

SENATE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 4/13/00

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain passenger vessels operating in the marine waters of
2 the state."

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

4 * **Section 1.** AS 46.03 is amended by adding new sections to read:

5 **Article 6A. Large Passenger Vessels.**

6 **Sec. 46.03.460. Registration requirements.** (a) Except as provided in
7 AS 46.03.484, each calendar year in which the owner or operator of a large passenger
8 vessel intends to operate, or cause or allow to be operated, the vessel in the marine
9 waters of the state, the owner or operator of the vessel shall register with the
10 department. The registration shall be completed no later than 72 hours after any large
11 passenger vessel of the owner or operator calls upon a port in the state. The
12 registration must include the following information:

13 (1) the vessel owner's business name and, if different, the vessel
14 operator's business name for each large passenger vessel of the owner that is scheduled

1 to be in the marine waters of the state during the calendar year;

2 (2) the postal address, electronic mail address, telephone number, and
3 facsimile number for the principal place of each business identified under (1) of this
4 subsection;

5 (3) the name and address of an agent for service of process for each
6 business identified under (1) of this subsection; the owner and operator shall
7 continuously maintain a designated agent for service of process whenever a large
8 passenger vessel of the owner or operator is in the marine waters of the state, and the
9 agent must be an individual resident of this state, a domestic corporation, or a foreign
10 corporation having a place of business in and authorized to do business in this state;
11 and

12 (4) the name or call sign of and Port of Registry for each of the
13 owner's or operator's vessels that is scheduled either to call upon a port in this state
14 or otherwise to be in the marine waters of the state during the calendar year occurring
15 after the date of registration.

16 (b) Registration under (a) of this section shall be signed under oath by the
17 owner or operator.

18 (c) Upon request of the department, the registrant shall submit registration
19 information required under this section electronically.

20 **Sec. 46.03.465. Information-gathering requirements.** (a) Owners and
21 operators of large passenger vessels shall, for the time during any calendar month in
22 which they operate, or cause or allow to be operated, a large passenger vessel in the
23 marine waters of the state, record or cause to be recorded all information necessary to
24 completely report as required by AS 46.03.475.

25 (b) At least once during each calendar month in which a large passenger vessel
26 is present in the marine waters of the state, the owner and operator of the vessel shall
27 measure visible emissions, excluding condensed water vapor, of the vessel while the
28 vessel is at berth or at anchor in a port of this state. Except as provided in (d) of this
29 section, the measuring technique and the duration of the measurement used to satisfy
30 the requirement of this subsection must have been approved by the department before
31 the measurement was taken.

1 (c) The department may adopt regulations directing owners and operators of
2 large passenger vessels to quantify and qualify the releases of waterborne pollutants
3 from their vessels into the marine waters of the state.

4 (d) If the owner or operator of a large passenger vessel has, when complying
5 with another state or federal law that requires substantially equivalent information
6 gathering, gathered the type of information required under this section, the owner or
7 operator shall be considered to be in compliance with this section.

8 **Sec. 46.03.470. Record keeping requirements.** An owner or operator subject
9 to AS 46.03.465 shall record the information required to be gathered under that section
10 and shall maintain the records for three years after the date the information was
11 gathered.

12 **Sec. 46.03.475. Reporting requirements.** (a) An owner or operator of a
13 large passenger vessel shall, within 10 days after the end of a calendar month in which
14 the owner or operator has operated, or caused or allowed to be operated, a large
15 passenger vessel in the marine waters of the state, submit to the department a report
16 concerning the offloading or release of pollutants from that vessel that occurred during
17 the previous calendar month. The report must

18 (1) include the information required for releases by (c) and (d) of this
19 section;

20 (2) include the information required for offloading by (e) - (g) of this
21 section; and

22 (3) be limited to releases and offloading that occurred while the vessel
23 was in the marine waters of the state.

24 (b) The information in the report required under this section may be provided
25 by referring to, or including copies of, other reports concerning pollutants that are
26 required by substantially equivalent state or federal reporting requirements.

27 (c) For each release of a pollutant, except for a release by an emission to
28 ambient air from a stack, the report required under this section must describe the

29 (1) location of the release, including latitude and longitude;

30 (2) date and time of the release;

31 (3) volume or weight, and type and source of the pollutant released;

1 (4) processing or treatment used on the pollutant before the release;

2 (5) circumstances surrounding and cause of the release, including a
3 statement as to whether the release was intentional or accidental;

4 (6) environmental damage caused by the release, to the extent the
5 damage can be reasonably identified; and

6 (7) remedial efforts taken to prevent accidental recurrence of the
7 release.

8 (d) For emissions to ambient air from a stack, the report required under this
9 section must include the measurements of visible emissions collected under
10 AS 46.03.465(b) and, if a stack on the vessel is equipped with continuous emission
11 monitors, the recordings printed by the monitors for the time during that month that
12 the vessel was in the marine waters of the state.

13 (e) For pollutants that were offloaded, the report required under this section
14 must describe the

15 (1) location of offloading;

16 (2) date of offloading;

17 (3) volume or weight, and type and source of the offloaded material;

18 (4) ultimate destination of the offloaded material; and

19 (5) processing or treatment received by the offloaded material before
20 or during the offloading.

21 (f) If hazardous waste was offloaded from the vessel and the hazardous waste
22 was manifested in accordance with 42 U.S.C. 6921 - 6939a (Subtitle C of the Solid
23 Waste Disposal Act), the report required under this section may, instead of the
24 information described in (e) of this section, include a copy of the manifest. If
25 hazardous waste was offloaded from the vessel without a manifest, the report required
26 under this section must, in addition to the information described in (e) of this section,
27 describe the reasons why the waste was offloaded without a manifest.

28 (g) For graywater, sewage, and other wastewater, the report required under this
29 section must state whether the graywater, sewage, and other wastewater were mixed
30 with one another or with other pollutants before or during offloading. If mixing of
31 pollutants occurred before or during offloading, the report must identify the specific

1 pollutants involved in the mixing, if feasible. If identification of the specific pollutants
2 is not feasible, the report must identify the waste streams in the mixture.

3 (h) To the extent allowed under federal law, the department may by regulation
4 require an owner or operator to submit supplemental or additional information
5 concerning the releases or offloading of pollutants.

6 (i) A record or report submitted under this section shall be signed under
7 penalty of unsworn falsification by the owner, operator, or a responsible official of the
8 reporting vessel and must include the following statement: "Based on information and
9 belief formed after reasonable inquiry, I certify that the statements and information in
10 and attached to this document are true, accurate, and complete."

11 (j) Upon request of the department, the report required under this section shall
12 be submitted electronically.

13 (k) This section does not relieve the owner or operator of a large passenger
14 vessel from other applicable reporting requirements of state or federal law.

15 **Sec. 46.03.480. Penalties.** (a) An owner or operator who fails to comply with
16 AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause
17 of action that arose during the time that the owner or operator was out of compliance
18 with AS 46.03.460.

19 (b) An owner or operator who fails to comply with AS 46.03.460 or a
20 reporting requirement of AS 46.03.475 is subject to an administrative penalty of not
21 more than \$50 a day for each day of noncompliance with each requirement as
22 determined by the commissioner subject to right of appeal to the superior court.

23 **Sec. 46.03.484. Exemption for vessels in innocent passage.** AS 46.03.460 -
24 46.03.490 do not apply to a large passenger vessel that operates in the marine waters
25 of the state solely in innocent passage. For the purpose of this section, a vessel is
26 engaged in innocent passage if its operation in state waters would constitute innocent
27 passage under the

28 (1) Convention on the Territorial Sea and the Contiguous Zone,
29 April 29, 1958, 15 U.S.T. 1606; or

30 (2) United Nations Convention on the Law of the Sea 1982,
31 December 10, 1982, United Nations Publication No. E.83.V.5., 21 I.L.M. 1261 (1982).

1 **Sec. 46.03.485. Regulations.** The department may adopt regulations that are
2 necessary for the implementation of AS 46.03.460 - 46.03.490.

3 **Sec. 46.03.490. Definitions.** In AS 46.03.460 - 46.03.490,

4 (1) "agent for service of process" means an agent upon whom process,
5 notice, or demand required or permitted by law to be served upon the owner or
6 operator may be served;

7 (2) "air contaminant" means a substance within the meaning given to
8 "air contaminant" in either AS 46.03.900 or AS 46.14.990;

9 (3) "ambient air" has the meaning given in AS 46.14.990;

10 (4) "ballast water" means water and suspended matter taken on board
11 a vessel to control or maintain trim, draught, stability, or stresses of the vessel,
12 regardless of how the water and suspended matter are carried;

13 (5) "emission" means a release of one or more pollutants into the
14 atmosphere;

15 (6) "graywater" means galley, bath, and shower water;

16 (7) "hazardous substance" has the meaning given in AS 46.03.826;

17 (8) "hazardous waste" has the meaning given in AS 46.03.900 and
18 includes wastes that meet that definition and have been collected from staterooms,
19 crew quarters, and other passenger or crew accommodations;

20 (9) "large passenger vessel" means a vessel of 300 gross registered tons
21 or greater that is engaged in the carrying of passengers for hire, excluding

22 (A) vessels without berths or overnight accommodations for
23 passengers; and

24 (B) noncommercial vessels, warships, and vessels operated by
25 the state, the United States, or a foreign government;

26 (10) "marine waters of the state" has the meaning given to "waters" in
27 AS 46.03.900 except that it includes only marine waters;

28 (11) "medical waste" includes each of the types of solid waste listed
29 in 42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of
30 the Solid Waste Disposal Act);

31 (12) "offloading" means the removal of pollutants from a large

1 passenger vessel onto or into a controlled storage, processing, or disposal facility or
2 treatment works;

3 (13) "oil" has the meaning given in AS 46.04.900;

4 (14) "pollutant" means air contaminant, biological materials, chemical
5 wastes, graywater, hazardous substances, hazardous waste, industrial waste, incinerator
6 residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge,
7 solid waste, toxic waste, and wrecked or discarded equipment, except that "pollutant"
8 does not include ballast water, a consumer product in consumer use, or, with respect
9 to offloading, a product that remains capable of being put to the beneficial use for
10 which the product was intended;

11 (15) "release" means spilling, leaking, pumping, pouring, emitting,
12 emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing
13 of pollutants into the environment, including the abandonment or discarding of bags,
14 containers, and other receptacles containing a pollutant, and without regard to whether
15 the pollutants left the vessel through a discrete conveyance or a nonpoint source;

16 (16) "responsible official" means

17 (A) for a corporation, a president, secretary, treasurer, or vice-
18 president of the corporation in charge of a principal business function, or any
19 other person who performs similar policy or decision-making functions for the
20 corporation, or a duly authorized representative of that person if the delegation
21 of authority to the representative is approved in advance by the department;

22 (B) for a partnership, sole proprietorship, or limited liability
23 company, a general partner, the proprietor, or the manager or managing
24 member, respectively;

25 (17) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312,
26 Water Pollution Control Act);

27 (18) "stack" means a chimney or conduit through which air or air
28 contaminants are emitted into the atmosphere;

29 (19) "vessel" means any form or manner of watercraft, other than a
30 seaplane on the water, whether or not capable of self-propulsion.

31 * **Sec. 2.** AS 46.03.760(e) is amended to read:

1 (e) A person who **falsifies a registration or report required by AS 46.03.460**
2 **or 46.03.475 or who** violates or causes or permits to be violated a provision of
3 AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490**, AS 46.14, or a regulation, a lawful
4 order of the department, or a permit, approval, or acceptance, or term or condition of
5 a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, **46.03.460 -**
6 **46.03.490**, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed
7 by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor
8 more than \$10,000 for each day after that on which the violation continues, and that
9 shall reflect, when applicable,

10 (1) reasonable compensation in the nature of liquidated damages for
11 any adverse environmental effects caused by the violation, that shall be determined by
12 the court according to the toxicity, degradability and dispersal characteristics of the
13 substance discharged, the sensitivity of the receiving environment, and the degree to
14 which the discharge degrades existing environmental quality; for a violation relating
15 to AS 46.14, the court, in making its determination under this paragraph, shall also
16 consider the degree to which the discharge causes harm to persons or property; this
17 paragraph may not be construed to limit the right of parties other than the state to
18 recover for personal injuries or damage to their property;

19 (2) reasonable costs incurred by the state in detection, investigation, and
20 attempted correction of the violation;

21 (3) the economic savings realized by the person in not complying with
22 the requirement for which a violation is charged; and

23 (4) the need for an enhanced civil penalty to deter future
24 noncompliance.