

HOUSE BILL NO. 205

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE JOSEPHSON

Introduced: 4/22/25

Referred: Judiciary, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for discharges of oil and other pollution violations; relating
2 to the definition of 'waste' in the Alaska Oil and Gas Conservation Act; and providing
3 for an effective date."

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

5 * **Section 1.** AS 31.05.170(15) is amended to read:

6 (15) "waste" means, in addition to its ordinary meaning, **physical**
7 **waste** ["PHYSICAL WASTE"] and includes

8 (A) the inefficient, excessive, or improper use of, or
9 unnecessary dissipation of, reservoir energy; and the locating, spacing, drilling,
10 equipping, operating or producing of any oil or gas well in a manner **that**
11 [WHICH] results or tends to result in reducing the quantity of oil or gas to be
12 recovered from a pool in this state under operations conducted in accordance
13 with good oil field engineering practices;

14 (B) the inefficient above-ground storage of oil; and the

1 locating, spacing, drilling, equipping, operating, or producing of an oil or gas
 2 well in a manner causing, or tending to cause, unnecessary or excessive surface
 3 loss or destruction of oil or gas;

4 (C) producing oil or gas in a manner causing unnecessary water
 5 channeling or coning;

6 (D) the operation of an oil well with an inefficient gas-oil ratio;

7 (E) the drowning with water of a pool or part of a pool capable
 8 of producing oil or gas, except insofar as and to the extent authorized by the
 9 commission;

10 (F) underground waste;

11 (G) the creation of unnecessary fire hazards;

12 (H) the release, burning, or escape into the open air of gas [,]
 13 from a well producing oil or gas **or from a pipeline carrying oil or gas,**
 14 except to the extent authorized by the commission;

15 (I) the use of gas for the manufacture of carbon black, except as
 16 provided in this chapter;

17 (J) the drilling of wells unnecessary to carry out the purpose or
 18 intent of this chapter.

19 * **Sec. 2.** AS 46.03.758(a) is amended to read:

20 (a) The legislature finds that

21 (1) [RECENT INFORMATION DISCLOSES THAT] the discharge of
 22 oil may cause significant short and long-term damage to the state's environment; even
 23 minute quantities of oil released to the environment may cause high mortalities among
 24 larval and juvenile forms of important commercial species, may affect salmon
 25 migration patterns, and may otherwise degrade and diminish the renewable resources
 26 of the state;

27 (2) the exact nature and extent of oil pollution can be neither
 28 documented with certainty nor precisely quantified on a spill-by-spill basis; however,
 29 in light of the magnitude of harm **that** [WHICH] may be caused by oil discharges, and
 30 the vital importance of commercial, sport, and subsistence fishing, tourism, and the
 31 state's natural abundance and beauty to the economic future of the state and its quality

1 of life, it is the judgment of the legislature that substantial civil penalties should be
 2 imposed for the discharge of oil in order to provide a meaningful incentive for the safe
 3 handling of oil and to **ensure** [INSURE] that the public does not bear substantial
 4 losses from oil pollution for which, because of its subtle, long-term, or unquantifiable
 5 nature, compensation would not otherwise be received; and

6 (3) the handling of oil in large quantities is a hazardous undertaking
 7 that poses a significant threat to the economy and environment of the state, which can
 8 be substantially reduced only by the taking of rigorous safety precautions involving
 9 considerable expense; conversely, persons handling oil in smaller amounts pose a
 10 correspondingly lower risk to the economy and environment of the state, and are
 11 capable of safe oil handling practices at correspondingly lower costs; in order to
 12 provide an incentive that is effective, [BUT NOT PUNITIVE,] it is necessary and
 13 appropriate that the assessment of [CIVIL] penalties for discharges of small quantities
 14 of oil be left for case-by-case [JUDICIAL] determination, while ensuring, through the
 15 penalty provisions of this section, that the handling of oil in large quantities occurs in
 16 a manner that will not impair the renewable resources of the state.

17 * **Sec. 3.** AS 46.03.758(b) is amended to read:

18 (b) **The** [NO LATER THAN THE 10TH DAY AFTER THE CONVENING
 19 OF THE SECOND SESSION OF THE TENTH ALASKA LEGISLATURE, THE]
 20 department shall **establish in** [SUBMIT TO THE LEGISLATURE] regulations
 21 [ESTABLISHING] the following schedule of fixed penalties for discharges of oil:

22 (1) subject to (2) of this subsection, the penalties for the following
 23 categories of receiving environments may not exceed

24 (A) **\$40** [\$10] per gallon of oil **that** [WHICH] enters an
 25 anadromous stream or other freshwater environment with significant aquatic
 26 resources;

27 (B) **\$10** [\$2.50] per gallon of oil **that** [WHICH] enters an
 28 estuarine, intertidal or confined saltwater environment; and

29 (C) **\$4** [\$1] per gallon of oil **that** [WHICH] enters an
 30 unconfined saltwater environment, public land or freshwater environment
 31 without significant aquatic resources;

1 (2) for discharges of oil that are caused by the gross negligence or
 2 intentional act of the discharger, or when the court finds that the discharger did not
 3 take reasonable measures to contain and clean up the discharged oil, the penalty shall
 4 be determined by multiplying the penalty established under (1) of this subsection by a
 5 factor of five.

6 * **Sec. 4.** AS 46.03.758 is amended by adding a new subsection to read:

7 (m) The department shall, every 10 years, increase the amounts of the civil
 8 penalties authorized in (b) of this section by a percentage equal to the percentage of
 9 increase in all items of the Consumer Price Index for all urban consumers for urban
 10 Alaska. The index for January of 2025 is the reference base index.

11 * **Sec. 5.** AS 46.03.759(a) is amended to read:

12 (a) A person who is found to be liable under any other state law for an
 13 unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to
 14 liability for any other penalties or for damages or the cost of containment and cleanup,
 15 liable to the state in a civil action for a civil penalty, up to a maximum of
 16 \$500,000,000, in the amount of

17 (1) **\$20** [\$8] per gallon of crude oil discharged for the first 420,000
 18 gallons discharged; and

19 (2) **\$30** [\$12.50] per gallon of crude oil discharged for amounts
 20 discharged in excess of 420,000 gallons.

21 * **Sec. 6.** AS 46.03.759 is amended by adding new subsections to read:

22 (h) For the purpose of determining the volume of discharged crude oil under
 23 this section, the department shall include the produced water, if any, that was mixed
 24 with the discharged crude oil at the time of the discharge.

25 (i) The department shall, every 10 years, increase the amounts of the civil
 26 penalties authorized in (a) of this section by a percentage equal to the percentage of
 27 increase in all items of the Consumer Price Index for all urban consumers for urban
 28 Alaska. The index for January of 2025 is the reference base index.

29 * **Sec. 7.** AS 46.03.760(a) is amended to read:

30 (a) A person who violates or causes or permits to be violated a provision of
 31 this chapter other than AS 46.03.250 - 46.03.313, or a provision of AS 46.04 or

1 AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or
 2 acceptance, or term or condition of a permit, approval, or acceptance issued under this
 3 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be
 4 assessed by the court of not less than \$2,000 [\$500] nor more than \$400,000
 5 [\$100,000] for the initial violation, nor more than \$25,000 [\$5,000] for each day after
 6 that on which the violation continues, and that shall reflect, when applicable,

7 (1) reasonable compensation in the nature of liquidated damages for
 8 any adverse environmental effects caused by the violation, which shall be determined
 9 by the court according to the toxicity, degradability, and dispersal characteristics of
 10 the substance discharged, the sensitivity of the receiving environment, and the degree
 11 to which the discharge degrades existing environmental quality;

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

14 (3) the economic savings realized by the person in not complying with
 15 the requirement for which a violation is charged; **and**

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

18 * **Sec. 8.** AS 46.03.760(d) is amended to read:

19 (d) In addition to liability under **(a) and (c)** [(a) - (c)] of this section, a person
 20 who violates or causes or permits to be violated a provision of AS 46.03.740 -
 21 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the
 22 full amount of actual damages caused to the state by the violation, including

23 (1) direct and indirect costs associated with the abatement,
 24 containment, or removal of the pollutant;

25 (2) restoration of the environment to its former state;

26 (3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as
 27 emergency first response advances and reimbursements under AS 46.08.070(c); and

28 (4) all incidental administrative costs.

29 * **Sec. 9.** AS 46.03.760(e) is amended to read:

30 (e) A person who violates or causes or permits to be violated a provision of
 31 AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful

1 order of the department, or a permit, approval, or acceptance, or term or condition of a
 2 permit, approval, or acceptance issued under AS 46.03.250 - 46.03.313, 46.03.460 -
 3 46.03.475, AS 46.14, or under the program authorized by AS 46.03.020(12), is liable,
 4 in a civil action, to the state for a sum to be assessed by the court of not less than
 5 \$1,000 [\$500] nor more than \$200,000 [\$100,000] for the initial violation, nor more
 6 than \$25,000 [\$10,000] for each day after that on which the violation continues, and
 7 that shall reflect, when applicable,

8 (1) reasonable compensation in the nature of liquidated damages for
 9 any adverse environmental effects caused by the violation, that shall be determined by
 10 the court according to the toxicity, degradability and dispersal characteristics of the
 11 substance discharged, the sensitivity of the receiving environment, and the degree to
 12 which the discharge degrades existing environmental quality; for a violation relating to
 13 AS 46.14, the court, in making its determination under this paragraph, shall also
 14 consider the degree to which the discharge causes harm to persons or property; for a
 15 violation of AS 46.03.463, the court, in making its determination under this paragraph,
 16 shall also consider the volume of the graywater, sewage, or other wastewater
 17 discharged; this paragraph may not be construed to limit the right of parties other than
 18 the state to recover for personal injuries or damage to their property;

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

21 (3) the economic savings realized by the person in not complying with
 22 the requirement for which a violation is charged; and

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

25 * **Sec. 10.** AS 46.03.760(f) is amended to read:

26 (f) An owner, agent, employee, or operator of a commercial passenger vessel,
 27 as defined in AS 43.52.295, who falsifies a registration or report required by
 28 AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a
 29 provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a
 30 regulation, a lawful order of the department, or a permit, approval, or acceptance, or
 31 term or condition of a permit, approval, or acceptance issued under AS 46.03.250 -

1 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state
 2 for a sum to be assessed by the court of not less than **\$10,000** [\$5,000] nor more than
 3 **\$200,000** [\$100,000] for the initial violation, nor more than **\$25,000** [\$10,000] for
 4 each day after that on which the violation continues, and that shall reflect, when
 5 applicable,

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

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

17 (3) the economic savings realized by the person in not complying with
 18 the requirement for which a violation is charged; and

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

21 * **Sec. 11.** AS 46.03.760(g) is amended to read:

22 (g) As used in this section, "economic savings" means **the economic benefit**
 23 **of noncompliance** [THAT SUM WHICH A PERSON WOULD BE REQUIRED TO
 24 EXPEND FOR THE PLANNING, ACQUISITION, SITING, CONSTRUCTION,
 25 INSTALLATION AND OPERATION OF FACILITIES NECESSARY TO EFFECT
 26 COMPLIANCE] with the standard violated. **When determining an "economic**
 27 **savings," the court may consider**

28 **(1) deferred and avoided costs of compliance with the standard**
 29 **violated;**

30 **(2) a competitive advantage gained by noncompliance with the**
 31 **standard violated; and**

1 **(3) income derived as a result of noncompliance with the standard**
 2 **violated from operations that were not authorized or permitted.**

3 * **Sec. 12.** AS 46.03.760 is amended by adding new subsections to read:

4 (h) When assessing the need for an enhanced civil penalty to deter future
 5 noncompliance under this section, the court may take into consideration

6 (1) the seriousness of the violation;

7 (2) the degree of culpability of the person;

8 (3) the history of previous violations of the person;

9 (4) other penalties assessed for the same violation;

10 (5) good faith efforts made by the person to comply with applicable
 11 requirements and to minimize or mitigate the effects of the violations;

12 (6) the economic effect of the violation on the person; and

13 (7) other factors as justice may require.

14 (i) The department shall, every 10 years, increase the daily civil penalty caps
 15 in (a), (e), and (f) of this section by a percentage equal to the percentage of increase in
 16 all items of the Consumer Price Index for all urban consumers for urban Alaska. The
 17 index for January of 2025 is the reference base index.

18 * **Sec. 13.** AS 46.03 is amended by adding a new section to read:

19 **Sec. 46.03.762. Administrative penalties for discharges of oil and crude oil.**

20 (a) In addition to the actions available under AS 46.03.758 - 46.03.760, the department
 21 may assess an administrative penalty against a person who causes or permits a serious
 22 discharge or repeat discharges of oil not permitted under applicable state or federal
 23 law.

24 (b) An administrative penalty assessed under this section may not be less than
 25 \$500 nor more than \$10,000 for each violation. When assessing a penalty under this
 26 section, the department shall consider

27 (1) the effect of the discharge on the public health or the environment;

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

30 (3) any previous history of compliance or noncompliance by the
 31 person with this chapter, AS 46.04, AS 46.09, and AS 46.14;

1 (4) the need to deter future discharges; and

2 (5) the volume, extent, and seriousness of the discharge, including the
3 potential for the discharge to threaten public health or the environment.

4 (c) If a person fails to pay an administrative penalty assessed under this
5 section, the department may bring an action to collect the penalty. The amount of the
6 penalty is not subject to review by the court in an action to collect the penalty
7 described in this section.

8 (d) In a collection action under (c) of this section, the court shall award the
9 prevailing party full reasonable attorney fees and costs incurred in the collection
10 action.

11 (e) Action under this section by the department does not limit or otherwise
12 affect the authority of the department to otherwise enforce this chapter, AS 46.04,
13 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
14 recover damages, restoration expenses, investigation costs, court costs, attorney fees,
15 or other necessary expenses. The court shall set off against a judicial civil assessment
16 subsequently awarded under AS 46.03.758, 46.03.759, or 46.03.760 an amount
17 ordered to be paid under this section by the same person for the same discharge.

18 (f) For the purpose of determining the volume of discharged oil under this
19 section, the department shall include the produced water, if any, that was mixed with
20 the discharged oil at the time of the discharge.

21 (g) The department shall, every 10 years, increase the amounts of the
22 administrative penalties authorized in (b) of this section by a percentage equal to the
23 percentage of increase in all items of the Consumer Price Index for all urban
24 consumers for urban Alaska. The index for January of 2025 is the reference base
25 index.

26 (h) In this section,

27 (1) "discharge" means entry of oil into or on the water or public land of
28 the state, regardless of causation, except discharges into an enclosed and impervious
29 oil spill containment area;

30 (2) "oil" means crude oil, petroleum, and any substance refined from
31 petroleum.

1 * **Sec. 14.** AS 46.03.900 is amended by adding a new paragraph to read:

2 (38) "produced water" means water that is the byproduct of the
3 exploration, extraction, development, production, refining, processing, or disposal of
4 energy-related products.

5 * **Sec. 15.** AS 46.03.758(c) and 46.03.760(b) are repealed.

6 * **Sec. 16.** This Act takes effect January 1, 2026.