

Original sponsor: Rules Committee by
Request of the Governor

Offered: 2/18/77
Referred: Judiciary

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 137

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties for discharges of
7 oil."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03 is amended by adding a new section to read:

10 Sec. 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL. (a) The
11 legislature finds that the discharge of oil causes significant harm to
12 the economy and environment of the state which is often difficult to
13 detect and incapable of quantification, and that, in order to protect
14 the public welfare and insure adequate recourse for the discharge of
15 oil, and to provide an incentive for the safe production, handling and
16 transporting of oil, it is necessary to establish a regulatory mechanism
17 which recognizes and meets the realities of oil pollution.

18 (b) No later than January 1, 1978, the department shall adopt, and
19 may periodically revise, regulations establishing a schedule of fixed
20 penalties for discharges of oil of not more than \$50 per gallon of oil
21 discharged. The schedule shall vary according to the toxicity, de-
22 gradability and dispersal characteristics of the oil. The schedule
23 shall vary according to the sensitivity of the receiving environment.
24 Variations under this subsection may be by category of receiving environ-
25 ments, specific receiving environments, or both.

26 (c) Upon the effective date of regulations adopted under (b) of
27 this section, if a discharge of oil not permitted under applicable state
28 and federal law occurs within the territorial jurisdiction of the state,
29 or into or upon the adjacent outer continental shelf of the state, the

1 following persons, in addition to the person causing or permitting the
2 discharge, are jointly and severally liable to the state, in a civil
3 action, for the full amount of penalties established in the regulations

4 (1) if the discharge occurs from any commercial or industrial
5 facility other than a vessel or offshore platform, the owner, lessee (or
6 permittee), and operator of the facility;

7 (2) if the discharge occurs from a vessel,

8 (A) the owner and the operator of the vessel; and

9 (B) the owner of the oil carried as cargo on the vessel
10 at the time the vessel was loaded, if the loading occurred within
11 the territorial jurisdiction of the state, or at a deepwater port
12 adjacent to the state; and

13 (3) if the discharge occurs from an offshore platform, the
14 lessee (or permittee) of the tract or acreage upon which the platform is
15 situated, and the operator of the platform.

16 (d) The entire penalty specified in the regulations shall be
17 imposed, and no portion of the penalty for which a person is liable
18 under this section may be suspended or deferred.

19 (e) A person otherwise liable for penalties under (c) of this
20 section is not liable if he demonstrates, by a preponderance of the
21 evidence, that the discharge occurred solely as a result of

22 (1) an act of God;

23 (2) an act of a third person with intent to cause a discharge
24 of oil, unless the third person is a person with whom the person charged
25 is made jointly and severally liable under (c)(1) - (3) of this section;

26 (3) a negligent or intentional act of the State of Alaska or
27 the United States; or

28 (4) an act of war.

29 (f) Notwithstanding sec. 875 of this chapter, a person liable

1 under this section is not also liable for the discharge of oil under
2 sec. 760(a) of this chapter.

3 (g) If the application of this section to discharges of oil
4 solely into and upon the adjacent outer continental shelf of the state
5 is held invalid, the application of this section to discharges of oil
6 into and upon the water or public land within the territorial jurisdic-
7 tion of the state is not affected by that holding. This severability
8 provision is intended to clarify, and not limit the severability pro-
9 vision of AS 01.10.030.

10 (h) Notwithstanding AS 30.25.220(b), penalties received by the
11 state under this section shall be deposited in the general fund and
12 credited to a special account called the "oil pollution mitigation
13 account." The legislature may annually appropriate from the oil spill
14 mitigation account a sum equivalent to the amount of penalties received
15 under this subsection for the calendar year preceding the legislative
16 session in which the appropriation is made, the appropriations to be
17 made for the purpose of restoring and enhancing environments affected by
18 oil pollution, including but not limited to the funding of aquaculture
19 projects.

20 (i) As used in this section,

21 (1) "adjacent outer continental shelf" means that portion of
22 the outer continental shelf which would be within the territorial
23 jurisdiction of the state if its boundaries were extended seaward to the
24 outer margin of the outer continental shelf;

25 (2) "discharge of oil" means the entry of oil into or upon
26 the water or land of the state, regardless of causation;

27 (3) "offshore platform" means an offshore structure, whether
28 floating or temporarily or permanently secured to the floor of the ocean
29 or other water body, which is used primarily for the exploration for or

1 production of oil or natural gas;

2 (4) "oil" means petroleum, crude oil, and any substance
3 refined from petroleum or crude oil;

4 (5) "operator" means the person who, through contract,
5 lease, sublease or otherwise, exerts general supervision and control of
6 activities at the facility; the term includes, by way of example and not
7 limitation, prime or general contractors, the master of a vessel (and
8 his employer), or any other person who, through himself, his agents, or
9 contractors, undertakes the general functioning of the facility;

10 (6) "vessel" means any form or manner of watercraft, whether
11 or not capable of self-propulsion, except offshore platforms.

12 * Sec 2. AS 46.03.900 is amended by adding a new paragraph to read:

13 (23) "facility" means any offshore or onshore structure,
14 improvement, vessel, vehicle, land, enterprise, or endeavor.