

**SENATE BILL NO. 16**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE TASK FORCE ON MOTORIZED OIL  
TRANSPORT**

**Introduced: 1/8/01**

**Referred: 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; and**  
7 **authorizing compliance verification for nontank vessels and for trains and related**  
8 **facilities and 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).