

HOUSE CS FOR CS FOR SENATE BILL NO. 273(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 4/17/00

Referred: House Special Committee on World Trade and State/Federal Relations, Finance

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

8 LEGISLATIVE INTENT FOR ACT. The provisions of this Act do not alter the
9 liability requirements of AS 46 with respect to contingency plan holders, parties responsible
10 for the discharge of oil, or oil spill response action contractors under AS 46.03 and AS 46.04.

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

12 (e) The department may attach reasonable terms and conditions to its approval
13 or modification of a contingency plan that the department determines are necessary to
14 ensure that the applicant for a contingency plan has access to sufficient resources to

1 protect environmentally sensitive areas and to contain, clean up, and mitigate potential
 2 oil discharges from the facility or vessel as provided in (k) of this section, and to
 3 ensure that the applicant complies with the contingency plan. If a contingency plan
 4 submitted to the department for approval relies on the services of an oil spill primary
 5 response action contractor, the department may not approve the contingency plan
 6 unless the primary response action contractor is registered and approved under
 7 AS 46.04.035; however, for purposes of this chapter, unless a primary response
 8 action contractor that is organized as a nonprofit corporation is specifically
 9 identified in the contingency plan as the contingency plan holder having the
 10 obligation to carry out procedures identified in the plan that are the responsibility
 11 of the holder of the plan, the primary response action contractor that performs
 12 the obligations that are described in the contingency plan is not considered a
 13 contingency plan holder for purposes of this section. The contingency plan must
 14 provide for the use by the applicant of the best technology that was available at the
 15 time the contingency plan was submitted or renewed. The department may require an
 16 applicant or holder of an approved contingency plan to take steps necessary to
 17 demonstrate its ability to carry out the contingency plan, including

18 (1) periodic training;

19 (2) response team exercises; and

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

22 * **Sec. 3.** AS 46.04 is amended by adding a new section to read:

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

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

29 (2) the person has furnished to the department and the department has
 30 approved proof of financial ability to respond to damages meeting the requirements of
 31 AS 46.04.040; proof of financial responsibility required under this paragraph is subject

1 to adjustment of dollar amounts under AS 46.04.045 and is established, for a nontank
2 vessel that carries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (f) In place of the requirements of (a)(1), (b)(1), and (c)(1) of this section, the

1 department may adopt regulations by negotiated regulation making under AS 44.62.710
 2 - 44.62.800 to provide for alternative means to obtain equivalent levels of spill
 3 prevention and response, including fleet plans, use of vessel agents, generic
 4 contingency plan contents established by regulation, and streamlined contingency plans
 5 with membership in a nonprofit corporation that is a primary response action
 6 contractor.

7 (g) A nontank vessel that is conducting, or is available only for conducting,
 8 oil discharge response operations is exempt from the requirements of (a) of this section
 9 if the nontank vessel has received prior approval of the department. The department
 10 may approve exemptions under this subsection upon application and presentation of
 11 information required by the department.

12 (h) When considering whether to approve or modify an oil discharge
 13 prevention and contingency plan, the department, consistent with the requirements of
 14 regulations adopted to implement this section, may modify the requirements of the
 15 standards set out in (c)(1) and (c)(2) of this section or of the general standards adopted
 16 under (f) of this section to provide for alternative means to obtain equivalent levels of
 17 spill prevention and response to reflect the reduced risk of oil discharges based on
 18 evidence of implementation of systems or staffing levels that reduce the potential size
 19 or risk of a discharge.

20 * **Sec. 4.** AS 46.04.060 is amended to read:

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

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

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

30 (b) When the department determines that no federal or state agencies with
 31 jurisdiction are performing timely and adequate inspections of an oil terminal facility,

1 pipeline, exploration or production facility, tank vessel, **nontank vessel, train,** or oil
 2 barge, it may perform its own inspection of the structural integrity and operating and
 3 mechanical systems of a facility, pipeline, tank vessel, **nontank vessel, train,** or oil
 4 barge by using personnel with qualifications in the areas being inspected.

5 * **Sec. 5.** AS 46.04.060 is amended by adding a new subsection to read:

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

8 * **Sec. 6.** AS 46.04.900(12) is amended to read:

9 (12) "oil terminal facility" means an onshore or offshore facility of any
 10 kind, and related appurtenances, including but not limited to a deepwater port, bulk
 11 storage facility, or marina, located in, on, or under the surface of the land or waters
 12 of the state, including tide and submerged land, **that** [WHICH] is used for the purpose
 13 of transferring, processing, refining, or storing oil; a vessel, **other than a nontank**
 14 **vessel,** is considered an oil terminal facility only when it is used to make a ship-to-ship
 15 transfer of oil, and when it is traveling between the place of the ship-to-ship transfer
 16 of oil and an oil terminal facility;

17 * **Sec. 7.** AS 46.04.900(21) is amended to read:

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

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

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

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

27 (26) "persistent product" has the meaning given to "persistent oil" in
 28 33 C.F.R. 155.1020;

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

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

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

6 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 TRANSITIONAL PROVISIONS: REGULATIONS. (a) The Department of
9 Environmental Conservation shall proceed to adopt regulations necessary to implement the
10 changes made by this Act. No later than March 1, 2001, the commissioner of environmental
11 conservation shall propose the regulations in a form that, with public notice, provides
12 opportunity for public comment. The regulations take effect under AS 44.62 (Administrative
13 Procedure Act), but not before the effective date of secs. 1 - 8 of this Act.

14 (b) If, under AS 46.04.055(f), added by sec. 3 of this Act, and under (a) of this
15 section, the Department of Environmental Conservation engages in the adoption of regulations
16 by negotiated regulation making under AS 44.62.710 - 44.62.800, the commissioner of
17 environmental conservation may adopt regulations to obtain equivalent levels of spill
18 prevention and response to reflect the reduced risk of oil discharges based on evidence of
19 implementation of systems or staffing levels that reduce the potential size or risk of a
20 discharge.

21 (c) If, under AS 46.04.055(f), added by sec. 3 of this Act, and under (a) of this
22 section, the Department of Environmental Conservation adopts regulations by negotiated
23 regulation making under AS 44.62.710 - 44.62.800, or if, notwithstanding the authority
24 provided in AS 46.04.055(f), the Department of Environmental Conservation, using negotiated
25 regulation making under AS 44.62.710 - 44.62.800, adopts regulations to implement or make
26 specific the requirements of the provisions added or amended by this Act, the Department of
27 Environmental Conservation shall provide to the members of the legislature, if in session, or
28 to the legislative council if the legislature is not in session, a comprehensive report
29 summarizing the activities undertaken to adopt the regulations using the negotiated regulation
30 making process authorized by AS 44.62.710 - 44.62.800.

31 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

1 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect September 1,
2 2000.