

**CS FOR SENATE BILL NO. 343(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered: 3/6/02**

**Referred: Rules**

**Sponsor(s): SENATE RESOURCES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act clarifying the term 'best technology' required for use in oil discharge**  
2   **prevention and contingency plans; affirming existing Department of Environmental**  
3   **Conservation regulations defining 'best technology' and oil discharge prevention and**  
4   **contingency plans approved using those regulations; and providing for an effective**  
5   **date."**

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

7       **\* Section 1.** The uncoded law of the State of Alaska is amended by adding a new section  
8   to read:

9           LEGISLATIVE FINDINGS, INTENT, AND PURPOSE. (a) The legislature finds  
10   that

11               (1) AS 46.04.030(a) - (c) provide that certain facilities may not operate  
12   without first securing an oil discharge prevention and contingency plan that has been  
13   approved by the Department of Environmental Conservation;

1 (2) AS 46.04.030(k) provides that the holder of an approved contingency plan  
2 must meet certain response planning standards;

3 (3) AS 46.04.030(e) provides that the holder of a contingency plan must have  
4 access to sufficient resources to protect environmentally sensitive areas and to meet the  
5 requirements of AS 46.04.030(k), including the response planning standards;

6 (4) AS 46.04.030(e) also provides that the contingency plan must provide for  
7 the use by the applicant of "the best technology that was available at the time the contingency  
8 plan was submitted or renewed";

9 (5) under AS 46.04.030(j) and 46.04.070, the Department of Environmental  
10 Conservation adopted regulations at 18 AAC 75.445(k), effective April 4, 1997, that  
11 established a reasonable three-tiered process for defining what was meant by best available  
12 technology;

13 (6) those regulations were developed using a negotiated rulemaking process  
14 that occurred over a period of several years, involved a facilitator, and included numerous  
15 stakeholders from throughout the state;

16 (7) more than 100 contingency plans have been issued under those  
17 regulations;

18 (8) on February 1, 2002, the Alaska Supreme Court held that the regulation  
19 defining best available technology, although having considerable theoretical merit, is contrary  
20 to the court's interpretation of the legislature's intent in enacting AS 46.04.030(e) and (k), and  
21 therefore invalidated 18 AAC 75.445(k)(1) and (2);

22 (9) the Alaska Supreme Court's recent ruling potentially jeopardizes the status  
23 of existing contingency plans, the timely issuance of new contingency plans, and the timely  
24 renewal of existing contingency plans;

25 (10) the Alaska Supreme Court's recent ruling has little or no positive benefit  
26 to the environment or the state; the negative consequences of the ruling include

27 (A) the creation of uncertainty for all existing contingency plan  
28 holders;

29 (B) a depletion of Department of Environmental Conservation  
30 appropriations if the department conducts new reviews of existing contingency plans;

31 (C) substantial delay and uncertainty for persons seeking renewals of

1 existing contingency plans;

2 (D) delay and uncertainty for persons seeking new contingency plans;  
3 and

4 (E) a negative effect on the development of the state's natural  
5 resources.

6 (b) It is the intent of the legislature to

7 (1) clarify that the Department of Environmental Conservation's 1997  
8 regulations meet the legislature's intent with respect to application of best available  
9 technology through reliance on proven, appropriate, and reliable technology meeting the  
10 response planning standards in AS 46.04.030(k) and the use of performance standards set in  
11 regulation or other specific criteria for determining best available technology; and

12 (2) create a solution to the uncertainty caused by the Alaska Supreme Court's  
13 recent ruling.

14 (c) The purpose of this Act is to overrule *Lakosh v. Alaska Department of*  
15 *Environmental Conservation*, Op. No. 5531 (Supreme Court file number S-9619) (February 1,  
16 2002), which invalidated parts of the Department of Environmental Conservation's best  
17 available technology regulations.

18 \* **Sec. 2.** AS 46.04.030(e) is amended to read:

19 (e) The department may attach reasonable terms and conditions to its approval  
20 or modification of a contingency plan that the department determines are necessary to  
21 ensure that the applicant for a contingency plan has access to sufficient resources to  
22 protect environmentally sensitive areas and to contain, clean up, and mitigate potential  
23 oil discharges from the facility or vessel as provided in (k) of this section, and to  
24 ensure that the applicant complies with the contingency plan. If a contingency plan  
25 submitted to the department for approval relies on the services of an oil spill primary  
26 response action contractor, the department may not approve the contingency plan  
27 unless the primary response action contractor is registered and approved under  
28 AS 46.04.035. The contingency plan must provide for the use by the applicant of the  
29 best technology that was available at the time the contingency plan was submitted or  
30 renewed. **The department shall identify the prevention and response technologies**  
31 **that are subject to a best available technology determination. The department**

1        may find that any technology meeting the response planning standards in (k) of  
 2        this section or a prevention performance standard established under  
 3        AS 46.04.070 is the best available technology. The department may prepare  
 4        findings and maintain a list of those technologies that are considered the best  
 5        available. The department may require an applicant or holder of an approved  
 6        contingency plan to take steps necessary to demonstrate the applicant's or holder's  
 7        [ITS] ability to carry out the contingency plan, including

8                    (1) periodic training;

9                    (2) response team exercises; and

10                  (3) verifying access to inventories of equipment, supplies, and  
 11        personnel identified as available in the approved contingency plan.

12        \* **Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to  
 13        read:

14                  TRANSITION: EXISTING BEST AVAILABLE TECHNOLOGY REGULATIONS.

15        The regulations relating to the determination of best available technology for use in oil  
 16        contingency plans adopted by the Alaska Department of Environmental Conservation before  
 17        the effective date of this section remain in effect as valid regulations implementing this Act.  
 18        The Alaska Department of Environmental Conservation may administer and enforce those  
 19        previously adopted regulations relating to the determination of best technology for use in  
 20        contingency plans.

21        \* **Sec. 4.** The uncoded law of the State of Alaska is amended by adding a new section to  
 22        read:

23                  TRANSITION: APPROVED OIL DISCHARGE PREVENTION AND  
 24        CONTINGENCY PLANS. A contingency plan that, on the effective date of this Act, has  
 25        been approved by the Department of Environmental Conservation under AS 46.04.030  
 26        remains in effect, and the plan holder may continue to operate under that plan until the plan is  
 27        revoked under AS 46.04.030(f) or until it expires, whichever first occurs.

28        \* **Sec. 5.** The uncoded law of the State of Alaska is amended by adding a new section to  
 29        read:

30                  RETROACTIVITY. The amendment to AS 46.04.030(e) made by sec. 2 of this Act is  
 31        retroactive to April 4, 1997.

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