

1 IN THE HOUSE

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2

HOUSE BILL NO. 459

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to liability for releases of hazard-
7 ous substances."

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

9 * Section 1. AS 46.03.822 is repealed and reenacted to read:

10 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
11 SUBSTANCES. (a) Notwithstanding any other provision of law, and to
12 the extent not preempted by federal law, the following persons are
13 strictly liable for damages to persons or property, public or private,
14 including the costs of response, containment, removal, or remedial
15 action incurred by the state or a municipality, resulting from a
16 release of a hazardous substance or, with respect to response costs,
17 the substantial threat of a release of a hazardous substance:

18 (1) the owner and the person having control over the hazard-
19 ous substance at the time of the release or threatened release;

20 (2) the owner and the operator of the facility or vessel
21 from which the release occurred or was threatened to occur; in the
22 case of an abandoned facility or vessel, the owner, the operator, and
23 any other person who controlled activities at the facility or on the
24 vessel immediately before the abandonment;

25 (3) a person who owned or operated the facility or vessel
26 from which the release occurred or was threatened to occur at the time
27 the hazardous substance was received by the facility or vessel;

28 (4) a person who owned or controlled the hazardous sub-
29 stance and who, by contract, agreement, or otherwise, arranged for

1 another party or entity to transport, store, dispose of, or treat the
2 hazardous substance, regardless of whether title to the hazardous
3 substance was transferred to the other party or entity as part of the
4 transaction; and

5 (5) a person who transported or accepted the hazardous
6 substance for transport to the facility, vessel, or site from which
7 the release occurred or was threatened to occur, if the person select-
8 ed the facility, vessel, or site.

9 (b) In an action to recover damages, a person otherwise liable
10 is relieved from strict liability if the person proves by clear and
11 convincing evidence

12 (1) that the release or threatened release of the hazardous
13 substance to which the damages relate occurred solely as a result of

14 (A) an act of war;

15 (B) an intentional or negligent act of a third party,
16 other than a party or its employees in privity of contract with,
17 or employed by, the person, and that the person

18 (i) exercised due care with respect to the haz-
19 ardous substance; and

20 (ii) took reasonable precautions against the act
21 of the third party and against the consequences of the act;
22 or

23 (C) an act of God; and

24 (2) in relation to (1)(B) or (C) of this section, that the
25 person, within a reasonable period of time after the act occurred,

26 (A) discovered the release or threatened release of
27 the hazardous substance; and

28 (B) began operations to contain and clean up the
29 hazardous substance.

1 (c) An indemnification, hold harmless, or similar agreement or
2 conveyance is not effective to transfer liability under this section
3 from the owner or operator of a vessel or facility or from a person
4 who may be liable for a release or substantial threat of a release
5 under this section. This subsection does not bar an agreement to
6 insure, hold harmless, or indemnify a party to the agreement for
7 liability under this section. This subsection does not bar a cause of
8 action that an owner or operator or other person subject to liability
9 under this section, or a guarantor, has or would have, by reason of
10 subrogation or otherwise against a person.

11 * Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

12 (8) "facility" includes a

13 (A) building; structure; installation; equipment; pipe
14 or pipeline, including a pipe into a sewer or publicly owned
15 treatment works; well; pit; pond; lagoon; impoundment; ditch;
16 landfill; storage container; motor vehicle; rolling stock; or
17 aircraft; or

18 (B) site or area at which a hazardous substance has
19 been deposited, stored, disposed of, placed, or otherwise locat-
20 ed.