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Referred: Finance

6-0693V

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

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 220 (Transportation)  
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

owner's behalf, shall provide

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

(2) evidence satisfactory to the department that

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

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

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

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

Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registration under AS 46.03.400, the owner shall pay to the department a registration fee of \$.01 per gallon based on the capacity of the tank being registered or a fee of \$100, whichever is lower. The department shall deposit fees collected under this section in the general fund. The commissioner of administration shall separately account for fees deposited under this section. The legislature may appropriate the annual estimated balance of the account to the petroleum and chemical storage tank account established under AS 46.08.015.

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

1 registration fee imposed under (a) of this section.

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

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

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

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

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

15 (1) "chemical" means any substance defined in 42 U.S.C.  
16 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,  
17 Compensation, and Liability Act of 1980), as amended, and any sub-  
18 stance having the characteristics identified or listed under 42 U.S.C.  
19 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-  
20 er the substance is a solid waste;

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

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

28 (4) "petroleum" means crude oil or any fraction of crude  
29 oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7

1 pounds per square inch absolute; "petroleum" includes petroleum-based  
2 substances comprised of a complex blend of hydrocarbons derived from  
3 crude oil through processes of separation, conversion, upgrading, and  
4 finishing, such as motor fuels, jet fuels, distillate fuel oils,  
5 residual fuel oils, lubricants, petroleum solvents, and used oils;

6 (5) "storage tank" means one or a combination of stationary  
7 devices that are designed to contain an accumulation of at least 110  
8 gallons of petroleum or chemicals; are constructed of nonearthen  
9 materials such as concrete, steel, or plastic; and provide structural  
10 support; "storage tank" includes pipes or piping connected to the  
11 storage tank;

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

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

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

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

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

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

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

27 (1) the costs of investigation, containment, and cleanup of  
28 a release or threatened release of petroleum or chemicals from an  
29 underground petroleum or chemical storage tank or from uses related to

1 the storage tank; payments under this paragraph may not exceed  
2 \$1,000,000 per investigation, containment, and cleanup action; and

3 (2) grants under AS 46.03.380.

4 (c) When using funds from the petroleum and chemical storage  
5 tank account, the commissioner shall place a priority on those inves-  
6 tigations, containments, and cleanups of a release or threatened  
7 release of petroleum or chemicals from an underground petroleum or  
8 chemical storage tank or from uses related to the storage tank based  
9 on the potential for groundwater contamination in or adjacent to major  
10 population centers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 during the 12-month period preceding the date the owner reported the re-  
2 lease to the department, as follows:

3	Total number of gallons of	Amount of investigation,
4	petroleum and chemicals stored	containment, and cleanup
5	by the owner in the 12 months	costs not payable by the
6	before the report date:	department under this section:
7	0 - 1,000,000 .....	\$ 5,000
8	1,000,001 - 5,000,000.....	10,000
9	5,000,001 - 10,000,000.....	15,000
10	10,000,001 - 15,000,000.....	20,000
11	15,000,001 - 30,000,000.....	40,000
12	Over 30,000,000.....	50,000.

13 (c) Information released to the department under (b) of this section  
14 shall remain confidential.

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

18 (1) the owner reported the release to the department before

19 (A) July 1, 1990, for a release that the owner establishes  
20 first occurred before July 1, 1989;

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

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

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

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

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

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

6 (7) the owner agrees to

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

10 (B) remove and properly dispose of all liquids and sludges  
11 from the underground storage tank systems located at the facility from  
12 which the release occurred and either fill the tanks with inert mate-  
13 rial or properly dismantle, remove, and dispose of the tanks.

14 (e) The department may deny a request for payment made under this  
15 section if the department determines that one or more of the following  
16 conditions exists:

17 (1) the account established under AS 46.08.015, enacted by  
18 sec. 4 of this Act, lacks sufficient funds; if a request for payment is  
19 denied under this paragraph, it shall be granted when funds are next avail-  
20 able, subject to the priorities established under (h) of this section;

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

24 (3) the owner fails to meet the requirements set out in (d) of  
25 this section.

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

28 (g) The department shall determine which costs of investigation,  
29 containment, and cleanup are eligible for payment under this section. The

1 department shall give higher priority to investigation, containment, and  
2 cleanup under this section than to grants under AS 46.03.380, enacted by  
3 sec. 2 of this Act.

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

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

20 (j) In this section,

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

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

25 (3) "chemical," "petroleum," and "underground storage tank" have  
26 the meanings given in AS 46.03.450, as enacted by sec. 2 of this Act, but  
27 "underground storage tank" does not include storage tanks that are exempt  
28 under AS 46.03.420, enacted by sec. 2 of this Act, or regulations adopted  
29 under that section;

1 (4) "underground storage tank system" has the meaning given to  
2 the term "UST system" in 40 C.F.R. 280.12, as amended.

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