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1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 2 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection, control, and reduc-
7 tion of damage to the environment; to the reduction of
8 litter and the recovery of materials and energy from
9 litter; and to the prevention and control of oil pollu-
10 tion; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDING AND INTENT. (a) The legislature finds
13 that a litter-free and pollution-free environment is possible through enact-
14 ment of strong and well-balanced programs of litter and pollution reduction,
15 prevention, and control, and that programs of litter and pollution reduction,
16 prevention, and control will result in significant conservation of natural
17 resources which will make these resources available for energy uses.

18 (b) In enacting this legislation, it is the intent of the legislature
19 (1) to protect Alaska's land and water from the damage which may
20 be occasioned by litter and pollution and to maintain the natural environment
21 as nearly litter free and pollution free as possible to prevent and minimize
22 both short-term and long-term damage to the environment and beauty of the
23 state, to owners and users of affected property, to public and private recrea-
24 tion, to residents of the state, and to visitors and others engaged in
25 fishing, hunting, tourism, and related activities;

26 (2) that the programs enacted are designed to make littering and
27 polluting unacceptable practices, to encourage local solutions for the preven-
28 tion of littering, and to assure sufficient capability among industrial and
29 commercial interests, and state and federal governments, to contain and clean

1 up pollution, especially oil discharges;

2 (3) to encourage and stimulate private and public recovery of
3 materials and energy from litter through recycling centers and other means,
4 and to require, through the maximum practicable use of private services and
5 resources by those engaged in oil storage, transfer, transportation, explora-
6 tion, and production operations, the prompt containment and cleanup of oil
7 discharges and the provision for compensation of third persons injured by
8 those discharges; and

9 (4) that the state, in carrying out programs of litter and pollu-
10 tion prevention and control, should continue to cooperate with appropriate
11 federal agencies, protecting the legitimate interests of the state while
12 working to remove any duplicative or potentially conflicting regulatory
13 activities.

14 * Sec. 2. AS 41 is amended by adding a new chapter to read:

15 CHAPTER 21. RECYCLING AND REDUCTION OF LITTER.

16 Sec. 41.21.010. POWERS AND DUTIES OF THE DEPARTMENT. The depart-
17 ment shall

18 (1) serve as the coordinating agency among the various govern-
19 ment and private organizations in the state which are involved in litter
20 control and reduction and the recovery of energy or materials from
21 litter;

22 (2) assist local governments in the adoption and amendment of
23 ordinances relating to litter control and reduction;

24 (3) encourage, organize and coordinate voluntary local in-
25 formation campaigns which seek to focus the attention of the public on
26 the reduction of litter and the recovery of materials and energy from
27 litter;

28 (4) encourage, organize and coordinate voluntary or nonprofit
29 local programs for the recovery of materials or energy from litter;

1 (5) encourage federal, state and local agencies to aid pro-
2 grams for the recovery of materials and energy from litter by providing
3 publicity which encourages those programs and by allowing the use of
4 publicly owned land, buildings, or equipment for those programs whenever
5 possible;

6 (6) investigate the availability of, apply for, receive, and
7 expend grants, loans or other funds available from any source, and, if
8 it is appropriate and feasible, accept nonmonetary assistance in the
9 form of services or equipment for use in programs established under this
10 chapter;

11 (7) determine the types of materials or energy which may be
12 profitably recovered from litter, and adopt regulations under the Admin-
13 istrative Procedure Act (AS 44.62) which require the recovery of the
14 materials or energy;

15 (8) adopt other regulations under the Administrative Proce-
16 dure Act (AS 44.62) necessary to implement this chapter; and

17 (9) develop methods for the measurement of litter in the
18 state and encourage competition between municipalities to establish
19 which municipality has the least litter.

20 Sec. 41.21.020. ANNUAL REPORT. Not later than six months after
21 the end of each fiscal year, the department shall prepare a detailed
22 report describing and evaluating the actions taken and programs estab-
23 lished under this chapter for submission to the governor and the legisla-
24 ture. The report must include

25 (1) the status and results of all grants made under this
26 chapter;

27 (2) an evaluation of the progress achieved by litter control
28 and reduction programs; and

29 (3) an evaluation of the resources and energy recovered from

1 litter in the state.

2 Sec. 41.21.030. ADVISORY COUNCIL. (a) There is created an advi-
3 sory council to the department, which shall advise the department con-
4 cerning the litter control and reduction, source separation and other
5 programs for the recovery of energy and materials from litter under this
6 chapter. The council may encourage the participation of industry,
7 labor, municipalities, and the public in the programs administered by
8 the department.

9 (b) The council consists of seven members appointed by the governor
10 who are aware of and concerned with achieving the goals of this chapter.
11 The members serve at the pleasure of the governor.

12 (c) The council shall meet annually, and may meet more frequently
13 if necessary or desired. The members of the council serve without
14 compensation but are entitled to per diem and travel expenses authorized
15 by law for boards and commissions.

16 Sec. 41.21.040. PUBLIC AWARENESS; MOTIVATION. The department
17 shall establish, provide advice concerning, and coordinate programs
18 designed to

19 (1) encourage the public to recover material and energy from
20 litter;

21 (2) use existing, and develop new, techniques and programs to
22 reduce litter and littering;

23 (3) encourage the public not to litter and to engage in
24 clean-up efforts; and

25 (4) advise the public of the state's anti-litter laws and
26 regulations and encourage enforcement of those laws and regulations.

27 Sec. 41.21.050. LITTER RECEPTACLES AND ANTI-LITTER SYMBOL. (a)
28 The department shall designate one or more types and sizes of litter
29 receptacles for use in the state. The department shall make available

1 for distribution throughout the state an anti-litter symbol of a uniform
2 color and design adopted by the department. This anti-litter symbol
3 must bear a statement of the penalties for littering, and the department
4 shall design the anti-litter symbol so that it may be attached to litter
5 receptacles. To aid public recognition and use of litter receptacles,
6 the department may adopt an anti-litter symbol used in another state.
7 The anti-litter symbol designed by the department must be attached to
8 litter receptacles located in the public places of the state by the
9 person or agency responsible for the placement of those receptacles.

10 (b) Litter receptacles designated for use in the state by the
11 department shall be placed at public places in the state unless the
12 public place is specifically exempted by regulations adopted by the com-
13 missioner under the Administrative Procedure Act (AS 44.62). The number
14 of receptacles required to be placed in each public place shall be
15 determined by a formula related to the need for those receptacles. The
16 requirements of this subsection are satisfied by the use of a litter
17 receptacle which was in use before July 1, 1980, if the anti-litter
18 symbol of the state is attached to the receptacle.

19 (c) A person owning or operating a privately owned public place at
20 which litter receptacles are required under (b) of this section shall
21 place litter receptacles at the public place at his own expense.

22 (d) Compliance with this section requires proper upkeep, mainte-
23 nance and repair of a litter receptacle sufficient to permit the re-
24 ceptacle to serve the function for which it was designed and to prevent
25 the receptacle from becoming unsightly.

26 (e) Responsibility for the placement of litter receptacles at
27 publicly owned public places and for the removal of litter from those
28 litter receptacles remains with the municipality or other public agency
29 performing litter removal. Removal of litter from litter receptacles

1 placed at privately owned public places remains the responsibility of
2 the owner or operator of the privately owned public place.

3 (f) A person may not damage, deface, abuse or misuse a litter re-
4 ceptacle not owned by him so as to interfere with its proper function or
5 to detract from its appearance.

6 (g) A person may not deposit leaves, clippings, prunings, garden
7 refuse or household waste materials in a litter receptacle unless he has
8 the permission of the owner of that receptacle.

9 (h) Except as provided in (i) of this section, a person who vio-
10 lates the provisions of (b) - (g) of this section is guilty of a viola-
11 tion and in addition to the punishment imposed by AS 12.55.035(b)(5),
12 the court may order a person who violates this section to gather and
13 dispose of litter in an area and for a length of time determined by the
14 court.

15 (i) If a municipality of the state adopts an ordinance which pro-
16 hibits the same conduct prohibited by (b) - (g) of this section, a
17 violation of (b) - (g) of this section which occurs in the municipality
18 is punishable under the provisions of the municipal ordinance if the
19 punishment imposed under the ordinance is equal to or greater than the
20 punishment imposed by AS 12.55.035(b)(5).

21 Sec. 41.21.060. LITTER BAGS. The department shall design and have
22 produced a biodegradable litter bag bearing the state anti-litter symbol
23 and a statement of the penalties for littering in the state. The depart-
24 ment shall make litter bags available to the division of motor vehicles
25 in the Department of Public Safety for this purpose. The division of
26 motor vehicles shall distribute one litter bag to each person who applies
27 for registration or reregistration of his motor vehicle and shall notify
28 the person of his responsibilities under the law. The department shall
29 make litter bags available to all vessel owners and persons entering the

1 state by automobile. The commissioner shall designate distribution
2 points for the broadest possible distribution of litter bags to persons
3 entering the state by automobile or vessel.

4 Sec. 41.21.070. LITTER PATROL. (a) The department shall establish
5 a youth litter patrol program for the employment of young people on a
6 seasonal basis. The department shall cooperate with federal, state or
7 municipal programs that either employ young people or encourage their
8 employment. The department may contract with other state agencies to
9 provide administration and other support for the youth litter patrol
10 established by this section.

11 (b) The department may adopt regulations under the Administrative
12 Procedure Act (AS 44.62) which are necessary to implement this section.

13 Sec. 41.21.080. LITTERING PROHIBITED. (a) A person may not
14 throw, drop, deposit, discard or otherwise dispose of litter from a
15 vehicle or otherwise, on public or private property in the state or in
16 waters in the state or under state jurisdiction unless

17 (1) the property is designated by a state agency or munici-
18 pality as a site for the sanitary disposal of garbage or refuse, and the
19 person is authorized to use the site for that purpose; or

20 (2) litter is placed in a litter receptacle so that the
21 litter is prevented from being carried away or deposited by the elements
22 upon public or private property or waters in the state or under state
23 jurisdiction.

24 (b) A vehicle may not be driven or moved on a public highway or
25 right-of-way unless it is constructed, loaded or covered to prevent its
26 load from dropping, sifting, leaking or otherwise escaping from the
27 vehicle. This subsection does not apply to a vehicle used (1) to deposit
28 salt or sand to secure traction, (2) by a public agency to clean or
29 maintain highways, or (3) to transport agricultural, mining or timber

1 products. A person who operates a vehicle from which an object has
2 fallen or escaped which obstructs or endangers travel upon a public
3 highway or right-of-way shall immediately remove the object at his own
4 expense or pay the cost of removal incurred by the state or by a person.

5 (c) A person who violates this section is guilty of a class B
6 misdemeanor, and in addition to the punishment imposed by AS 12.55.035-
7 (b)(4) and 12.55.135(b), the court may order the person to gather and
8 dispose of litter in an area and for a length of time determined by the
9 court.

10 Sec. 41.21.090. PROHIBITED BEVERAGE CONTAINERS. (a) Beginning
11 October 1, 1981, a person may not sell or offer to sell a non-glass
12 beverage container which is designed and constructed so that the con-
13 tainer is opened by detaching a metal ring or tab. This section does
14 not apply to a beverage container which is opened by a detachable piece
15 of tape, foil, or other soft material.

16 (b) Beginning October 1, 1981, a person may not sell or offer to
17 sell beverage containers which are held together by plastic rings or
18 similar plastic devices which are not degradable.

19 (c) A person who violates this section is guilty of a violation.
20 Each sale or offer to sell is a separate offense.

21 Sec. 41.21.100. NOTICE TO PUBLIC. The penalties imposed for
22 littering shall be posted along the public highways of the state, at
23 visitor centers, at entrances to state parks and recreational areas, at
24 public beaches, and other publicly owned public places the commissioner
25 determines necessary to accomplish the purposes of this chapter. The
26 state agency or municipality responsible for litter removal from a
27 public place shall post the notice required by this section.

28 Sec. 41.21.110. ENFORCEMENT AUTHORITY. (a) The following persons
29 are authorized to enforce the provisions of this chapter:

- 1 (1) a state employee authorized by the commissioner; and
2 (2) a peace officer.

3 (b) The department shall prescribe a citation form which shall be
4 used by all peace officers and persons in the state who are authorized
5 to enforce the provisions of this chapter.

6 Sec. 41.21.120. GRANTS. The department may make grants to state
7 agencies, to municipalities, and to private organizations including
8 nonprofit organizations for the establishment and operation of programs
9 authorized under this chapter. A grant under this section may not
10 exceed 18 months. A program qualifying for a grant under this section
11 may include

12 (1) courses of instruction at, or the distribution of infor-
13 mative materials to, elementary and secondary schools;

14 (2) purchase and erection of roadside signs;

15 (3) organization and operation of litter removal activities
16 conducted by municipalities, private organizations or service groups
17 using volunteer help;

18 (4) a public information program to inform the public con-
19 cerning the reduction of litter using the media including use of the
20 electronic media;

21 (5) expansion of existing and planning, design and construc-
22 tion of new facilities for the recovery of materials and energy from
23 litter;

24 (6) research and evaluation of markets for the materials and
25 energy recovered from litter;

26 (7) advice and assistance, including information and con-
27 sultation on available technology, operating procedures, organizational
28 arrangements, markets for materials or energy obtained from litter,
29 transportation alternatives, and publicity techniques;

1 (8) surveys by public agencies or recognized research organi-
2 zations to assess the amount and composition of litter, and rates of
3 littering;

4 (9) the purchase of litter receptacles;

5 (10) the creation or expansion of litter law enforcement
6 programs;

7 (11) the initial purchase or lease of recycling equipment, the
8 cost of operating that equipment, and the cost of storing and transport-
9 ing materials before and after those materials are recycled.

10 Sec. 41.21.130. CONDITIONS FOR GRANTS. (a) The department shall
11 adopt regulations under the Administrative Procedure Act (AS 44.62)
12 which establish

13 (1) eligibility requirements for applicants for a grant under
14 AS 41.21.120;

15 (2) standards for the evaluation of proposals submitted by
16 applicants for grants under AS 41.21.120; and

17 (3) other conditions for the receipt of a grant under AS 41.-
18 21.120 which are necessary to achieve the purposes of this chapter.

19 (b) The regulations adopted by the department under (a) of this
20 section must meet the following criteria:

21 (1) if there is not enough money for grants to all eligible
22 applicants, the following shall receive priority:

23 (A) a proposed program or project which most efficiently
24 recovers materials or energy from litter;

25 (B) the proposed program or project which creates the
26 greatest number of new jobs;

27 (2) the maximum amount for a single grant shall be estab-
28 lished so that available money is distributed to a variety of programs,

29 (3) a grant may be made for new programs or for improvements

1 to or additions to existing programs which were not previously financed
2 by other existing resources of financing.

3 Sec. 41.21.140. FEDERAL REQUIREMENTS. If a federal department or
4 agency issues a formal ruling that a section of this chapter will pre-
5 vent the state from receiving federal financial participation in a
6 program or activity established under this chapter, the section does not
7 apply to the extent that it causes the program or activity to lose
8 federal funding.

9 Sec. 41.21.150. DEFINITIONS. In this chapter,

10 (1) "beverage container" means the individual, separate,
11 sealed glass, metal or plastic bottle, can, jar or carton containing
12 beer or other malt beverages or carbonated soft drinks, in liquid form;

13 (2) "commissioner" means the commissioner of environmental
14 conservation;

15 (3) "department" means the Department of Environmental Con-
16 servation;

17 (4) "litter" means all waste materials susceptible to being
18 dropped, deposited, discarded or otherwise disposed of upon property in
19 the state or in waters under state jurisdiction; "litter" does not
20 include the waste of the primary processes of mining or other extraction
21 process, logging, sawmilling, farming or manufacturing;

22 (5) "litter bag" means a bag, sack or other container made of
23 any material which is large enough and suitable to serve as a receptacle
24 for litter inside a vehicle or vessel;

25 (6) "public place" means public or private property that is
26 used or held out for use by the public, including but not limited to
27 highways or other roads upon which vehicles are moved, parks, camp-
28 grounds, trailer parks, drive-in and fast food restaurants, gasoline
29 service stations, parking lots for taverns, shopping centers and grocery

1 stores and other parking lots which have a capacity for more than 50
2 vehicles, marinas, boat launching areas, boat moorage and fueling sta-
3 tions, public and private piers, beaches, bathing areas, school grounds,
4 sporting event sites with seating capacity for more than 200 spectators,
5 and business district sidewalks;

6 (7) "vehicle" means a mechanically driven device of any kind
7 which is used for the transportation of a person or property on a public
8 highway, trail or path;

9 (8) "vessel" means all descriptions of watercraft used or
10 capable of being used as a means of transportation on the water.

11 * Sec. 3. AS 46 is amended by adding a new chapter to read:

12 CHAPTER 04. OIL POLLUTION CONTROL.

13 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The depart-
14 ment shall promptly seek reimbursement, either under AS 46.03.760(e) or
15 from an applicable federal fund, for the expenses it incurs in cleaning
16 up or containing a discharge of oil. If the department obtains reim-
17 bursement for a portion of its expenses from a federal fund, the re-
18 mainder of the expenses incurred may be recovered under AS 46.03.760(e).
19 Money received by the department under this section shall be deposited
20 in the general fund.

21 Sec. 46.04.020. REMOVAL OF OIL DISCHARGES. (a) A person causing
22 or permitting the discharge of oil shall immediately contain and clean
23 up the discharge. The department may waive this requirement

24 (1) if it determines, in consultation with the United States
25 Coast Guard or the United States Environmental Protection Agency, as
26 appropriate, that containment or cleanup is technically not feasible; or

27 (2) if the cleanup or containment activities would result in
28 greater environmental damage than the discharge itself.

29 (b) The containment and cleanup of discharged oil must be carried

1 out in a manner approved by the department. Wastes generated as a
2 result of containment or cleanup activities shall be disposed of in a
3 manner approved by the department. The requirement of this subsection
4 for approval of containment and cleanup activities does not apply to the
5 United States Coast Guard or United States Environmental Protection
6 Agency acting under the authority of sec. 311(c) or (d) of the Clean
7 Water Act.

8 (c) If the department determines that containment or cleanup
9 activities are not adequate, it may direct the person engaged in the
10 activities to cease and may undertake the activities itself through
11 contract or its own resources, or both. The department may not direct
12 the cessation of containment or cleanup activities undertaken by the
13 United States Coast Guard or United States Environmental Protection
14 Agency under sec. 311 of the Clean Water Act. However, the department
15 may undertake, direct, or authorize supplemental cleanup or containment
16 efforts.

17 (d) The department shall provide for the immediate containment or
18 cleanup of an oil discharge of unexplained origin unless

19 (1) the department determines, in consultation with the
20 United States Coast Guard or the United States Environmental Protection
21 Agency that containment or cleanup of the oil discharge is technically
22 not feasible; or

23 (2) the containment or cleanup activities would result in
24 greater environmental damage than the discharge itself.

25 (e) The department shall enter into negotiations for memoranda of
26 understanding or cooperative agreements with the United States Coast
27 Guard, the United States Environmental Protection Agency, and other
28 persons in order to

29 (1) facilitate coordinated and effective oil discharge re-

1 sponse in the state;

2 (2) provide for cooperative review of oil spill contingency
3 plans submitted to the department under AS 46.04.030;

4 (3) provide for cooperative inspections of oil terminal
5 facilities by the department and the United States Coast Guard or United
6 States Environmental Protection Agency; and

7 (4) provide for cooperative oil spill notification procedures.

8 Sec. 46.04.025. CONFIDENTIAL INFORMATION. The department may
9 maintain the confidentiality of a manufacturer's proprietary technical
10 information relating to chemical and biological agents used to control
11 or mitigate the effects of an oil discharge. The department may refuse
12 to release the information unless the manufacturer authorizes its release
13 or unless a court orders its release. The department may provide the
14 information to the Department of Fish and Game and other state and
15 federal agencies if the department or other agency requesting the infor-
16 mation agrees to maintain its confidentiality.

17 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person
18 may not cause or permit the operation of an oil terminal facility in the
19 state unless an oil discharge contingency plan for the facility has been
20 approved by the department. The department is the only state agency
21 which has the power to approve an oil discharge contingency plan for the
22 purposes of this section.

23 (b) After January 1, 1981, a person may not cause or permit the
24 operation of an offshore exploration or production facility in the state
25 unless an oil discharge contingency plan for the facility has been
26 approved by the department.

27 (c) A person may not cause or permit the transfer of oil to or
28 from a tank vessel, or, after January 1, 1981, to or from an oil barge,
29 unless an oil discharge contingency plan for the tank vessel or oil

1 barge has been approved by the department. Except for prosecutions
2 under AS 46.03.790(b), it is not a defense to an action brought for
3 violation of this subsection that the person charged believed that a
4 current oil discharge contingency plan for the tank vessel or oil barge
5 had been approved by the department.

6 (d) An oil discharge contingency plan must be renewed at least
7 every three years.

8 (e) The department may attach reasonable terms and conditions to
9 its approval of an oil discharge contingency plan which it determines
10 are necessary to insure that the applicant for an oil discharge con-
11 tingency plan has access to sufficient resources to protect environ-
12 mentally sensitive areas and to contain, clean up, and mitigate poten-
13 tial oil discharges from the facility or vessel within the shortest
14 feasible time. The plan must provide for the use of the best available
15 technology by the applicant. The department may require an applicant to
16 undertake discharge exercises.

17 (f) The department, after notice and opportunity for hearing, may
18 modify its approval of an oil discharge contingency plan if it deter-
19 mines that a change has occurred in the operation of a facility, marina
20 or vessel necessitating an amended or supplemented plan, or the opera-
21 tor's discharge experience demonstrates a necessity for modification.
22 The department, after notice and opportunity for hearing, may revoke its
23 approval of a contingency plan if it determines that

- 24 (1) approval was obtained by fraud or misrepresentation;
25 (2) the operator does not have access to the quality or
26 quantity of resources identified in the plan; or
27 (3) a term or condition of approval has been violated.

28 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A person
29 may not cause or permit the operation of an oil terminal facility in the

1 state unless he has furnished proof of financial ability to respond in
2 damages which has been accepted by the department. Ability to respond
3 in damages need not exceed \$50,000,000 but must be in an amount (1) not
4 less than \$10, per incident, for each barrel of storage capacity at the
5 oil terminal facility; or (2) \$1,000,000, whichever is greater.

6 (b) After July 1, 1981, a person may not cause or permit the
7 operation of an offshore exploration or production facility in the state
8 unless proof of financial ability to respond in damages has been ac-
9 cepted by the department. Proof of financial responsibility may not be
10 less than \$35,000,000 per incident.

11 (c) A person may not cause or permit the transfer of oil to or
12 from a tank vessel, or, after January 1, 1981, to or from an oil barge,
13 unless proof of financial responsibility for the tank vessel or barge
14 has been accepted by the department. Financial responsibility under
15 this subsection shall be in the following amounts:

16 (1) for a tank vessel or oil barge involved in the transpor-
17 tation of trans-Alaska pipeline oil, the amount required by the Federal
18 Maritime Commission under sec. 304(c)(3) of the Trans-Alaska Pipeline
19 Authorization Act (43 U.S.C. sec. 1653(c)(3)), as amended; and

20 (2) for any other oil barge, the amount required by sec.
21 311(b)(1) of the Clean Water Act, or \$1,000,000, whichever is greater;

22 (3) for any other tank vessels, the amount required by sec.
23 311(b)(1) of the Clean Water Act, or \$20,000,000, whichever is greater.

24 (d) Except for prosecutions under AS 46.03.790(b), it is not a
25 defense to an action brought for violation of (c) of this section that
26 the person charged believed in good faith that the vessel operator
27 possessed proof of financial responsibility accepted by the department.

28 (e) Financial responsibility may be demonstrated by self-insur-
29 ance, insurance, surety, or guarantee, under terms the department may

1 prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e),
2 or 46.03.822 may be brought in a state court directly against the in-
3 surer or another person providing evidence of financial responsibility.
4 The applicant, and an insurer, surety, or guarantor shall appoint an
5 agent for service of process in the state. An insurer must either be
6 authorized by the Department of Commerce and Economic Development to
7 sell insurance in the state or be an unauthorized insurer listed by the
8 Department of Commerce and Economic Development as not disapproved for
9 use in the state.

10 (f) Acceptance of proof of financial responsibility expires

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

12 (2) on the effective date of a change in the surety bond,
13 guarantee, or insurance agreement; or

14 (3) on the expiration or cancellation of the surety bond,
15 guarantee, or insurance agreement.

16 (g) The person whose proof of financial responsibility is accepted
17 by the department under this section shall notify the department at
18 least 30 days before the effective date of a change, expiration or
19 cancellation in the surety bond, guarantee, or insurance agreement.
20 Application for renewal of acceptance of proof of financial responsi-
21 bility under this section must be filed at least 30 days before the date
22 of expiration.

23 (h) The department, after notice and hearing, may revoke accep-
24 tance of proof of financial responsibility if it determines that

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

26 (2) a change of circumstance has occurred other than a change
27 specified in (f)(1) - (3) of this section, which would have warranted
28 denial of the application.

29 (i) Financial responsibility under this section extends to a loss

1 compensable under AS 46.03.760(e) or 46.03.822 and an assessment under
2 AS 46.03.758 or 46.03.760(a).

3 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of
4 these operations and the minimal danger to the environment posed by
5 their activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to
6 an oil terminal facility that has an effective storage capacity of less
7 than 10,000 barrels of oil.

8 Sec. 46.04.060. INSPECTIONS. Oil terminal facilities, offshore
9 exploration and production facilities, tank vessels, and oil barges are
10 subject to inspection by the department to ensure compliance with the
11 provisions of this chapter.

12 Sec. 46.04.070. SCOPE OF REGULATIONS. The department shall adopt
13 regulations which are necessary to carry out the purposes of this chap-
14 ter and which do not conflict with and are not preempted by federal law
15 or regulations, including but not limited to provisions concerning

16 (1) operation, inspection, and abandonment requirements for
17 oil terminal facilities, tank vessels, oil barges, and offshore explora-
18 tion and production facilities;

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

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

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

25 (5) development and implementation of criteria and plans to
26 meet oil discharges, including regulation of the use of chemical or
27 biological agents;

28 (6) requirements for the safety and operation of tank ves-
29 sels, oil barges, motor vehicles, motorized equipment and other equip-

1 ment relating to the use and operation of terminals and offshore ex-
2 ploration and production facilities;

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

5 (8) other matters the department considers necessary to carry
6 out the purposes of this chapter.

7 Sec. 46.04.080. CATASTROPHIC OIL DISCHARGES. (a) The actual or
8 imminent occurrence of a catastrophic oil discharge constitutes a disas-
9 ter emergency under AS 26.23. However, the department shall perform the
10 duties of the Alaska division of emergency services under AS 26.23.040
11 as they apply to catastrophic oil discharges. The department shall
12 consult and coordinate its duties under this section with the Alaska
13 division of emergency services.

14 (b) The department shall promptly, under AS 46.04.010, seek reim-
15 bursement of oil discharge cleanup or containment expenses incurred as a
16 result of an actual or imminent catastrophic oil discharge under AS 26.-
17 23.050.

18 Sec. 46.04.090. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EX-
19 PENSES. (a) The department, when feasible, shall enter into contracts
20 with persons or private organizations to provide the personnel, equip-
21 ment, or other services or supplies which may be required to carry out
22 this chapter. When private contracting is not feasible, the department
23 may establish and maintain at ports, harbors, or other locations in the
24 state, the cleanup personnel, equipment, and supplies which, in its
25 judgment, are necessary to carry out this chapter.

26 (b) Inspection and enforcement employees of the department desig-
27 nated by the commissioner are peace officers in the performance of their
28 duties under this chapter and AS 46.03.

29 Sec. 46.04.100. COMPACTS AUTHORIZED. The governor may execute

1 supplementary agreements, reciprocal arrangements, or compacts with any
2 other state or country, subject to the approval, if required by the
3 United States Constitution, of the Congress of the United States, for
4 the purpose of implementing this chapter.

5 Sec. 46.04.110. MUNICIPAL POWERS LIMITED. If a conflict occurs
6 between a provision of this chapter, or a regulation, order, decision,
7 or other determination of the department under this chapter, and a
8 charter, ordinance, permit, regulation, franchise, decision, or other
9 determination of a municipality, the provisions of this chapter or the
10 regulation, order, decision, or other determination of the department
11 prevail. However, nothing in this chapter precludes a municipality, by
12 ordinance or regulation, from exercising its police powers in the area
13 regulated by this chapter.

14 Sec. 46.04.120. DEFINITIONS. In this chapter, unless the context
15 requires otherwise,

16 (1) "barrel" is a measure of capacity equal to the space
17 occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

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

22 (3) "Clean Water Act" means the Federal Water Pollution
23 Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of
24 1977 (P.L. 95-217), as amended;

25 (4) "commissioner" means the commissioner of environmental
26 conservation;

27 (5) "containment and cleanup" includes all direct and in-
28 direct efforts associated with the prevention, abatement, containment or
29 removal of a pollutant, the restoration of the environment to its former

1 state, and all incidental administrative costs;

2 (6) "department" means the Department of Environmental Con-
3 servation;

4 (7) "discharge" means spilling, leaking, pumping, pouring,
5 emitting, emptying, or dumping;

6 (8) "offshore exploration or production facility" means a
7 platform, vessel or other facility used to explore for or produce hydro-
8 carbons in the waters of the state; the term does not include vessels
9 used for stratigraphic drilling or other operations which are not autho-
10 rized or intended to drill to a producing formation;

11 (9) "oil" means oil of any kind and in any form, whether
12 crude, refined, or a petroleum by-product, including but not limited to
13 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil re-
14 fuse, oil mixed with other wastes, crude oils, liquefied natural gas,
15 propane, butane, or other liquid hydrocarbons regardless of specific
16 gravity;

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

19 (11) "oil terminal facility" means an onshore or offshore
20 facility of any kind, and related appurtenances, including but not
21 limited to a deepwater port, bulk storage facility or marina, located
22 in, on, or under the surface of the land or waters of the state, in-
23 cluding tide and submerged land, which is used for the purpose of trans-
24 ferring, processing, refining, or storing oil; a vessel is considered an
25 oil terminal facility only when it is used to make a ship-to-ship trans-
26 fer of oil, and when it is traveling between the place of the ship-to-
27 ship transfer of oil and an oil terminal facility;

28 (12) "operator" means a person who, through contract, lease,
29 sublease or otherwise, exerts general supervision and control of activi-

1 ties at the facility; the term includes, by way of example and not
2 limitation, prime or general contractors, the master of a vessel and his
3 employer, or any other person who, through himself, his agents, or
4 contractors, undertakes the general functioning of the facility;

5 (13) "person" means an individual, public or private corpora-
6 tion, political subdivision, government agency, municipality, industry,
7 partnership, association, firm, trust, estate, or any other entity;

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

11 (15) "tank vessel" means a self-propelled vessel that is
12 constructed or converted to carry liquid bulk cargo in tanks and in-
13 cludes tankers, tankships, and combination carriers when carrying oil;
14 the term does not include vessels carrying oil in drums, barrels, or
15 other packages, or vessels carrying oil as fuel or stores for that
16 vessel;

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

18 (17) "waters of the state" includes lakes, bays, sounds,
19 ponds, impounding reservoirs, springs, wells, rivers, streams, creeks,
20 estuaries, marshes, inlets, straits, passages, canals, the Pacific
21 Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial
22 limits of the state, and all other bodies of surface or underground
23 water, natural or artificial, public or private, inland or coastal,
24 fresh or salt, which are wholly or partially in or bordering the state
25 or under the jurisdiction of the state.

26 * Sec. 4. AS 46.03.750 is repealed and re-enacted to read:

27 Sec. 46.03.750. BALLAST WATER DISCHARGE. (a) Except as provided
28 in (b) of this section, a person may not cause or permit the discharge
29 of ballast water from a cargo tank of a tank vessel into the waters of

1 the state. A tank vessel may not take on petroleum or a petroleum
2 product or by-product as cargo unless it arrives in ports in the state
3 without having discharged ballast from cargo tanks into the waters of
4 the state and the master of the vessel certifies that fact on forms
5 provided by the department.

6 (b) The master of a tank vessel may discharge ballast water from a
7 cargo tank of his tank vessel if it is necessary for the safety of the
8 tank vessel and no alternative action is feasible to assure the safety
9 of the tank vessel.

10 * Sec. 5. AS 46.03.755(a) is amended to read:

11 (a) A person in charge of a facility, operation or vessel, as soon
12 as he has knowledge of any discharge from the facility, operation or
13 vessel in violation of AS 46.03.740 or 46.03.750 [OR AS 30.25.020,]
14 shall immediately notify the department of the discharge.

15 * Sec. 6. 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 46.04 [AS 30.25.020], or a regulation, a
18 lawful order of the department, or a permit, approval, or acceptance [OR
19 CERTIFICATE], or term or condition of a permit, approval, or acceptance
20 [OR CERTIFICATE] issued under this chapter or AS 46.04 [AS 30.25] is
21 liable, in a civil action, to the state for a sum to be assessed by the
22 court of not less than \$500 nor more than \$100,000 for the initial
23 violation, nor more than \$5,000 for each day thereafter on which the
24 violation 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, de-
28 gradability and dispersal characteristics of the substance discharged,
29 the sensitivity of the receiving environment, and the degree to which

1 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 com-
7 plying with the requirement for which a violation is charged.

8 * Sec. 7. 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 AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
12 brought under AS 46.03.822, for the full amount of actual damages caused
13 to the state by the violation, including direct and indirect costs
14 associated with the abatement, containment or removal of the pollutant,
15 restoration of the environment to its former state, and all incidental
16 administrative costs. [THAT PORTION OF THE DAMAGES RECOVERED BY THE
17 STATE IN A CIVIL ACTION BROUGHT UNDER AS 46.03.822 ATTRIBUTABLE TO COSTS
18 INCURRED BY THE DEPARTMENT IN THE ABATEMENT, CONTAINMENT OR REMOVAL OF
19 THE POLLUTANT RESULTING FROM A DISCHARGE OF CRUDE OIL, REFINED PETROLEUM
20 PRODUCTS OR THEIR BY-PRODUCTS SHALL BE DEPOSITED IN THE COASTAL PROTEC-
21 TION FUND CREATED UNDER AS 30.25.220. EXCEPT FOR SPECIAL RISK CHARGES
22 COLLECTED UNDER AS 30.25.270, A PERSON HOLDING A RISK AVOIDANCE CERTIFI-
23 CATE MAY NOT BE HELD LIABLE FOR COSTS ASSOCIATED WITH THE ABATEMENT,
24 CONTAINMENT OR REMOVAL OF THE POLLUTANT.]

25 * Sec. 8. AS 46.03.765 is amended to read:

26 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction
27 to enjoin a violation of this chapter or AS 46.04 [AS 30.25], or of a
28 regulation, lawful order of the department, or permit, approval, or ac-
29 ceptance [OR CERTIFICATE], or term or condition of a permit, approval,

1 or acceptance [OR CERTIFICATE] issued under this chapter or AS 46.04
2 [AS 30.25]. In actions brought under this section, temporary or pre-
3 liminary relief may be obtained upon a showing of an imminent threat of
4 continued violation, and probable success on the merits, without the
5 necessity of demonstrating physical irreparable harm. The balance of
6 equities in actions under this section may affect the timing of com-
7 pliance, but not the necessity of compliance within a reasonable period
8 of time.

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

10 (a) A person who violates or who causes or permits a violation of
11 a provision of this chapter or AS 46.04 [AS 30.25], or of a regulation,
12 lawful order of the department, or permit, approval, or acceptance [OR
13 CERTIFICATE], or term or condition of a permit, approval, or acceptance
14 [OR CERTIFICATE] issued under this chapter or AS 46.04 [AS 30.25] is
15 guilty of a violation [MISDEMEANOR AND, UPON CONVICTION, IS PUNISHABLE
16 BY A FINE OF NOT MORE THAN \$25,000 AND COSTS OF PROSECUTION].

17 * Sec. 10. AS 46.03.790(b) is amended to read:

18 (b) A person who wilfully violates a provision of this chapter, or
19 of a regulation, lawful order of the department, or permit, approval, or
20 acceptance [OR CERTIFICATE], or term or condition of a permit, approval,
21 or acceptance [OR CERTIFICATE] issued under this chapter or AS 46.04
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 BY
24 IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY FINE, COSTS, AND IMPRI-
25 SONMENT].

26 * Sec. 11. AS 44.19.171(b)(2) is amended to read:

27 (2) to alleviate the effects of a disaster as defined in
28 AS 44.19.175 occurring after October 11, 1967, by making loans or grants
29 to persons or municipalities on terms the governor considers appropriate

1 or by other means the governor considers appropriate.

2 * Sec. 12. AS 11.46.488, AS 19.17.010, AS 30.20, and AS 30.25 are
3 repealed.

4 * Sec. 13. AS 41.21 is repealed.

5 * Sec. 14. REVIEW AND EVALUATION OF LITTER RECYCLING AND REDUCTION. The
6 Legislative Budget and Audit Committee shall review and evaluate the extent
7 to which the purposes of AS 41.21, added by sec. 2 of this Act, have been and
8 are being achieved and the need for the continuation of the programs and
9 requirements established under AS 41.21. The review and evaluation shall be
10 completed January 1, 1984.

11 * Sec. 15. EVALUATION OF OIL POLLUTION FINANCIAL RESPONSIBILITY REQUIRE-
12 MENTS. The Department of Environmental Conservation shall

13 (1) prepare a report describing the status of the negotiations
14 required by AS 46.04.020(e) and submit the report to the legislature no later
15 than the 60th day of the First Session of the Twelfth Legislature;

16 (2) study offshore drilling to determine whether the requirements
17 of AS 46.04.040(b), imposing a minimum financial responsibility of
18 \$35,000,000, and of AS 46.04.040(e), authorizing actions in state courts for
19 oil pollution damages and imposing other requirements on parties which insure
20 against oil pollution damages, discourage bidding and participation in off-
21 shore oil development by small operators, and report to the legislature the
22 results of its study with recommendations and proposed legislation, if any,
23 no later than January 31, 1981.

24 * Sec. 16. (a) An oil spill contingency plan approved between July 1,
25 1979, and June 30, 1980, under AS 30.25, as it existed before July 1, 1980,
26 is an approved plan for the purposes of AS 46.04.030, and may be renewed in
27 accordance with AS 46.04.030(d).

28 (b) A proof of financial responsibility accepted under AS 30.25 may be
29 used to satisfy the requirements of AS 46.04.040 if the acceptance has not

1 expired before July 1, 1980; however, the acceptance expires in accordance
2 with AS 46.04.040(f) or on the earlier of

3 (1) July 1, 1981, for an acceptance covering an offshore explora-
4 tion or production facility under AS 46.04.040(b);

5 (2) January 1, 1981, for an acceptance covering any other require-
6 ment of AS 46.04.040.

7 * Sec. 17. Section 13 of this Act takes effect July 1, 1984.

8 * Sec. 18. Sections 1 - 12 and 14 - 18 of this Act take effect July 1,
9 1980.

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