

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 30, 2023

1:00 p.m.

MEMBERS PRESENT

Representative Kevin McCabe, Chair
Representative Sarah Vance, Vice Chair
Representative Tom McKay
Representative Craig Johnson
Representative Jesse Sumner
Representative Louise Stutes
Representative Genevieve Mina

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 128

"An Act relating to the definition of 'oil terminal facility.'"

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 128

SHORT TITLE: OIL TERMINAL FACILITY

SPONSOR(S): TRANSPORTATION

03/22/23	(H)	READ THE FIRST TIME - REFERRALS
03/22/23	(H)	TRA
03/30/23	(H)	TRA AT 1:00 PM BARNES 124

WITNESS REGISTER

BUDDY WHITT, Staff
Representative Kevin McCabe
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 128 on behalf of the sponsor,
the House Transportation Standing Committee.

KEVIN O'SHEA, Safety and Environmental Manager
Vitus Energy, LLC

Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony during the hearing on HB 128.

JIM BUTLER, Principal
Incident Response Group, LLC
Kenai, Alaska

POSITION STATEMENT: Provided invited testimony during the hearing on HB 128.

TIFFANY LARSON, Director
Division of Spill Prevention and Response
Department of Environmental Conservation
Fairbanks, Alaska

POSITION STATEMENT: Provided invited testimony during the hearing on HB 128.

CAMERON JIMMO, Assistant Attorney General
Environmental Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 128.

ACTION NARRATIVE

[1:00:13 PM](#)

CHAIR KEVIN MCCABE called the House Transportation Standing Committee meeting to order at 1:00 p.m. Representatives C. Johnson, Vance, Sumner, McKay, and McCabe were present at the call to order. Representatives Mina and Stutes arrived as the meeting was in progress.

HB 128-OIL TERMINAL FACILITY

[1:00:50 PM](#)

CHAIR MCCABE announced that the only order of business would be HOUSE BILL NO. 128, "An Act relating to the definition of 'oil terminal facility.'"

[1:01:41 PM](#)

BUDDY WHITT, Staff, Representative Kevin McCabe, Alaska State Legislature, on behalf of the bill sponsor, the House Transportation Standing Committee, stated that the bill was

conceived when the Department of Environmental Conservation (DEC) approached the committee with ideas for regulatory changes for oil terminal facilities. He began a PowerPoint presentation [hard copy included in the committee packet], on slides 2 and 3, and said that the proposed legislation would make changes to Alaska Administrative Code (AAC) 75.432, regarding response planning for potential spills at oil storage facilities. The new language would change the regulations for vessels operating as oil terminal facilities to have the same requirements as other vessels.

[1:04:35 PM](#)

MR. WHITT continued to slides 4-7, regarding the definition of oil terminal facility. He said that DEC requested clarifying language regarding vessels used as oil terminal facilities. He gave the current definition of an oil terminal facility found under AS 46.04.900(a)(14), which read:

(14) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including a deepwater port, bulk storage facility, or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, that is used for the purpose of transferring, processing, refining, or storing oil; a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

MR. WHITT said that this definition includes vessels acting as oil terminal facilities under 18 AAC 75.280.

[1:07:10 PM](#)

MR. WHITT continued to slides 8-10 and gave an overview for classification of oil terminal facilities under 18 AAC 75.280. Operators of vessels acting as oil terminal facilities must submit a written request to DEC. He stated that these regulations have caused issues due to the difference of responding to a land- or water-based oil spill. Land-based facilities are required to have a plan that would allow them to be able to respond to a spill of their biggest storage tank, whereas vessels must plan for a percentage of their cargo. Mr. Whitt continued as follows:

It appears that the definition of oil terminal facility that includes vessels that transfer fuel to smaller vessels in state waters now requires vessels that already have oil spill contingency plans to now plan for and acquire what could be tens of millions of dollars of new equipment to comply with oil terminal facilities' planning requirements.

MR. WHITT listed cost to stakeholder, and thereby costumers, as well as time delays, as issues of concern.

MR. WHITT directed attention to slide 11 and gave the sectional analysis of HB 128. He said that under Section 1, AS 46.04.900 (14) would be amended to exclude vessels with a discharge prevention and contingency plan from the definition of oil terminal facility.

[1:11:06 PM](#)

KEVIN O'SHEA, Safety and Environmental Manager, Vitus Energy, LLC, stated that 200 million gallons of fuel come into the state of Alaska via marine transport, approximately half of which could be impacted by the current definition of oil terminal facility. Primarily, larger barges making a transfer to smaller barges going to remote villages would be affected. He said that the current definition would place insurance coverage into question if a spill were to occur.

[1:14:38 PM](#)

JIM BUTLER, Principal, Incident Response Group, LLC, stated that the current statutory definition of vessel has three components. The way the statute is currently written causes oil barges to fall under the definition of oil terminal facility, meaning that a barge that is not at full capacity would still be required to plan for an incident in which it is at full capacity. He said that the bill would allow vessels to make ship-to-ship transfers using the same contingency plans as other vessels. The industry has invested significant amounts of money into ship-to-ship transfer equipment to increase safety.

[1:20:13 PM](#)

TIFFANY LARSON, Director, Division of Spill Prevention and Response, Department of Environmental Conservation, stated that at the time of the oil spill, the Exxon Valdez vessel was

carrying 53 million gallons of oil, and the vessels currently being used in Alaska have a capacity between 9,000 and 54.6 gallons. She said DEC has previously considered vessels meeting the proposed definition to be compliant with the current definition. She said that DEC is currently reviewing the possible trickle-down effects that could occur due to the change in definition. She questioned whether a statutory change was necessary due to the way the department has previously interpreted the definition in statute and said that clarifying language could always be added in the current regulations.

[1:25:50 PM](#)

REPRESENTATIVE C. JOHNSON asked why changing the statute is unnecessary if the interpretation of the definition and subsequent regulations do not match the statute.

MS. LARSON answered that the department has been applying regulations to meet the intent of the statute since it was written.

[1:27:56 PM](#)

CHAIR MCCABE asked whether an insurance company would use the discrepancy between the statute and regulation to absolve itself from paying out in the event of a spill.

MR. BUTLER answered that insurance companies often look for any possible reason to deny an insurance claim, so it is likely that the discrepancy would be used in the event of a spill. He added that a change in leadership at the department could result in a change in regulations to match what is in the current statutory definition.

[1:29:37 PM](#)

REPRESENTATIVE STUTES asked whether it is correct that insurance companies and DEC have a different interpretation of the statutory definition.

REPRESENTATIVE MCCABE confirmed that is correct. In response to a follow-up question, he said that there is a planned meeting between himself, DEC, and the insurance companies.

[1:32:34 PM](#)

REPRESENTATIVE SUMNER commented that he expected DEC to defend the way that it interprets the definition of oil terminal facility, although that does not mean that the bill is unnecessary.

REPRESENTATIVE STUTES replied that DEC can "reach out" and work on a solution to the discrepancy between the definitions.

CHAIR MCCABE added that DEC has offered some amendments to HB 128, and the goal is to ensure that operators are covered by their insurance policies.

[1:34:38 PM](#)

REPRESENTATIVE C. JOHNSON questioned whether insurance companies would continue to offer policies due to the current discrepancies.

CHAIR MCCABE replied that a major focus on the bill is addressing such an issue.

[1:35:48 PM](#)

REPRESENTATIVE VANCE asked if the Department of Law could give insight into the possible effects of the proposed legislation.

[1:36:12 PM](#)

CAMERON JIMMO, Assistant Attorney General, Environmental Section, Department of Law, answered that DEC's interpretation of the current definition aligns with the Department of Law's interpretation. He added that the department believes it would be better to address oil prevention and response in statute rather than modifying the definition of oil terminal facility.

[1:38:12 PM](#)

REPRESENTATIVE VANCE asked whether it is correct to say that any vessel with an oil contingency plan would be considered an oil terminal facility if it makes ship-to-ship transfers.

MR. JIMMO answered that the Department of Law has historically interpreted the definition in that manner. He added that changing the definition of oil terminal facility could have a broader effect than what is intended by the proposed legislation.

[1:40:44 PM](#)

REPRESENTATIVE C. JOHNSON asked whether it is possible to have different definitions of vessel in different parts of the statute to avoid a trickle-down effect.

MR. JIMMO answered that he is unsure but believes that it could be a more favorable approach to fixing the discrepancy.

[1:43:08 PM](#)

MR WHITT stated that DEC has been very engaged in working on solving the problem.

[1:43:52 PM](#)

CHAIR MCCABE opened public testimony on HB 128. After ascertaining that nobody wished to testify, he closed public testimony.

[1:44:15 PM](#)

CHAIR MCCABE announced that HB 128 was held over.

[1:44:20 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 1:44 p.m.