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

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 SENATE CS FOR 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 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 and chemical storage tanks to comply with federal and state
17 requirements governing their tanks. The legislature recognizes that these
18 owners may be faced with expenses that they cannot immediately afford for
19 liability insurance, the costs of upgrading or replacing their tanks, and
20 the costs of cleaning up past contamination related to their tanks. The
21 legislature intends to help these owners through a combination of educa-
22 tional assistance, grants, and other financial assistance, but only if
23 these owners promptly comply with the new requirements of this Act.

24 * Sec. 2. 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 UNDERGROUND PETROLEUM AND CHEMICAL
27 STORAGE TANKS. (a) The department shall assist owners and develop a
28 program to prevent and abate pollution from underground petroleum and
29 chemical storage tanks through the adoption of regulations.

1 Consistent with other provisions in AS 46.03.360 - 46.03.450, the
2 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 overfill control, corrosion prevention, and
10 release detection and reporting;

11 (7) enforcement, corrective action, and damages and cost
12 recovery;

13 (8) administration of the grant program under AS 46.03.380;

14 (9) closure and abandonment; and

15 (10) prevention of spills, releases, or pollution, to pro-
16 tect the public health and environment.

17 (b) The department may distinguish among the sizes, types,
18 classes, and ages of underground petroleum and chemical storage tanks
19 in the regulations adopted under (a) of this section.

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

1 the comments of the panel.

2 Sec. 46.03.370. EDUCATIONAL ASSISTANCE. The department shall
3 provide to persons who own or operate storage tanks educational assis-
4 tance to help them comply with federal and state laws and regulations
5 applicable to the tanks. The department shall also provide the public
6 with information to help the public understand the effects associated
7 with the release of petroleum and chemical products into the environ-
8 ment.

9 Sec. 46.03.380. GRANTS. (a) The department may issue a grant,
10 not to exceed \$100,000 per facility, to the owner of an underground
11 petroleum or chemical storage tank for the purpose of

12 (1) removing and properly disposing of all liquids and
13 sludges from the tank and either filling the tank with inert material
14 or properly dismantling, removing, and disposing of the tank; or

15 (2) retrofitting, repairing, or replacing the tank to meet
16 federal or state requirements.

17 (b) A grant under (a)(1) of this section may be for up to 75
18 percent of the costs approved by the department. A grant under (a)(2)
19 of this section may be for up to 60 percent of the costs approved by
20 the department.

21 Sec. 46.03.390. NOTIFICATION REQUIREMENTS. (a) A person who
22 intends to install, have installed, significantly change the config-
23 uration of, or transfer ownership of an underground petroleum or
24 chemical storage tank shall notify the department in writing at least
25 30 days before the installation, change, or transfer. The department
26 may waive the requirement of this subsection upon a showing of good
27 cause.

28 (b) If an underground petroleum or chemical storage tank is
29 taken out of operation, the owner of the tank, or an agent on the

1 owner's behalf, shall provide

2 (1) notification of that fact to the department within 30
3 days after the date the tank was taken out of operation; and

4 (2) evidence satisfactory to the department that

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

7 (B) the tank has either been filled with inert materi-
8 al or been properly dismantled, removed, and disposed of.

9 (c) A person who owns an aboveground petroleum or chemical
10 storage tank shall notify the department within 30 days after install-
11 ing the tank or removing it from operation. A notification required
12 under this subsection for installation of a tank must include informa-
13 tion about the tank's location, age if known, type of construction,
14 capacity, and contents.

15 Sec. 46.03.400. REGISTRATION REQUIREMENTS. (a) The owner of an
16 underground petroleum or chemical storage tank shall, within 30 days
17 after installing an underground petroleum or chemical storage tank,
18 register the tank with the department on a form provided by the de-
19 partment.

20 (b) The owner shall specify on the registration form required
21 under (a) of this section the location, size, type of construction,
22 and age of the tank and the type and number of gallons of petroleum or
23 chemical stored in the tank during the previous 12 months.

24 Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registra-
25 tion under AS 46.03.400, the owner shall pay to the department a
26 registration fee of \$.01 per gallon based on the capacity of the tank
27 being registered or a fee of \$100, whichever is lower. The department
28 shall deposit fees collected under this section in the general fund.
29 The commissioner of administration shall separately account for fees

1 deposited under this section. The legislature may appropriate the
2 annual estimated balance of the account to the petroleum and chemical
3 storage tank account established under AS 46.08.015.

4 (b) The registration fee imposed under (a) of this section does
5 not apply to an underground storage tank owned by the state. The
6 department may by regulation provide for other exemptions from the
7 registration fee imposed under (a) of this section.

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

12 (b) AS 46.03.360 - 46.03.450 do not apply to a storage tank used
13 for storing heating oil if the oil is held for consumptive use on the
14 premises where it is stored.

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

18 (d) The department may by regulation provide for other exemp-
19 tions as necessary.

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

21 (1) "chemical" means any substance defined in 42 U.S.C.
22 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,
23 Compensation, and Liability Act of 1980), as amended, and any sub-
24 stance having the characteristics identified or listed under 42 U.S.C.
25 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-
26 er the substance is a solid waste;

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

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

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

12 (5) "storage tank" means one or a combination of stationary
13 devices that are designed to contain an accumulation of at least 110
14 gallons of petroleum or chemicals; are constructed of nonearthen
15 materials such as concrete, steel, or plastic; and provide structural
16 support; "storage tank" includes pipes or piping connected to the
17 storage tank;

18 (6) "underground storage tank" means a storage tank de-
19 signed to contain an accumulation of petroleum or chemicals, the
20 volume of which, including the volume of underground pipes connected
21 to it, is 10 percent or more beneath the surface of the ground.

22 * Sec. 3. AS 46.08.010(c) is amended to read:

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

27 * Sec. 4. AS 46.08 is amended by adding a new section to read:

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

29 (a) There is established in the fund a petroleum and chemical storage

1 tank account. The account consists of money appropriated to it.

2 (b) The commissioner may use money in the petroleum and chemical
3 storage tank account to pay for

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

9 (2) grants under AS 46.03.380; and

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

12 (c) In this section, "chemical," "petroleum," and "underground
13 storage tank" have the meanings given in AS 46.03.450.

14 * Sec. 5. AS 46.08.060(a) is amended to read:

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

19 (1) the amount of money expended under AS 46.08.015 and
20 46.08.040 during the preceding fiscal year;

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

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

25 (4) a detailed summary of department activities in re-
26 sponses funded by the fund and the petroleum and chemical storage tank
27 account during the preceding fiscal year, including response and
28 descriptions and statements outlining the nature of the threat; the
29 report must separately describe how many requests for assistance have

1 been made to the department to use the petroleum and chemical storage
2 tank account to respond to a release or threatened release from a
3 storage tank, the estimated cost of containment and cleanup related to
4 those requests, and a separate description of associated administra-
5 tive costs;

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

9 * Sec. 6. (a) Notwithstanding AS 46.03.400, enacted by sec. 2 of this
10 Act, the registration required under AS 46.03.400, enacted by sec. 2 of
11 this Act, is due December 1, 1989, for an underground storage tank in-
12 stalled before July 1, 1989, that is in use on July 1, 1989.

13 (b) The owner of an underground petroleum or chemical storage tank
14 governed by AS 46.03.360 - 46.03.450, enacted by sec. 2 of this Act, whose
15 tank was taken out of use before July 1, 1989, but whose tank is still in
16 place on July 1, 1989, shall notify the Department of Environmental Conser-
17 vation of the location of the tank by January 1, 1990.

18 (c) Notwithstanding AS 46.03.390(c), as enacted by sec. 2 of this
19 Act, notification required under that subsection for an aboveground petro-
20 leum or chemical storage tank in existence on July 1, 1989, is due by
21 January 1, 1990.

22 * Sec. 7. AS 46.03.380 and AS 46.08.015(b)(2) are repealed Septem-
23 ber 30, 1994.

24 * Sec. 8. (a) Subject to (b) - (h) of this section, the owner of an
25 underground petroleum or chemical storage tank may request the department
26 to use funds from the account established under AS 46.08.015, enacted in
27 sec. 4 of this Act, to pay the costs of investigation, containment, and
28 cleanup resulting from a release of petroleum or chemical from, or associ-
29 ated with, an underground petroleum or chemical storage tank.

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

8 Total number of gallons of	Amount of investigation,
9 petroleum and chemicals stored	containment, and cleanup
10 by the owner in the 12 months	costs not payable by the
11 before the report date:	department under this section:
12 0 - 1,000,000	\$ 5,000
13 1,000,001 - 5,000,000.....	10,000
14 5,000,001 - 10,000,000.....	15,000
15 10,000,001 - 15,000,000.....	20,000
16 15,000,001 - 30,000,000.....	40,000
17 Over 30,000,000.....	50,000.

18 (c) An owner of an underground petroleum or chemical storage tank is
19 not eligible to request payment under this section unless the owner estab-
20 lishes the following to the department's reasonable satisfaction:

21 (1) the owner reported the release to the department before
22 (A) July 1, 1990, for a release that the owner establishes
23 first occurred before July 1, 1989;

24 (B) July 1, 1994, for a release that the owner establishes
25 first occurred on or after July 1, 1989, and before December 22, 1993;

26 (2) the tank from which the release occurred was installed
27 before December 22, 1988;

28 (3) the tank from which the release occurred was registered with
29 the department as provided in sec. 6 of this Act by December 1, 1989;

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

4 (5) 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 (6) the release was not a result of the owner's gross negli-
8 gence, recklessness, or intentional conduct; and

9 (7) 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 liquids and sludges
14 from the underground storage tank systems located at the facility from
15 which the release occurred and either fill the tanks with inert mate-
16 rial or properly dismantle, remove, and dispose of the tanks.

17 (d) The department may deny 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
21 sec. 4 of this Act, lacks sufficient funds; if a request for payment is
22 denied under this paragraph, it shall be granted when funds are next avail-
23 able, subject to the priorities established under (g) of this section;

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

27 (3) the owner fails to meet the requirements set out in (c) of
28 this section.

29 (e) A request for funding under this section, and a payment made

1 under this section, may not exceed \$1,000,000 per facility.

2 (f) The department shall determine which costs of investigation,
3 containment, and cleanup are eligible for payment under this section. The
4 department shall give higher priority to investigation, containment, and
5 cleanup under this section than to grants under AS 46.03.380, enacted by
6 sec. 2 of this Act.

7 (g) The department may adopt regulations reasonably necessary to
8 implement this section. The regulations must be consistent with federal
9 law. The department may adopt regulations that will be used for determin-
10 ing priorities for responding to a release or threatened release reported
11 under this section. The priorities established in the regulations must
12 take into consideration the ability of particular storage tank owners to
13 pay their costs of investigation, containment, and cleanup.

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

23 (i) In this section,

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

26 (2) "facility" has the meaning given in AS 46.03.450, as enacted
27 by sec. 2 of this Act;

28 (3) "chemical," "petroleum," and "underground storage tank" have
29 the meanings given in AS 46.03.450, as enacted by sec. 2 of this Act, but

1 "underground storage tank" does not include storage tanks that are exempt
2 under AS 46.03.420, enacted by sec. 2 of this Act, or regulations adopted
3 under that section;

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

6 * Sec. 9. This Act takes effect July 1, 1989.