

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 220 (Finance)

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 underground petroleum and chemical storage tanks in order to
14 protect the public from contamination of drinking water and the environment
15 and to establish mechanisms that will assist the owners of underground
16 petroleum storage tanks to comply with federal and state requirements
17 governing their tanks. The legislature recognizes that these owners may be
18 faced with expenses that they cannot immediately afford for liability
19 insurance, the costs of upgrading or replacing their tanks, and the costs
20 of cleaning up past contamination related to their tanks. The legislature
21 intends to help these owners through a combination of educational
22 assistance, grants, and other financial assistance, but only if these
23 owners promptly 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 except the motor fuel taxes levied and collected
29 (1) under AS 43.40.010(a)(1) and (b)(1) on aviation

1 gasoline and under AS 43.40.010(b)(3) on aviation fuel other than
2 gasoline; and

3 (2) under AS 43.40.010(a)(2) and (b)(2) for motor fuel used
4 in boats and watercraft of all descriptions.

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

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

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

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

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

29 ARTICLE 6A. PETROLEUM AND CHEMICAL STORAGE TANKS.

1 Sec. 46.03.360. REGULATION OF UNDERGROUND PETROLEUM AND CHEMICAL
2 STORAGE TANKS. (a) The department shall develop and implement a
3 program to prevent and abate pollution from underground petroleum and
4 chemical storage tanks through the adoption of regulations.
5 Consistent with other provisions in AS 46.03.360 - 46.03.450, the
6 regulations may govern

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

20 (b) The department may distinguish between the sizes, types,
21 classes, and ages of underground petroleum and chemical storage tanks
22 in the regulations adopted under (a) of this section.

23 (c) The commissioner shall appoint an advisory panel to assist
24 the department in developing regulations under this section. The
25 panel must include public members and persons who will be governed by
26 the regulations, such as underground petroleum and chemical storage
27 tank owners and persons who install, repair, or test underground
28 petroleum and chemical storage tanks. Before a notice of proposed
29 action may be published under AS 44.62.190 for regulations required

1 under this section, the commissioner shall submit the proposed
2 regulations to the panel for review and comment. Before the commis-
3 sioner adopts regulations under this section, the commissioner shall
4 consider the comments of the panel.

5 Sec. 46.03.370. INSPECTIONS. (a) An underground petroleum
6 or chemical storage tank regulated under AS 46.03.360 - 46.03.450 is
7 subject to inspection by the department or by professionally qualified
8 inspectors certified by the department to ensure compliance with
9 AS 46.03.360 - 46.03.450 and the regulations adopted under those
10 sections and to verify information on the registration form required
11 under AS 46.03.400.

12 (b) An aboveground petroleum or chemical storage tank is subject
13 to inspection by the department or by professionally qualified
14 inspectors certified by the department to verify information on the
15 registration form required under AS 46.03.400.

16 (c) The department may contract with persons who are not state
17 employees to perform inspections under this section. The department
18 shall adopt regulations to implement a certification program for
19 persons who wish to be eligible for inspection contracts under this
20 section.

21 Sec. 46.03.380. EDUCATIONAL ASSISTANCE. The department shall
22 provide to persons who own or operate underground petroleum storage
23 tanks educational assistance to help them comply with federal and
24 state laws and regulations applicable to the tanks. The department
25 shall also provide the public with information to help the public
26 understand the effects associated with the release of petroleum prod-
27 ucts into the environment.

28 Sec. 46.03.390. GRANTS. (a) Except as provided in (c) of this
29 section, the department may issue a grant, not to exceed \$100,000 per

1 facility, to the owner of an underground petroleum storage tank for
2 the purpose of

3 (1) removing and properly disposing of all sludges from the
4 tank and either filling the tank with inert material or properly
5 dismantling, removing, and disposing of the tank; or

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

8 (b) A grant under (a)(1) of this section may be for up to 90
9 percent of the costs approved by the department. A grant under (a)(2)
10 of this section may be for up to 75 percent of the costs approved by
11 the department.

12 (c) A person is not eligible for a grant under this section for
13 costs relating to a storage tank that contains motor fuel that is
14 exempt from the surcharge levied under AS 43.40.015.

15 (d) The department may adopt regulations to implement this
16 section.

17 Sec. 46.03.400. NOTIFICATION AND REGISTRATION REQUIREMENTS. (a)
18 A person who intends to install or have a storage tank installed shall
19 notify the department in writing at least 30 days before installing or
20 having the tank installed. The department may waive the requirement
21 of this subsection upon a showing of good cause.

22 (b) The owner of a storage tank shall, within 30 days after
23 installing a storage tank, register the tank with the department on a
24 form provided by the department. The owner shall biennially renew the
25 registration.

26 (c) The owner shall specify on the registration form required
27 under (b) of this section the location, size, type of construction,
28 and age of the tank; the type of petroleum or chemical stored in the
29 tank; and the total volume of petroleum or chemical stored in the tank

1 during the previous 12 months.

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

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

6 (2) provide evidence satisfactory to the department that

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

9 (B) the tank has either been filled with inert
10 material or been properly dismantled, removed, and disposed of;
11 and

12 (C) the owner has otherwise complied with federal laws
13 relating to taking a tank out of operation.

14 Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registra-
15 tion and renewal of registration under AS 46.03.400, the owner shall
16 pay to the department a registration fee of \$.02 per gallon based on
17 the capacity of the tank being registered or a fee of \$2,000, which-
18 ever is lower, subject to a maximum biennial fee of \$40,000 per facil-
19 ity. The department shall deposit fees collected under this section
20 in the general fund. The commissioner of administration shall sepa-
21 rately account for fees deposited under this section. The legislature
22 may appropriate the annual estimated balance of the account to the
23 petroleum and chemical storage tank account established under AS 46.-
24 08.015.

25 (b) The registration fee imposed under (a) of this section does
26 not apply to a storage tank owned by the state. The department may by
27 regulation provide for other exemptions from the registration fee
28 imposed under (a) of this section.

29 Sec. 46.03.420. EXEMPTIONS. (a) AS 46.03.360 - 46.03.450 do

1 not apply to a storage tank with a capacity of 1,100 gallons or less
2 at a farm, or at a residence that is a single-family dwelling or
3 duplex, if the storage tank is used for storing motor fuel that is not
4 intended for resale.

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

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

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

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

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

19 (1) "chemical" means any substance defined in 42 U.S.C.
20 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980), as amended, and any sub-
22 stance having the characteristics identified or listed under 42 U.S.C.
23 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-
24 er the substance is a solid waste;

25 (2) "facility" means contiguous land and structures on or
26 in the land containing petroleum and chemical storage tanks owned by
27 the same person;

28 (3) "farm" means a tract of land devoted to the production
29 of crops or raising animals, including fish, and associated residences

1 and improvements; "farm" includes fish hatcheries, rangelands, and
2 nurseries with growing operations;

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

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

15 (6) "underground petroleum storage tank" means a storage
16 tank designed to contain an accumulation of petroleum, the volume of
17 which, including the volume of underground pipes connected to it, is
18 10 percent or more beneath the surface of the ground.

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

20 (c) Except as provided in AS 46.08.015, the [THE] fund shall be
21 used for actual expenses incurred under AS 46.08.040. Except as
22 provided in AS 46.08.015, the [THE] fund may not be used for capital
23 improvements.

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

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

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

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

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

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

9 (3) grants under AS 46.03.390; and

10 (4) the department's costs for administering AS 46.03.380 -
11 46.03.410.

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

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

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

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

23 (1) the amount of money expended under AS 46.08.015 and
24 46.08.040 during the preceding fiscal year;

25 (2) the amount and source of money received and money re-
26 covered during the preceding fiscal year as specified in AS 46.08.020;

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

29 (4) a detailed summary of department activities in re-

1 sponses funded by the fund and the petroleum and chemical storage tank
2 account during the preceding fiscal year, including response and
3 descriptions and statements outlining the nature of the threat; the
4 report must separately describe how many requests for assistance have
5 been made to the department to use the petroleum and chemical storage
6 tank account to respond to a release or threatened release from a
7 storage tank and the estimated cost of containment and cleanup related
8 to those requests; and

9 (5) the projected cost for the next fiscal year of
10 monitoring, operating, and maintaining sites where response has been
11 completed or is expected to be continued during the fiscal year.

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

18 * Sec. 9. AS 43.40.015 is repealed July 1, 1998.

19 * Sec. 10. AS 46.03.390 is repealed July 1, 1994.

20 * Sec. 11. (a) Subject to (b) - (i) of this section, the owner of an
21 underground petroleum storage tank may request the department to use funds
22 from the account established under AS 46.08.015, enacted in sec. 6 of this
23 Act, to pay the costs of investigation, containment, and cleanup resulting
24 from a release of petroleum from, or associated with, an underground petro-
25 leum storage tank.

26 (b) Payments made by the department under this section shall exclude
27 a portion of the investigation, containment, and cleanup costs. The por-
28 tion of costs not payable by the department under this section shall be
29 based upon the total number of whole gallons of petroleum stored by the

1 owner in all underground petroleum storage tanks during the 12-month period
2 preceding the date the owner reported the release to the department, as
3 follows:

4	Total number of gallons	Amount of investigation,
5	of petroleum stored by	containment, and cleanup
6	the owner in the 12 months	costs not payable by the
7	before the report date:	department under this section:
8	0 - 1,000,000	\$ 5,000
9	1,000,001 - 5,000,000.....	10,000
10	5,000,001 - 10,000,000.....	15,000
11	10,000,001 - 15,000,000.....	20,000
12	15,000,001 - 30,000,000.....	40,000
13	Over 30,000,000.....	No costs payable

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

- 17 (1) the owner reported the release to the department before
18 (A) July 1, 1990, for a release that the owner establishes
19 first occurred before July 1, 1989;
20 (B) July 1, 1994, for a release that the owner establishes
21 first occurred on or after July 1, 1989, and before December 22, 1993;
22 (2) the tank from which the release occurred was installed
23 before December 22, 1988;
24 (3) the tank from which the release occurred was registered with
25 the department as provided in sec. 8 of this Act by December 1, 1989;
26 (4) the owner has, after July 1, 1989, been in compliance with
27 all state and federal laws applicable to underground petroleum storage
28 tanks;
29 (5) the owner lacks sufficient assets to adequately self-insure

1 for the costs of investigation, containment, and cleanup resulting from
2 releases of petroleum from underground storage tanks as defined under
3 applicable federal regulations;

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

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

9 (8) the owner agrees to

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

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

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

20 (1) the account established under AS 46.08.015, enacted by sec.
21 6 of this Act, lacks sufficient funds;

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

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

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

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

1 (f) The department shall determine which costs of investigation,
2 containment, and cleanup are eligible for payment under this section. The
3 department shall give higher priority to investigation, containment, and
4 cleanup under this section than to grants under AS 46.03.390, enacted by
5 sec. 4 of this Act.

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

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

19 (i) A person is not eligible to request funding under this section
20 for costs relating to a storage tank containing motor fuel that is exempt
21 from the surcharge under AS 43.40.015.

22 (j) The owner of an underground petroleum storage tank for whom the
23 department makes payments under this section may not operate the under-
24 ground petroleum storage tank system for which payments were received under
25 this section for the costs of investigation, containment, and cleanup until
26 the system meets the requirements of federal regulations that are applica-
27 ble to underground storage tank systems installed after the date investiga-
28 tion, containment, and cleanup are completed.

29 (k) In this section,

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

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

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

9 * Sec. 12. By the 10th day of the Second Regular Session of the
10 Sixteenth Alaska State Legislature, the Department of Environmental Con-
11 servation shall submit a report to the legislature containing its rec-
12 ommendations on

13 (1) whether there is a need to develop a state program for the
14 prevention and abatement of pollution from aboveground petroleum or
15 chemical storage tanks; and

16 (2) the manner in which aboveground petroleum or chemical
17 storage tanks should be regulated, including recommended legislation, if
18 the department identifies a need under (1) of this section.

19 * Sec. 13. This Act takes effect July 1, 1989.