

Offered: 4/10/89
Referred: Finance

6-0693P

Original sponsors: Menard, M.Davis,
Brown, et al.

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 220 (Resources)
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, grants, and
22 other financial assistance, but only if these owners promptly comply with
23 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 except the motor fuel taxes levied and collected under
29 AS 43.40.010(a)(2) and (b)(2) for motor fuel used in boats and

1 watercraft of all descriptions.

2 (b) The surcharge imposed by (a) of this section shall be col-
3 lected and remitted in the same manner as the tax levied and collected
4 under AS 43.40.010 except that the proceeds of the surcharge may not
5 be returned to municipalities under AS 43.40.010(e) or deposited in
6 any special account authorized under AS 43.40.010, but shall be remit-
7 ted to the commissioner of revenue for deposit into the general fund.

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

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

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

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

26 ARTICLE 6A. PETROLEUM AND CHEMICAL STORAGE TANKS.

27 Sec. 46.03.360. REGULATION OF STORAGE TANKS. (a) The depart-
28 ment shall develop and implement a program to prevent and abate pol-
29 lution from aboveground and underground petroleum and chemical storage

1 tanks through the adoption of regulations. Consistent with other
2 provisions in AS 46.03.360 - 46.03.450, the regulations may govern

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

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

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

29 Sec. 46.03.370. INSPECTIONS. An aboveground or underground

1 petroleum or chemical storage tank regulated under AS 46.03.360 -
2 46.03.450 is subject to inspection by the department to ensure com-
3 pliance with AS 46.03.360 - 46.03.450 and the regulations adopted
4 under those sections.

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

12 Sec. 46.03.390. GRANTS. (a) The department may issue a grant
13 to the owner of an underground petroleum storage tank for the purpose
14 of

15 (1) removing and properly disposing of all sludges from the
16 tank and either filling the tank with inert material or properly
17 dismantling, removing, and disposing of the tank; or

18 (2) retrofitting, repairing, or replacing an underground
19 petroleum storage tank to meet federal or state requirements.

20 (b) A grant under (a)(1) of this section may be for up to 90
21 percent of the costs approved by the department. A grant under (a)(2)
22 of this section may be for up to 75 percent of the costs approved by
23 the department.

24 (c) The department may adopt regulations to implement this
25 section.

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

1 (b) The owner of a storage tank shall, within 30 days after
2 installing a storage tank, register the tank with the department on a
3 form provided by the department. The owner shall biennially renew the
4 registration.

5 (c) The owner shall specify on the registration form required
6 under (b) of this section the location, size, type of construction,
7 and age of the tank; the type of petroleum or chemical stored in the
8 tank; and the total volume of petroleum or chemical stored in the tank
9 during the previous 12 months.

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

12 (1) specify on the biennial registration form the date the
13 tank was taken out of operation; and

14 (2) provide evidence satisfactory to the department that

15 (A) all petroleum and chemical products and sludges
16 have been removed from the tank and properly disposed of;

17 (B) the tank has either been filled with inert materi-
18 al or been properly dismantled, removed, and disposed of; and

19 (C) the owner has otherwise complied with federal laws
20 relating totaking a tank out of operation.

21 Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registra-
22 tion and renewal of registration under AS 46.03.400, the owner shall
23 pay to the department a registration fee of \$.02 per gallon based on
24 the capacity of the tank being registered or a fee of \$2,000, which-
25 ever is lower, subject to a maximum biennial fee of \$40,000 per facil-
26 ity. The department shall deposit fees collected under this section
27 in the general fund. The commissioner of administration shall sepa-
28 rately account for fees deposited under this section. The legislature
29 may appropriate the annual estimated balance of the account to the

1 petroleum and chemical storage tank account established under AS 46.-
2 08.015. In this subsection, "facility" means contiguous land and
3 structures on or in the land containing petroleum and chemical storage
4 tanks owned by the same person.

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

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

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

16 (c) AS 46.03.360 - 46.03.450 do not apply to a storage tank used
17 for storing heating oil at a farm, or at a residence that is a single-
18 family dwelling or duplex, if the oil is held for consumptive use on
19 the premises where it is stored.

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

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

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

26 (1) "chemical" means any substance defined in 42 U.S.C.
27 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,
28 Compensation, and Liability Act of 1980), as amended, and any sub-
29 stance having the characteristics identified or listed under 42 U.S.C.

1 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-
2 er the substance is a solid waste;

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

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

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

19 (5) "underground petroleum storage tank" means a storage
20 tank designed to contain an accumulation of petroleum, the volume of
21 which, including the volume of underground pipes connected to it, is
22 10 percent or more beneath the surface of the ground.

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

24 (c) Except as provided in AS 46.08.015, the [THE] fund shall be
25 used for actual expenses incurred under AS 46.08.040. Except as
26 provided in AS 46.08.015, the [THE] fund may not be used for capital
27 improvements.

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

29 Sec. 46.08.015. PETROLEUM AND CHEMICAL STORAGE TANK ACCOUNT.

1 (a) There is established in the fund a petroleum and chemical storage
2 tank account. The account consists of money appropriated to it.

3 (b) The commissioner may use money from the petroleum and chem-
4 ical storage tank account to pay for

5 (1) the costs of investigation, containment, and cleanup of
6 a release or threatened release of petroleum or chemicals from a
7 storage tank or from uses related to a storage tank; payments under
8 this paragraph may not exceed \$1,000,000 per investigation, contain-
9 ment, and cleanup action;

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

13 (3) grants under AS 46.03.390; and

14 (4) the department's costs for administering AS 46.03.380 -
15 46.03.410.

16 (c) Each year, the commissioner shall use at least 10 percent of
17 the balance of the petroleum and chemical storage tank account exist-
18 ing on July 1 for grants under AS 46.03.390 during the ensuing fiscal
19 year.

20 (d) In this section, "chemical," "petroleum," and "storage tank"
21 have the meanings given in AS 46.03.450.

22 * Sec. 7. AS 46.08.060(a) is amended to read:

23 (a) The commissioner shall submit a report to the legislature
24 not later than the 10th day following the convening of each regular
25 session of the legislature. The report may include information con-
26 sidered significant by the commissioner but must include:

27 (1) the amount of money expended under AS 46.08.015 and
28 46.08.040 during the preceding fiscal year;

29 (2) the amount and source of money received and money

1 recovered during the preceding fiscal year as specified in AS 46.08.-
2 020;

3 (3) a summary of municipal participation in responses
4 funded by the fund;

5 (4) a detailed summary of department activities in re-
6 sponses funded by the fund and the petroleum and chemical storage tank
7 account during the preceding fiscal year, including response and
8 descriptions and statements outlining the nature of the threat; the
9 report must separately describe how many requests for assistance have
10 been made to the department to use the petroleum and chemical storage
11 tank account to respond to a release or threatened release from a
12 storage tank and the estimated cost of containment and cleanup related
13 to those requests; and

14 (5) the projected cost for the next fiscal year of monitor-
15 ing, operating, and maintaining sites where response has been com-
16 pleted or is expected to be continued during the fiscal year.

17 * Sec. 8. Notwithstanding AS 46.03.400, enacted by sec. 4 of this Act,
18 the registration required under AS 46.03.400, enacted by sec. 4 of this
19 Act, is due December 1, 1989, for a tank installed before July 1, 1989.
20 This registration requirement also applies to storage tanks governed by
21 AS 46.03.360 - 46.03.450, as enacted by sec. 4 of this Act, that were taken
22 out of operation before July 1, 1989.

23 * Sec. 9. AS 46.03.390, enacted by sec. 4 of this Act, is repealed
24 July 1, 1994.

25 * Sec. 10. (a) Subject to (b) - (h) of this section, the owner of an
26 underground petroleum storage tank may request the department to use funds
27 from the account established under AS 46.08.015, enacted in sec. 6 of this
28 Act, to pay the costs of investigation, containment, and cleanup resulting
29 from a release of petroleum from, or associated with, an underground

1 petroleum storage tank.

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

9 Total number of gallons 10 of petroleum stored by 11 the owner in the 12 months 12 before the report date:	Amount of investigation, containment, and cleanup costs not payable by the department under this section:
13 0 - 1,000,000	\$ 5,000
14 1,000,001 - 5,000,000.....	10,000
15 5,000,001 - 10,000,000.....	15,000
16 10,000,001 - 15,000,000.....	20,000
17 15,000,001 - 30,000,000.....	40,000
18 Over 30,000,000.....	No costs payable

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

- 22 (1) the owner reported the release to the department before
23 (A) July 1, 1990, for a release that the owner establishes
24 first occurred before July 1, 1989;
25 (B) July 1, 1994, for a release that the owner establishes
26 first occurred on or after July 1, 1989, and before December 22, 1993;
27 (2) the tank from which the release occurred was installed
28 before December 22, 1988;
29 (3) the tank from which the release occurred was registered with

1 the department as provided in sec. 8 of this Act by December 1, 1989;

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

5 (5) the owner lacks sufficient assets to adequately self-insure
6 for the costs of investigation, containment, and cleanup resulting from
7 releases of petroleum from underground storage tanks as defined under
8 applicable federal regulations;

9 (6) the owner, upon demand by the department, pays the full
10 amount of costs not payable under this section as set out in (b) of this
11 section;

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

14 (8) the owner agrees to

15 (A) upgrade all underground storage tank systems located at
16 the facility from which the release occurred to the standards set by
17 federal regulations; or

18 (B) remove and properly dispose of all sludges from the
19 underground storage tank systems located at the facility from which
20 the release occurred and either fill the tanks with inert material or
21 properly dismantle, remove, and dispose of the tanks.

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.