SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KERTTULA

Introduced: 2/23/01
Referred: Transportation, Resources, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain passenger vessels operating in the marine waters of the state; and providing for an effective date."

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

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

Article 6A. Large Passenger Vessels.

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

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

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

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

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

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

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

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

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

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

(c) While a large passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall collect samples of the vessel's graywater

(1) with a sampling technique approved by the department before the sample is collected;

(2) at least twice during the time period consisting of May, June, July, August, and September each year; if the vessel is in the marine waters of the state during more than one of the months specified in this paragraph, the samples required by this subsection shall be collected in two different months; the samples shall be collected at least 15 days apart unless the vessel is in the marine waters of the state for less than 15 days during the time period described in this paragraph, in which case the samples shall be collected on the first and last day that the vessel is in the marine waters of the state during that time period; and

(3) no less frequently than samples are required to be collected under federal laws and regulations for treated sewage discharges.

(d) The owner or operator of a vessel required to collect graywater samples under (c) of this section shall have the samples tested

(1) with an analytical testing method that was approved by the department before the testing is conducted;

(2) to measure fecal coliform, ammonia, residual chlorine, pH, total suspended solids, and biochemical oxygen demand (BOD) in the sample.

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

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

Sec. 46.03.475. Monthly reporting requirements. (a) An owner or operator of a large passenger vessel shall, within 21 days after the end of a calendar month in which the owner or operator has operated, or caused or allowed to be operated, a large

passenger vessel in the marine waters of the state, submit to the department a report concerning the offloading or release of pollutants from that vessel that occurred during the previous calendar month. The report must

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

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

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

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

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

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

(2) date and time of the release;

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

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

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

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

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

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

(e) For pollutants that were offloaded, the report required under this section

must describe the

(1) location of offloading;

(2) date of offloading;

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

(4) ultimate destination of the offloaded material; and

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

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

(g) For graywater, treated sewage, and other wastewater, the report required under this section must state whether the graywater, treated sewage, and other wastewater were mixed with one another or with other pollutants before or during release or offloading. If mixing of pollutants occurred before or during offloading, the report must identify the specific pollutants involved in the mixing, if feasible. If identification of the specific pollutants is not feasible, the report must identify the waste streams in the mixture.

(h) A record or report submitted under this section shall be signed under penalty of unsworn falsification by the owner, operator, or a responsible official of the reporting vessel and must include the following statement: "Based on information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete and that the offloading, releases, treatment, and processing described in this document were in compliance with applicable laws and regulations."

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

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

Sec. 46.03.477. Other reporting requirements (a) If the owner or operator of a large passenger vessel operating in the marine waters of the state is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage or graywater and keep records of the sampling and testing, the owner or operator shall, within 21 days after the sewage or graywater is tested, submit to the department a copy of the records.

(b) Within 21 days after the testing required under AS 46.03.465(d), the owner or operator shall submit a written report to the department that contains the measurements required under AS 46.03.465(d)(2) and describes the sampling technique and analytical testing methods used.

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

(b) An owner or operator who fails to comply with AS 46.03.460 or a reporting requirement of AS 46.03.475, 46.03.477, or 46.03.485 is subject to an administrative penalty of not more than $50 a day for each day of noncompliance with each requirement as determined by the commissioner subject to right of appeal to the superior court.

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

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

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

(1982).

Sec. 46.03.485. Regulations. (a) The department may adopt regulations that are necessary for the implementation of AS 46.03.460 - 46.03.490.

(b) To the extent allowed under federal law, the department may, by regulation, require an owner or operator of a large passenger vessel to submit supplemental or additional information concerning releases or offloading of pollutants that occurred while the vessel was in the marine waters of the state.

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

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

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

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

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

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

(6) "graywater" means galley, dishwasher, bath, and laundry wastewater;

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

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

(9) "large passenger vessel" means a vessel that is authorized to carry 500 or more passengers for hire, excluding noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

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

(11) "medical waste" includes each of the types of solid waste listed in

42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of the Solid Waste Disposal Act);

(12) "offloading" means the removal of pollutants from a large passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works;

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

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

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

(16) "responsible official" means

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

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

(17) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste;

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

(19) "treated sewage" means sewage that meets all applicable effluent limitation standards and processing requirements of 33 U. S. C. 1251 - 1376 (Federal Water Pollution Control Act), as amended, secs. 1401 - 1414 of H.R. 5666, as incorporated by reference into P.L. 106 - 554, and regulations adopted under 33 U. S. C. 1251 - 1376 or under secs. 1401 - 1414 of H.R. 5666, as incorporated by reference into P.L. 106 - 554;

(20) "untreated sewage" means sewage that is not treated sewage;

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

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

(e) A person who **falsifies a registration or report required under AS 46.03.460, 46.03.475, 46.03.477, or 46.03.485 or who** violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490,** AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314**, 46.03.460 - 46.03.490,** or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

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

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

(3) the economic savings realized by the person in not complying with

the requirement for which a violation is charged; and

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

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY OF REPORTING REQUIREMENTS. (a) Notwithstanding AS 46.03.460(a), enacted by sec. 1 of this Act, the first registration required under AS 46.03.460(a) for the owner or operator of a large passenger vessel that is in the marine waters of the state on June 1, 2001, is 11:59 p.m., Alaska Daylight Time, on June 3, 2001, regardless of whether the vessel has called upon or will call upon a port in the state on or after June 1, 2001.

(b) The information-gathering and record keeping requirements of AS 46.03.465 and 46.03.470, enacted by sec. 1 of this Act, apply on and after June 1, 2001. The first report that is due under AS 46.03.475, enacted by sec. 1 of this Act, is due July 21, 2001.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ASSESSMENT REPORT. (a) By January 15, 2004, the Department of Environmental Conservation shall submit to the governor a report that assesses the information received by the department under AS 46.03.475 - 46.03.485 for the cruise ship seasons of 2001, 2002, and 2003 and information received by the department for the cruise ship season of 2000. The report must include

(1) a characterization, to the extent possible, of the risks to the marine and human environments posed by releases and offloadings from large passenger vessels;

(2) evaluation of the pollution control and abatement technologies on the vessels; and

(3) recommendations for future action by the state in relation to the matters discussed in the report.

(b) While producing the assessment required under this section, the department shall consult appropriate federal agencies, owners and operators of passenger vessels, and other interested parties.

(c) The department shall notify the legislature when the report required under this

1 section has been submitted to the governor.

2 (d) In this section, "department" means the Department of Environmental

3 Conservation.

4 *** Sec. 5.** This Act takes effect June 1, 2001.