

Introduced: 2/14/79  
Referred: Resources and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 205

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the prevention and control of oil  
7 pollution."

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

9 \* Section 1. AS 30.25.010 - 30.25.360 are repealed.

10 \* Sec. 2. AS 30.25 is amended by adding new sections to read:

11 Sec. 30.25.011. POLICY AND PURPOSE. (a) The legislature finds  
12 that:

13 (1) it is a matter of the highest urgency and priority to  
14 protect Alaska's coastal and inside water, estuaries, wetlands, beaches,  
15 and land from the damage which may be occasioned by the discharge of  
16 oil;

17 (2) the transfer, transportation, and offshore exploration  
18 for and production of oil within the jurisdiction of the state is a  
19 hazardous undertaking; oil discharges may cause both short- and long-  
20 term damage to the environment of the state, to owners and users of  
21 affected property, to public and private recreation, to residents of  
22 the state and other interests deriving livelihood from fishing, hunting,  
23 tourism and related activities, and to the beauty of the state; the  
24 intensity of oil exploration, production, transportation, and transfer  
25 operations in Alaska presents future threats of potentially catastrophic  
26 proportions, all of which are expressly declared to be inimical to the  
27 paramount interests of the state as set out in this section; these  
28 state interests outweigh any economic and liability burdens imposed by  
29 the legislature upon those engaged in oil exploration, production,

1 transportation, or transfer operations; and

2 (3) assuring sufficient capability, among industry, the  
3 state and the federal government, to contain and cleanup discharges of  
4 oil is of vital public interest; weather conditions, logistical con-  
5 straints and the relative paucity of manpower and equipment resources  
6 in the state increase the difficulty of oil discharge containment and  
7 cleanup in Alaska, making imperative an active state role; it is the  
8 policy of the state that, to the maximum extent practicable, prompt  
9 and adequate containment and cleanup of oil discharges is the respon-  
10 sibility of the discharger; it is therefore of the utmost importance  
11 to assure that those engaged in oil transfer, transportation, explora-  
12 tion, and production operations have sufficient resources and capa-  
13 bilities to respond to oil discharges, and to compensate third persons  
14 injured by those discharges.

15 (b) The legislature intends by the enactment of this legislation  
16 to:

17 (1) exercise the police power of the state through the  
18 Department of Environmental Conservation by conferring upon the depart-  
19 ment the authority and capability to deal with the hazards and threats  
20 posed by oil transfer, transportation, exploration and production  
21 operations and to encourage and ensure, in accordance with sec. 311 of  
22 the federal Clean Water Act, cooperation with the United States Coast  
23 Guard and other state and federal departments and agencies;

24 (2) require, through the maximum practicable use of private  
25 services and resources, the prompt containment and cleanup of oil  
26 discharges;

27 (3) provide assurance that persons suffering damage from  
28 these occurrences will be made whole promptly; and

29 (4) provide for the inspection and supervision of oil

1 transportation, transfer, oil storage, and offshore exploration and  
2 production activities, and guarantee the prompt cleanup of oil dis-  
3 charges and the payment of costs incurred.

4 Sec. 30.25.021. POLLUTION CONTROL ASSESSMENT. (a) At the  
5 commencement of each fiscal year, the Department of Revenue shall  
6 collect from each operator of an oil terminal facility the pollution  
7 control assessment for that fiscal year. All money received under  
8 this section shall be deposited in the general fund.

9 (b) Unless the legislature otherwise directs, and subject to AS  
10 30.25.131(b), the total pollution control assessment for any fiscal  
11 year must equal the appropriation for the department's oil pollution  
12 control program for that fiscal year, less any amount collected under  
13 AS 30.25.051 for the preceding fiscal year. The Department of Revenue  
14 shall apportion the total assessment for the fiscal year in the manner  
15 provided in AS 30.25.041.

16 (c) The assessment is payable within 30 days after the operator  
17 receives billing under (a) of this section. No person may cause or  
18 permit the transfer of oil to or from an oil terminal facility and a  
19 vessel if the operator of the facility has not paid the assessment  
20 within that 30-day period, and the transfer of oil may not resume  
21 until the operator has paid the assessment, together with an additional  
22 amount which represents five per cent of the assessment for each  
23 month, or portion of a month, following expiration of the 30-day  
24 period in which the assessment is unpaid.

25 (d) If an operator believes that the assessment is improper,  
26 unlawful or unconstitutional, he shall, within 30 days after billing  
27 under (c) of this section, pay the assessment under protest, and  
28 request an adjudicatory hearing from the department. Failure to pay  
29 the assessment under protest and request a hearing within the 30-day

1 period constitutes a waiver of the operator's right to administrative  
2 or judicial review of the assessment.

3 (e) If the department determines that the operator is entitled  
4 to a refund, the Department of Administration shall promptly pay the  
5 refund to the operator, together with interest computed at the rate of  
6 eight per cent per year.

7 (f) The superior court has jurisdiction under AS 44.62.560 to  
8 review decisions of the department with respect to hearing requests  
9 under (d) of this section. The Department of Administration shall  
10 promptly pay any refund judgment.

11 Sec. 30.25.031. OIL POLLUTION CONTROL PROGRAM BUDGET. (a) The  
12 department shall submit annually to the legislature, through the  
13 Department of Administration and the governor, in accordance with the  
14 Executive Budget Act (AS 37.07), an appropriation request for the  
15 department's oil pollution control program. Appropriation items may  
16 include:

- 17 (1) administrative costs related to this chapter;  
18 (2) research and development;  
19 (3) the estimated state-incurred expenses in containing and  
20 cleaning up non-catastrophic oil discharges for the succeeding fiscal  
21 year; and  
22 (4) acquisition or contract costs for oil spill cleanup or  
23 containment equipment or services.

24 (b) Unless the legislature otherwise directs, any amounts appro-  
25 priated under (a)(3) of this section are not one-year appropriations  
26 under AS 37.25.010 and remain available to the department until spent.  
27 Commencing with the appropriation request for fiscal year 1981, the  
28 request under (a)(3) of this section shall be reduced by that amount  
29 previously appropriated for that purpose which the department projects

1 will remain unspent at the end of the fiscal year.

2 (c) Unless the legislature otherwise directs, the pollution  
3 control assessment for a fiscal year, and amounts collected under AS  
4 30.25.051 in the preceding fiscal year, constitute program receipts  
5 for the oil pollution control program. Penalties assessed for late  
6 payment under AS 30.25.021(c) do not constitute program receipts. If  
7 program receipts for a fiscal year fall short of the amount appropriated  
8 under this section, the appropriation shall be correspondingly reduced.  
9 The appropriation may be reduced either pro rata for each appropriation  
10 item, or by reducing the appropriation for one or more items.

11 (d) Nothing in this section or AS 30.25.021 or 30.25.121 binds  
12 any legislature to make an appropriation for a particular purpose or  
13 amount.

14 Sec. 30.25.041. APPORTIONMENT OF ASSESSMENT. (a) The pollution  
15 control assessment shall be apportioned according to the oil throughput  
16 of each facility for the fiscal year preceding the assessment.

17 (b) If an oil terminal facility was not engaged in normal opera-  
18 tions throughout the fiscal year preceding assessment, the department  
19 shall estimate the likely throughput of the facility for the fiscal  
20 year for which the assessment is made, and that estimate must be used  
21 for the purposes of this section.

22 Sec. 30.25.051. RECOUPMENT OF CLEANUP EXPENSES. The department  
23 shall promptly seek reimbursement of any oil discharge cleanup or con-  
24 tainment expenses either under AS 46.03.760(e) or by use of an appli-  
25 cable federal fund. If the department is able to obtain reimbursement  
26 for a portion of its expenses from a federal fund, the remainder of  
27 the expenses incurred may be recouped under AS 46.03.760(e). Funds  
28 reimbursed under this section must be deposited in the general fund.

29 Sec. 30.25.061. REMOVAL OF OIL DISCHARGES. (a) It is the

1 intent of the legislature that oil discharge containment or cleanup  
2 measures undertaken, directed, or authorized by the department supple-  
3 ment and support federal cleanup and containment actions under sec.  
4 311 of the Clean Water Act.

5 (b) Any person causing or permitting the discharge of oil shall  
6 immediately contain and cleanup the discharge. The department may  
7 waive this requirement if it determines, in consultation with the United  
8 States Coast Guard or United States Environmental Protection Agency,  
9 as appropriate, that containment or cleanup is technically infeasible,  
10 or if the cleanup or containment effort would result in greater environ-  
11 mental damage than the discharge itself.

12 (c) The containment and cleanup of discharged oil must be carried  
13 out in a manner approved by the department. The disposal of wastes  
14 generated as a result of containment or cleanup operations must be  
15 disposed of in a manner approved by the department. The requirement  
16 of this subsection for approval of containment and cleanup operations  
17 does not apply to the United States Coast Guard or United States En-  
18 vironmental Protection Agency acting under the authority of sec.  
19 311(c) or (d) of the Clean Water Act.

20 (d) If the department determines that containment or cleanup  
21 activities are not adequate, it may direct the person engaged in the  
22 operations to cease, undertake operations itself through contract or  
23 its own resources, or both. The department may not direct the cessation  
24 of containment or cleanup activities undertaken by the United States  
25 Coast Guard or United States Environmental Protection Agency under  
26 sec. 311 of the Clean Water Act; however, the department may undertake,  
27 direct, or authorize supplemental cleanup or containment efforts.

28 (e) The department shall insure that all oil discharges of  
29 unexplained origin are immediately contained and cleaned up.

1 (f) The department may enter into memoranda of understanding or  
2 cooperative agreements with the United States Coast Guard, the United  
3 States Environmental Protection Agency, and other persons in order to  
4 facilitate coordinated and effective oil discharge response in Alaska.

5 Sec. 30.25.071. OIL DISCHARGE CONTINGENCY PLANS. (a) No person  
6 may cause or permit the operation of an oil terminal facility in the  
7 state unless an oil discharge contingency plan for that facility has  
8 been approved by the department.

9 (b) After January 1, 1980, no person may operate an offshore  
10 exploration or production facility in the state unless an oil discharge  
11 contingency plan for that facility has been approved by the department.

12 (c) No person may cause or permit the transfer of oil to or from  
13 a tank vessel, or, after January 1, 1980, an oil barge larger than 500  
14 gross registered tons, unless an oil discharge contingency plan for  
15 that tank vessel or oil barge has been approved by the department.  
16 Except for prosecutions under AS 46.03.790(b), it is not a defense to  
17 an action brought for violation of this subsection that the person  
18 charged believed that a current oil discharge contingency plan for the  
19 tank vessel or oil barge had been approved by the department.

20 (d) Approval of an oil discharge contingency plan expires one  
21 year from its issuance, and may be renewed annually. If a person has  
22 obtained approval of an oil spill contingency plan under the pro-  
23 visions of AS 30.25 as it existed before the effective date of this  
24 Act for fiscal year 1979, that plan is considered an approved plan  
25 under this section, and may be submitted for renewal for fiscal year  
26 1980 and subsequent years.

27 (e) The department may attach terms and conditions to its  
28 approval of oil discharge contingency plans which it determines are  
29 necessary to insure that the applicant has access to sufficient re-

1 sources to contain, clean up, and mitigate potential oil discharges  
2 from the facility or vessel within the shortest feasible time, and suf-  
3 ficiently to protect environmentally sensitive areas. The plan must  
4 provide for the use of the best available technology for the size and  
5 location of the facility or size and route of the vessel. The depart-  
6 ment may require applicants to undertake discharge exercises.

7 (f) The department, after notice and opportunity for hearing,  
8 may modify its approval of an oil discharge contingency plan if it  
9 determines that a change has occurred in the operation of the facility  
10 or vessel necessitating an amended or supplemented plan, or the  
11 operator's discharge experience demonstrates a necessity for modifi-  
12 cation. The department, after notice and opportunity for hearing, may  
13 revoke its approval of a contingency plan if it determines that:

14 (1) approval was obtained by fraud or misrepresentation;

15 (2) the operator does not have access to the quality or  
16 quantity of resources identified in the plan; or

17 (3) a term or condition of approval has been violated.

18 Sec. 30.25.081. PROOF OF FINANCIAL RESPONSIBILITY. (a) No  
19 person may cause or permit the operation of an oil terminal facility  
20 in the state unless proof of financial responsibility for that facility  
21 has been accepted by the department. Financial responsibility must be  
22 in an amount not less than \$10, per incident, for each barrel of  
23 storage capacity at the facility, or \$1 million, whichever is greater,  
24 but need not exceed \$50 million.

25 (b) After January 1, 1980, no person may cause or permit the  
26 operation of an offshore exploration or production facility in the  
27 state unless proof of financial responsibility for that facility has  
28 been accepted by the department. Proof of financial responsibility  
29 must be not less than \$35 million per incident.

1 (c) No person may cause or permit the transfer of oil to or from  
2 a tank vessel, or, after January 1, 1980, an oil barge larger than 500  
3 gross registered tons, unless proof of financial responsibility for  
4 that tank vessel or barge has been accepted by the department.

5 Financial responsibility must be in the following amounts:

6 (1) for a tank vessel or oil barge involved in the transpor-  
7 tation of Trans-Alaska Pipeline oil, the amount required by the  
8 Federal Maritime Commission under sec. 304(c)(3) of the Trans-Alaska  
9 Pipeline Authorization Act (43 U.S.C. sec. 1653(c)(3)); and

10 (2) for any other tank vessel or oil barge, the amount  
11 required by sec. 311 (p)(1) of the Clean Water Act, or \$1 million,  
12 whichever is greater, with respect to oil barges, or \$20 million, which-  
13 ever is greater, with respect to tank vessels.

14 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
15 defense to an action brought for violation of (c) of this section that  
16 the person charged believed that the vessel operator possessed proof  
17 of financial responsibility accepted by the department.

18 (e) Financial responsibility may be demonstrated by self-insur-  
19 ance, insurance, surety, or guarantee, under terms the department may  
20 prescribe. Any action brought under either AS 46.03.758, 46.03.760(a)  
21 or (e), or 46.03.822 may be brought in the courts of the state directly  
22 against the insurer or any other person providing evidence of financial  
23 responsibility. The applicant, and any insurer, surety, or guarantor  
24 must appoint an agent for service of process in the state. Any insurer  
25 must be either authorized to sell insurance in the state by the Depart-  
26 ment of Commerce and Economic Development, or be an unauthorized  
27 insurer listed by the Department of Commerce and Economic Development  
28 as not disapproved for use in the state.

29 (f) Acceptance of proof of financial responsibility expires:

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(1) one year from its issuance for self-insurance;

(2) upon the effective date of any change in the surety bond, guarantee, or insurance agreement; the department must be notified at least 30 days in advance of the effective date of any change; or

(3) upon the expiration or cancellation of the surety bond, guarantee, or insurance agreement; the department must be notified at least 30 days in advance of the effective date of any cancellation.

(g) Application for renewal of acceptance under this section must be filed at least 30 days before expiration under (f) of this section.

(h) If a person has obtained acceptance of proof of financial responsibility under the provisions of AS 30.25 as it existed before the effective date of this Act for fiscal year 1979, the person must comply with the provisions of this section before expiration of the acceptance under (f) of this section, or January 1, 1980, whichever first occurs.

(i) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that:

(1) acceptance was procured by fraud or misrepresentation; or

(2) there has occurred a change of circumstances (other than a change specified in (f)(1)-(3) of this section) which would have warranted denial of the application.

(j) Financial responsibility under this section must extend to any loss compensible under AS 46.03.760(e) or 46.03.822 and any assessment under AS 46.03.758 or 46.03.760(a).

Sec. 30.25.091. EXEMPTIONS. (a) Because of the restricted nature of their operations and the minimal danger to the environment

1 posed by their activities, the following are exempt from the require-  
2 ments of AS 30.25.021, 30.25.071, and 30.25.081:

3 (1) a marina used or capable of being used to store less  
4 than 10,000 barrels of refined petroleum products or their by-products;

5 (2) an onshore limited capacity facility used or capable of  
6 being used to store less than 25,000 barrels of refined petroleum  
7 products or their by-products; and

8 (3) a seafood processing vessel or tender when, incidental  
9 to its seafood processing operations, it transfers refined petroleum  
10 products to a fishing boat.

11 (b) For the purposes of (a) of this section:

12 (1) "marina" means a person or facility engaged in the  
13 business, whether onshore or offshore, of servicing the fuel require-  
14 ments of aircraft, pleasure watercraft, fishing boats, and other  
15 commercial vessels, where the purchaser and the consumer are the same  
16 entity, and the fuel capacity of the servicing or serviced vessel is  
17 less than 10,000 barrels of refined petroleum products or their by-  
18 products, and is not covered by the definition of limited capacity  
19 facility in (2) of this subsection;

20 (2) "limited capacity facility" means a small tank farm,  
21 small bulk fuel storage facility, or other onshore facility storing  
22 refined petroleum products or their by-products, except asphalt, and  
23 which is engaged in the business of servicing the requirements of  
24 product transporters and vendors, or storing the fuel requirements for  
25 village domestic, school, or commercial use, including but not limited  
26 to fish processing, logging operations, construction projects, or  
27 electric power generation.

28 Sec. 30.25.101. INSPECTIONS. Oil terminal facilities, offshore  
29 exploration and production facilities, tank vessels, and oil barges

1 are subject to inspection by the department to ensure compliance with  
2 the provisions of this chapter.

3 Sec. 30.25.111. TANK VESSEL REGULATIONS. (a) The department  
4 may, to the extent permitted by the Port and Tanker Safety Act of 1978  
5 (P.L. 95-474), adopt traffic and navigation rules, including tug  
6 assistance requirements, for the operation of tank vessels in the  
7 various ports and waters of the state.

8 (b) In adopting these regulations, the department may prescribe  
9 the maximum and minimum speed for vessels subject to this chapter and  
10 the weather conditions under which the movement of these vessels may  
11 be prohibited.

12 (c) The department shall consult and cooperate with the United  
13 States Coast Guard in the establishment, adoption, maintenance,  
14 administration, and enforcement of the traffic and navigation regu-  
15 lations adopted under this chapter.

16 Sec. 30.25.121. SCOPE OF REGULATIONS. The department shall  
17 adopt regulations which are necessary to carry out the purposes of  
18 this chapter and which do not conflict with and are not pre-empted by  
19 federal law or regulations, including provisions on the following:

20 (1) operation, inspection, and abandonment requirements for  
21 oil terminal facilities, tank vessels, oil barges, and offshore explora-  
22 tion and production facilities;

23 (2) procedures and methods of reporting oil discharges and  
24 other occurrences prohibited or regulated by this chapter;

25 (3) procedures and methods for the transfer of oil between  
26 a tank vessel or oil barge and an oil terminal facility;

27 (4) procedures, methods, means, and equipment to be used in  
28 the abatement, containment, or removal of oil discharges;

29 (5) development and implementation of criteria and plans to

1 meet oil discharges, including regulation of the use of chemical or  
2 biological agents;

3 (6) requirements for the safety and operation of tank  
4 vessels, oil barges, motor vehicles, motorized equipment and other  
5 equipment relating to the use and operation of terminals and offshore  
6 exploration and production facilities;

7 (7) minimum personnel, equipment, and operations standards  
8 for oil discharge cleanup services; and

9 (8) other matters, as the department considers necessary to  
10 carry out the purposes of this chapter.

11 Sec. 30.25.131. CATASTROPHIC OIL DISCHARGES. (a) The actual or  
12 imminent occurrence of a catastrophic oil discharge constitutes a  
13 disaster emergency under AS 26.23. However, the department shall  
14 perform the duties of the Alaska division of emergency services under  
15 AS 26.23.040 as they apply to catastrophic oil discharges. The  
16 department shall consult and coordinate its duties under this section  
17 with the Alaska division of emergency services.

18 (b) The department shall promptly, under AS 30.25.051, seek  
19 reimbursement of any oil discharge cleanup or containment expenses  
20 incurred as a result of an actual or imminent catastrophic oil discharge  
21 under AS 26.23.050. Notwithstanding AS 30.25.021(b), and unless the  
22 legislature directs otherwise, the total pollution control assessment  
23 for the fiscal year following the expenditure must include those  
24 expenses for which reimbursement has not been received. Any expenses  
25 subsequently reimbursed must, unless the legislature directs otherwise,  
26 be subtracted in the computation of the succeeding fiscal year's  
27 assessment under AS 30.25.021(b).

28 Sec. 30.25.141. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT,  
29 EXPENSES. (a) The department may establish and maintain at ports,

1 harbors, or other locations in the state, the personnel, equipment,  
2 and supplies which, in its judgment, are necessary to carry out the  
3 provisions of this chapter. Whenever feasible, the department shall  
4 enter into contracts with persons or private organizations to provide  
5 the oil discharge containment and cleanup personnel, equipment, or  
6 other services or supplies which may be required to carry out the  
7 provisions of this chapter.

8 (b) Inspection and enforcement employees of the department desig-  
9 nated by the commissioner are peace officers under AS 01.10.060(6) in  
10 the performance of their duties under this chapter and AS 46.03.

11 Sec. 30.25.151. INTERSTATE COMPACTS AUTHORIZED. The governor  
12 may execute supplementary agreements, reciprocal arrangements, or  
13 compacts with any other state, subject to the approval, if required by  
14 the United States Constitution, of the Congress of the United States,  
15 for the purpose of implementing this chapter.

16 Sec. 30.25.161. MUNICIPAL ORDINANCES, REGULATIONS: POWERS  
17 LIMITED. If a conflict occurs between a provision of this chapter, or  
18 a regulation, order, decision, or other determination of the department  
19 and a charter, ordinance, permit, regulation, franchise, decision,  
20 or other determination of a municipality, the provisions of this  
21 chapter or the regulation, order, decision, or other determination of  
22 the department prevail. However, nothing in this chapter precludes  
23 a municipality, by ordinance or regulation, from exercising its police  
24 powers in the area regulated by this chapter.

25 Sec. 30.25.171. CONSTRUCTION. This chapter shall be liberally  
26 construed to effect the purposes set out in AS 30.25.010.

27 Sec. 30.25.181. DEFINITIONS. In this chapter, unless the  
28 context requires otherwise,

29 (1) "barrel" means 42 U.S. gallons at 60 degrees Fahrenheit;

1 (2) "catastrophic oil discharge" means any oil discharge in  
2 excess of 100,000 barrels, and any other discharge which the governor  
3 determines presents a grave and substantial threat to the economy or  
4 environment of the state;

5 (3) "Clean Water Act" means the Federal Water Pollution  
6 Control Act of 1972 (P.L. 92.500), as amended by the Clean Water Act  
7 of 1977 (P.L. 95-217);

8 (4) "commissioner" means the commissioner of environmental  
9 conservation;

10 (5) "containment and cleanup" includes all direct and  
11 indirect efforts associated with the prevention, abatement, contain-  
12 ment or removal of the pollutant, restoration of the environment to  
13 its former state, and all incidental administrative costs;

14 (6) "department" means the Department of Environmental  
15 Conservation;

16 (7) "discharge" means any spilling, leaking, pumping,  
17 pouring, emitting, emptying, or dumping;

18 (8) "offshore exploration or production facility" means any  
19 platform, vessel or other facility used to explore for or produce  
20 hydrocarbons at any point seaward of the line of marine vegetation; the  
21 term does not include vessels used for stratigraphic drilling or other  
22 operations which are not authorized or intended to drill to a producing  
23 formation;

24 (9) "oil" means oil of any kind and in any form, whether  
25 crude, refined, or a petroleum by-product, including but not limited  
26 to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil  
27 refuse, oil mixed with other wastes, crude oils, liquefied natural  
28 gas, propane, butane, or other liquid hydrocarbons regardless of  
29 specific gravity;

1 (10) "oil barge" means a non-self propelled vessel which is  
2 not self-propelled and which is constructed or converted to carry oil  
3 as cargo in bulk;

4 (11) "oil terminal facility" means an onshore or offshore  
5 facility of any kind, and related appurtenances, including but not  
6 limited to a deepwater port, located in, on, or under the surface of  
7 any land or water of the state, including tide and submerged land,  
8 which is used or capable of being used for the purpose of transfer-  
9 ring, processing, refining, or storing oil; a vessel is considered an  
10 oil terminal facility only in the event of a ship-to-ship transfer of  
11 oil, and only that vessel going to or coming from the place of transfer  
12 and the oil terminal facility; however, an oil terminal facility does  
13 not include a seafood processing vessel or tender when, incidental to  
14 its seafood processing operations, it transfers refined petroleum  
15 products to a fishing boat;

16 (12) "operator" and "operate" have the same meaning as in  
17 AS 46.03.758(7);

18 (13) "person" has the same meaning as in AS 46.03.900(13);

19 (14) "self-propelled" means propelled either by machinery  
20 aboard the vessel, or by a tug or other vessel secured into the cargo-  
21 carrying vessel through special hull design;

22 (15) "tank vessel" means a self-propelled vessel that is  
23 constructed or converted to carry liquid bulk cargo in tanks and  
24 includes tankers, tankships, and combination carriers when carrying  
25 oil; the term does not include vessels carrying oil in drums, barrels,  
26 or other packages, or vessels carrying oil as fuel or stores for that  
27 vessel;

28 (16) "vessel" includes tank vessels and oil barges;

29 (17) "water of the state" has the same meaning as "waters"

1 in AS 46.03.900(22).

2 \* Sec. 3. AS 46.03.750 is repealed and re-enacted to read:

3 Sec. 46.03.750. BALLAST WATER DISCHARGE. No person may cause or  
4 permit the discharge of ballast water from a cargo tank of a tank  
5 vessel into the waters of the state. No tank vessel may take on  
6 petroleum or any petroleum product or by-product as cargo unless it  
7 arrives in ports in the state without having discharged ballast from  
8 cargo tanks into the waters of the state and the master of the vessel  
9 certifies that fact on forms provided by the department.

10 \* Sec. 4. AS 46.03.755(a) is amended to read:

11 (a) A person in charge of a facility, operation or vessel, as  
12 soon as he has knowledge of any discharge from the facility, operation  
13 or vessel in violation of secs. 740 or 750 of this chapter [OR AS  
14 30.25.020,] shall immediately notify the department of the discharge.

15 \* Sec. 5. AS 46.03.760(a) is amended to read:

16 (a) A person who violates or causes or permits to be violated a  
17 provision of this chapter or AS 30.25 [AS 30.25.020], or a regulation,  
18 a lawful order of the department, or a permit, approval, or acceptance  
19 [OR CERTIFICATE], or term or condition of a permit, approval, or accept-  
20 ance [OR CERTIFICATE] issued under this chapter or AS 30.25 is liable,  
21 in a civil action, to the state for a sum to be assessed by the court  
22 of not less than \$500 nor more than \$100,000 for the initial violation,  
23 nor more than \$5,000 for each day thereafter on which the violation  
24 continues, and which shall reflect, when applicable,

25 (1) reasonable compensation in the nature of liquidated  
26 damages for any adverse environmental effects caused by the violation,  
27 which shall be determined by the court according to the toxicity,  
28 degradability and dispersal characteristics of the substance dis-  
29 charged, the sensitivity of the receiving environment, and the degree

1 to which the discharge degrades existing environmental quality;

2 (2) reasonable costs incurred by the state in detection,  
3 investigation, and attempted correction of the violation [, EXCEPT  
4 DISBURSEMENTS FOR POLLUTION ABATEMENT COSTS UNDER AS 30.25.260(a)(2)];  
5 and

6 (3) the economic savings realized by the person in not  
7 complying with the requirement for which a violation is charged.

8 \* Sec. 6. AS 46.03.760(e) is amended to read:

9 (e) In addition to liability under (a) - (d) of this section, a  
10 person who violates or causes or permits to be violated a provision of  
11 secs. 740 - 750 of this chapter is liable to the state, in a civil  
12 action brought under sec. 822 of this chapter, for the full amount of  
13 actual damages caused to the state by the violation, including direct  
14 and indirect costs associated with the abatement, containment or  
15 removal of the pollutant, restoration of the environment to its former  
16 state, and all incidental administrative costs. [THAT PORTION OF THE  
17 DAMAGES RECOVERED BY THE STATE IN A CIVIL ACTION BROUGHT UNDER SEC.  
18 822 OF THIS CHAPTER ATTRIBUTABLE TO COSTS INCURRED BY THE DEPARTMENT  
19 IN THE ABATEMENT, CONTAINMENT OR REMOVAL OF THE POLLUTANT RESULTING  
20 FROM A DISCHARGE OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-  
21 PRODUCTS SHALL BE DEPOSITED IN THE COASTAL PROTECTION FUND CREATED  
22 UNDER AS 30.25.220. EXCEPT FOR SPECIAL RISK CHARGES COLLECTED UNDER  
23 AS 30.25.270, A PERSON HOLDING A RISK AVOIDANCE CERTIFICATE MAY NOT BE  
24 HELD LIABLE FOR COSTS ASSOCIATED WITH THE ABATEMENT, CONTAINMENT OR  
25 REMOVAL OF THE POLLUTANT.]

26 \* Sec. 7. AS 46.03.765 is amended to read:

27 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
28 tion to enjoin a violation of this chapter or AS 30.25, or of a regu-  
29 lation, lawful order of the department, or permit, approval, or

1 acceptance [OR CERTIFICATE], or term or condition of a permit, approval,  
2 or acceptance [OR CERTIFICATE] issued under this chapter or AS 30.25.  
3 In actions brought under this section, temporary or preliminary relief  
4 may be obtained upon a showing of an imminent threat of continued  
5 violation, and probable success on the merits, without the necessity  
6 of demonstrating physical irreparable harm. The balance of equities  
7 in actions under this section may affect the timing of compliance, but  
8 not the necessity of compliance within a reasonable period of time.

9 \* Sec. 8. AS 46.03.790(a) is amended to read:

10 (a) A person who violates or who causes or permits a violation  
11 of a provision of this chapter or AS 30.25, or of a regulation, lawful  
12 order of the department, or permit, approval, or acceptance [OR CERTI-  
13 FICATE], or term or condition of a permit, approval, or acceptance  
14 [OR CERTIFICATE] issued under this chapter or AS 30.25 is guilty of a  
15 misdemeanor and, upon conviction, is punishable by a fine of not more  
16 than \$25,000 and costs of prosecution.

17 \* Sec. 9. AS 46.03.790(b) is amended to read:

18 (b) A person who wilfully violates a provision of this chapter,  
19 or of a regulation, lawful order of the department, or permit, approval,  
20 or acceptance [OR CERTIFICATE], or term or condition of a permit,  
21 approval, or acceptance [OR CERTIFICATE] issued under this chapter or  
22 AS 30.25 is guilty of a misdemeanor and, upon conviction, is punish-  
23 able by a fine of not more than \$25,000 and costs of prosecution, or  
24 by imprisonment for not more than year, or by fine, costs, and impri-  
25 sonment.

26 \* Sec. 10. AS 30.20 is repealed.  
27  
28  
29