the extent of that person's ownership interest if the
18 court finds that the person is not liable for the expenses incurred by
19 the state in connection with the costs of response, containment,
20 removal, or remedial action resulting from the oil or hazardous sub-
21 stance release or threat of release of oil or a hazardous substance.

22 * Sec. 8. AS 46.03.822, as amended by sec. 2 of this Act, applies to
23 liability for releases and substantial threats of releases that occurred
24 before the effective date of this Act, and therefore, AS 46.03.822, as
25 amended by sec. 2 of this Act, is retroactive in its effect. However,
26 AS 46.03.822, as amended by sec. 2 of this Act, does not apply to an action
27 in which final judgment no longer subject to appeal has been entered before
28 the effective date of this Act.

29 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).



LAWS OF ALASKA

1989

Source

CSSB 261(Fin)

Chapter No.

90

AN ACT

Requiring the Department of Environmental Conservation to prepare and to annually review and revise a master oil and hazardous substance discharge and prevention contingency plan for the state and regional oil and hazardous substance discharge and prevention contingency plans for certain regions of the state, and to the implementation of those plans; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 15

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

Approved by the Governor: June 2, 1989
Actual Effective Date: June 3, 1989

AN ACT

Requiring the Department of Environmental Conservation to prepare and to annually review and revise a master oil and hazardous substance discharge and prevention contingency plan for the state and regional oil and hazardous substance discharge and prevention contingency plans for certain regions of the state, and to the implementation of those plans; and providing for an effective date.

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.

(b) It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.

* Sec. 2. AS 46.04 is amended by adding new sections to read:

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

Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall prepare and annually review and revise a statewide master oil and

hazardous substance discharge and prevention contingency plan.

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

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

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

(A) agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

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

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

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

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

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

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

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

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

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

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

* Sec. 3. AS 46.08.040 is amended to read:

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

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and [,] assessing, to address a [INVESTIGATING, AND EVALUATING THE] 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) 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

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1980); 1 1

(3) recover the cost to the state or to a municipality of containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(4) prepare, review, and revise

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

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

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

* Sec. 4. PREPARATION OF INITIAL PLANS. The commissioner of environmental conservation shall present the initial statewide master plan prepared under AS 46.04.200, enacted by sec. 2 of this Act, and any initial regional master plans required by AS 46.04.210, enacted by sec. 2 of this Act, to the governor by July 1, 1990, and to the legislature in January, 1991, in accordance with AS 46.04.200(c)(3), added by sec. 2 of this Act.

* Sec. 5. APPLICABILITY OF ACT. This Act does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law.

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



LAWS OF ALASKA

1989

Source

HCS CSSB 264 (Fin)

Chapter No.

113

AN ACT

Establishing an oil and hazardous substance response office, corps, and depots; authorizing use of money in the oil and hazardous substance release response fund for certain related expenses; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12

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

Approved by the Governor: June 15, 1989
Actual Effective Date: June 16, 1989

AN ACT

Establishing an oil and hazardous substance response office, corps, and depots; authorizing use of money in the oil and hazardous substance release response fund for certain related expenses; and providing for an effective date.

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.

(b) It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.

* Sec. 2. AS 46.08.040 is amended to read:

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

(1) contain, clean up, and take other necessary action, such as monitoring, assessing, investigating, and evaluating the 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 establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office;

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

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

* Sec. 3. AS 46.08 is amended by adding new sections to read:

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE.

Sec. 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.

Sec. 46.08.110. RESPONSE CORPS. (a) The office shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the office and agree to be trained by the office in techniques for containment and cleanup and to be available on short notice to assist the office in containment and cleanup.

(c) Members of the corps are entitled to per diem and expenses as determined by the commissioner for training and for days spent in service to the state in containment and cleanup actions.

Sec. 46.08.120. RESPONSE DEPOTS. The office shall maintain

emergency response depots in areas of the state determined by the director 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.

Sec. 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.

Sec. 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.

Sec. 46.08.150. CONTRACTS. The office may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private entities to

(1) establish and maintain regional oil and hazardous substances depots and to acquire the supplies and equipment necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology.

Sec. 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.

Sec. 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) "office" means the oil and hazardous substance response office.

* Sec. 4. APPLICABILITY OF ACT. (a) This Act does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law.

(b) This Act does not add to or detract from the authority under law of a municipality to impose taxes on oil and gas property or other properties for the purpose of establishing or maintaining services and facilities to minimize the risk of or respond to a release of oil or a hazardous substance.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).



LAWS OF ALASKA

1990

Chapter No.

190

Source

SGS CSHB 566 (Fin) (efd fld H)

AN ACT

Relating to state response actions and planning involving the release or threatened release of oil or a hazardous substance; and establishing the Alaska State Emergency Response Commission.

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

THE ACT FOLLOWS ON PAGE 1, LINE 11

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

Approved by the Governor: June 26, 1990
Actual Effective Date: September 24, 1990

earm on which the manufacturer's serial
ed, altered, or destroyed, knowing that
removed, covered, altered, or destroyed
the firearm untraceable;
46.320 or 11.46.330 by entering or
es or in a propelled vehicle in viola-
r issued under AS 25.35.010(b) or 25.-
on, possesses on the person a deadly
pocketknife; or
person with another in violation of
the communication, possesses on the
an an ordinary pocketknife.

AN ACT

Relating to state response actions and planning involving the release or threatened release of oil or a hazardous substance; and establishing the Alaska State Emergency Response Commission.

* Section 1. AS 26.23.020(g) is amended by adding a new paragraph to read:

(11) use money from the oil and hazardous substance release response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

* Sec. 2. AS 26.23.050(b) is amended to read:

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

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* Sec. 3. AS 26.23.190 is amended by adding a new subsection to read:

(b) When performing responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 - 46.04.210, or AS 46.13, the Alaska division of emergency services may, in a situation involving an actual or imminent discharge of oil or a hazardous substance, issue an order directing persons and governmental agencies to take action the division believes necessary to carry out its assigned responsibilities.

* Sec. 4. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.195. DISCHARGE RESPONSE ACTIONS. (a) The Alaska division of emergency services shall perform the responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 - 46.04.210, or AS 46.13 in a state response to a release or threatened release of oil or a hazardous substance.

(b) The Alaska division of emergency services may contract with persons to provide personnel, including members of the emergency response corps, to assist them with a nongovernmental response to a release or threatened release of oil or a hazardous substance.

(c) Within the limit of appropriations made specifically for the purpose, the Alaska division of emergency services may assist persons with mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a nongovernmental response to a release or threatened release of oil or a hazardous substance when to do so would be consistent with the duties assigned to it under an incident command system established under this chapter, AS 46.04.200 - 46.04.210, or AS 46.13.

* Sec. 5. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.215. RELATIONSHIP TO OTHER PLANNING STATUTES. To the extent that the state emergency plan, interjurisdictional plans, and

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local plans prepared under this chapter relate to action required to avert damage from a release of oil or a hazardous substance, the plans must be substantially equivalent in relevant respects to the local emergency plans prepared under AS 46.13 and the state and regional master plans prepared by the Department of Environmental Conservation under AS 46.04.200 - 46.04.210, use the same incident command systems used in those plans, and be approved by the Alaska State Emergency Response Commission under AS 46.13.045.

* Sec. 6. AS 39.50.200(b) is amended by adding a new paragraph to read:
(5) Hazardous Substance Spill Technology Review Council (AS 46.13.110).

* Sec. 7. AS 44.66.010(a) is amended by adding a new paragraph to read:
(17) Hazardous Substance Spill Technology Review Council (AS 46.13.110) -- June 30, 1994.

* Sec. 8. AS 46.03.865(a) is amended to read:

(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.

* Sec. 9. AS 46.03.865(c) is amended to read:

(c) During a period of emergency declared under (a) of this section, each state agency (, INCLUDING, WHEN APPROPRIATE, THE DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS UNDER THE AUTHORITY CONFERRED BY AS 26.20,) shall take whatever action the department finds necessary to meet the emergency (,) and to protect the public health, welfare, or environment, consistent with the 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.

* Sec. 10. AS 46.04.080(a) is amended to read:

(a) The actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23.020. The (, HOWEVER, THE) department and (SHALL PERFORM THE DUTIES OF) the Alaska division of emergency services, Department of Military and Veterans' Affairs, shall coordinate their duties under AS 26.23.040 and AS 46.08.100 - 46.08.190 as they apply to catastrophic oil discharges, consistent with the responsibilities assigned to them under applicable incident command systems. (THE DEPARTMENT SHALL CONSULT AND COORDINATE ITS DUTIES UNDER THIS SECTION WITH THE ALASKA DIVISION OF EMERGENCY SERVICES.)

* Sec. 11. AS 46.04.090(a) is amended to read:

(a) The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that (WHICH) 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 (WHICH), 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.

* Sec. 12. AS 46.04.200(b) is amended to read:

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

(1) take into consideration the elements of an oil discharge 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 (A CATASTROPHIC OIL DISCHARGE OR OF A SIGNIFICANT DISCHARGE) 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 (COMMISSIONER) 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; [AND]

(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.

* Sec. 13. AS 46.04.200(c) is amended to read:

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

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

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

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

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

* Sec. 14. AS 46.08.040 is amended to read:

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

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

(2) pay all costs incurred to establish and maintain the oil and hazardous substance response office;

(3) pay [AND FOR] the expenses incurred by the Alaska division of emergency services for [OF] the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division [ESTABLISHED BY THAT OFFICE];

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

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

(6) [(5)] prepare, review, and revise

(A) the state's master oil and hazardous substance discharge and prevention contingency plan required by AS 46.04.-200; and

(B) a regional master oil and hazardous substance discharge and prevention contingency plan required by AS 46.04.-210; and

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

* Sec. 15. AS 46.08.040 is amended by adding new subsections to read:

(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) of this section unless funds are available from an appropriation made specifically for that purpose.

* Sec. 16. AS 46.08.060(a) is amended to read:

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

(1) the amount of money expended by the department under AS 46.08.040(a) [AS 46.08.040] 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; 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.

* Sec. 17. AS 46.08.060 is amended by adding a new subsection to read:

(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).

* Sec. 18. AS 46.08.110 is amended to read:

Sec. 46.08.110. RESPONSE CORPS. (a) The division of emergency services, Department of Military and Veterans' Affairs, [OFFICE] shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division [OFFICE] and agree to be trained by the division [OFFICE] in techniques for containment and cleanup and to be available on short notice to assist [THE OFFICE] 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 [COMMISSIONER] for training and for days spent in service to the state in containment and cleanup actions.

* Sec. 19. AS 46.08.120 is amended to read:

Sec. 46.08.120. RESPONSE DEPOTS. The division [OFFICE] shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 [BY THE DIRECTOR] to be potential sites of releases or threatened releases of oil or

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hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

* Sec. 20. AS 46.08.130 is amended by adding a new subsection to read:

(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.

* Sec. 21. AS 46.08.150 is amended to read:

Sec. 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 [TO ACQUIRE THE SUPPLIES AND EQUIPMENT] 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.

* Sec. 22. AS 46.08.190 is amended by adding a new paragraph to read:

(4) "division" means the division of emergency services, Department of Military and Veterans' Affairs.

* Sec. 23. AS 46.09.030 is amended to read:

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner of environmental conservation or the director of the division of

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emergency services, Department 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 and [MAY ASSIST] the division of emergency services, Department of Military and Veterans' Affairs, shall respond appropriately [ADJUTANT GENERAL] in the relief of the emergency, in accordance with the relevant provisions of the applicable incident command system.

* Sec. 24. AS 46 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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 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.

Sec. 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

1 division of emergency services has a major role in mobilization of
2 personnel and resources, communications, transportation planning, and
3 other logistics involved in a state response to an imminent or actual
4 hazardous substance discharge.

5 Sec. 46.13.050. AGENCY COOPERATION. The commission may request
6 data, reports, or other information from a state agency. To the
7 extent feasible and not otherwise prohibited by laws making specific
8 information confidential and nondisclosable, a state agency shall
9 cooperate with the commission and furnish the commission with the
10 information and assistance necessary to accomplish the purposes of 42
11 U.S.C. 11001 - 11005 and this chapter.

12 Sec. 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES. Bound-
13 aries for emergency planning districts are the regions designated by
14 the Department of Environmental Conservation under AS 46.04.210,
15 unless otherwise designated by the commission.

16 Sec. 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES. The com-
17 mission shall establish and appoint the members of a local emergency
18 planning committee for each emergency planning district. Each commit-
19 tee must include, at a minimum, representatives from each of the
20 following groups or organizations: elected state and local officials;
21 law enforcement; civil defense; fire fighting; first aid; health;
22 local environmental, hospital, and transportation personnel; broadcast
23 and print media; community groups; and owners and operators of facili-
24 ties subject to the requirements of 42 U.S.C. 11001 - 11005.

25 Sec. 46.13.080. DUTIES OF LOCAL EMERGENCY PLANNING COMMITTEES.
26 Each local emergency planning committee shall

27 (1) establish procedures for receiving and processing
28 requests from the public for information under 42 U.S.C. 11044, in-
29 cluding tier II information under 42 U.S.C. 11022;

1 (2) appoint a chair and establish rules by which the com-
2 mittee shall function, including provisions for public notification of
3 committee activities, public meetings to discuss the emergency plan,
4 public comments, response to the comments by the committee, distribu-
5 tion of the emergency plan, and designation of an official to serve as
6 coordinator for information;

7 (3) prepare and periodically review an emergency plan in
8 accordance with 42 U.S.C. 11003(a);

9 (4) evaluate the need for resources necessary to develop,
10 implement, and exercise the emergency plan, and make recommendations
11 with respect to additional resources that may be required and the
12 means for providing the additional resources;

13 (5) to the extent consistent with the constitution and law
14 of the state, perform all other functions prescribed for emergency
15 planning committees in 42 U.S.C. 11001 - 11005; and

16 (6) participate as a local advisory committee in the prepa-
17 ration of statewide regional contingency plans.

18 Sec. 46.13.090. EMERGENCY PLANS. (a) An emergency plan pre-
19 pared under AS 46.13.080 must include

20 (1) identification of facilities subject to the require-
21 ments of 42 U.S.C. 11001 - 11005 that are within the emergency plan-
22 ning district, identification of routes likely to be used for the
23 transportation of substances on the list of extremely hazardous sub-
24 stances referred to in 42 U.S.C. 302(a), and identification of addi-
25 tional facilities contributing or subjected to additional risk due to
26 their proximity to facilities subject to the requirements of 42 U.S.C.
27 11001 - 11005 such as hospitals or natural gas facilities;

28 (2) methods and procedures to be followed by facility
29 owners and operators and local emergency and medical personnel to

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1 respond to a release of hazardous substances, and to a release of
2 substances on the list of extremely hazardous substances referred to
3 in 42 U.S.C. 302(a);

4 (3) designation of a community emergency coordinator and
5 facility emergency coordinators, who shall make determinations neces-
6 sary to implement the emergency plan;

7 (4) procedures providing reliable, effective, and timely
8 notification by the facility emergency coordinators to persons des-
9 ignated in the emergency plan, and to the public, that a release has
10 occurred, consistent with the emergency notification requirements of
11 42 U.S.C. 11004;

12 (5) methods for determining the occurrence of a release,
13 and the area or population likely to be affected by that release;

14 (6) a description of emergency equipment and facilities in
15 the community and at each facility in the community subject to the
16 requirements of 42 U.S.C. 11001 - 11005, and an identification of the
17 persons responsible for the equipment and facilities;

18 (7) evacuation plans, including provisions for a precau-
19 tionary evacuation and alternative traffic routes;

20 (8) training programs, including schedules for training of
21 local emergency response and medical personnel; and

22 (9) methods and schedules for exercising the emergency
23 plan.

24 (b) Each emergency plan prepared under AS 46.13.080 must incor-
25 porate within it an incident command system. The incident command
26 system must be substantially equivalent in relevant respects to the
27 incident command systems established under AS 46.04.200 - 46.04.210
28 and meet the requirements of AS 46.13.045.

29 Sec. 46.13.100. FINDINGS AND PURPOSE. The legislature
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1 (1) finds and declares that there exists a lack of scien-
2 tific knowledge concerning the availability, properties, and effec-
3 tiveness of various hazardous substance containment and cleanup tech-
4 nologies; and

5 (2) concludes that it is in the best interest of the state
6 and its citizens to establish a Hazardous Substance Spill Technology
7 Review Council in the Alaska State Emergency Response Commission to
8 assist in the identification of containment and cleanup products and
9 procedures for arctic and sub-arctic hazardous substance releases and
10 make recommendations to the departments and agencies of the state
11 regarding their use and deployment.

12 Sec. 46.13.110. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW
13 COUNCIL. (a) There is established in the Alaska State Emergency
14 Response Commission the Hazardous Substance Spill Technology Review
15 Council.

16 (b) The council consists of the commissioner of environmental
17 conservation, the adjutant general of the Department of Military and
18 Veterans' Affairs, a representative of the University of Alaska ap-
19 pointed by the governor, the governor's senior science advisor, a
20 representative of the Prince William Sound Science Center in Cordova
21 appointed by the governor, and four other members, one from each
22 judicial district of the state, appointed by the governor, with broad
23 experience or expertise in one or more of the following areas: phys-
24 ical or biological science; oil technology, transportation, or manage-
25 ment; fisheries; economics; environmental engineering; or law. The
26 U.S. Coast Guard and the Environmental Protection Agency may each
27 appoint a federal employee to the council to represent their agencies
28 as nonvoting members. Appointed state members of the council serve
29 overlapping three-year terms.

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(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.

Sec. 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;

(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

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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.

Sec. 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.

Sec. 46.13.900. DEFINITIONS. In this chapter,



LAWS OF ALASKA

1990

Chapter No.

191

Source

SCS CSHD 567(Fin)

AN ACT

Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 18

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

Approved by the Governor: June 26, 1990
Actual Effective Date: June 27, 1990

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(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.

* Sec. 25. TRANSITIONAL PROVISION. The Alaska State Emergency Response Commission established under AS 46.13, enacted by sec. 24 of this Act, is a continuation of the Alaska State Emergency Response Commission established by Administrative Order No. 103. The terms of the public members of the commission who are serving terms on the effective date of this section continue until the date that was scheduled for their expiration before the effective date of this section.

* Sec. 26. TESTING PROTOCOLS. The Hazardous Substance Spill Technology Review Council shall establish the initial testing protocols required under AS 46.13.120(2), enacted by sec. 24 of this Act, by January 1, 1991.

* Sec. 27. APPROVAL OF SPILL TECHNOLOGY. The Department of Environmental Conservation shall, by March 1, 1991, report to the legislature its recommendations about the feasibility of establishing a process under which all types of oil and hazardous substance spill technology would have to be submitted to the department for approval before they could be used in the state.

AN ACT

Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.

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

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

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

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

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

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intentional act of the defendant;

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

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

* Sec. 3. AS 46.03.823(a) is amended to read:

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

* Sec. 4. AS 46.03.823(b) is amended to read:

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

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

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

* Sec. 5. AS 46.03.823(e) is amended to read:

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

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

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

* Sec. 6. AS 46.03.823(g)(2) is amended to read:

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

(A) the department; [OR]

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

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

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

* Sec. 7. AS 46.03.823(g)(3) is amended to read:

(3) "response action contractor" means

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

(B) a person who is retained or hired by and is under

the control of a person described in (A) of this paragraph to provide services related to the response action contract.

* Sec. 8. AS 46.04.020(e) is amended to read:

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

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

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

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

(4) provide for cooperative oil discharge notification procedures.

* Sec. 9. AS 46.04.030 is amended to read:

Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

(b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit

the operation of a pipeline or an [OFFSHORE] exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a [A] person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.-790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN APPROVED BY THE DEPARTMENT].

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

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

1 discharges from the facility or vessel as provided in (k) of this sec-
 2 tion, and to ensure that the applicant complies with the contingency
 3 plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contin-
 4 gency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY]
 5 by the applicant of the best technology that was available at the time
 6 the contingency plan was submitted or renewed. The department may
 7 require an applicant or holder of an approved contingency plan to take
 8 steps necessary to demonstrate its ability to carry out the contingen-
 9 cy plan, including

- 10 (1) periodic training;
- 11 (2) response team exercises; and
- 12 (3) verifying access to inventories of [AVAILABLE] equip-
- 13 ment, supplies, and personnel identified as available in the approved
 14 contingency plan.

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

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

1 plan and the deficiency materially affects the plan holder's response
 2 capability.

3 (g) Failure of a holder of an approved or modified [OIL DIS-
 4 CHARGE] contingency plan to comply with the plan, or to have access to
 5 the quality or quantity of resources identified in the plan or [AND,
 6 IN THE EVENT OF A SPILL,] to respond with those resources within the
 7 shortest possible [FEASIBLE] time in the event of a spill is a vio-
 8 lation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
 9 46.03.790, and any other applicable law. If the holder of an approved
 10 or modified [OIL DISCHARGE] contingency plan fails to respond to and
 11 conduct cleanup operations of an unpermitted discharge of crude oil
 12 with the quality and quantity of resources identified in the plan and
 13 in a manner required under the plan, the holder is strictly liable,
 14 jointly and severally, for the civil penalty assessed under AS 46.03.-
 15 758, 46.03.759, or 46.03.760 against any other person for that dis-
 16 charge.

17 * Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

18 (h) The department is the only state agency that has the power
 19 to approve, modify, or revoke a contingency plan for the purposes of
 20 this section. The department shall exercise its power under this
 21 section in a timely manner. Except for prosecutions under AS 46.03.-
 22 790(b) and except as provided in (i) of this section, it is not a
 23 defense to an action brought for a violation of (a) - (c) of this
 24 section that the person charged believed that a current contingency
 25 plan had been approved by the department.

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

alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

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

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

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

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

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

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

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

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

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is

greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

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

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

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department

may approve exemptions under this subsection upon application and presentation of information required by the department.

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

(p) The department shall approve or disapprove a proposed contingency plan within 65 days after it receives a complete application for approval under this section.

(q) In this section,

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

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

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

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

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

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

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

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

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

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

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE

CAPACITY AT THE OIL TERMINAL FACILITY; OR (2) \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

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

(b) A [AFTER JULY 1, 1981, A] person may not cause or permit the operation of a pipeline or an [OFFSHORE] exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is \$50,000,000 [MAY NOT BE LESS THAN \$35,000,000] per incident. Proof of financial responsibility required for an onshore production facility is \$20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is \$5,000,000 per incident.

* Sec. 13. AS 46.04.040(c) is amended to read:

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

under this subsection is

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

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

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

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

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

* Sec. 14. AS 46.04.040(d) is amended to read:

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

* Sec. 15. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by (1) self-

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

* Sec. 16. AS 46.04.040(f) is amended to read:

(F) Acceptance of proof of financial responsibility expires

- (1) one year from its issuance for self-insurance;
- (2) on the effective date of a change in the surety bond, guarantee, [OR] insurance agreement, letter of credit, or other proof of financial responsibility; or
- (3) on the expiration or cancellation of the surety bond, guarantee, [OR] insurance agreement, letter of credit, or other proof of financial responsibility.

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

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

* Sec. 18. AS 46.04.040 is amended by adding new subsections to read:

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

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

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

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

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

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

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

* Sec. 19. AS 46.04 is amended by adding a new section to read:

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

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

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index

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

(d) The department shall adopt a regulation announcing

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

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

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

* Sec. 20. AS 46.04.050 is amended to read:

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

* Sec. 21. AS 46.04.060 is amended to read:

Sec. 46.04.060. INSPECTIONS. In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner

enter and inspect oil (OIL) terminal facilities, pipelines, (OFFSHORE) exploration and production facilities, tank vessels, and oil barges in order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

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

or

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

* Sec. 22. AS 46.04.060 is amended by adding a new subsection to read:

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

* Sec. 23. AS 46.04.200 is amended to read:

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

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

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

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

- (A) agencies of the state;
- (B) municipalities of the state;
- (C) appropriate federal agencies;
- (D) operators of facilities;
- (E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

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

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

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

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

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

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

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

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

* Sec. 24. AS 46.04.210(a) is amended to read;

(a) For any region of the state, the boundaries of which are

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

* Sec. 25. AS 46.04.900(8) is amended to read:

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

* Sec. 26. AS 46.04.900(15) is amended to read:

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

* Sec. 27. AS 46.04.900 is amended by adding new paragraphs to read:

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

(19) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons

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in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

* Sec. 28. AS 46.08.040 is amended to read:

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

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

(2) pay all costs incurred

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

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

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

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

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

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

(5) prepare, review, and revise

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

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

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

* Sec. 29. AS 46.00.060(a) is amended to read:

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

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

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

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

(4) a detailed summary of department activities in

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

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

* Sec. 30. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 to 10,000 barrels in order to determine for each facility

- (1) its actual storage capacity;
- (2) the type of noncrude oil products stored;
- (3) its age, design, construction, and general condition;
- (4) the design and construction standards applicable or relevant;
- (5) the presence or absence of containment structures and equipment;
- (6) its ability to respond to a release or threatened release;
- (7) the environmental sensitivity of the surrounding area and the potential risk to the environment if a release occurs;
- (8) the presence or absence of surface and subsurface pipelines and storage tanks; and
- (9) other appropriate information.

(b) By January 31, 1992, the Department of Environmental Conservation shall report to the legislature the results of the survey required under SCS CS11B 567(Fin)

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(a) of this section and its written recommendations concerning discharge prevention and contingency requirements or design review requirements that should be enacted for noncrude oil terminal facilities with storage capacities of less than 10,000 barrels.

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

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

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

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

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

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

(2) appropriate discharge response times;

(3) requirements for personnel and equipment that should be imposed on contingency plan holders;

(4) appropriate roles for industry and state and local governments in the purchase, ownership, and positioning of discharge response

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1 efforts.

2 * Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), en-
3 acted by sec. 10 of this Act, do not apply to oil discharge prevention and
4 contingency plans until June 1, 1991. On and after June 1, 1991, a contin-
5 gency plan must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of
6 this Act, regardless of whether the contingency plan is due for renewal
7 under AS 46.04.030(d), as amended by sec. 9 of this Act.

8 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this
9 Act, do not apply to persons required to show proof of financial respon-
10 sibility until June 1, 1991. On and after June 1, 1991, proof of financial
11 responsibility must comply with AS 46.04.040, as amended by secs. 11 - 18
12 of this Act, regardless of whether acceptance of proof of financial respon-
13 sibility has expired under AS 46.04.040(f), as amended by sec. 16 of this
14 Act.

15 * Sec. 33. This Act takes effect immediately under AS 01.10.070(c).
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LAWS OF ALASKA

1990

Source

SCS CSHB 578 (Fin)

Chapter No.

199

AN ACT

Creating a citizens' oversight council on oil and other hazardous substances; and authorizing funding of the council through the oil and hazardous substance release response fund."

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

THE ACT FOLLOWS ON PAGE 1, LINE 11

Approved by the Governor: June 27, 1990
Actual Effective Date: September 25, 1990

AN ACT

Creating a citizens' oversight council on oil and other hazardous substances; and authorizing funding of the council through the oil and hazardous substance release response fund.

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) a pervasive contributing factor to the Exxon Valdez disaster was the complacency of the oil industry and the federal and state agencies responsible for monitoring the operation of the Valdez oil terminal and oil tanker traffic in Valdez Arm and Prince William Sound;

(2) it is essential to involve local citizens to help ensure compliance with environmental laws and regulations relating to the production, transport, and storage of oil and other hazardous substances in order to overcome this complacency;

(3) a state oversight council will provide a valuable mechanism for citizen participation and an opportunity for citizens to express their concerns to the legislature and the governor about environmental safety in production, transport, and storage of oil and other hazardous substances.

* Sec. 2. AS 24.20 is amended by adding new sections to read:

ARTICLE 4. CITIZENS' OVERSIGHT COUNCIL ON
OIL AND OTHER HAZARDOUS SUBSTANCES.

Sec. 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.

Sec. 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;

(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

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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; and

(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.

Sec. 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.

Sec. 24.20.630. DEFINITIONS. In AS 24.20.600 - 24.20.630,

Chapter 199

(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.

* Sec. 3. AS 46.08.040 is amended by adding a new subsection to read:

(b) Upon a request from 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.

* Sec. 4. INITIAL APPOINTMENTS. Notwithstanding AS 24.20.600(c), as enacted by sec. 2 of this Act, one initial member of the Citizens' Oversight Council on Oil and Other Hazardous Substances shall be appointed to a term of one year, one initial member shall be appointed to a term of two years, one initial member shall be appointed to a term of three years, and two initial members shall be appointed to terms of four years. The members appointed to terms of one and two years are eligible to serve two full terms following the completion of their initial shortened terms.

ment of Natural Resources for the discount;
ns' land discount authorized by sec. 2 of this Act unless the
e veterans' land discount not later than one year after the

ely under AS 01.10.070(c).



LAWS OF ALASKA

1991

Source

CSSSSB 25(CRA)

Chapter No.

83

AN ACT

Concerning the exercise of authority by the state and its municipalities, and the recovery of damages by the state and its municipalities and villages, in matters relating to environmental conservation; relating to the liability of villages for environmental response actions and to state assistance to municipalities and villages for expenses for prevention and abatement of environmental degradation; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 27, 1991
Actual Effective Date: June 28, 1991

AN ACT

1 Concerning the exercise of authority by the state and its municipalities, and the recovery
2 of damages by the state and its municipalities and villages, in matters relating to
3 environmental conservation; relating to the liability of villages for environmental
4 response actions and to state assistance to municipalities and villages for expenses for
5 prevention and abatement of environmental degradation; and providing for an effective
6 date.

7
8
9
10 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
11 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
12 assistance under those provisions.

13 * Sec. 2. AS 29.35.020(b) is amended to read:

14 (b) A municipality may adopt an ordinance to exercise a power authorized by this
15 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the
16 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
17 be exercised inside the boundaries of another municipality, the approval of the other municipality
18 must be given by ordinance, and before a power authorized by this subsection may be
19 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
20 village must be given by resolution. A municipality intending to exercise its authority under
21 this subsection shall act by ordinance, and may adopt an ordinance under this subsection

1 to

2 (1) protect its water supply and watershed; or

3 (2) contain, clean up, or prevent the release or threatened release of oil or

4 a hazardous substance that may pose an imminent or substantial threat to persons,

5 property, or natural resources within the municipality's boundaries; however, this

6 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries

7 to regulate exploration, development, production, or transportation of oil, gas, or minerals

8 in a manner inconsistent with the state's management of those resources, and enforcement

9 of the ordinance must be consistent with a regional master plan prepared by the

10 Department of Environmental Conservation under AS 46.04.210; In this paragraph,

11 "natural resources" has the meaning given in AS 46.03.826.

12 * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

13 (c) In this section, "village"

14 (1) means the area within a five-mile radius of the village post office or, if there

15 is no post office, another site designated by the commissioner;

16 (2) does not include an area described in (1) of this subsection that is within a

17 city or another village.

18 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

19 (d) A first class borough that exercises power necessary to contain, clean up, or prevent

20 a release or threatened release of oil or a hazardous substance, and exercise a power granted to

21 a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner

22 that is consistent with a regional master plan prepared by the Department of Environmental

23 Conservation under AS 46.04.210.

24 * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

25 (13) contain, clean up, or prevent a release or threatened release of oil or a

26 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,

27 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is

28 consistent with a regional master plan prepared by the Department of Environmental

29 Conservation under AS 46.04.210.

30 * Sec. 6. AS 29.35.220 is amended by adding a new subsection to read:

1 (c) A third class borough may by ordinance exercise power necessary to contain, clean

2 up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a

3 power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power

4 authorized by this subsection may be exercised only on a nonareawide basis. The borough shall

5 exercise its authority under this subsection in a manner that is consistent with a regional master

6 plan prepared by the Department of Environmental Conservation under AS 46.04.210.

7 * Sec. 7. AS 29.60 is amended by adding new sections to read:

8 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL

9 IMPACT ASSISTANCE.

10 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds and declares that

11 a major release of oil or hazardous substances into the environment presents a real and subst

12 threat to the economy and public welfare of the municipalities and villages that are affected by

13 the release and the resultant activities to contain and clean up the release.

14 (b) The legislature concludes that it is in the best interest of the state and its citizens to

15 provide a readily available fund for the payment of the expenses incurred by municipalities and

16 villages to mitigate the social and economic effects that arise out of a major release of oil or

17 hazardous substances and resultant cleanup activities.

18 (c) It is the intent of the legislature and declared to be the public policy of the state that

19 money to defray the cost of social and economic effects on municipalities and villages arising

20 from a major release of oil or a hazardous substance and resultant cleanup activities and to pay

21 for efforts to abate that release will be immediately available upon

22 (1) a determination by the governor that the release exceeds 2,500 barrels of oil,

23 or exceeds an amount of a hazardous substance that when released into the environment presents

24 a real and substantial threat to the economy and public welfare of the municipalities or villages

25 affected by it;

26 (2) the declaration by the governor of a disaster emergency relating to the rel

27 and

28 (3) a finding by the governor that

29 (A) the release of the oil or hazardous substance into the environment

30 presents a real and substantial threat to the economy and public welfare of the

1 municipalities and villages that are affected by the release and by the resultant activities
2 to contain and clean up the release; and

3 (B) it is in the best interest of the state to pay the expenses incurred by
4 municipalities and villages to mitigate the social and economic effects that arise out of
5 the release of the oil or the hazardous substance and the resultant cleanup activities.

6 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The
7 commissioner may use money from the oil and hazardous substance release response fund to
8 make grants to a municipality or village that is affected by the release or by the response to the
9 release and that demonstrates that the release or response to the release involves extraordinary
10 expenditures that are beyond the reasonable capability of the municipality or village to meet from
11 the current revenue sources of the municipality or village if

12 (1) the governor determines that a release of oil or a hazardous substance exceeds
13 2,500 barrels of oil, or exceeds an amount of a hazardous substance that, when released into the
14 environment, presents a threat to the economy and public welfare of the municipalities and
15 villages affected by it at least equivalent in effect to the effect of a release of oil in an amount
16 defined by this paragraph;

17 (2) the release has been proclaimed a disaster emergency by the governor under
18 AS 26.23.020; and

19 (3) the governor finds that

20 (A) the release of the oil or hazardous substance into the environment
21 presents a real and substantial threat to the economy and public welfare of the
22 municipalities and villages that are affected by the release and by the resultant activities
23 to contain and clean up the release; and

24 (B) it is in the best interest of the state to pay the expenses incurred by
25 municipalities and villages to mitigate the social and economic effects that arise out of
26 the release of the oil or the hazardous substance and the resultant cleanup activities.

27 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
28 subject to agreement with the commissioner of environmental conservation as to the amount of
29 money in the fund that may be used by the department to make grants, the commissioner may
30 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill

1 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
2 commissioner and the commissioner of environmental conservation do not agree on the amount
3 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
4 29.60.599, the governor shall make the determination.

5 (c) Notwithstanding the limitation of AS 37.07.080(c) against the transfer of money
6 between appropriations, when the commissioner and the commissioner of environmental
7 conservation have agreed to the amount of money in the fund that may be used by the
8 department to make grants, or when that determination has been made by the governor, the
9 commissioner of environmental conservation shall promptly transfer that amount to the
10 department for use under AS 29.60.500 - 29.60.599.

11 (d) For money that has been transferred under (c) of this section, if within any one-yr.
12 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
13 29.60.599, the commissioner shall, at the direction of the governor or the request of the
14 commissioner of environmental conservation, return the unexpended amount transferred under
15 (c) of this section to the fund.

16 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A grant made
17 under AS 29.60.510 may be made

18 (1) only for

19 (A) provision of subsistence resources on which the residents of the
20 municipality or village rely for subsistence needs;

21 (B) the additional costs of a reasonable and appropriate function or
22 service, including administrative expenses for the incremental costs of providing the
23 function or service, limited to:

24 (i) public health and welfare functions and services, including
25 hospital, clinic, and emergency medical services; alcohol, drug abuse, and mental
26 health services; family support services; and the operation of waste disposal
27 systems and water quality improvement systems;

28 (ii) public safety functions and services, including police
29 protection, search and rescue, and fire protection;

30 (iii) public utility functions and services, including the operation

1 of electric generating plants and distribution systems, water supply systems,
 2 telephone systems, and fuel distribution systems; and
 3 (iv) housing functions and services, limited to leasing or making
 4 other arrangements for temporary housing to be occupied by persons associated
 5 with containment or clean up of the release;
 6 (C) costs associated with leasing transportation facilities for use in
 7 activities associated with the containment or clean up;
 8 (D) costs of repair or replacement of equipment or a capital asset
 9 associated with a function or service set out in (B) of this paragraph the useful life of
 10 which has been substantially reduced by use associated with the containment or clean up;
 11 and
 12 (2) to compensate the municipality or village for
 13 (A) the reduction of revenue attributable to the release of the oil or
 14 hazardous substance; and
 15 (B) the costs of projects or activities that are delayed or lost because of
 16 the efforts of the municipality or village responding to the release or associated with the
 17 containment or cleanup of oil or the hazardous substance.
 18 (b) If money received under this section is used for a capital expenditure the
 19 commissioner may require the municipality or village that acquired the item as a capital
 20 expenditure to transfer it to the state at the end of the period during which the item is actually
 21 used for spill response if the commissioner finds that retention of the item would confer an
 22 inappropriate benefit on the municipality or village.
 23 **Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS.** (a) In
 24 determining whether an expenditure or proposed expenditure by a municipality or village is
 25 eligible for a grant under AS 29.60.510, the department shall consider
 26 (1) the degree to which the effect on the municipality or village is directly caused
 27 by the oil or hazardous substance release or the response to the release;
 28 (2) the availability of money to the recipient from other sources that can meet the
 29 costs of providing the functions or services; and
 30 (3) the severity of the effect addressed in the grant application.

1 (b) The department may reject an application for a grant under AS 29.60.510 or approve
 2 an application for a grant in an amount that is less than the amount requested by a municipality
 3 or village if the department determines that payment of the amount requested is not warranted
 4 under (a) of this section.
 5 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
 6 of applications for the purpose of establishing the priority order of awarding grants if money
 7 requested by eligible municipalities and villages under this section exceeds the amount available.
 8 The criteria must be based on the elements set out in (a) of this section. If the total amount of
 9 money requested by eligible municipalities and villages under this section exceeds the amount
 10 available, the department shall rank applications for the purpose of establishing the priority
 11 of awarding grants in accordance with the regulations.
 12 **Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES AND**
 13 **VILLAGES.** (a) A municipality may not use a grant made under AS 29.60.510 to reduce
 14 current municipal tax rates or to retire its existing bonded indebtedness.
 15 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
 16 not be used for a capital improvement, as that term is defined by AS 46.08.900(1).
 17 **Sec. 29.60.550. RECORDS.** The department shall maintain records showing the income
 18 and expenses of grants made under AS 29.60.510, and shall develop procedures governing the
 19 expenditure of, and accounting for, money expended.
 20 **Sec. 29.60.560. IMPACT ASSESSMENT AND REMEDIAL PLANS.** (a) For each
 21 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
 22 hazardous substance, the commissioner, after consulting with and securing the written approval
 23 of the attorney general and after consulting with other state agencies, shall
 24 (1) make an assessment of the social and economic effects of the release of the
 25 oil or hazardous substance;
 26 (2) develop a plan to
 27 (A) recover the cost of release-related expenditures; and
 28 (B) mitigate the social and economic effects of the release of the oil or
 29 hazardous substance on the municipalities, the villages, and the region in which the
 30 discharge occurs;

- 1 (b) The commissioner may make the assessment and plans required by (a) of this section
2 by
3 (1) using staff of the department;
4 (2) contracting with a municipality or other entity; or
5 (3) authorizing a municipality or other entity to perform that work and supporting
6 that effort by a grant.
- 7 (c) Only one assessment and one plan may be completed under this section for each
8 declaration of a disaster emergency.
- 9 (d) The commissioner may pay the costs of the assessment, the plan, and the recovery
10 of the cost of release related expenditures from money available in the fund.
- 11 (e) Expenditures made under this section may be made only from the amount transferred
12 to the commissioner under AS 29.60.510(c), unless
- 13 (1) the commissioner and the commissioner of environmental conservation
14 mutually agree that payment may be made from money in the oil and hazardous substance release
15 response fund not transferred under AS 29.60.510(c); or
- 16 (2) the commissioner pays them from another source.
- 17 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
18 environmental conservation shall jointly develop and adopt regulations that are necessary to
19 implement the purposes of AS 29.60.500 - 29.60.599.
- 20 Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599,
- 21 (1) "barrel" when used with reference to oil has the meaning given by
22 AS 43.20.072;
- 23 (2) "containment and cleanup" has the meaning given in AS 46.08.900;
- 24 (3) "disaster emergency" means a disaster declared by the governor under
25 AS 26.23.020;
- 26 (4) "fund" means the oil and hazardous substance release response fund
27 established by AS 46.08.010;
- 28 (5) "hazardous substance" has the meaning given in AS 46.09.900;
- 29 (6) "oil" and "release" have the meanings given in AS 46.08.900;
- 30 (7) "service"

- 1 (A) means a function performed or service provided by a municipality
2 under a duty or power authorized by this title or by another provision of law authorizing
3 a municipality to perform functions or provide services, or a comparable function
4 performed or service provided by a village;
- 5 (B) Includes functions not previously performed and services not
6 previously provided by the municipality or village;
- 7 (B) "village" means a place within the unorganized borough or within a borough
8 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -
9 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
10 the time the grant application is submitted, that
- 11 (A) has irrevocably waived, in a form approved by the Department of
12 Law, any claim of sovereign immunity that might arise in connection with the use of
13 grant money under this chapter; and
- 14 (B) has
- 15 (i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
16 Reorganization Act);
- 17 (ii) a traditional village council recognized by the United States as
18 eligible for federal aid to Indians; or
- 19 (iii) a council recognized by the commissioner under regulations
20 adopted by the department to determine and give official recognition of village
21 entities under AS 44.47.150(b).
- 22 * Sec. 8. AS 46.03.760(e) is amended to read:
- 23 (e) In addition to liability under (a) - (d) of this section, a person who violates or causes
24 or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil
25 action brought under AS 46.03.922, for the full amount of actual damages caused to the state by
26 the violation, including
- 27 (1) direct and indirect costs associated with the abatement, containment, or
28 removal of the pollutant;
- 29 (2) [.] restoration of the environment to its former state;
- 30 (3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency

1 first response advances and reimbursements under AS 46.08.070(c): [.] and

2 (4) all incidental administrative costs.

3 * Sec. 9. AS 46.03.822(a) is amended to read:

4 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
5 set out in (b) of this section and the exception set out in (i) of this section, the following persons
6 are strictly liable, jointly and severally, for damages to persons or property, whether public or
7 private, including damage to the natural resources of the state or municipality, [AND] for the
8 costs of response, containment, removal, or remedial action incurred by the state, [OR] a
9 municipality, or a village, and for the additional costs of a function or service, including
10 administrative expenses for the incremental costs of providing the function or service, that
11 are incurred by the state, a municipality, or a village, and the costs of projects or activities
12 that are delayed or lost because of the efforts of the state, the municipality, or the village,
13 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
14 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

25 (4) any person who by contract, agreement, or otherwise arranged for disposal or
26 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
27 substances owned or possessed by the person, other than domestic sewage, or by any other party
28 or entity, at any facility or vessel owned or operated by another party or entity and containing
29 hazardous substances, from which there is a release, or a threatened release that causes the
30 incurrence of response costs, of a hazardous substance;

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

5 * Sec. 10. AS 46.03.822(h) is amended to read:

6 (h) The state, [OR] a municipality, or a village is not liable under this section for costs
7 or damages as a result of actions taken in response to an emergency created by a release or
8 threatened release of a hazardous substance generated by or from a facility or vessel owned by
9 another person unless the actions taken by the state, the [OR] municipality, or the village
10 constitute gross negligence or intentional misconduct.

11 * Sec. 11. AS 46.03.900 is amended by adding new paragraphs to read:

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

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

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

22 (B) has

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

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

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

1 • Sec. 12. AS 46.04.020 is amended by adding a new subsection to read:

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

4 • Sec. 13. AS 46.04.900(5) is amended to read:

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

11 • Sec. 14. AS 46.04.900 is amended by adding new paragraphs to read:

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

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

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

19 (B) has

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

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

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

28 • Sec. 15. AS 46.08.010(a) is amended to read:

29 (a) In addition to money in the fund that is transferred to the commissioner of
30 community and regional affairs to make grants under AS 29.60.510 and to pay for impact

1 assessments under AS 29.60.510, the [TIME] commissioner of environmental conservation may
2 use money from the fund to

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

7 (2) pay all costs incurred to

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

9 (B) review oil discharge prevention and contingency plans submitted under

10 AS 46.04.030;

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

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

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

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

25 (5) recover the costs [COST] to the state, [OR TO] a municipality, or a village
26 of a containment and cleanup resulting from the release or the threatened release of oil or
27 hazardous substance;

28 (6) prepare, review, and revise

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

(D) 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.

* Sec. 16. AS 46.08.070(c) is amended to read:

(c) The department ~~shall~~ [MAY] 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(c) or AS 46.09.020(c); 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.

* Sec. 17. AS 46.08.900(3) is amended to read:

(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 [AND INCIDENTAL.] administrative expenses for the incremental costs of providing the function or service;

* Sec. 18. AS 46.08.900 is amended by adding new paragraphs to read:

(11) "service"

(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;

(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).

* Sec. 19. AS 46.09.060(b) is amended to read:

(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.

Chapter 83

1 Except as provided in (a) of this section, a municipality may exercise its police power within the
2 area of the municipality.

3 • Sec. 20. AS 46.09.900(2) is amended to read:

4 (2) "containment and cleanup" includes the direct and indirect efforts associated
5 with the prevention, abatement, containment, or removal of a hazardous substance, and the
6 restoration of the environment; when applied to expenses, the term includes the additional
7 costs of providing a reasonable and appropriate function or service incurred in response to
8 the release of the hazardous substance, including [, AND INCIDENTAL] administrative
9 expenses for the incremental costs of providing the function or service;

10 • Sec. 21. AS 46.09.900 is amended by adding a new paragraph to read:

11 (8) "service" means a function performed or service provided by the state,
12 including functions not previously performed and services not previously provided by the state.

13 • Sec. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

14 • Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
15 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond
16 to or abate that release if the release occurred before the effective date of this Act.

17 • Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

regulations under the Administrative Procedure Act

means holding a certificate of public convenience and
ilities Commission under AS 42.05.



LAWS OF ALASKA

1991

Source

CSSB 92(FIN)

Chapter No.

39

AN ACT

Relating to the leasing authority and loans of the Commercial Fishing and Agriculture Bank and to the use of limited entry permits as security for those loans; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 12, 1991
Actual Effective Date: June 13, 1991

AN ACT

1 Relating to the lending authority and loans of the Commercial Fishing and Agriculture
2 Bank and to the use of limited entry permits as security for those loans; and providing
3 for an effective date.
4
5
6

7 * Section 1. AS 16.43.150(g) is amended to read:

8 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.210, 44.81.225, and
9 44.81.230 - 44.81.250, an entry permit may not be

10 (1) pledged, mortgaged, leased, or encumbered in any way;

11 (2) transferred with any retained right of repossession or foreclosure, or on any
12 condition requiring a subsequent transfer; or

13 (3) attached, distrained, or sold on execution of judgment or under any other
14 process or order of any court.

15 * Sec. 2. AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.225. SMALL LOANS. (a) To facilitate the development of commercial
17 fisheries in geographic areas in which factors such as geographic considerations, uncertainties of
18 communication, or limited demands do not encourage normal lending activities, the bank may
19 make small loans to qualified borrowers who are not members of the bank.

20 (b) The provisions of this chapter apply to loans authorized by this section except that

21 (1) the borrower is not required to be a member of the bank at the time the loan

1 is approved; and

2 (2) the principal amount of the portion of the loan made by the bank may not
3 exceed \$25,000.

4 (c) The total amount of money that may be loaned under this section may not exceed
5 eight percent of the total capital of the bank.

6 (d) To service loans made under this section, the bank may contract or make other
7 arrangements with a public agency or with a legal entity that the bank determines to be
8 responsible and competent to administer the loan.

9 * Sec. 3. AS 44.81.230(a) is amended to read:

10 (a) A loan under AS 44.81.210(a)(20) or 44.81.225 for the purchase of a limited entry
11 permit may be made only upon certification by the commission that the fisherman is a person
12 who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the
13 commission.

14 * Sec. 4. AS 44.81.230(b) is amended to read:

15 (b) Upon approval by the bank, a [FISH] permit [TO BE PURCHASED] may be pledged
16 as security for a loan made under (a) of this section, AS 44.81.225, or 44.81.235 (,) if

17 (1) the certificate for the pledged permit lists the bank as the legal owner of the
18 permit;

19 (2) the certificate for the pledged permit lists the debtor as the equitable owner
20 of the permit;

21 (3) all annual permit cards issued under the pledged permit list the name of the
22 debtor;

23 (4) all obligations and responsibilities of a permit owner are assumed by the
24 debtor;

25 (5) co-signers or other sureties for performance under the note are not vested with
26 any rights in the pledged permit and their obligation is limited to satisfaction of the note and
27 payment of costs directly incurred by the bank in administering the loan.

28 * Sec. 5. AS 44.81.230(f) is amended to read:

29 (f) In anticipation of possible foreclosure on an entry permit under AS 44.81.250, the
30 debtor may nominate a person to assume a note for a loan made [GIVEN] under

1 AS 44.81.210(c)(20), 44.81.225, or 44.81.235. If the person nominated qualifies under (a) of this
2 section at the time of the foreclosure, the person may assume all rights and liabilities of the
3 debtor in the event the bank forecloses on the entry permit.

4 * Sec. 6. AS 44.81.250(d) is amended to read:

5 (d) Nothing in this section affects the right of the bank to institute legal action for a
6 deficiency resulting from a default on a note for a loan made [GIVEN] under
7 AS 44.81.210(a)(20), 44.81.225, [OR] 44.81.230, or 44.81.235. In addition to any deficiency,
8 the debtor is liable for the costs of administering the note and for costs and attorney fees.

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

ATTACHMENT B
Draft Report by the Department of Environmental Conservation
About the History of the Response Fund

Oil and Hazardous Substance Release Response Fund

• Establishment of Response Fund

Prior to 1986 the Department of Environmental Conservation (DEC) utilized the Spill Expense Reserve Account (Reserve Account) to pay costs directly involved in the abatement, containment, and removal of a discharge of oil or hazardous substances. The initial appropriation to this account was \$1,000,000 in FY81. Subsequent appropriations were made in FY82 and FY84, each totalling \$250,000. During the period FY81 through FY86, \$1,278,000 was expended.

In 1986, the Alaska Legislature established the Oil and Hazardous Substance Release Response Fund (Response Fund). The Response Fund was to provide a readily available source to pay expenses incurred by DEC in the protection of the environment from the release of oil or hazardous substances. It was the intent of the Legislature and declared to be public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available.

• Funding History

The remaining balance in the Reserve Account (\$222,000), the balance in the mitigation account (\$159,000) and the FY87 appropriation (\$300,000) provided the initial funding for the Response Fund of \$681,000. Table 1 provides a funding history.

Table 1
Summary of Funding by Fiscal Year
(In Thousands)

| | |
|------|----------|
| FY87 | 681.0 |
| FY88 | 1,129.3 |
| FY89 | 20,636.5 |
| FY90 | 52,797.6 |
| FY91 | 28,696.1 |
| FY92 | 28,500.0 |

Until FY89, funding came from general fund appropriations and appropriations of cost recovered monies deposited in the mitigation account. In March 89, the Exxon Valdez incident occurred and special appropriations were made to the response fund. Of those appropriations 10 million was program receipts. This was the first time program receipts authority was granted to the Response Fund. Additional program receipts were authorized in FY90. Beginning in FY91, the primary funding for the Response Fund has been a conservation surcharge of \$.05 per barrel on oil subject to the oil and gas properties production act.

- Use of the Response Fund

Initially, use of the Response Fund was limited to:

Containment, cleanup and other necessary action such as monitoring, assessing, investigating, and evaluating the 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.

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 1990).

Recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

- Changes in Use of the Response Fund

Subsequent legislation added to the uses of the Response Fund. Two types of uses were established; those where legislative appropriation for the purpose is expressly required and a second where legislative appropriation is not directly required. The latter uses are summarized first:

Transfer money to the commissioner of Community and Regional Affairs to make grants. [Chapter 83 SLA81 Section 15] (Reference 29.60.510 and 29.60.500)

Investigate, evaluate, 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 [Chapter 90 SLA89 Section 3]

Upon request of Legislature, fund Citizens' Oversight Council [Chapter 199 SLA90 Section 3] (Reference 24.20.600)

When the Governor declares a disaster related to an oil or hazardous substance discharge emergency use money from the fund to respond to the disaster emergency [Chapter 190 SLA90 Section 15] (Reference 23.23.020(c))

Other uses which may not be funded unless funds are available from an appropriation made specifically for that purpose are [Chapter 48 SLA91 Section 4]:

Establish and maintain the response office [Chapter 113 SLA99 Section 2]

Review oil discharge prevention and contingency plans [Chapter 191 SLA90 Section 28]
[Reference 48.04.030]

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, other activities to verify or establish the preparedness of the state, a municipality, or a party required to have an approved contingency plan to act in accordance with that plan [Chapter 191 SLA90 Section 28] [Reference 48.04.030]

Verify or establish proof of financial responsibility [Chapter 191 SLA90 Section 28] [Reference 48.04.040]

Pay the expenses incurred by the Alaska division of emergency services for response corps and response depots when presented with appropriate documentation [Chapter 190 SLA90 Section 14]

Provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601-9657 (CERCLA Act of 1980) [Chapter 59 SLA89 Section 1]

Recover the costs to the state, municipality or to a village of a containment and cleanup [Chapter 83 SLA91 Section 15]

Prepare, review, and revise the state's master or a regional oil and hazardous substance discharge prevention and contingency plan [Chapter 90 SLA89 Section 3] [Reference 48.04.200 and 48.04.210]

Restore the environment by addressing the effects of an oil or hazardous substance release [Chapter 90 SLA89 Section 3]

Upon request from the commissioner of DOTPF transfer monies to DOT to fund construction or refurbishment of one or more vessels that have the capability of responding to spills of oil or hazardous substances [Chapter 48 SLA91 Section 5] [Reference 18.65.025]

- Types of Use of the Response Fund

Response Fund expenditures can be categorized in four types:

Operating:

These costs are the on going costs of operation of the Division of Spill Prevention and Response within the Department of Environmental Conservation. With the exception of costs for specific spill response and contaminated site projects, these costs are generally not recoverable. Until FY90, these costs were primarily funded by appropriations from the general fund. Beginning in FY91, the operating costs were mostly converted from general fund to the Response Fund. In addition, costs of the Department of Law are included in on going operating costs, particularly regulation review, legal opinions and guidance. Law's efforts at cost recovery for specific spill response and contaminated site projects are generally recoverable.

Cost Recoverable:

Costs for specific spill response and contaminated site projects, these costs are generally recoverable. Law's efforts at cost recovery for specific spill response and contaminated site projects are generally recoverable. Exceptions occur when a responsible party can not be identified, is not financially able to reimburse the State for its costs, or when the State is the property owner.

Spill Reserve:

Spill Reserve is a reserve of funds with two primary purposes. DEC has a goal of depositing and maintaining 30 million in Spill Reserve to be used 10 million for Communities, Municipalities and Villages and 20 million in reserve for the State costs in response to major incidents. The State will continue to fund on going minor and medium spill response efforts from Spill Reserve.

Other:

One time expenditures and special projects can be classified as other. Examples of these type of expenditures are funding for Regional Citizen's Advisory Councils, Air Monitoring, Volcanic Eruptions, Construction of Oil Response Ferries, One Time Contracts or Surveys and the Storage Tank Assistance Program. While some of the projects may receive funding in multiple years, typically these are not on going operational costs, cost recoverable or eligible for spill reserve funding. Technological costs, such as the funding costs of the Oil and Hazardous Substance Spill Technology Review Council and its staff are also categorized as other costs.

• Operating Costs

Prevention

Reduce the potential for oil and hazardous substance spills through design, development, planning, coordination, implementation and administration of Statewide programs to reduce the potential and severity of spills, leaks and releases of oil and other hazardous substances. Included in the prevention activities are education, training, information distribution, analysis of contingency plans, inspections, discharge exercises, and financial responsibility.

Planning

DEC will complete a ten-year cleanup management plan for approximately 1100 reported sites. The plan will lay out a systematic process for closing out all sites by the year 2002. That process will include a detailed review to confirm reported sites are contaminated, and remove reported sites from the list that are found not to pose a risk. The remaining confirmed sites will be ranked based on risk. The list will be further subdivided based on whether the responsible party for the spill is able to cleanup the site, or if the State must assume responsibility by default of the responsible party.

Fund the State Emergency Response Commission (SERC); composed of nine State agency commissioners and seven public members. Implement local emergency planning and community right-to-know programs as mandated by state and federal laws. Assist the State and local governments with the development of oil and hazardous substance spill contingency planning by conducting training workshops and providing information to local communities.

Develop and annually revise Statewide and regional plans to coordinate State and other parties involved in response to hazardous substance incidents including oil spills. Regional plans provide detailed information regarding spill hazards, risk to humans and the environment, and response capability.

Regulation Development and Enforcement

Establish regulations to protect public health and resources; issue authorizations such as plan approval or certificates in accordance with regulations; and monitor and maintain compliance with environmental standards. Provide assistance and guidance to industry and the public on spill response matters.

Preparedness (Training, Drills, Medical Monitoring and Equipment)

Maintain a highly trained group responsible for immediate response to catastrophic spills, declared emergency discharges of oil and hazardous substance releases anywhere in Alaska.

Prepare all State responders for such events by improving the State's overall oil and hazardous substance spill response capabilities through education, training on response techniques, equipping responders, addressing life, health, safety issues prior to an incident.

Drills, including unannounced drills, shall be conducted to verify that industry, the State, local government and contractors can perform response activities as planned.

In 1990, the Hazardous Waste Operations and Emergency Response regulations (29 CFR 1910.120) were adopted at the Federal Level. In Alaska, a parallel worker health and safety statute and regulations were implemented. Employees who work in situations which present potential exposure to hazardous substances above permissible limits are required to have comprehensive medical examinations. Preparation for response requires that employees be medically evaluated prior to exposure and monitored on an on going basis to locate and mitigate any effects of exposure.

The State shall purchase equipment with Response Funds. Equipment purchases shall be limited to the equipment needed for first response to control and contain the spill while the responsible party mounts a response effort or a State response action contractor arrives on scene with resources to assume control. This equipment shall be compatible with federal response equipment and located in high risk areas. Local responders shall have access and training in equipment operations.

Legal Costs, Investigation and Cost Recovery

Costs of the Department of Law are included in on going operating costs, particularly regulation review, legal opinions and guidance. Law's efforts at cost recovery for specific spill response and contaminated site projects are generally recoverable.

Investigation costs are also an operating costs. DEC participates with Law and the State Troopers in criminal investigations which are the precursor to identification, cleanup and restorations resulting in a civil action to recover the State's costs.

Administration and Management

Provides overall management and administrative functions for operating programs. Program development and supervision; budget and work plan development; regulation development oversight; regional work plan review; and overall program responsibility. Serve as Response Fund Manager. Collect and distribute legislative, management and public information reports on the Response Fund.

- Recoverable Activities

- Contaminated Sites

Response Funds will be used to pay for staff to oversee responsible party cleanups, and pay for cleanups directly managed by the DEC using response action contractors. An action schedule will be developed for both the responsible party and state-lead category cleanups. The actual cleanup costs incurred by DEC or its contractors shall be considered cost recoverable where a responsible party is identified and able to reimburse the State.

- Spill Response

Response Funds are used to hire contractors to initiate responses, or continue clean-up of spills when the spiller (responsible party) is unable or unwilling to respond. The Response Fund supports local response efforts to manage and monitor response efforts of the spiller(s) or other responsible parties. The spill response program responds to approximately 3,000 non-catastrophic oil and hazardous substance spills reported to DEC each year. DEC operates on a "first day is free" policy for minor spills. Thus, spill reserve is used on minor spills for costs in excess of that amount and for medium and major spills.

- Spill Reserve

- Communities

It is the intent of the Legislature and declared to be public policy of the State that funds for the reimbursement of costs of abatement of a release of oil or a hazardous substance which will always be available for municipalities and villages and that in certain instances the State should have monies available to defray the costs of social and economic effects on municipalities and villages arising from a major release and resultant cleanup activities. Those funds are in Spill Reserve. DEC plans to maintain 10 million dollars in spill reserve to fund those expenditures.

- Emergency Response

It is the intent of the Legislature and declared to be public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available. Those funds are in Spill Reserve. DEC plans that 20 million dollars shall be maintained in Spill Reserve for emergency first response on catastrophic spills. This amount is not sufficient to fund all of the State costs in response, containment and clean up of a catastrophic spill, but, provides funding for the time needed to allow the Legislature to consider, approve and appropriate additional funds for catastrophic response.

- Oversight Councils, RCACs

Response Funds are used for the Citizen's Oversight Council on Oil and Hazardous Substance Releases. The council is responsible for determining whether state and federal agencies responsible for the prevention of and response to releases are carrying out their duties. The council recommends to the Legislature, Governor, agencies and private entities policies to prevent release. The council assists the Legislature and Governor in the development of interstate compacts and policy recommendations to the federal government regarding prevention.

Response Funds have been used as an initial funding source for the formation of Regional Citizen Advisory Councils such as the Arctic Marine Resource Commission in FY92.

- Tank Program

Protect the public from contamination resulting from leaking underground storage tanks through regulatory and assistance program which includes prevention, education and cleanup. With guidance from the Board of Storage Tank Assistance, State provide financial assistance for conducting site assessments and testing tanks for leaks, cleanup from leaking tanks, and upgrading or removing tanks. Regulations govern certification of tank workers and site assessors. Installation, registration, maintenance, leak detection, site assessment, upgrade, cleanup and closure of tanks and tanks systems is also governed by regulations under this project.

- Technological

Provide staff assistance to the Oil and Hazardous Substance Technology Review Council which is composed of the commissioner of DEC, the adjutant general of the Department of Military and Veterans Affairs, a representative from the University of Alaska, the Governor's senior science advisor, a representative of the Prince William Sound Science Center, and four public members appointed by the Governor. The council assists in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases. The council reviews oil and hazardous substance spill cleanup technology research and development activities undertaken by other government agencies and industry spill response groups. The council also makes recommendations to the Department and agencies of the state regarding the use and deployment of these products and procedures.

- Oil Response Ferries

Response funds are used 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.

Oil and Hazardous Substance Release Response Fund
Revised: August 1991
Summary of Legislation and Statutory Effect

DRAFT

Alaska Statute Title 46, Chapter 08

The effect of bills passed in this last session SLA91 are NOT reflected in a statute supplement. Chapter 83 SLA 91 CSSSSB 25 (CRA) (effective 6/28/91) and Chapter 48 SLA 91 (effective 9/13/91) CSSB 165 (TRA) were signed and do effect AS 46.08. The effect of those acts are included in the summary.

The summary is provided for general guidance only. It will direct you to the appropriate section or legislation. When being asked to provide an opinion, the statute, supplement or legislation should be consulted.

Key terms are defined within the statute and legislation, thus, this should be reviewed by all fund users. Those terms are listed in the summary.

Statutes: AS46.08 September 1987
AS46.08 1990 Cumulative Supplement, October 1990

| | | | | |
|---------------|-------------|-------|---------|-----------|
| Legislation: | Chapter 59 | SLA86 | SCSCSHB | 470 (Fin) |
| | Chapter 29 | SLA89 | CSSB | 256 (CRA) |
| | Chapter 39 | SLA89 | SCSCSHB | 68 (Jud) |
| | Chapter 90 | SLA89 | CSSB | 261 (Fin) |
| | Chapter 113 | SLA89 | HCSCSSB | 264 (Fin) |
| | Chapter 190 | SLA90 | SCSCSHB | 566 (Fin) |
| | Chapter 191 | SLA90 | SCSCSHB | 567 (Fin) |
| | Chapter 199 | SLA90 | SCSCSHB | 578 (Fin) |
| (Eff 9/13/91) | Chapter 48 | SLA91 | CSSB | 165 (Tra) |
| | Chapter 83 | SLA91 | CSSSSB | 25 (CRA) |

46.08.005 Purpose

Acknowledges threat to public health, welfare and economy on release and need for fund to pay ADEC and Department of Transportation and Public Facilities costs [Chapter 48 SLA91 Section 2]

46.08.010 Fund established

OHSRRF in General Fund. Administered by Commissioner. Money is continuing. Except as provided in 46.08.040, (DOTPF portion) no capital improvements [Chapter 48 SLA91 Section 3]

46.08.020 Financing of the fund

Legislature may appropriate money from federal, state, other sources or private donor or from mitigation to the OHSRRF. Money received and recovered from responsible parties is put in the mitigation account [Chapter 50 SLA88 Section 1]

Due to addition of 46.08.100 thru 46.08.190 language had to be changed from "chapter" to limit the scope of source for fines, penalties and damages to 46.08.005 thru 48.06.080 [SLA89]

46.08.030 Financing the abatement of oil or hazardous substance releases

Funds for abatement will always be available [Chapter 58 SLA88 Section 1]

46.08.040 Purposes of the fund

Transfer money to the commissioner of CRA to make grants and to pay for impact assessments. [Chapter 83 SLA91 Section 15] (Reference 29.60.510 and 29.60.560)

Investigate, evaluate, 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 [Chapter 90 SLA88 Section 3]

Upon request of Legislature, fund Citizens' Oversight Council [Chapter 199 SLA90 Section 3] (Reference 24.20.600)

When the Governor declares a disaster related to an oil or hazardous substance discharge emergency use money from the fund to respond to the disaster emergency [Chapter 190 SLA90 Section 15] (Reference 23.23.020(c))

May not be used for the purposes below unless money is available from an appropriation made SPECIFICALLY FOR THAT PURPOSE [Chapter 48 SLA91 Section 4]

Establish and maintain the response office [Chapter 113 SLA88 Section 2]

Review oil discharge prevention and contingency plans [Chapter 191 SLA90 Section 28] (Reference 48.04.030)

Conduct training, response exercises, inspections, and tests in order to verify equipment inventories and ability to prevent and response to oil and hazardous substance release emergencies, other activities to verify or establish the preparedness of the state, a municipality, or a party required to have an approved contingency plan to act in accordance with that plan [Chapter 191 SLA90 Section 28] (Reference 48.04.030)

Verify or establish proof of financial responsibility [Chapter 191 SLA90 Section 28] (Reference 48.04.040)

Pay the expenses incurred by the Alaska division of emergency services for response corps and response depots when presented with appropriate documentation [Chapter 190 SLA90 Section 14]

Provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601-9657 (CERCLA Act of 1980) [Chapter 59 SLA88 Section 11]

Recover the costs to the state, municipality or to a village of a containment and cleanup [Chapter 83 SLA91 Section 13]

Prepare, review, and revise the state's master or a regional oil and hazardous substance discharge prevention and contingency plan [Chapter 90 SLA89 Section 3] (Reference 48.04.200 and 48.04.210)

Restore the environment by addressing the effects of an oil or hazardous substance release [Chapter 90 SLA89 Section 3]

Upon request from the commissioner of DOTPF transfer monies to DOT to fund construction or refurbishment of one or more vessels that have the capability of responding to spills of oil or hazardous substances [Chapter 48 SLA91 Section 5] (Reference 19.85.029)

46.08.050 Records of the fund

Maintain accounting records of income and expenses, Develop procedures governing expenditure and accounting [Chapter 59 SLA88 Section 1]

46.08.060 Report to the legislature

No later than 10 days after convening regular session
[Chapter 59 SLA 89 Section 1]

Amount expended by department [Chapter 190 SLA90 Section 18]

Amount, source of money received & recovered on behalf
of department [Chapter 190 SLA90 Section 18]

Summary of municipal participation in department
response [Chapter 190 SLA90 Section 18]

Detailed summary of department activity prior FY
including response and nature including each personal
services position and total compensation, each contract
in excess of \$20,000 and each purchase in excess of
\$10,000 [Chapter 191 SLA90 Section 29]

Projected costs to department for activity continuing
next year [Chapter 190 SLA90 Section 18]

Summary of sites identified [Chapter 59 SLA88 Section 1]

Immediate and long term threat [Chapter 59 SLA88 Section 1]

Actions needed to abate threat and estimated cost [Chapter 59
SLA88 Section 1]

Governor's Office is required to report on expenditures
incurred under its' authority [Chapter 190 SLA90 Section 17]

46.08.070 Reimbursement for containment and cleanup

Shall seek reimbursement for clean up and containment
[Chapter 59 SLA88 Section 1] [Reference 46.03.760(e)]

AG office shall immediately seek, at request of
Commissioner, to recover monies [Chapter 29 SLA28 Section 1]

Shall reimburse municipality or village for actual
expenses other than normal operating and may advance
money if municipality or village has agreement and
expenditures were for emergency first response at the
time of the release or threatened release and a need
for advance financial assistance is demonstrated and
expenditures reimbursed or advanced were consistent
with the region master plan where the municipality or
village is located if plan exists [Chapter 83 SLA91 Section 16] [Reference
46.04.020(e), 46.09.020(e), 46.04.210]

46.08.075 Liens against property as a security for state expenditures

The state has a lien for expenditures from all sources against all property owned by a person determined by the Commissioner to be liable [Chapter 38 SLA 89 Section 7]

Lien not effective until certificate is filed and copy sent to all interested parties [Chapter 38 SLA38 Section 7]

Certificate of discharge or reduction shall be issued on request on payment [Chapter 38 SLA89 Section 7]

Lien may be reduced (full or partially) or discharged at Commissioner's discretion if a bond or other security is posted. May not be done if contrary to public interest [Chapter 38 SLA89 Section 7]

Person with ownership may file action in court to have lien released [Chapter 38 SLA89 Section 7]

46.08.080 Regulations

Periodically review minimum quantity under federal law and adopt minimums for application of this law. Others only as expressly required to implement [Chapter 59 SLA88 Section 1]

Scope changed to limit to Article 1 [SLA88]

46.08.900 Definitions

The following terms are defined:

capital improvement
commissioner
containment and cleanup
department
fund
hazardous substance
oil
permitted release
release
threatened release
service
village

Article 2. Oil and Hazardous Substance Response Office

46.08.100 Office established

Establish office with director and employees trained in programs and technologies related to containment and clean up [Chapter 113 SLA88 Section 3]

46.08.110 Response corps

DES (DMVA) shall establish corps. Registered volunteers trained in techniques for cleanup and containment, available on short notice, consistent with roles and responsibilities under an ICS activation. May be paid per diem and expenses while training or in service

[Chapter 190 SLA90 Section 18]

46.08.120 Response depots

DES (DMVA) shall maintain emergency response depots in areas determined in plans. Equipped and staffed to ensure prompt response when containment and clean up are necessary [Chapter 190 SLA90 Section 19] [Reference 48.04.200-210].

46.08.130 Duties of the office

Response ONLY if the incident is catastrophic, emergency or the commissioner believes it poses an imminent and substantial threat to the public health or welfare, or to the environment. Must be guided by the use of ICS [Chapter 190 SLA90 Section 20]

Serve as staff for the State Emergency Response Commission and for the Hazardous Substance Spill Technology Review Council within the State Emergency Response Commission [Chapter 190 SLA90 Section 24]

46.08.140 Emergency powers

When the office has reasonable grounds to believe release has occurred or is threatened which presents an imminent or present danger to health, welfare, irreversible or irreparable damage to natural resources or environment, and delay would be prejudicial to public interest may enter private property without prior hearing or permission for containment and cleanup

[Chapter 113 SLA89 Section 3]

Property owner has right to be heard and to present proof that containment or cleanup is unnecessary and that it is not necessary to enter [Chapter 113 SLA89 Section 3]

46.08.150 Contracts

Contract for (the office or DES, as applicable) personnel, equipment or services to establish and maintain depots; train corps; treatment technology research including topics recommended by the hazardous substance spill technology review council [Chapter 190 SLA90 Section 21]

46.08.160 Limitation of liability

State, its' employee and members of corps are not
liable unless gross negligence or intentional
misconduct [Chapter 113 SLA88 Section 3]

46.08.190 Definitions

The following terms are defined:

corps
depots
division
office

ATTACHMENT C
Excerpts From Response Fund Annual Reports

FY 1987
(First half)

A REPORT TO THE 15th ALASKA LEGISLATURE
ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

by the

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Dennis Kelso - Commissioner

January 30, 1987

STATE OF ALASKA

STEVE COWPER - GOVERNOR

Section 1. INTRODUCTION

The 1986 Legislature passed HB 470, a bill relating to the release of oil and hazardous substances. This legislation, in part, established an Oil and Hazardous Substance Release Response Fund. The legislation incorporated the previously existing oil spill reserve account into the Oil and Hazardous Substances Release Response Fund. The department uses money from the Response Fund for the response and cleanup of oil and hazardous substance spills. Section 46.08.060 of the bill requires the department to submit to the Legislature an annual report summarizing information on: spill response activities during the preceding fiscal year; projected costs of cleanup for the next year; expenditures from the fund; and monies recovered from spillers. Since FY 87 is the first year of the fund's existence, this report covers the six month period from July 1, 1986 - January 1, 1987.

Section 2. EXECUTIVE SUMMARY

The Legislature appropriated \$680,666 to the Response Fund for FY 87. However, monies in the Fund were subject to a 35 percent restriction on spending that was placed on all capital budget appropriations in July 1986. As a result, \$451,327 was released to the department to spend for oil and hazardous spill responses in FY 87. On January 1, 1987, OMB released the remaining balance of the Oil Spill Mitigation Account (\$79,338) to the department for additional spill expenditures. As of January 1, 1987, our records show FY 87 expenditures of \$206,670 and encumbrances and other obligations of \$196,081 (Attachment A), leaving \$127,914 remaining in the unrestricted portion of the Fund.

During FY 87, the department reached settlement agreements for damages from three oil spills. These settlements are deposited to the Oil and Hazardous Substance Release Mitigation Account. When final payments are made to the state, total revenue recovered in the Mitigation Account from these three spill settlements will be \$307,299. This total may increase as the department proceeds with enforcement actions on other spills in FY 87. As provided in HB 470, these funds are available for appropriation to the Response Fund.

The department has allocated monies from the Fund for several significant oil and hazardous substance spill investigations during the first six months of FY 87. These include the Kotzebue underground spill (\$62,638), Nome underground spill (\$12,745), West Poppy Lane gravel pit (\$15,464), Iron's Subdivision groundwater contamination (\$9,041), Peters Creek groundwater contamination (\$208,415), Anchor Point groundwater contamination (\$10,407), and Crown Point chemical release (\$20,000).

The department projects that at least \$612,000 will be needed to respond to and clean up existing known oil and hazardous substance spills. These are costs associated with continuing projects. In addition, we estimate that at least \$350,000 will be required for new cleanup activities to be initiated during FY 88.

No funds were provided to municipalities for their involvement in oil and hazardous substance spill response activities during FY 87.

Section 3. FUND EXPENDITURES FOR FY 87

The Legislature established the Response Fund on July 1, 1986, with appropriations from three different sources as follows:

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|--|------------------|
| FY 86 Oil Spill Mitigation Account balance | \$158,677 |
| FY 86 Oil Spill Expense Reserve balance | 221,989 |
| FY 87 Capital Budget appropriation | 300,000 |
| Total | <u>\$680,666</u> |

In August, 1986, the Office of Management and Budget (OMB) restricted this appropriation by 35 percent. This reduction was applied to all capital appropriations.

The department responded to a rash of oil and hazardous substances spills during the summer of 1986. By the end of August we had either spent or encumbered a total of \$226,669 for oil and hazardous substances spill response and cleanup activities. As a result, the department asked OMB that an exception to the spending restriction be granted.

On September 15, 1986, we were advised by OMB that they would release monies from the following Fund appropriations as follows:

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|---|------------------|
| 50% of the Oil Spill Mitigation Account balance | \$ 79,338 |
| 100% of FY 86 Oil Spill Expense Reserve balance | 221,989 |
| 50% of FY 87 Capital budget appropriation | 150,000 |
| Total revised appropriation | <u>\$451,327</u> |

OMB released the remaining balance of the Oil Spill Mitigation Account (\$79,338) on January 1, 1987 for additional spill expenditures. As of January 1, 1987, our records show total spill expenditures, encumbrances and other obligations of \$402,751. The balance of the Fund on January 1, 1987, was:

| | |
|-------|----------------------------------|
| | \$530,665 (\$451,327 + \$79,338) |
| | 402,751 |
| Total | <u>\$127,914</u> |