

HOUSE BILL NO. 55

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST

Introduced: 1/12/01

Referred: Transportation, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act regarding oil discharge prevention and cleanup involving self-propelled**
2 **nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and**
3 **related facilities and operations and requiring preparation and implementation of oil**
4 **discharge contingency plans for those nontank vessels and railroad tank cars; amending**
5 **the definition of 'response action' that relates to releases or threatened releases of oil and**
6 **thereby amending the duties and liabilities of response action contractors; authorizing**
7 **compliance verification for nontank vessels and for trains and related facilities and**
8 **operations; and providing for an effective date."**

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

10 *** Section 1.** AS 46.03.825(a) is amended to read:

11 (a) A response action contractor who responds to a release or threatened
12 release of oil is not civilly liable for removal costs or damages that result from an act

1 or omission in the course of providing care, assistance, or advice

2 (1) consistent with a contingency plan

3 (A) approved under AS 46.04.030 or 46.04.055 if the response
4 action contractor is listed in the contingency plan; or

5 (B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C.
6 1321(d) if the response action contractor is not listed in the contingency plan;
7 or

8 (2) as otherwise directed by the federal or state on-scene coordinator.

9 * **Sec. 2.** AS 46.03.825(b) is amended to read:

10 (b) The limitation on liability contained in (a) of this section does not apply to

11 (1) an action for personal injury or death or;

12 (2) a response action contractor who

13 (A) would otherwise have been liable for the release or
14 threatened release under AS 46.03.822;

15 (B) acts with gross negligence or intentional misconduct; or

16 (C) has agreed in writing to be listed as a primary response
17 action contractor, who is listed as a primary response action contractor in a
18 contingency plan approved under AS 46.04.030 or 46.04.055, and who fails to
19 respond to a release or threatened release of oil that the primary response
20 action contractor was required to respond to under its contract with the
21 applicable contingency plan holder; this subparagraph does not apply to a
22 primary response action contractor if the failure to respond to a release or
23 threatened release of oil results from a prior and ongoing response under
24 another contingency plan approved under AS 46.04.030 or 46.04.055 in which
25 the primary response action contractor has the primary duty to respond and a
26 significant portion of the response action contractor's oil spill cleanup
27 equipment listed in the contingency plan approved under AS 46.04.030 or
28 46.04.055 is in use.

29 * **Sec. 3.** AS 46.03.825(f) is amended to read:

30 (f) Nothing in this section is intended to amend AS 46.04.030(l) or 46.04.055,

31 or to create a cleanup or performance standard that must be met by a holder of a

1 contingency plan or by a primary response action contractor.

2 * **Sec. 4.** AS 46.03.825(g)(3) is amended to read:

3 (3) "response action" means an action taken to respond to a release or
4 threatened release of oil, including mitigation, clean up, marine salvage, **incident**
5 **management team services, response plan facilitator services,** or removal of a
6 release or threatened release of oil.

7 * **Sec. 5.** AS 46.04.055(a) is amended to read:

8 (a) A person may not **operate** [CAUSE OR PERMIT THE OPERATION OF]
9 a nontank vessel within the waters of the state or cause or permit the transfer of oil to
10 or from a nontank vessel unless the person has furnished to the department and the
11 department has approved proof of financial ability to respond to damages meeting the
12 requirements of AS 46.04.040. Proof of financial responsibility required under this
13 subsection is subject to adjustment of dollar amounts under AS 46.04.045 and is
14 established, for a nontank vessel that carries

15 (1) predominantly persistent product, at \$300 per incident for each
16 barrel of oil storage capacity on the vessel or \$5,000,000, whichever is greater; and

17 (2) predominantly nonpersistent product, at \$100 per incident for each
18 barrel of oil storage capacity on the vessel or \$1,000,000, whichever is greater.

19 * **Sec. 6.** AS 46.04.055(e) is amended to read:

20 (e) The requirements of [(a) - (d) OF] this section do not apply to a nontank
21 vessel operating in the waters of the state if the nontank vessel

22 (1) is engaged in innocent passage; for purposes of this paragraph, a
23 nontank vessel is engaged in innocent passage if its operation in state waters,
24 irrespective of whether it is a United States or foreign-flag vessel, would constitute
25 innocent passage under the Convention on the Territorial Sea and the Contiguous
26 Zone, April 29, 1958, 15 U.S.T. 1606, or the United Nations Convention on the Law
27 of the Sea 1982, December 10, 1982, U.N. Publication No. E 83.V.5, 21 I.L.M. 1261
28 (1982), were the vessel a foreign-flag vessel;

29 (2) enters state waters because of imminent danger to the crew, or in an
30 effort to prevent an oil spill or other harm to public safety or the environment, and are
31 inapplicable only until the vessel is able to leave state waters as soon as it may do so

1 without imminent risk of harm to the crew, public safety, or the environment; or

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

6 * **Sec. 7.** AS 46.04.055 is amended by adding new subsections to read:

7 (f) On and after the date that is 180 days after the effective date of the
 8 regulations initially adopted by the department under (l) of this section to implement
 9 the requirements of this subsection and (g) and (h) of this section, a person may not
 10 operate a nontank vessel within the waters of the state or cause or permit the transfer
 11 of oil to or from a nontank vessel unless the department has approved an oil discharge
 12 prevention and contingency plan covering that nontank vessel and the person is in
 13 compliance with the plan.

14 (g) The oil discharge prevention and contingency plan for a nontank vessel
 15 required by (f) of this section must include

16 (1) vessel-specific information;

17 (2) a response plan consisting of

18 (A) initial notification procedures;

19 (B) a certification that the applicant for the nontank vessel
 20 contingency plan is a member of, or has a contract with, an oil spill response
 21 organization that is an oil spill primary response action contractor with a
 22 response action plan approved by the department as meeting the response
 23 planning standards of (c)(1) of this section for the maximum oil capacity of the
 24 nontank vessel; and

25 (C) a certification that the applicant for the nontank vessel
 26 contingency plan has contracted with an oil spill primary response action
 27 contractor providing incident management team services; and

28 (3) a prevention plan certification stating that the nontank vessel for
 29 which contingency plan approval is made complies with applicable federal and
 30 International Maritime Organization requirements.

31 (h) In lieu of the requirements

1 (1) of (g)(2)(B) of this section, a person may comply with the
 2 requirement of (g)(2)(B) of this section by demonstrating, to the satisfaction of the
 3 department, that the person is maintaining an oil spill response plan and equivalent
 4 equipment, personnel, and resources to enable the person to meet the requirements of
 5 this section; and

6 (2) of (g)(2)(C) of this section, a person may comply with the
 7 requirement of (g)(2)(C) of this section by demonstrating, to the satisfaction of the
 8 department, that the person is maintaining an incident management team in order to
 9 implement a planned response to a release or threatened release of oil from its nontank
 10 vessel.

11 (i) The provisions of AS 46.04.030(d) - (l), (n), (o), and (r) apply to a nontank
 12 vessel, to a nontank vessel contingency plan required by this section, and to a person
 13 applying for and holding an approved nontank vessel contingency plan.

14 (j) On and after the date that is 180 days after the effective date of the
 15 regulations initially adopted by the department under (l) of this section to implement
 16 the requirements of this subsection, a person may not transport oil by railroad tank car
 17 or cause or permit the transfer of oil to or from a railroad tank car unless the
 18 department has approved an oil discharge prevention and contingency plan covering
 19 the transportation of oil by railroad tank cars by the railroad and the person is in
 20 compliance with the plan.

21 (k) The provisions of AS 46.04.030(d) - (l), (n), (o), and (r) apply to a railroad
 22 tank car, to a railroad tank car contingency plan required by this section, and to a
 23 person applying for and holding an approved railroad tank car contingency plan.

24 (l) The department shall adopt regulations under AS 46.04.070 to implement

25 (1) the requirements of response planning standards under (c) of this
 26 section;

27 (2) the requirements of (f) - (i) of this section as applicable to nontank
 28 vessels; and

29 (3) the requirements of (j) and (k) of this section as applicable to
 30 railroad tank cars.

31 * **Sec. 8.** AS 46.04 is amended by adding a new section to read:

1 **Sec. 46.04.065. Compliance verification for nontank vessels and for trains**
 2 **and related facilities and operations.** In addition to other rights of access or
 3 examination conferred upon the department by law or otherwise, to ensure compliance
 4 with the provisions of this chapter relating to oil pollution control, the department may
 5 at reasonable times and in a safe manner enter and examine

6 (1) nontank vessels; and

7 (2) trains, railroad tracks, associated facilities, and railroad operations.

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

10 **CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.** The lieutenant
 11 governor shall certify to the revisor of statutes

12 (1) the effective date of the regulations initially adopted by the Department of
 13 Environmental Conservation under AS 46.04.055(l), added by sec. 7 of this Act, to implement
 14 the requirements of AS 46.04.055(f) - (i), added by sec. 7 of this Act, as applicable to nontank
 15 vessels; and

16 (2) the effective date of the regulations initially adopted by the Department of
 17 Environmental Conservation under AS 46.04.055(l), added by sec. 7 of this Act, to implement
 18 the requirements of AS 46.04.055(j) and (k), added by sec. 7 of this Act, as applicable to
 19 railroad tank cars.

20 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).