

CS HB 470 (FM)

Introduced: 1/13/86
Referred: Resources and
Finance

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1 IN THE HOUSE

2 HOUSE BILL NO. 470

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or
2 from a private donor;

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

8 (4) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation and Liability Act of
11 1980); and

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

7 (1) the amount of money expended under AS 46.08.040 during
8 the preceding fiscal year; and

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 (3) "department" means the Department of Environmental
2 Conservation;

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;

16 (B) a substance defined as a hazardous substance under
17 state or federal law or by regulations adopted under state or
18 federal law;

19 (8) "oil" means petroleum products of any kind and in any
20 form, whether crude, refined, or a petroleum by-product, including
21 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
22 refuse, oil mixed with other wastes, liquified natural gas, propane,
23 butane, and other liquid hydrocarbons regardless of specific gravity;

24 (9) "release" means an intentional or unintentional release
25 into the environment of the state.

26 * Sec. 2. AS 46 is amended by adding a new chapter to read:

27 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

28 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

29 Except as provided in (b) of this section, a person in charge of a

1 vehicle, vessel or container from which, or a place at which, a haz-
2 arduous substance is released shall report the release to the depart-
3 ment promptly after learning of the release.

4 (b) The commissioner may enter into an agreement with a person
5 for the periodic reporting of a controlled release of a hazardous
6 substance if the release is not into the water of the state.

7 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
8 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
9 stance shall make reasonable efforts to contain and clean up the
10 hazardous substance promptly after learning of the release, unless the
11 commissioner determines

12 (1) after consulting the Environmental Protection Agency,
13 that containment or cleanup is technically infeasible; or

14 (2) that containment or cleanup would cause greater en-
15 vironmental damage than the release would cause if unabated.

16 (b) The commissioner shall adopt regulations prescribing proce-
17 dures and methods to be used in the containment and cleanup of a
18 hazardous substance and in the disposal of waste from the containment
19 or cleanup.

20 (c) If the commissioner determines that the containment or
21 cleanup of a hazardous substance undertaken is inadequate, the commis-
22 sioner may direct the person undertaking the containment or cleanup to
23 cease and may undertake the containment or cleanup directly or by
24 contract.

25 (d) If it appears to the commissioner that the cause or respon-
26 sibility for the release of a hazardous substance is unclear or unex-
27 plained, the commissioner may immediately undertake the containment
28 and cleanup of the release unless the commissioner determines

29 (1) after consulting the Environmental Protection Agency,

1 that containment or cleanup is technically infeasible; or

2 (2) that containment or cleanup would cause greater en-
3 vironmental damage than the release would cause if unabated.

4 (e) The commissioner shall enter into agreement with the En-
5 vironmental Protection Agency, and may enter into agreements with
6 other persons, in order to

7 (1) facilitate a coordinated and effective hazardous sub-
8 stance response in the state; or

9 (2) provide for cooperative hazardous substance release
10 notification procedures.

11 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
12 request the governor to determine that an actual or imminent release
13 of a hazardous substance constitutes a disaster emergency under
14 AS 26.23. If the governor declares a disaster emergency under
15 AS 26.23, the commissioner may assist the adjutant general in the
16 relief of the emergency.

17 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
18 The commissioner may contract with a person or a municipality of the
19 state for personnel, equipment, or services that may be useful to
20 carry out the requirements of this chapter. If the commissioner
21 determines that it is infeasible to contract with a person or a munic-
22 ipality in the state, the commissioner may establish and maintain
23 containment and cleanup personnel, equipment, and supplies necessary
24 to carry out the requirements of this chapter.

25 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
26 designated by the commissioner as enforcement officers in the imple-
27 mentation of this chapter are peace officers of the state.

28 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
29 into supplementary agreements, reciprocal arrangements, and compacts

1 with another state or country for the implementation of this chapter
2 subject to the approval of the Congress of the United States, if
3 required, under the Constitution of the United States.

4 Sec. 46.09.070. MUNICIPAL POWERS. (a) If a provision of this
5 chapter or of a regulation adopted by the commissioner under this
6 chapter conflicts with the charter, ordinance, or regulation of a
7 municipality of the state, the provision of this chapter or of the
8 regulation adopted by the commissioner under this chapter prevails.

9 (b) Except as provided in (a) of this section, a municipality of
10 the state may exercise its police power within the area of the munic-
11 ipality.

12 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
13 regulations necessary to implement the provisions of this chapter.

14 Sec. 46.09.900. DEFINITIONS. In this chapter

15 (1) "commissioner" means the commissioner of environmental
16 conservation;

17 (2) "containment and cleanup" includes the direct and
18 indirect efforts associated with the prevention, abatement, contain-
19 ment, or removal of a hazardous substance, the restoration of the
20 environment to its former state, and incidental administrative costs;

21 (3) "department" means the Department of Environmental
22 Conservation;

23 (4) "hazardous substance" means

24 (A) an element or compound that, when it enters into
25 or on the surface or subsurface land or water of the state,
26 presents an imminent and substantial danger to the public health
27 or welfare, or to fish, animals, vegetation, or any part of the
28 natural habitat in which fish, animals, or wildlife may be found;

29 or

1 (B) a substance defined as a hazardous substance under
2 state or federal law or by regulations adopted under state or
3 federal law;

4 (6) "release" means an intentional or unintentional release
5 into the environment of the state.

6 * Sec. 3. AS 26.23.230(1) is amended to read:

7 (1) "disaster" means the occurrence or imminent threat of
8 widespread or severe damage, injury, or loss of life or property
9 resulting from any natural or nonmilitary man-made cause including,
10 but not limited to, fire, flood, earthquake, landslide, mudslide,
11 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
12 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
13 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
14 blight, infestation, explosion, riot, equipment failure, or shortage
15 of food, water, fuel, or clothing, or the release of oil or a hazard-
16 ous substance requiring prompt action to avert environmental danger or
17 damage;

18 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

19 (g) Notwithstanding the provisions of (b) of this section and
20 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
21 during a fiscal year from the reserve for emergency operating expenses
22 account to the oil and hazardous substance release response fund
23 (AS 46.08).

24 * Sec. 5. AS 44.19.050 is amended to read:

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring emergency action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 46.03.290(a) is amended to read:

7 (a) When the department finds that an actual or imminent dis-
8 charge of oil, a hazardous substance, or low level radioactive mate-
9 rials to the air, water, land or subsurface land of the state poses an
10 immediate threat to the public health or welfare, or the environment
11 of the state, it may issue an order declaring an emergency and direct-
12 ing a person or persons to take action the department believes neces-
13 sary to meet the emergency, and protect the public health, welfare, or
14 environment.

15 * Sec. 7. 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 other than AS 46.03.250 - 46.03.314, or a
18 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
19 the department, or a permit, approval, or acceptance, or term or
20 condition of a permit, approval, or acceptance issued under this
21 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
22 state for a sum to be assessed by the court of not less than \$500 nor
23 more than \$100,000 for the initial violation, nor more than \$5,000 for
24 each day after that on which the violation continues, and that shall
25 reflect, when applicable,

26 (1) reasonable compensation in the nature of liquidated
27 damages for any adverse environmental effects caused by the violation,
28 that shall be determined by the court according to the toxicity,
29 degradability and dispersal characteristics of the substance

1 discharged, the sensitivity of the receiving environment, and the
2 degree to which the discharge degrades existing environmental quality;
3 (2) reasonable costs incurred by the state in detection,
4 investigation, and attempted correction of the violation;
5 (3) the economic savings realized by the person in not
6 complying with the requirement for which a violation is charged.

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

8 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
9 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
10 or of a regulation, a lawful order of the department, or permit,
11 approval, or acceptance, or term or condition of a permit, approval,
12 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
13 In actions brought under this section, temporary or preliminary relief
14 may be obtained upon a showing of an imminent threat of continued
15 violation, and probable success on the merits, without the necessity
16 of demonstrating physical irreparable harm. The balance of equities
17 in actions under this section may affect the timing of compliance, but
18 not the necessity of compliance within a reasonable period of time.

19 * Sec. 9. AS 46.03.780(a) is amended to read:

20 (a) A person who violates a provision of this chapter, [OR]
21 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
22 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
23 order, permit, or other determination of the department made under the
24 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
25 and thereby causes the death of fish, animals, or vegetation or other-
26 wise injures or degrades the environment of the state is liable to the
27 state for damages.

28 * Sec. 10. AS 46.03.790(a) is amended to read:

29 (a) Except as provided in (d) - (f) of this section, a person

1 who negligently violates a provision of this chapter, [OR] AS 46.04,
2 or AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class B misdemeanor.

6 * Sec. 11. AS 46.03.790(b) is amended to read:

7 (b) Except as provided in (d) - (f) of this section, a person
8 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
9 AS 46.09, or of a regulation, lawful order of the department, or
10 permit, approval, or acceptance, or term or condition of a permit,
11 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
12 AS 46.09 is guilty of a class A misdemeanor.

13 * Sec. 12. AS 46.03.790(d) is amended to read:

14 (d) Notwithstanding (a) and (b) of this section, a person who
15 fails to provide or falsely states information required under AS 46.-
16 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
17 upon conviction, is punishable by a fine of not more than \$25,000, or
18 by imprisonment for not more than one year, or by both. Each unlawful
19 act constitutes a separate offense.

20 * Sec. 13. AS 46.04.010 is amended to read:

21 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
22 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
23 760(e), AS 46.08.070, or from an applicable federal fund, for the
24 expenses it incurs in cleaning up or containing a discharge of oil.
25 If the department obtains reimbursement for a portion of its expenses
26 from a federal fund, the remainder of the expenses incurred may be
27 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
28 the department under this section shall be deposited in the general
29 fund and may be appropriated by the legislature to the oil and

1 hazardous substance release response fund (AS 46.08).

2 * Sec. 14. AS 46.03.758(k) is repealed.

3 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).