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1 IN THE HOUSE

2 HOUSE BILL NO. 220

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor fuels, petroleum and chemi-
7 cal storage tanks, and investigation, containment,
8 and cleanup of oil and hazardous substances; and
9 providing for an effective date."

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

11 * Section 1. PURPOSE. The purpose of this Act is to authorize the
12 Department of Environmental Conservation to abate and prevent leaks associ-
13 ated with petroleum and chemical storage tanks in order to protect the
14 public from contamination of drinking water and the environment and to
15 establish mechanisms that will assist the owners of underground petroleum
16 storage tanks to comply with federal and state requirements governing their
17 tanks. The legislature recognizes that these owners may be faced with
18 expenses that they cannot immediately afford for liability insurance, the
19 costs of upgrading or replacing their tanks, and the costs of cleaning up
20 past contamination related to their tanks. The legislature intends to help
21 these owners through a combination of educational assistance, loan guaran-
22 tees, and other financial assistance, but only if these owners promptly
23 comply with the new requirements of this Act.

24 * Sec. 2. AS 43.40 is amended by adding a new section to read:

25 Sec. 43.40.015. ADDITIONAL SURCHARGE ON MOTOR FUEL. (a) In
26 addition to the tax levied by AS 43.40.010, there is levied a sur-
27 charge of two cents a gallon on all motor fuel subject to tax under
28 AS 43.40.010.

29 (b) The surcharge imposed by (a) of this section shall be

1 collected and remitted in the same manner as the tax levied and col-
2 lected under AS 43.40.010 except that the proceeds of the surcharge
3 may not be returned to municipalities under AS 43.40.010(e) or depos-
4 ited in any special account authorized under AS 43.40.010, but shall
5 be remitted to the commissioner of revenue for deposit into the gener-
6 al fund.

7 (c) The commissioner of administration shall separately account
8 for the proceeds of the surcharge collected under this section and
9 deposited into the general fund. The legislature may use the annual
10 estimated balance in the account to make appropriations to the Depart-
11 ment of Environmental Conservation for the underground petroleum
12 storage tank account established under AS 46.08.015.

13 * Sec. 3. AS 43.40.035(a) is amended to read:

14 (a) A person who resells fuel on which the tax under AS 43.40.-
15 010(a) or (b) and the surcharge levied under AS 43.40.015 were [WAS]
16 previously paid is entitled to a credit or refund of the tax or sur-
17 charge, or both, if (1) the resold fuel is not motor fuel and the
18 requirements of AS 43.40.010(1) have been fulfilled; or (2) the amount
19 of tax and surcharge previously paid exceeds the tax and surcharge due
20 on the resale. The amount of the credit or refund under this section
21 is equal to the amount of tax and surcharge previously paid on the
22 resold fuel less the amount of tax prescribed by AS 43.40.010(a) or
23 (b) and the surcharge prescribed by AS 43.40.015.

24 * Sec. 4. AS 46.03 is amended by adding new sections to read:

25 ARTICLE 6A. PETROLEUM AND CHEMICAL STORAGE TANKS.

26 Sec. 46.03.360. REGULATION OF STORAGE TANKS. (a) The depart-
27 ment shall develop and implement a program to prevent and abate pol-
28 lution from aboveground and underground petroleum and chemical storage
29 tanks through the adoption of regulations. Consistent with other

1 provisions in AS 46.03.360 - 46.03.450, the regulations may govern
2 (1) notification;
3 (2) licensing, certification, inspection, and record keep-
4 ing;
5 (3) contingency plans and financial responsibility;
6 (4) construction, installation, and performance;
7 (5) maintenance, operation, and repair;
8 (6) spill and overflow control, corrosion prevention, and
9 release detection and reporting;
10 (7) enforcement, corrective action, and damages and cost
11 recovery;
12 (8) closure and abandonment; and
13 (9) prevention of spills, releases, or pollution, to pro-
14 tect the public health and environment.

15 (b) The department may distinguish between the sizes, types,
16 classes, and ages of storage tanks in the regulations adopted under
17 (a) of this section.

18 (c) The commissioner shall appoint an advisory panel to assist
19 the department in developing regulations under this section. The
20 panel must include public members and persons who will be governed by
21 the regulations, such as storage tank owners and persons who install,
22 repair, or test storage tanks. Before a notice of proposed action may
23 be published under AS 44.62.190 for regulations required under this
24 section, the commissioner shall submit the proposed regulations to the
25 panel for review and comment. Before the commissioner adopts regula-
26 tions under this section, the commissioner shall consider the comments
27 of the panel.

28 (d) The state may delegate authority to a municipality to imple-
29 ment a program with regulatory requirements substantially equivalent

1 to those in AS 46.03.360 - 46.03.450 and the regulations adopted under
2 those statutes.

3 Sec. 46.03.370. INSPECTIONS. An aboveground or underground
4 petroleum or chemical storage tank regulated under AS 46.03.360 -
5 46.03.450 is subject to inspection by the department to ensure com-
6 pliance with AS 46.03.360 - 46.03.450 and the regulations adopted
7 under those sections.

8 Sec. 46.03.380. EDUCATIONAL ASSISTANCE. The department shall
9 provide to persons who own or operate underground petroleum storage
10 tanks educational assistance to help them comply with federal and
11 state laws and regulations applicable to the tanks. The department
12 shall also provide the public with information to help the public
13 understand the effects associated with the release of petroleum prod-
14 ucts into the environment.

15 Sec. 46.03.390. LOAN GUARANTEES. (a) Subject to approval by
16 the commissioner of environmental conservation, the Department of Com-
17 merce and Economic Development may guarantee up to 75 percent of a
18 loan made to a person who owns an underground petroleum storage tank
19 for the costs of labor and materials for

20 (1) site inspection and evaluation of the status of an
21 underground petroleum storage tank;

22 (2) retrofitting, repairing, or replacing an underground
23 petroleum storage tank to meet federal or state requirements; and

24 (3) installing leak detection and monitoring devices for an
25 underground petroleum storage tank.

26 (b) A loan guaranteed under (a) of this section must satisfy the
27 following conditions:

28 (1) the loan must be commercially reasonable, contain
29 amortization provisions satisfactory to the department, and be secured

1 by adequate collateral;

2 (2) net cash flow from the borrower must provide adequate
3 coverage for debt service on the loan;

4 (3) the term of loan may not exceed 25 years;

5 (4) the loan must be originated with and serviced by a
6 state or federally chartered financial institution;

7 (5) the portion of the loan not guaranteed by the depart-
8 ment must be held by the originating financial institution or another
9 financial institution approved by the department;

10 (6) the amount of the loan may not exceed \$50,000;

11 (7) the loan may not be a loan to refinance existing debt.

12 (c) A loan guarantee made under (a) of this section may not
13 guarantee the payment of interest. The ratio of the guarantee to the
14 outstanding principal of the loan may not increase over the term of
15 the loan. The department may not guarantee loans to an individual
16 that cumulatively exceed \$50,000.

17 (d) In order to implement this section, the commissioner may

18 (1) make and execute contracts and other instruments;

19 (2) acquire real or personal property by purchase, trans-
20 fer, or foreclosure when necessary to protect the state's interest;

21 (3) use money in the guarantee subaccount as provided in
22 AS 46.08.015(c);

23 (4) adopt regulations to carry out its functions, including
24 regulations that establish

25 (A) reasonable fees for services provided; the commis-
26 sioner may charge and collect fees established by regulation
27 under this subparagraph for deposit in the general fund; the
28 commissioner of administration shall separately account for money
29 deposited under this subparagraph; the legislature may use the

1 annual estimated balance in the account to make an appropriation
2 to the department to carry out the purposes of this section;

3 (B) additional terms and conditions for loans guaran-
4 teed under this section or for loan guarantees made under this
5 section;

6 (C) conditions that must be met by a financial insti-
7 tution that holds a loan guaranteed under this section with
8 respect to its servicing of the loan and its allocation of
9 amounts received in satisfaction of a default on the loan.

10 (e) In this section

11 (1) "commissioner" means the commissioner of commerce and
12 economic development;

13 (2) "department" means the Department of Commerce and
14 Economic Development.

15 Sec. 46.03.400. NOTIFICATION AND REGISTRATION REQUIREMENTS. (a)
16 A person who intends to install or have a storage tank installed shall
17 notify the department in writing at least 30 days before installing or
18 having the tank installed.

19 (b) The owner of a storage tank shall, within 30 days after
20 installing a storage tank, register the tank with the department on a
21 form provided by the department. The owner shall annually renew the
22 registration.

23 (c) The owner shall specify on the registration form required
24 under (b) of this section the location, size, type of construction,
25 and age of the tank; the type of petroleum or chemical stored in the
26 tank; and the total volume of petroleum or chemical stored in the tank
27 during the previous 12 months.

28 (d) If a storage tank is taken out of operation, the owner of
29 the tank shall

1 (1) specify on the annual registration form the date the
2 tank was taken out of operation; and

3 (2) provide evidence satisfactory to the department that
4 all petroleum and chemical products and sludges have been removed from
5 the tank and that the tank has either been filled with inert material
6 or been removed from the ground.

7 Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registra-
8 tion and renewal of registration under AS 46.03.400, the owner shall
9 pay to the department a registration fee of \$.01 per gallon based on
10 the capacity of the tank being registered or a fee of \$100, whichever
11 is higher. The department shall deposit fees collected under this
12 section in the general fund. The commissioner of administration shall
13 separately account for fees deposited under this section. The legis-
14 lature may appropriate the annual estimated balance of the account to
15 the underground petroleum storage tank account established under
16 AS 46.08.015.

17 (b) The department may by regulation provide for exemptions from
18 the registration fee imposed under (a) of this section.

19 Sec. 46.03.420. EXEMPTIONS. (a) AS 46.03.360 - 46.03.450 do
20 not apply to a storage tank with a capacity of 1,100 gallons or less
21 at a farm, or at a residence that is a single-family dwelling or
22 duplex, if the storage tank is used for storing motor fuel that is not
23 intended for resale.

24 (b) AS 46.03.360 - 46.03.450 do not apply to a storage tank with
25 a capacity of 1,100 gallons or less if the storage tank is used for
26 storing heating oil for consumptive use on the premises where it is
27 stored.

28 (c) AS 46.03.360 - 46.03.450 do not apply to a storage tank used
29 for storing heating oil at a farm, or at a residence that is a single-

1 family dwelling or duplex, if the oil is held for consumptive use on
2 the premises where it is stored.

3 (d) AS 46.03.360 - 46.03.450 do not apply to the storage of
4 hazardous waste that is being managed under 42 U.S.C. 6901 - 6991i
5 (the Solid Waste Disposal Act).

6 (e) The department may by regulation provide for other exemp-
7 tions as necessary.

8 Sec. 46.03.450. DEFINITIONS. In AS 46.03.360 - 46.03.450

9 (1) "chemical" means any substance defined in 42 U.S.C.
10 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980), as amended, and any sub-
12 stance having the characteristics identified or listed under 42 U.S.C.
13 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-
14 er the substance is a solid waste;

15 (2) "farm" means a tract of land devoted to the production
16 of crops or raising animals, including fish, and associated residences
17 and improvements; "farm" includes fish hatcheries, rangelands, and
18 nurseries with growing operations;

19 (3) "petroleum" means crude oil or any fraction of crude
20 oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7
21 pounds per square inch absolute; "petroleum" includes petroleum-based
22 substances comprised of a complex blend of hydrocarbons derived from
23 crude oil through processes of separation, conversion, upgrading, and
24 finishing, such as motor fuels, jet fuels, distillate fuel oils,
25 residual fuel oils, lubricants, petroleum solvents, and used oils;

26 (4) "underground petroleum storage tank" means a storage
27 tank designed to contain an accumulation of petroleum, the volume of
28 which, including the volume of underground pipes connected to it, is
29 10 percent or more beneath the surface of the ground;

1 (5) "storage tank" means one or a combination of stationary
2 devices that are designed to contain an accumulation of petroleum or
3 chemicals; are constructed of nonearthen materials such as concrete,
4 steel, or plastic; and provide structural support; "storage tank" in-
5 cludes pipes or piping connected to the storage tank.

6 * Sec. 5. AS 46.08.010(c) is amended to read:

7 (c) Except as provided in AS 46.08.015, the [THE] fund shall be
8 used for actual expenses incurred under AS 46.08.040. Except as
9 provided in AS 46.08.015, the [THE] fund may not be used for capital
10 improvements.

11 * Sec. 6. AS 46.08 is amended by adding a new section to read:

12 Sec. 46.08.015. UNDERGROUND PETROLEUM STORAGE TANK ACCOUNT. (a)
13 There is established in the fund an underground petroleum storage tank
14 account. The account consists of money appropriated to it.

15 (b) The commissioner may use money from the underground petro-
16 leum storage tank account to pay for

17 (1) the costs of investigation, containment, and cleanup of
18 a release or threatened release of petroleum from an underground
19 petroleum storage tank or from uses related to an underground petro-
20 leum storage tank; payments under this paragraph may not exceed
21 \$1,000,000 per investigation, containment, and cleanup action;

22 (2) the costs of investigation, containment, and cleanup of
23 a release or threatened release of a hazardous substance that poses an
24 imminent and substantial threat to public health;

25 (3) loan guarantees under AS 46.03.390; and

26 (4) the department's costs for administering AS 46.03.380 -
27 46.03.410.

28 (c) There is established in the underground petroleum storage
29 tank account a guarantee subaccount as a reserve from fund equity.

1 Before a loan guarantee is made under AS 46.03.390, the commissioner
2 of commerce and economic development shall notify the commissioner of
3 environmental conservation of the amount and purpose of the proposed
4 loan that would be covered by the loan guarantee. The commissioner of
5 commerce and economic development shall request the commissioner of
6 environmental conservation to approve the use of money from the under-
7 ground petroleum storage tank account to guarantee the loan. If the
8 commissioner of environmental conservation approves the request, the
9 commissioner of environmental conservation shall credit the guarantee
10 subaccount with 50 percent of the amount of the loan that is covered
11 by the loan guarantee by encumbering funds in the underground pe-
12 troleum storage tank account. The commissioner of commerce and eco-
13 nomic development may use money in the guarantee account to

14 (1) satisfy a default on a loan guaranteed under AS 46.-
15 03.390;

16 (2) protect the state's security interest in collateral for
17 a loan guaranteed under AS 46.03.390;

18 (3) defray expenses incurred by the state during foreclo-
19 sure proceedings after default on a loan guaranteed under AS 46.03.-
20 390.

21 * Sec. 7. AS 46.08.900 is amended by adding a new paragraph to read:

22 (11) "underground petroleum storage tank" has the meaning
23 given in AS 46.03.450.

24 * Sec. 8. Notwithstanding AS 46.03.400, enacted by sec. 4 of this Act,
25 the registration required under AS 46.03.400, enacted by sec. 4 of this
26 Act, is due on October 1, 1989, for a tank installed before July 1, 1989.
27 This registration requirement also applies to storage tanks governed by
28 AS 46.03.360 - 46.03.450, as enacted by sec. 4 of this Act, that were taken
29 out of operation before July 1, 1989.

1 * Sec. 9. (a) Subject to (b) - (h) of this section, the owner of an
2 underground petroleum storage tank may request the department to use funds
3 from the account established under AS 46.08.015, enacted in sec. 6 of this
4 Act, to pay the costs of investigation, containment, and cleanup resulting
5 from a release of petroleum from, or associated with, an underground petro-
6 leum storage tank.

7 (b) Payments made by the department under this section shall exclude
8 a portion of the investigation, containment, and cleanup costs. The por-
9 tion of costs not payable by the department under this section shall be
10 based upon the total number of whole gallons of petroleum stored by the
11 owner in all underground petroleum storage tanks during the 12-month period
12 preceding the date the owner reported the release to the department, as
13 follows:

14 Total number of gallons 15 of petroleum stored by 16 the owner in the 12 months 17 before the report date:	Amount of investigation, containment, and cleanup costs not payable by the department under this section:
18 0 - 1,000,000	\$ 5,000
19 1,000,001 - 5,000,000.....	10,000
20 5,000,001 - 10,000,000.....	15,000
21 10,000,001 - 15,000,000.....	20,000
22 15,000,001 - 30,000,000.....	40,000
23 Over 30,000,000.....	No costs payable

24 (c) An owner of an underground petroleum storage tank is not eligible
25 to request payment under this section unless the owner establishes the
26 following to the department's reasonable satisfaction:

27 (1) the owner reported the release to the department before
28 July 1, 1991;

29 (2) the tank from which the release occurred was installed

1 before July 1, 1989;

2 (3) the tank from which the release occurred was registered with
3 the department as provided in sec. 8 of this Act by October 1, 1989;

4 (4) the owner has, after July 1, 1989, been in compliance with
5 all state and federal laws applicable to underground petroleum storage
6 tanks;

7 (5) the owner could not, despite the owner's best efforts,
8 obtain liability insurance that provides adequate insurance coverage for
9 the investigation, containment, and cleanup costs resulting from releases
10 of petroleum from underground storage tanks;

11 (6) the owner lacks sufficient assets to adequately self-insure
12 for the costs of investigation, containment, and cleanup resulting from
13 releases of petroleum from underground storage tanks;

14 (7) the owner, upon demand by the department, pays the full
15 amount of costs not payable under this section as set out in (b) of this
16 section;

17 (8) the petroleum release was not a result of the owner's negli-
18 gence, gross negligence, recklessness, or intentional conduct; and

19 (9) the owner agrees to upgrade all underground storage tank
20 systems located at the facility from which the release occurred to the
21 standards set by federal regulations.

22 (d) The department shall reject a request for payment made under this
23 section if the department determines that one or more of the following
24 conditions exists:

25 (1) the account established under AS 46.08.015, enacted by sec.
26 6 of this Act, lacks sufficient funds;

27 (2) other investigation, containment, and cleanup activities for
28 which account funds may be used constitute a higher priority for account
29 fund expenditures;

1 (3) the owner fails to meet the requirements set out in (c) of
2 this section; or

3 (4) other good cause exists to reject the request for payment.

4 (e) A request for funding under this section, and a payment made
5 under this section, may not exceed \$1,000,000 per facility.

6 (f) The department shall determine which costs of investigation,
7 containment, and cleanup are eligible for payment under this section. The
8 department shall give higher priority to investigation, containment, and
9 cleanup under this section than to loan guarantees under AS 46.03.390,
10 enacted by sec. 4 of this Act.

11 (g) The department may adopt regulations reasonably necessary to
12 implement this section. The department shall by regulation adopt criteria
13 that will be used by the department for determining priorities for respond-
14 ing to a release or threatened release reported under this section.

15 (h) This section does not affect the liability under state or federal
16 law of any person for the costs of investigation, containment, and cleanup
17 resulting from a release of petroleum. However, the department may not
18 seek reimbursement of a payment made under this section unless the depart-
19 ment determines that the payment was requested under false pretenses or
20 that other circumstances render the payment inconsistent with this section
21 or with department regulations. This section does not affect the authority
22 of the department to seek recovery of costs other than payments actually
23 made to an owner under this section.

24 (i) The owner of an underground storage tank for whom the department
25 makes payments under this section may not operate the underground storage
26 tank system for which payments were received under this section for the
27 costs of investigation, containment, and cleanup until the system meets the
28 requirements of federal regulations that are applicable to storage tank
29 systems installed after the date investigation, containment, and cleanup

1 are completed.

2 (j) In this section,

3 (1) "department" means the Department of Environmental Conserva-
4 tion;

5 (2) "underground petroleum storage tank" has the meaning given
6 in AS 46.03.450, as enacted by sec. 4 of this Act, but does not include
7 storage tanks that are exempt under AS 46.03.420, enacted by sec. 4 of this
8 Act, or regulations adopted under that section;

9 (3) "underground storage tank system" has the meaning given to
10 the term "UST system" in 40 C.F.R. sec. 280.11, as amended.

11 * Sec. 10. This Act takes effect July 1, 1989.