

Sec. 46.08.005. Purpose of fund; description of accounts.

The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a fund containing two accounts. Within the fund,

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the department during a response to a release or threatened release of oil or hazardous substances when authorized by [AS 46.08.045](#) and for related purposes intended to address those releases;

(2) the other account consists of money that the state may use during a response to a release of oil or a hazardous substance, other than one described in (1) of this section, and to a threatened release of oil or a hazardous substance, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law.

Sec. 46.08.010. Fund established.

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

(1) the oil and hazardous substance release prevention account;

(2) the oil and hazardous substance release response account.

(b) Money from an appropriation made to an account in the fund remaining in that account at the end of a fiscal year does not lapse and remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under [AS 46.08.040](#). Except as provided in [AS 46.08.040\(a\)\(2\)\(D\)](#) for the acquisition, repair, or improvement of assets as preparedness measures, the fund may not be used for capital improvements.

Sec. 46.08.020. Financing of the oil and hazardous substance release prevention account; prevention mitigation account.

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

(1) the annual estimated balance of the account maintained under [AS 37.05.142](#) for deposits into the general fund of the proceeds of the oil conservation surcharge levied by [AS 43.55.300](#);

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

(3) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding money

specific site, but excluding money

(A) from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action; and

(B) described in [AS 46.08.025\(a\)\(3\)](#);

(4) fines, penalties, or damages recovered under [AS 46.08.005](#) – [46.08.080](#) or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance; and

(5) the interest earned on the balance of the accounts maintained under [AS 37.05.142](#) for deposits into the general fund from the proceeds of the surcharges levied under [AS 43.55.201](#) and [43.55.300](#).

(b) Money received by the state under (a)(2) – (5) of this section shall be deposited in the general fund and credited to a special account called the “oil and hazardous substance release prevention mitigation account.” The legislature may annually appropriate to the prevention account in the fund from the prevention mitigation account a sum equal to the amount received under (a)(2) – (5) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

(c) The interest earned on the balances of each of the following accounts shall be deposited into the general fund and credited to the prevention account in the fund:

- (1) the prevention account;
- (2) the prevention mitigation account;
- (3) the response account; and
- (4) the response mitigation account.

Sec. 46.08.025. Financing of the oil and hazardous substance release response account; release mitigation account.

(a) The legislature may appropriate from the following sources to the oil and hazardous substance release response account in the fund:

(1) the annual estimated balance of the account maintained under [AS 37.05.142](#) for deposit into the general fund of the proceeds of the oil conservation surcharge levied by [AS 43.55.201](#);

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

(3) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site for which the state expended money from the former oil and hazardous substance release response fund before October 2, 1994 or for which the state expended money from the response account, but excluding

(A) money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(B) fines, penalties, and damages described in [AS 46.08.020\(a\)\(4\)](#).

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

Sec. 46.08.030. Intent concerning the abatement of oil or hazardous substance releases.

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

Sec. 46.08.040. Uses of the fund.

(a) In addition to money in the response account of the fund that is transferred to the commissioner of commerce, community, and economic development to make grants under [AS 29.60.510](#) and to pay for impact assessments under [AS 29.60.560](#), the commissioner of environmental conservation may use money

(1) from the response account in the fund

(A) when authorized by [AS 46.08.045](#), to 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;

(B) to provide matching funds in the event of a release of oil or a hazardous substance for which use of the response account is authorized by [AS 46.08.045](#) for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 – 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) to recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance for which money was expended from the response account;

(2) from the prevention account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in [AS 46.08.045\(a\)](#), 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, except a release described in [AS 46.08.045\(a\)](#);

(B) pay all costs incurred

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

(ii) under agreements entered into under [AS 46.04.090](#) or [AS 46.09.040](#);

(iii) to review oil discharge prevention and contingency plans submitted under [AS 46.04.030](#);

(iv) 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

(v) to verify or establish proof of financial responsibility required by [AS 46.04.040](#);

(C) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, the expenses incurred by the Department of Military and Veterans' Affairs for Alaska State Emergency Response Commission activities, including staff support, when the activities and staff support relate to oil or hazardous substances, and for the costs of being prepared for responding to a request by the department for support in response and restoration, but not including the costs of maintaining the response corps and the emergency response depots under [AS 26.23.045](#);

(D) pay all costs incurred to acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a release or threatened release of oil or a hazardous substance;

(E) pay the costs, if approved by the commissioner, that were incurred by local emergency planning committees to carry out the duties assigned them by [AS 26.23.073](#)(g);

(F) provide matching funds in the event of the release of oil or a hazardous substance, except a release of oil for the containment and cleanup of which use of the response account is authorized by [AS 46.08.045](#), for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 – 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(G) [Repealed, § 2 ch 102 SLA 2006.]

(H) transfer to the Department of Commerce, Community, and Economic Development for payment by the commissioner of commerce, community, and economic development of

(i) municipal impact grants when authorized under [AS 29.60.510](#)(b)(2);

(ii) assessments of the social and economic effects of the release of oil or hazardous substances as required by [AS 29.60.560](#) when, in the judgment of the commissioner, the release of oil or a hazardous substance is not one that is described in [AS 46.08.045](#); and

(iii) grants to repair, improve, or replace fuel storage facilities under the bulk fuel system emergency repair and upgrade program;

(I) recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance for which money was expended from the prevention account;

(J) prepare, review, and revise

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

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

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

(b) [Repealed, § 43 ch 128 SLA 1994.]

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(1)(B) or (C) or (a)(2) of this section unless money is available from an appropriation made specifically for that purpose. The legislature may use not more than three percent of the estimated annual balance of the prevention account to make appropriations for the purposes described in (a)(2)(E) of this section.

(d) [Repealed, § 43 ch 128 SLA 1994.]

Sec. 46.08.045. Use of the response account; declared disasters.

(a) The commissioner may use money from the response account in the fund to respond to a release or threatened release when the governor declares a disaster related to an oil or hazardous substance discharge emergency under [AS 26.23.020\(c\)](#). During the effective period of the disaster emergency, the commissioner may use money from the response account to respond to the disaster emergency.

(b) Notwithstanding (a) of this section, money from the response account may be used for the purpose in [AS 46.08.040\(a\)\(1\)\(A\)](#) without a declaration under [AS 26.23.020\(c\)](#). However, when exercising authority under this subsection, the commissioner shall, within 120 hours of using money in the response account when authorized by this subsection, provide a written report to the governor and to the Legislative Budget and Audit Committee summarizing the release, the state's actions, both taken and anticipated, the costs of the state's actions, both taken and anticipated, and other information considered appropriate by the commissioner or the governor. The governor may, at any time during the state's response, approve, disapprove, or amend the action.

Sec. 46.08.050. Records of the fund.

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

(b) A department that is appropriated or allocated money from the fund, either directly or through a reimbursable service agreement with the Department of Environmental Conservation, shall develop procedures governing the expenditure of, and accounting for, money it expends from

the fund. The Department of Environmental Conservation may not

the fund. The department of environmental conservation may not reimburse or pay money to another state agency for the agency's activities under AS 46.08.040 unless the state agency provides to the department the information necessary to complete the report required by AS 46.08.060.

Sec. 46.08.060. Report.

(a) The commissioner shall make available a report to the legislature not later than the 10th day following the convening of each first regular session of the legislature. The commissioner shall notify the legislature that the report is available. The report may include information considered significant by the commissioner but must include

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

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding two fiscal years under

(A) AS 46.08.020; and

(B) AS 46.08.025;

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

(4) a detailed summary of department activities in responses paid for by the fund during the preceding two fiscal years, 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 \$10,000, and each purchase in excess of \$10,000; and

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

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

(1) the number of sites that are included in the department's contaminated sites data base, whether the site is active or closed; and

(2) a prioritized listing of those sites, both statewide and by community, based on the immediate and long-term threats to the public health or welfare or to the environment.

(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 two fiscal years to the legislature not later than the 10th day following the convening of each first 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 paid for under the authority of AS 46.08.045.

Sec. 46.08.070. Reimbursement for containment and cleanup.

(a) Except as provided in (e) of this section, the commissioner shall seek reimbursement promptly under this section, [AS 46.03.760](#)(d), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

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

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

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

(2) the commissioner determines that

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

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

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

(d) The department shall adopt regulations to implement the cost recovery requirements of (a) and (b) of this section, but may not delay cost recovery actions pending the effective date of the adoption of the regulations. The department may adopt regulations to implement the provisions of (e) of this section.

(e) Notwithstanding (a) of this section and for a person otherwise liable under [AS 46.03.822](#), the department may waive all or a portion of the response costs incurred by the department in the cleanup or containment of oil or a hazardous substance that has been released if the department makes a written finding that

(1) the release was from piping, tankage, or other equipment used solely to provide heat or electrical power generation for a building used primarily for residential purposes and that does not consist of more than four dwelling units;

(2) the person did not wilfully or negligently fail to comply with spill prevention, reporting, and response requirements of the department applicable to the release or the property where the release occurred;

(3) the person took immediate measures upon discovery of the release to contain the release where possible; and

(4) the person provided reasonable assistance to the department and other governmental entities that responded to the release, including providing reasonable access to the property where the release occurred and providing information requested by the department about the release and property.

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

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

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

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

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

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

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be

released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the release or from the threatened release, of oil or a hazardous substance.

Sec. 46.08.080. Regulations.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which AS 46.08.005 – 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 – 46.08.080.

Article 2. Oil and Hazardous Substance Response Office.

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.

Secs. 46.08.110 , 46.08.120. Response corps; response depots.

[Repealed, § 28 ch 32 SLA 1994.]

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.

(c) When the office or corps responds to an oil or hazardous substance

(c) When the office of 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. 46.08.140. Emergency powers and rights of property owners.

(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 department may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to 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. Definition of “office” for [AS 46.08.100](#) – 46.08.190. In [AS 46.08.100](#) – 46.08.190, “office” means the oil and hazardous substance response office.

Article 3. General Provisions.

Sec. 46.08.900. Definitions.

In this chapter,

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

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

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

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

(5) "fund" means the oil and hazardous substance release prevention and response fund;

(6) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 – 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

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

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(9) "prevention account" means the oil and hazardous substance release prevention account established in [AS 46.08.010\(a\)\(1\)](#);

(10) "prevention mitigation account" means the oil and hazardous substance release prevention mitigation account established in [AS 46.08.020\(b\)](#);

(11) "release"

(A) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(B) does not include

(i) a permitted release; or

(ii) an act of nature;

(12) “response account” means the oil and hazardous substance release response account established in AS 46.08.010(a)(2);

(13) “response mitigation account” means the oil and hazardous substance release response mitigation account established in AS 46.08.025(b);

(14) “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;

(15) “threatened release” means that a release is imminent; a release is imminent if

(A) it is impending or on the point of happening; or

(B) though not impending, in the judgment of the commissioner
(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to cause personal injury, other injury to life, or loss of or damage to property, including the environment;

(16) “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 commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b).