

CS FOR SENATE BILL NO. 128(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/9/99
Referred: Finance

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act moving the termination date of the Board of Storage Tank Assistance
2 to June 30, 1999; relating to the storage tank assistance fund; relating to
3 financial assistance for owners and operators of underground petroleum storage
4 tank systems; relating to discharges from underground petroleum storage tank
5 systems; and providing for an effective date."

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

7 * **Section 1.** AS 44.66.010(a)(18) is amended to read:

8 (18) Board of Storage Tank Assistance (AS 46.03.360) - June 30, 1999
9 [2000];

10 * **Sec. 2.** AS 46.03.360(e) is amended to read:

11 (e) Under AS 44.62 (Administrative Procedure Act), the board shall adopt
12 regulations under which the department shall

13 (1) [DETERMINE WHICH COSTS OF TIGHTNESS TESTING AND

1 SITE ASSESSMENT ARE ELIGIBLE COSTS UNDER AS 46.03.415;

2 (2) rank requests for assistance under AS 46.03.421 [AS 46.03.420];

3 (2) [(3)] determine which costs of risk assessment, containment,
4 corrective action, and cleanup are eligible costs under AS 46.03.421 [AS 46.03.420];
5 **and**

6 (3) [(4)] determine which costs of upgrading and closure are eligible
7 costs under AS 46.03.431 [AS 46.03.430].

8 * **Sec. 3.** AS 46.03.360(f) is amended to read:

9 (f) If the department determines that an owner or operator is not eligible for
10 assistance under AS 46.03.410 - 46.03.431 [AS 46.03.410 - 46.03.430] or that a cost
11 is not eligible under AS 46.03.410 - 46.03.431 [AS 46.03.415 - 46.30.430] and the
12 affected owner or operator disputes that determination, or if an owner or operator
13 disputes the ranking assigned to a request for assistance under AS 46.03.421
14 [AS 46.03.420], the owner or operator may apply to the board for resolution of the
15 dispute. The board may issue a decision in a dispute brought to it under this
16 subsection. The decision is binding on the owner, operator, and department.

17 * **Sec. 4.** AS 46.03.360(g) is amended to read:

18 (g) The board may adopt regulations to limit the number of sites per calendar
19 year for which an owner or operator may be awarded financial assistance under
20 AS 46.03.421 and 46.03.431 [AS 46.03.420 - 46.03.430]. The department shall
21 implement the regulations.

22 * **Sec. 5.** AS 46.03.365(c) is amended to read:

23 (c) **When** [EXCEPT AS PROVIDED IN AS 46.03.420(c)(2)(A), WHEN] the
24 regulations adopted under this section address areas governed by federal laws or
25 regulations, the state regulations must be consistent with federal laws and regulations
26 and may not be more stringent than the federal laws and regulations.

27 * **Sec. 6.** AS 46.03.405 is amended to read:

28 **Sec. 46.03.405. Prohibitions.** A person, including a governmental entity or
29 institution, or a public corporation, may not operate an underground petroleum storage
30 tank or tank system unless

31 (1) the tank and tank system is registered with the department as

1 provided in AS 46.03.360 - 46.03.450 or other law; and

2 (2) [EXCEPT AS PROVIDED IN AS 46.03.420(c)(1)(D),] the person
3 has provided to the department proof of financial responsibility to the extent required
4 under regulations adopted under AS 46.03.365 or proof of application for arrangements
5 that would satisfy state financial responsibility requirements.

6 * **Sec. 7.** AS 46.03.410 is amended to read:

7 **Sec. 46.03.410. Storage tank assistance fund.** (a) There is established the
8 storage tank assistance fund. It consists of money appropriated to it by law. The
9 department shall deposit earnings on money in the fund in the general fund. The
10 legislature may use the estimated balance in the account maintained by the
11 commissioner of administration under AS 37.05.142 to make appropriations to the
12 fund. **The legislature may appropriate unencumbered money from the fund for**
13 **the cost of risk assessment, containment, corrective action, and cleanup relating**
14 **to an underground petroleum storage tank system owned or operated by the**
15 **federal government, the state, the University of Alaska, a public corporation, a**
16 **school district, or another political subdivision or instrumentality of the state. An**
17 **application for funds under AS 46.03.421 and 46.03.431 is not considered an**
18 **encumbrance for purposes of this subsection.**

19 (b) The commissioner may use money in the fund to pay for

20 (1) [TANK TIGHTNESS TESTS OR SITE ASSESSMENTS UNDER
21 AS 46.03.415;

22 (2) GRANTS AND] loans under **AS 46.03.421** [AS 46.03.420] for risk
23 assessment, containment, corrective action, and cleanup costs; and

24 **(2) loans** [(3) GRANTS] under **AS 46.03.431** [AS 46.03.430] for tank
25 system upgrading and closure.

26 (c) The commissioner shall prepare a report on the status of the storage tank
27 assistance fund and notify the legislature not later than the 10th day following the
28 convening of each regular session of the legislature that the report is available. The
29 report may include information considered significant by the commissioner but must
30 include

31 (1) the amount and source of money received by the fund during the

1 preceding fiscal year;

2 (2) the amount of money expended during the preceding fiscal year for
3 each type of expense authorized under (b) of this section;

4 (3) a detailed summary of department activities paid for from the fund
5 during the preceding fiscal year, including how many requests for assistance have been
6 made to the department to use the fund for [GRANTS OR] loans for [TESTING, SITE
7 ASSESSMENT,] risk assessment, upgrading, closure, containment, corrective action,
8 and cleanup costs, and the number of requests funded in each activity area;

9 (4) the projected cost for the next fiscal year of monitoring, operating,
10 and maintaining sites where department activities have been completed or are expected
11 to start or be continued during the fiscal year;

12 (5) the priority list of tank system sites for which the department
13 expects to provide financial assistance in the next fiscal year.

14 * **Sec. 8.** AS 46.03 is amended by adding a new section to read:

15 **Sec. 46.03.421. Tank cleanup loan program.** (a) The commissioner may
16 make a loan from the storage tank assistance fund to an owner or operator of an
17 underground petroleum storage tank system for the costs of risk assessment,
18 containment, corrective action, and cleanup resulting from a release of petroleum from
19 or associated with an underground petroleum storage tank system if the owner or
20 operator submitted a timely application for a grant under former AS 46.03.420 and
21 agrees

22 (1) to accept a loan in the same or lesser amount instead of a grant for
23 the same project;

24 (2) to provide additional security or collateral for the loan if requested
25 by the department

26 (3) either to

27 (A) upgrade all underground petroleum storage tanks located at
28 the facility from which the release occurred to the standards set by state and
29 federal regulations according to a time line established by the department; or

30 (B) remove and properly dispose of all liquids and sludges from
31 the underground petroleum storage tanks located at the facility from which the

1 release occurred, conduct a site assessment, and either fill the tanks with inert
2 solid material or properly dismantle, remove, and dispose of the tanks in
3 accordance with applicable state and federal regulations; and

4 (4) to submit a plan for risk assessment, containment, corrective action,
5 and cleanup to the department for its review and approval; if the department and the
6 owner or operator cannot reach agreement on a plan or on later changes in the plan,
7 the owner or operator may apply to the board to review the dispute; the board may
8 issue a recommendation to the department in a dispute brought to it under this
9 paragraph.

10 (b) The department may require more security or collateral for a loan made
11 under this section than was required under a previously approved grant application for
12 the same project.

13 (c) Under regulations of the board, the department shall rank requests under
14 this section in order of priority, giving greatest priority to those tank systems that
15 present the greatest threat or potential threat to human health.

16 (d) The department may deny a request for a loan under this section if other
17 risk assessment, containment, corrective action, tank upgrading or closure, and cleanup
18 activities for which money may be used under AS 46.03.410 constitute a higher
19 priority for fund expenditures.

20 (e) This section does not affect

21 (1) the liability under state or federal law of a person or entity that
22 receives assistance under this section for the costs of risk management, containment,
23 corrective action, and cleanup resulting from a release of petroleum; or

24 (2) the authority of the department to seek recovery from the owner or
25 operator of costs other than grants or loans actually made to an owner or operator
26 under this section or the former provisions of this section.

27 (f) The rate of interest on a loan under this section is equal to the 12th Federal
28 Reserve District discount rate in effect on January 1 of the year in which the loan is
29 approved plus one-half percentage point. The department shall disburse a loan in
30 partial payments according to a schedule that allows reasonable oversight and
31 assessment during implementation of the plan approved under (a) of this section. The

1 interest rate applicable to a loan remains the same throughout the project for which the
 2 loan was approved but begins accruing on each partial payment only after
 3 disbursement of that payment.

4 (g) The legislature may appropriate to the storage tank assistance fund
 5 established under AS 46.03.410 the annual estimated balance of the account maintained
 6 under AS 37.05.142 by the commissioner of administration to keep track of loan
 7 repayments, including interest payments, under this section.

8 * **Sec. 9.** AS 46.03 is amended by adding a new section to read:

9 **Sec. 46.03.431. Tank upgrading and closure loan program.** (a) The
 10 department shall, by regulation, establish a loan program under which the owner or
 11 operator of an underground petroleum storage tank may receive a loan for 60 percent
 12 of the eligible costs of tank upgrading or closure, subject to a maximum total loan of
 13 \$60,000 for each facility.

14 (b) An owner or operator is eligible for a loan under this section only if

15 (1) a timely application for a grant was submitted under former
 16 AS 46.03.430 for the facility; and

17 (2) the owner or operator agrees to accept a loan instead of the grant.

18 (c) Under regulations adopted by the board, the department shall determine
 19 which costs of upgrading and closure are eligible for a loan under this section.

20 (d) The rate of interest on a loan under this section is equal to the 12th Federal
 21 Reserve District discount rate in effect on January 1 of the year in which the loan is
 22 approved plus one-half percentage point. The department shall disburse a loan in
 23 partial payments according to a schedule that allows reasonable oversight and
 24 assessment during the project funded by the loan. The interest rate applicable to a
 25 loan remains the same throughout the project for which the loan was approved but
 26 begins accruing on each partial payment only after disbursement of that payment.

27 (e) A loan may not be awarded under this section for upgrading or closure
 28 activities that do not meet the requirements of state and federal law.

29 (f) The legislature may appropriate to the storage tank assistance fund
 30 established under AS 46.03.410 the annual estimated balance of the account maintained
 31 under AS 37.05.142 by the commissioner of administration to keep track of loan

1 repayments, including interest payments, under this section.

2 (g) In this section,

3 (1) "closure" means to remove all petroleum and sludges from an
4 underground petroleum storage tank and either fill the tank with inert solid material
5 or properly dismantle, remove, and dispose of the tank;

6 (2) "upgrading" means to add or retrofit cathodic protection systems,
7 lining, spill and overflow controls, or similar systems to improve the ability of an
8 underground petroleum storage tank system to prevent a release.

9 * **Sec. 10.** Section 4(a), ch. 96, SLA 1990, is amended to read:

10 (a) Notwithstanding **AS 46.03.421(e), former** AS 46.03.420(h), 46.03.758,
11 46.03.760, 46.03.780, 46.03.790, and 46.03.822, a person, including a municipal school
12 district, regional educational attendance area, or municipality, is not civilly or
13 criminally liable to the state under those sections for a discharge covered by those
14 sections if the person demonstrates by a preponderance of the evidence that the person

15 (1) is the owner or operator of an underground petroleum storage tank
16 or tank system, as defined in AS 46.03.450 [, ENACTED BY SEC. 2 OF THIS ACT,]
17 that was installed before December 22, 1988, and the discharge occurred from that
18 tank or tank system before December 22, 1992;

19 (2) acted in good faith to report, assess, and mitigate damage from the
20 discharge and to undertake corrective action in accordance with applicable state and
21 federal law and was in compliance with all applicable state and federal law before the
22 discharge occurred;

23 (3) is receiving or has been approved for state funds under
24 **AS 46.03.421 and 46.03.431 or former** AS 46.03.420 - 46.03.430 [, ENACTED BY
25 SEC. 2 OF THIS ACT]; and

26 (4) did not intentionally cause the discharge.

27 * **Sec. 11.** AS 46.03.380(b)(3)(B)(ii), 46.03.415, 46.03.420, 46.03.430; and sec. 7, ch. 96,
28 SLA 1990, are repealed.

29 * **Sec. 12.** Section 1 of this Act takes effect immediately under AS 01.10.070(c).

30 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect July 1, 1999.