

CS FOR SENATE BILL NO. 273(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 3/21/00
Referred: Finance

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring oil discharge prevention and contingency plans and proof of
2 financial responsibility for nontank vessels and railroad tank cars; authorizing
3 inspection of nontank vessels and trains; and providing for an effective date."

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

5 * **Section 1.** AS 46.04 is amended by adding a new section to read:

6 **Sec. 46.04.055. Nontank vessels and railroad tank cars.** (a) A person may
7 not cause or permit the operation of a nontank vessel within the waters of the state or
8 cause or permit the transfer of oil to or from a nontank vessel unless

9 (1) effective November 1, 2001, an oil discharge prevention and
10 contingency plan has been approved by the department and the person is in compliance
11 with the plan; a plan under this paragraph is subject to the requirements of
12 AS 46.04.030; and

13 (2) the person has furnished to the department and the department has
14 approved proof of financial ability to respond to damages meeting the requirements of

1 AS 46.04.040; proof of financial responsibility required under this paragraph is subject
2 to adjustment of dollar amounts under AS 46.04.045 and is established, for a nontank
3 vessel that carries

4 (A) only persistent product as fuel or in bulk, at \$300 per
5 incident for each barrel of persistent product storage capacity or \$5,000,000,
6 whichever is greater;

7 (B) only nonpersistent product, at \$100 per incident for each
8 barrel of nonpersistent product storage capacity or \$1,000,000, whichever is
9 greater; and

10 (C) both persistent product, as fuel or in bulk, and nonpersistent
11 product, at the applicable financial responsibility rate established in (A) or (B)
12 of this paragraph for the storage capacity of the vessel for persistent product
13 or nonpersistent product that predominates on the vessel.

14 (b) A person may not transport oil by railroad tank car or cause or permit the
15 transfer of oil to or from a railroad tank car unless

16 (1) effective November 1, 2001, an oil discharge prevention and
17 contingency plan has been approved by the department and the person is in compliance
18 with the plan; a plan under this paragraph is subject to the requirements of
19 AS 46.04.030; and

20 (2) the person has furnished to the department and the department has
21 approved proof of financial ability to respond to damages meeting the requirements of
22 AS 46.04.040; proof of financial responsibility required under this paragraph is subject
23 to adjustment of dollar amounts under AS 46.04.045 and is established at

24 (A) \$300 per incident for each barrel of persistent product based
25 on the maximum amount of persistent product storage capacity of any train on
26 the railroad; and

27 (B) \$100 per incident for each barrel of nonpersistent product
28 based upon the maximum amount of nonpersistent product storage capacity of
29 any train on the railroad or \$1,000,000, whichever is greater.

30 (c) Effective November 1, 2001, for purposes of AS 46.04.030(k), response
31 planning standards apply to nontank vessels and railroad tank cars as follows:

1 (1) for a nontank vessel contingency plan required by (a)(1) of this
2 section,

3 (A) containment and control of 15 percent of the maximum oil
4 capacity of the nontank vessel within 48 hours; and

5 (B) cleanup of the discharge within the shortest possible time
6 consistent with minimizing damage to the environment;

7 (2) for a railroad tank car contingency plan required by (b)(1) of this
8 section,

9 (A) containment and control of 15 percent of the maximum oil
10 capacity of a train on the railroad within 48 hours; and

11 (B) cleanup of the discharge within the shortest possible time
12 consistent with minimizing damage to the environment.

13 (d) Notwithstanding the requirements of AS 46.04.040(1) and AS 46.04.047,
14 for purposes of (a)(2) and (b)(2) of this section, an applicant may provide evidence of
15 financial responsibility provided by an insurer or other person who does not agree to
16 be subject to direct action in state courts or to appoint an agent for service of process.

17 (e) The requirements of (a) - (d) of this section do not apply to a nontank
18 vessel operating in the waters of the state if the nontank vessel

19 (1) is engaged in innocent passage; for purposes of this paragraph, a
20 nontank vessel is engaged in innocent passage if its operation in state waters would
21 constitute innocent passage under either the Convention on the Territorial Sea and the
22 Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, or the United Nations Convention
23 on the Law of the Sea 1982, December 10, 1982, U.N. Publication No. E 83.V.5, 21
24 I.L.M. 1261 (1982);

25 (2) enters state waters because of imminent danger to the crew, or in
26 an effort to prevent an oil spill or other harm to public safety or the environment, and
27 are inapplicable only until the vessel is able to leave state waters as soon as it may do
28 so without imminent risk of harm to the crew, public safety, or the environment; or

29 (3) enters state waters after the United States Coast Guard has
30 determined that the vessel is in distress, and are inapplicable only until the vessel is
31 able to leave state waters as soon as it may do so without imminent risk of harm to

1 the crew, public safety, or the environment.

2 (f) In place of the requirements of (a)(1), (b)(1), and (c)(1) of this section, the
3 department may adopt regulations by negotiated regulation making under AS 44.62.710
4 - 44.62.800 to provide for alternative means to obtain equivalent levels of spill
5 prevention and response, including the use of fleet plans, membership in a nonprofit
6 corporation that is a primary response action contractor and a contingency plan holder,
7 and spill prevention measures.

8 * **Sec. 2.** AS 46.04.060 is amended to read:

9 **Sec. 46.04.060. Inspections.** (a) In addition to other rights of access or
10 inspection conferred upon the department by law or otherwise, the department may at
11 reasonable times and in a safe manner enter and inspect oil terminal facilities,
12 pipelines, exploration and production facilities, tank vessels, **nontank vessels, trains,**
13 and oil barges in order to

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

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

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

24 * **Sec. 3.** AS 46.04.060 is amended by adding a new subsection to read:

25 (c) For purposes of this section, "train" includes tracks, associated facilities,
26 and operations.

27 * **Sec. 4.** AS 46.04.900(12) is amended to read:

28 (12) "oil terminal facility" means an onshore or offshore facility of any
29 kind, and related appurtenances, including but not limited to a deepwater port, bulk
30 storage facility, or marina, located in, on, or under the surface of the land or waters
31 of the state, including tide and submerged land, **that** [WHICH] is used for the purpose

1 of transferring, processing, refining, or storing oil; a vessel, **other than a nontank**
 2 **vessel**, is considered an oil terminal facility only when it is used to make a ship-to-ship
 3 transfer of oil, and when it is traveling between the place of the ship-to-ship transfer
 4 of oil and an oil terminal facility;

5 * **Sec. 5.** AS 46.04.900(21) is amended to read:

6 (21) "vessel" includes tank vessels, [AND] oil barges, **and nontank**
 7 **vessels**;

8 * **Sec. 6.** AS 46.04.900 is amended to add new paragraphs to read:

9 (24) "nonpersistent product" has the meaning given to "non-persistent
 10 or Group I oil" in 33 C.F.R. 155.1020;

11 (25) "nontank vessel" means a self-propelled watercraft of 400 gross
 12 registered tons or greater; in this paragraph, "watercraft" includes commercial fishing
 13 vessels, commercial fish processor vessels, passenger vessels, and cargo vessels, but
 14 does not include a tank vessel, oil barge, or public vessel;

15 (26) "persistent product" has the meaning given to "persistent oil" in
 16 33 C.F.R. 155.1020;

17 (27) "public vessel" means a vessel that is operated by and is either
 18 owned or bareboat chartered by the United States, a state or a political subdivision of
 19 that state, or a foreign nation, except when the vessel is engaged in commerce;

20 (28) "railroad tank car" means rolling stock used to transport oil in bulk
 21 as cargo by rail;

22 (29) "train" means connected rolling stock operated as a single moving
 23 vehicle on rails; for purposes of this paragraph, "connected rolling stock" includes
 24 railroad tank cars.

25 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section
 26 to read:

27 TRANSITIONAL PROVISIONS: REGULATIONS. (a) The Department of
 28 Environmental Conservation may proceed to adopt regulations necessary to implement the
 29 changes made by this Act. The regulations take effect under AS 44.62 (Administrative
 30 Procedure Act), but not before the effective date of secs. 1 - 6 of this Act.

31 (b) If, under AS 46.04.055(f), added by sec. 1 of this Act, the Department of

1 Environmental Conservation adopts regulations by negotiated regulation making under
2 AS 44.62.710 - 44.62.800, or if, notwithstanding the authority provided in AS 46.04.055(f),
3 the Department of Environmental Conservation, using negotiated regulation making under
4 AS 44.62.710 - 44.62.800, adopts regulations to implement, interpret, or make specific the
5 requirements of the provisions added or amended by this Act, the Department of
6 Environmental Conservation shall provide to the members of the legislature, if in session, or
7 to the legislative council if the legislature is not in session, a comprehensive report
8 summarizing the activities undertaken to adopt the regulations using the negotiated regulation
9 making process authorized by AS 44.62.710 - 44.62.800.

10 * **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

11 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect September 1, 2000.