

SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR OLSON

Introduced: 1/29/03

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the recovery of the expenses of the Department of Environmental
2 Conservation that are incurred when containing or cleaning up a discharge, release, or
3 threatened release of oil; and providing for an effective date."

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

5 * **Section 1.** AS 46.04.010 is amended to read:

6 **Sec. 46.04.010. Reimbursement for cleanup expenses. Except as provided**
7 **in (b) and (c) of this section, the** [THE] department shall promptly seek
8 reimbursement under AS 46.03.760(d), AS 46.08.070, or from an applicable federal
9 fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the
10 department obtains reimbursement for a portion of its expenses from a federal fund,
11 the remainder of the expenses incurred may be recovered under AS 46.03.760(d) or
12 AS 46.08.070. Money received by the department under this section shall be
13 deposited in the general fund and credited to

14 (1) the oil and hazardous substance release response mitigation

1 account established under AS 46.08.025(b); the amount required to be deposited under
 2 this paragraph shall represent the proportion of the expenses recovered that were
 3 originally paid for from the oil and hazardous substance release account established
 4 under AS 46.08.010(a)(2); or

5 (2) the oil and hazardous substance release prevention mitigation
 6 account established under AS 46.08.020(b); the amount required to be deposited under
 7 this paragraph is the amount of money recovered that exceeds the amount payable to
 8 the response mitigation account under (1) of this **subsection** [SECTION].

9 * **Sec. 2.** AS 46.04.010 is amended by adding new subsections to read:

10 (b) Notwithstanding (a) of this section, the department shall apply the
 11 provisions of (c) of this section and is not required to seek reimbursement for the
 12 expenses incurred in cleaning up or containing a discharge of oil if the department
 13 determines that the expenses are not recoverable from a federal source of funds and

14 (1) the person who would be responsible for the reimbursement is an
 15 individual, the discharge occurred from a tank system containing residential heating
 16 oil for fewer than five families, and the discharge was not the result of overfilling a
 17 tank;

18 (2) the party who would be responsible for the reimbursement is an
 19 unincorporated community, a village, or a municipality with a population under 5,000,
 20 according to the latest available federal or state census or other census approved by the
 21 Department of Community and Economic Development, the discharge occurred from
 22 a tank system containing residential heating oil, and the discharge was not the result of
 23 overfilling a tank; or

24 (3) the expenses incurred by the department were less than \$3,000.

25 (c) The department shall seek reimbursement of expenses in a situation
 26 described in (b) of this section unless the department determines, under regulations
 27 adopted by the department, that it is in the public interest to waive cost recovery in
 28 that situation.

29 * **Sec. 3.** AS 46.08.070(a) is amended to read:

30 (a) **Except as provided in (e) and (f) of this section, the** [THE]
 31 commissioner shall seek reimbursement promptly under this section, AS 46.03.760(d),

1 or federal law for the cost incurred in the cleanup or containment of oil or a hazardous
2 substance that has been released.

3 * **Sec. 4.** AS 46.08.070(d) is amended to read:

4 (d) The department shall adopt regulations to implement the cost recovery
5 requirements of (a), (b), (e), and (f) [(a) AND (b)] of this section, but may not delay
6 cost recovery actions pending the effective date of the adoption of the regulations.

7 * **Sec. 5.** AS 46.08.070 is amended by adding new subsections to read:

8 (e) Notwithstanding (a) and (b) of this section, the department shall apply the
9 provisions of (f) of this section and is not required to seek reimbursement for the
10 expenses incurred in cleaning up or containing a release or threatened release of oil if
11 the expenses are not recoverable from a federal source of funds and

12 (1) the person who would be responsible for the reimbursement is an
13 individual, the release or threatened release was from a tank system containing
14 residential heating oil for fewer than five families, and the release or threatened
15 release was not the result of overfilling a tank;

16 (2) the party who would be responsible for the reimbursement is an
17 unincorporated community, a village, or a municipality with a population under 5,000,
18 according to the latest available federal or state census or other census approved by the
19 Department of Community and Economic Development, the release or threatened
20 release was from a tank system containing residential heating oil, and the release or
21 threatened release was not the result of overfilling a tank; or

22 (3) the expenses incurred by the department were less than \$3,000.

23 (f) The department shall seek reimbursement of expenses in a situation
24 described in (e) of this section unless the department determines, under regulations
25 adopted by the department, that it is in the public interest to waive cost recovery in
26 that situation.

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

29 **APPLICABILITY.** AS 46.04.010 and AS 46.08.070, as amended by this Act, apply to
30 cost recovery actions under AS 46.04.010 or AS 46.08.070 that are pending or that are
31 initiated on or after the effective date of this section.

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

3 TRANSITIONAL PROVISIONS FOR EXISTING COST RECOVERY ACTIONS
4 AND PAYMENT PLANS. (a) Notwithstanding AS 46.08.070(d), if the Department of
5 Environmental Conservation and the Department of Law determine that a cost recovery action
6 under AS 46.04.010 or AS 46.08.070 that is pending on the effective date of this section
7 might involve a situation covered by AS 46.04.010(b), enacted by sec. 2 of this Act, or
8 AS 46.08.070(e), enacted by sec. 5 of this Act, the departments may delay the cost recovery
9 action until the effective date of regulations adopted to implement this Act and may apply the
10 new regulations to determine whether to continue the cost recovery action.

11 (b) Upon request of a person who, on the effective date of this section, has made at
12 least one payment under a payment plan, but has not completed making full payment under
13 the plan, to reimburse the Department of Environmental Conservation under AS 46.04.010 or
14 AS 46.08.070, the department may waive the right to receive further payments from the
15 person under the payment plan if the department would have decided not to pursue cost
16 recovery under the changes made by this Act if the events giving rise to the cost recovery
17 action had occurred on or after the effective date of this section.

18 * **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).