

CS FOR SENATE BILL NO. 273(RLS)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Amended: 3/31/00

Offered: 3/31/00

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act regarding oil discharge prevention, and relating to contingency plans and
2 proof of financial responsibility for all self-propelled nontank vessels exceeding 400
3 gross registered tonnage and for railroad tank cars; authorizing inspection of
4 nontank vessels and trains; and providing for an effective date."

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

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

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

10 (1) effective April 1, 2002, an oil discharge prevention and contingency
11 plan has been approved by the department and the person is in compliance with the
12 plan; a plan under this paragraph is subject to the requirements of 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 April 1, 2002, an oil discharge prevention and contingency
17 plan has been approved by the department and the person is in compliance with the
18 plan; a plan under this paragraph is subject to the requirements of AS 46.04.030; and

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

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

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

29 (c) Effective April 1, 2002, for purposes of AS 46.04.030(k), response
30 planning standards apply to nontank vessels and railroad tank cars as follows:

31 (1) for a nontank vessel contingency plan required by (a)(1) of this

1 section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship
 2 transfer of oil, and when it is traveling between the place of the ship-to-ship transfer
 3 of oil and an oil terminal facility;

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

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

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

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

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

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

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

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

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

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

26 TRANSITIONAL PROVISIONS: REGULATIONS. (a) The Department of
 27 Environmental Conservation shall proceed to adopt regulations necessary to implement the
 28 changes made by this Act. No later than March 1, 2001, the commissioner of environmental
 29 conservation shall propose the regulations in a form that, with public notice, provides
 30 opportunity for public comment. The regulations take effect under AS 44.62 (Administrative
 31 Procedure Act), but not before the effective date of secs. 1 - 6 of this Act.

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

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

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