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Original sponsor(s): REP. MENARD, M.Davis, Brown, Larson, Navarre, Cato,
Koponen, Gruenberg, Spohnholz, Goll, Ellis, Foster, Jacko, Boyer, Boucher,
Swackhammer, Kubina

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 220 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND 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 AND INTENT. (a) The purpose of this Act is to
12 provide for

13 (1) establishment of technical assistance mechanisms that will
14 assist the owners and operators of underground storage tank systems to
15 comply with federal and state requirements governing their tank systems;
16 and

17 (2) clean up of existing leaks and prevention of future leaks
18 associated with underground petroleum storage tank systems in order to
19 protect the public from contamination of drinking water and to protect the
20 environment.

21 (b) The legislature recognizes that the regulations governing under-
22 ground storage tank systems may not be easily understood and that some
23 owners and operators will be faced with insurance requirements that they
24 will not be able to satisfy because of contamination relating to their tank
25 systems. It is the legislature's intent to help these owners and operators
26 through educational, technical, and financial assistance, and to provide
27 incentives for prompt compliance with the new requirements of this Act.

28 (c) It is the intent of the legislature that the owners and operators
29 of underground petroleum storage tank systems train their employees in the

1 proper handling of petroleum products and the use of leak, spill, and
2 overflow protection devices.

3 (d) It is also the intent of the legislature to develop a program for
4 underground storage tank systems that will be approved by the federal
5 government.

6 * Sec. 2. AS 46.03 is amended by adding new sections to read:

7 ARTICLE 6A. UNDERGROUND STORAGE TANK SYSTEMS.

8 Sec. 46.03.360. BOARD OF STORAGE TANK ASSISTANCE. (a) There is
9 established the Board of Storage Tank Assistance. For administrative
10 purposes, the board is located in the department. The board consists
11 of the commissioners of environmental conservation and transportation
12 and public facilities, or their designees, and the following persons
13 who shall be appointed by the governor:

14 (1) an engineer registered under AS 08.48 who is knowledge-
15 able about installing, upgrading, repairing, or closing underground
16 petroleum storage tank systems;

17 (2) a general contractor registered under AS 08.18 who is
18 knowledgeable about installing, upgrading, repairing, or closing
19 underground petroleum storage tank systems;

20 (3) two persons who own or operate an underground petroleum
21 storage tank system, at least one of whom does not own or operate more
22 than 10 underground petroleum storage tanks; and

23 (4) a member of the insurance industry.

24 (b) The board may employ a full-time director and no more than
25 one other employee. The department shall provide additional adminis-
26 trative and clerical support to the board.

27 (c) Members of the board designated under (a)(1) - (4) of this
28 section serve staggered four-year terms and may be removed by the
29 governor only after notice and hearing for misconduct, incompetency,

1 or neglect of duty.

2 (d) The board shall meet at the call of the chair, who shall be
3 selected by the members from among themselves.

4 (e) The members of the board serve without compensation, but are
5 entitled to per diem and travel expenses authorized by law for boards
6 and commissions.

7 (f) The department shall implement and enforce the regulations
8 adopted by the board.

9 Sec. 46.03.363. BOARD REPORT. The board shall submit a report
10 to the legislature not later than the 10th day following the convening
11 of each regular session of the legislature. The report may include
12 information considered significant by the board but must include

13 (1) information about the extent to which releases associ-
14 ated with underground petroleum storage tank systems have caused
15 bodily injury or property damages to persons other than the owner or
16 operator of the system in the preceding fiscal year, and the extent to
17 which insurance is available to cover that type of injury and damage;

18 (2) recommendations about whether there are specific areas
19 where state regulations should be more stringent than the federal
20 regulations for underground petroleum storage tank systems;

21 (3) information on the availability of private commercial
22 loans and federal loans, loan guarantees, or grants for upgrading
23 underground petroleum storage tank systems;

24 (4) information on the availability of insurance that would
25 cover the costs of corrective actions made necessary by a release or
26 threatened release from an underground petroleum storage tank system;

27 (5) a brief summary of disputes involving the board under
28 AS 46.03.420(c)(3); and

29 (6) recommendations for amendments or additions to

1 AS 46.03.360 - 46.03.450.

2 Sec. 46.03.365. REGULATION OF UNDERGROUND PETROLEUM STORAGE TANK
3 SYSTEMS. (a) The board shall develop a program to abate and prevent
4 pollution from underground petroleum storage tank systems through the
5 adoption of regulations under the Administrative Procedure Act
6 (AS 44.62). Consistent with other provisions in AS 46.03.360 - 46.-
7 03.450, the regulations may govern

- 8 (1) notification and registration;
- 9 (2) inspection and record keeping;
- 10 (3) construction, installation, and performance;
- 11 (4) maintenance, operation, and repair;
- 12 (5) technical standards, including standards for spill and
13 overfill control, corrosion prevention, and release detection and
14 reporting;
- 15 (6) financial responsibility;
- 16 (7) certification of underground petroleum storage tank
17 system workers;
- 18 (8) corrective action and cost recovery;
- 19 (9) closure and abandonment;
- 20 (10) enforcement of regulations; and
- 21 (11) prevention of releases to protect the public health and
22 environment.

23 (b) In the regulations adopted under (a) of this section, the
24 board may

- 25 (1) distinguish among the sizes, types, classes, locations,
26 and ages of underground petroleum storage tank systems;
- 27 (2) provide for exemptions and deferrals determined to be
28 necessary by the board; exemptions and deferrals under this paragraph
29 must be consistent with those granted under federal laws and

1 regulations.

2 (c) Except as provided in AS 46.03.420(c)(2)(A), when the regu-
3 lations adopted under this section address areas governed by federal
4 laws or regulations, the state regulations must be consistent with
5 federal laws and regulations and may not be more stringent than the
6 federal laws and regulations.

7 (d) The department may not adopt regulations that conflict with
8 regulations adopted by the board.

9 Sec. 46.03.370. EDUCATIONAL ASSISTANCE. Under the regulations
10 of the board, the department shall provide

11 (1) educational assistance to owners and operators of
12 underground petroleum storage tank systems to help them comply with
13 federal and state laws and regulations applicable to the tank systems,
14 including the registration and notification requirements under AS 46.-
15 03.380 - 46.03.400;

16 (2) the public with information to help the public under-
17 stand the effects associated with the release of petroleum and chemi-
18 cal products into the environment, including releases from petroleum
19 and chemical storage tank systems.

20 Sec. 46.03.375. CERTIFICATION OF STORAGE TANK WORKERS. (a) The
21 board shall adopt regulations governing the certification of persons
22 who install, test, close, repair, or significantly change the config-
23 uration of underground petroleum storage tanks and tank systems. The
24 certification program shall be administered by the division of occupa-
25 tional licensing, Department of Commerce and Economic Development.
26 Under the board's regulations and in consultation with the Department
27 of Environmental Conservation, the division shall make every reason-
28 able attempt to ensure that opportunities for obtaining certification
29 under this section are available throughout the state. The division

1 shall organize presentation of national training courses that are
2 available in the state and assist residents of isolated communities
3 who request assistance in becoming certified. The division may con-
4 tract with the University of Alaska, a vocational technical school, or
5 a regional nonprofit organization to provide the education and testing
6 necessary for certification.

7 (b) The division shall establish fees applicable to certifica-
8 tion under this section in an amount necessary to cover the costs of
9 the certification program. The fees shall be collected by the divi-
10 sion. The commissioner of administration shall separately account for
11 fees deposited in the general fund by the Department of Commerce and
12 Economic Development under this subsection. The legislature may
13 appropriate the annual estimated balance of the account to the Depart-
14 ment of Commerce and Economic Development for operation of the certi-
15 fication program.

16 (c) Except as provided in (d) of this section, a person may not
17 install, test, close, repair, or significantly change the config-
18 uration of an underground petroleum storage tank or tank system unless
19 that person is certified for the appropriate activity under (a) of
20 this section. A person who violates this subsection is guilty of a
21 class B misdemeanor.

22 (d) A person may install, test, close, repair, or significantly
23 change the configuration of an underground petroleum storage tank or
24 tank system without being certified under this section if

25 (1) the person performs the work under the direct super-
26 vision of another who is certified for that work under this section;

27 (2) the supervisor inspects the work performed; and

28 (3) after inspection, the supervisor approves the work in
29 writing.

1 (e) The Administrative Procedure Act (AS 44.62) applies to
2 regulations and certifications under this section.

3 (f) The department shall develop and maintain lists of persons
4 certified under this section to perform the various activities related
5 to underground petroleum storage tanks and tank systems. The depart-
6 ment shall provide the lists on request to interested persons.

7 (g) In this section,

8 (1) "close" means to remove petroleum and sludges from the
9 tanks in the tank system and either fill the tanks with inert solid
10 material or remove, dismantle, and dispose of the tanks;

11 (2) "division" means the division of occupational licensing
12 in the Department of Commerce and Economic Development.

13 Sec. 46.03.380. REGISTRATION OF TANKS AND TANK SYSTEMS. (a) A
14 person, including a governmental entity or institution, or a public
15 corporation, who intends to install, have installed, return to opera-
16 tion, or acquire ownership of an underground petroleum storage tank or
17 tank system shall, before the installation or return to operation, or
18 30 days after acquisition, register the tank or tank system with the
19 department on a form provided by the department and pay the tank
20 registration fee required under AS 46.03.385.

21 (b) The owner or operator of an underground petroleum storage
22 tank or tank system that was installed before and is still in use on
23 the effective date of this section shall register the tank or tank
24 system with the department on a form provided by the department and
25 pay the tank registration fee required under AS 46.03.385. For each
26 tank or tank system registered under this subsection that was in-
27 stalled before December 22, 1988, the owner or operator shall provide
28 to the department at the time of registration

29 (1) proof of plans for prompt site assessment or testing

1 for tank tightness;

2 (2) an application for state assistance to fund part of the
3 cost of a tank tightness test or site assessment; or

4 (3) proof of tank tightness testing or site assessment that
5 occurred within the previous 12 months and

6 (A) satisfactory performance of the tank or tank
7 system during the test, proof of noncontamination if a site
8 assessment was performed, and proof of compliance with applicable
9 state financial responsibility requirements; or

10 (B) if the tank or tank system did not perform satis-
11 factorily during the test, or the site assessment showed evidence
12 of contamination,

13 (i) a summary of the upgrading, repair, contain-
14 ment, or cleanup efforts that have been or will be used for
15 the tank, tank system, or site; or

16 (ii) an application for state assistance under
17 AS 46.03.420 - 46.03.430; if the applicant is determined to
18 be ineligible for assistance under AS 46.03.420 - 46.03.430,
19 the applicant shall comply with (i) of this subparagraph
20 upon notification of ineligibility.

21 Sec. 46.03.385. REGISTRATION FEE. (a) At the time of registra-
22 tion under AS 46.03.380, and annually thereafter, the owner or opera-
23 tor shall pay to the department a registration fee for each tank
24 registered unless the owner or operator has notified the department
25 under AS 46.03.395 that the tank has been taken out of service. An
26 underground storage tank that has leak detection, spill and overflow
27 protection, and corrosion protection that meet requirements of the
28 board is subject to a \$50 annual registration fee, regardless of tank
29 capacity. An underground storage tank system that lacks any or all of

1 these features is subject to an annual registration fee of
2 (1) \$150 if the underground storage tank capacity is less
3 than 1,000 gallons;
4 (2) \$300 if the underground storage tank capacity is
5 1,000 - 5,000 gallons;
6 (3) \$500 if the underground storage tank capacity is over
7 5,000 gallons.
8 (b) An underground petroleum storage tank or tank system owned
9 or operated by the federal or state government is exempt from the
10 registration fee in (a) of this section.
11 (c) A registration fee that is not paid within 30 days of when
12 it is due shall be increased by a late payment fee equal to \$10 per
13 day until the day of payment.
14 (d) The first annual fee under this section must be accompanied
15 by the information required under AS 46.03.400. Subsequent annual
16 fees must be accompanied by the names and addresses of the owner and
17 operator of the tank system, and the location and capacity of, and
18 substance being stored in, the tanks for which the fee is being sub-
19 mitted.
20 (e) The commissioner of administration shall separately account
21 for money deposited in the general fund by the department under this
22 section. The legislature may appropriate the annual estimated balance
23 of the account to the storage tank assistance fund established under
24 AS 46.03.410.
25 **Sec. 46.03.390. NOTIFICATION OF CHANGES IN TANK SYSTEMS.** An
26 owner or operator who intends to significantly change the configura-
27 tion of an underground petroleum storage tank system shall notify the
28 department before beginning work on the change by completing and
29 returning to the department a notification form obtained from the

1 department.

2 Sec. 46.03.395. NOTIFICATION OF TANK SYSTEM CLOSURE. If an
3 underground petroleum tank or storage tank system is taken out of
4 operation, the owner or operator of the tank or tank system, or an
5 agent on the owner's or operator's behalf, shall provide on forms ob-
6 tained from the department

7 (1) notification of that fact to the department at least 15
8 days, but not more than 60 days, before the date the tank or tank
9 system will be taken out of operation unless the tank or tank system
10 is taken out of operation because of an emergency; in emergency sit-
11 uations, the owner or operator shall provide notification as promptly
12 as possible under the circumstances; and

13 (2) evidence satisfactory to the department within 30 days
14 after the tank or tank system is taken out of operation that the owner
15 or operator has complied with applicable state and federal laws and
16 regulations governing temporary or permanent tank closure.

17 Sec. 46.03.400. REGISTRATION FORMS. The registration forms
18 required under AS 46.03.380 - 46.03.395 must require information about
19 the geographical location of a tank or tank system, the estimated age
20 of the tanks and tank system, the total capacity, type of construc-
21 tion, internal and external protection, and piping of the tanks and
22 tank system, and the substance currently or proposed to be stored in
23 the tank system. If the tank or tank system is newly installed, the
24 owner or operator shall certify that the owner or operator has com-
25 plied with installation, release detection, corrosion protection, and
26 financial responsibility requirements of state and federal law.

27 Sec. 46.03.405. PROHIBITIONS. A person may not operate an
28 underground petroleum storage tank or tank system unless

29 (1) the tank and tank system is registered with the

1 department as provided in AS 46.03.360 - 46.03.450 or other law; and
2 (2) except as provided in AS 46.03.420(c)(1)(D), the person
3 has provided to the department proof of financial responsibility to
4 the extent required under regulations adopted under AS 46.03.365 or
5 proof of application for arrangements that would satisfy state finan-
6 cial responsibility requirements.

7 Sec. 46.03.410. STORAGE TANK ASSISTANCE FUND. (a) There is
8 established the storage tank assistance fund. It consists of money
9 appropriated to it by law. The commissioner of administration shall
10 separately account for earnings on money in the fund that are de-
11 posited in the general fund by the department. The legislature may
12 use the estimated balance in the account to make appropriations to the
13 fund.

14 (b) The commissioner may use money in the fund to pay for

15 (1) tank tightness tests or site assessments under AS 46.-
16 03.415;

17 (2) grants and loans under AS 46.03.420 for risk assess-
18 ment, containment, corrective action, and cleanup costs; and

19 (3) grants under AS 46.03.430 for tank system upgrading and
20 closure.

21 (c) The commissioner shall submit a report on the status of the
22 storage tank assistance fund to the legislature not later than the
23 10th day following the convening of each regular session of the legis-
24 lature. The report may include information considered significant by
25 the commissioner but must include

26 (1) the amount and source of money received by the fund
27 during the preceding fiscal year;

28 (2) the amount of money expended during the preceding
29 fiscal year for each type of expense authorized under (b) of this

1 section;

2 (3) a detailed summary of department activities paid for
3 from the fund during the preceding fiscal year, including how many
4 requests for assistance have been made to the department to use the
5 fund for grants or loans for testing, site assessment, risk assess-
6 ment, upgrading, closure, containment, corrective action, and cleanup
7 costs, and the number of requests funded in each activity area;

8 (4) the projected cost for the next fiscal year of moni-
9 toring, operating, and maintaining sites where department activities
10 have been completed or are expected to start or be continued during
11 the fiscal year;

12 (5) the priority list of tank system sites for which the
13 department expects to provide financial assistance in the next fiscal
14 year.

15 Sec. 46.03.415. TANK TIGHTNESS AND SITE ASSESSMENT INCENTIVE
16 PROGRAM. (a) The owner or operator of an underground petroleum
17 storage tank or tank system that was installed before the effective
18 date of this Act and is operating on the effective date of this Act,
19 other than the state or federal government, may request the department
20 to use money from the storage tank assistance fund to reimburse the
21 owner or operator for eligible costs of a tank tightness test or site
22 assessment in order to determine if there has been a release of petro-
23 leum from the owner's or operator's tank system. The department shall
24 reimburse up to 50 percent of the cost, not to exceed \$300 per tank
25 for tightness tests up to a maximum of \$1,200 per facility, or \$800
26 per tank for site assessment up to a maximum of \$3,200 per facility.

27 (b) Under regulations adopted by the board, the department shall
28 determine which costs of tightness testing and site assessment are
29 eligible costs under this section.

1 (c) Notification of intent to request reimbursement under this
2 section must be submitted to the department at the time of registra-
3 tion under AS 46.03.380(b). The activities for which reimbursement is
4 requested must be completed within 12 months after registration is due
5 under AS 46.03.380 unless the owner or operator demonstrates to the
6 department's satisfaction that there is good cause for extending the
7 deadline. Good cause may be demonstrated by a showing that a qual-
8 ified site assessor or tank system tester was not available, seasonal
9 climatic conditions render the appropriate activities unsafe or im-
10 practicable, or other justification acceptable to the department. If
11 the department finds good cause for extending the deadline, the de-
12 partment may extend the deadline for completion of activities for
13 which reimbursement is requested for a period of time specified by the
14 department.

15 (d) The department shall make available, on request, lists of
16 persons who have notified the department that they are available as
17 site assessors and tank testers for purposes of this section.

18 Sec. 46.03.420. TANK CLEANUP PROGRAM. (a) Subject to (b) - (j)
19 of this section, application may be made to the department by the
20 owner or operator of an underground petroleum storage tank system,
21 other than the state or federal government, for grants and loans from
22 the storage tank assistance fund to pay for the costs of risk assess-
23 ment, containment, corrective action, and cleanup resulting from a
24 release of petroleum from or associated with an underground petroleum
25 storage tank system. Applications for assistance under this section
26 must be submitted to the department before July 1, 1994. The depart-
27 ment shall rank requests under this section in order of priority,
28 giving greatest priority to those tank systems that present the great-
29 est threat or potential threat to human health. The board shall

1 review the priority list developed by the department.

2 (b) Grants made by the department under this section shall
3 exclude a portion of the risk assessment, containment, corrective
4 action, and cleanup costs. The portion of these costs not payable as
5 a grant by the department under this section is 10 percent of total
6 costs, up to a maximum of \$25,000 not payable by the department; this
7 portion of the costs shall be loaned at no interest by the department
8 to the owner or operator on request with repayment to be made accord-
9 ing to a schedule agreed to by the parties. The department may re-
10 quire security or collateral for a loan made under this subsection and
11 may charge a fee for a late loan repayment equal to five percent of
12 the amount of the late payment. At the department's discretion, a
13 loan or grant under this section may be disbursed in partial payments
14 according to a schedule related to costs anticipated to be incurred
15 during specified time periods.

16 (c) An owner or operator of an underground petroleum storage
17 tank system is not eligible for a grant or loan under this section for
18 activities related to a release unless the release occurs before
19 December 22, 1993, and the owner or operator

20 (1) establishes the following to the department's reason-
21 able satisfaction:

22 (A) the owner or operator reported the release to the
23 department in compliance with state and federal law before
24 July 1, 1994, for a release that the owner or operator estab-
25 lishes first occurred on or after the effective date of this
26 section and before December 22, 1993;

27 (B) the owner or operator promptly reported the re-
28 lease to the department in compliance with applicable regula-
29 tions;

1 (C) the tank or tank system from which the release
2 occurred was installed before December 22, 1988;

3 (D) the owner and operator have, within six months
4 after the effective date of this section, been in compliance with
5 all state and federal laws applicable to underground petroleum
6 storage tank systems and releases from them, including notifica-
7 tion and registration laws, but excluding financial responsibil-
8 ity requirements;

9 (E) the release was not a result of the owner's or
10 operator's gross negligence, recklessness, or intentional con-
11 duct;

12 (2) agrees to

13 (A) upgrade all underground petroleum storage tanks
14 located at the facility from which the release occurred to the
15 standards set by state and federal regulations according to a
16 time line established by the department under regulations of the
17 board; notwithstanding (g) of this section and AS 46.03.365(c),
18 the board and the department may require upgrading under this
19 subparagraph that is required earlier than that required under
20 federal law; or

21 (B) remove and properly dispose of all liquids and
22 sludges from the underground petroleum storage tanks located at
23 the facility from which the release occurred, conduct a site
24 assessment, and either fill the tanks with inert solid material
25 or properly dismantle, remove, and dispose of the tanks in accor-
26 dance with applicable state and federal regulations; and

27 (3) agrees to submit a plan for risk assessment, contain-
28 ment, corrective action, and cleanup to the department for its review
29 and approval; if the department and the owner or operator cannot reach

1 agreement on a plan or on later changes in the plan, the owner or
2 operator may apply to the board to decide the dispute; the board may
3 issue a decision in a dispute brought to it under this paragraph; the
4 decision is binding on the owner, operator, and department if the
5 owner or operator continues to request assistance under this section.

6 (d) The department may deny a request for a grant or loan under
7 this section if the department determines that one or more of the
8 following conditions exists:

9 (1) the fund established under AS 46.03.410 lacks suffi-
10 cient money; if a request for a grant or loan is denied under this
11 paragraph, it shall be granted, without the requirement of a new
12 application, when money is next available, subject to the existence of
13 higher-priority requests;

14 (2) other risk assessment, containment, corrective action,
15 and cleanup activities for which money may be used under AS 46.03.410
16 constitute a higher priority for fund expenditures; if a request is
17 initially denied under this paragraph, it shall be granted later
18 without the necessity of a new application, subject to available
19 funding and other higher priorities; or

20 (3) the owner or operator fails to meet the requirements
21 set out in (c) of this section.

22 (e) A request for a grant under this section, and a grant pay-
23 ment made under this section, may not exceed \$1,000,000 per occur-
24 rence, less the amount not payable as a grant under (b) of this sec-
25 tion.

26 (f) Under regulations adopted by the board, the department shall
27 determine which costs of risk assessment, containment, corrective
28 action, and cleanup are eligible for payment under this section.

29 (g) The board shall adopt regulations reasonably necessary to

1 enable the department to implement this section. The regulations must
2 be consistent with federal law except as provided in (c)(2)(A) of this
3 section.

4 (h) This section does not affect the liability under state or
5 federal law of any person for the costs of risk management, contain-
6 ment, corrective action, and cleanup resulting from a release of
7 petroleum. However, notwithstanding the provisions of AS 46.08.-
8 070(a), the department may not seek reimbursement of a grant made
9 under this section unless the department determines that the grant was
10 requested under false pretenses or that other circumstances render the
11 grant inconsistent with this section or with applicable regulations.
12 This section does not affect the authority of the department to seek
13 recovery from the owner or operator of costs other than grants and
14 loans actually made to an owner or operator under this section.

15 (i) The commissioner of administration shall separately account
16 for money deposited by the department under this section. The legis-
17 lature may appropriate the annual estimated balance of the account to
18 the fund established under AS 46.03.410.

19 Sec. 46.03.430. TANK UPGRADING AND CLOSURE PROGRAM. (a) The
20 board shall, by regulation, establish a grant program to be adminis-
21 tered by the department under which the owner or operator of an under-
22 ground petroleum storage tank, other than the state or federal govern-
23 ment, may, upon application, receive a grant for 60 percent of the
24 eligible costs of tank upgrading or closure, subject to a maximum
25 total grant of \$60,000 per facility.

26 (b) The regulations adopted under (a) of this section

27 (1) may limit the number of grants that may be awarded to
28 an owner or operator during a calendar year;

29 (2) must include criteria for determining eligible costs

1 under this section.

2 (c) A grant may not be awarded under this section for upgrading
3 or closure activities that do not meet the requirements of state and
4 federal law.

5 (d) In this section,

6 (1) "closure" means to remove all petroleum and sludges
7 from an underground petroleum storage tank and either fill the tank
8 with inert solid material or properly dismantle, remove, and dispose
9 of the tank;

10 (2) "upgrading" means to add or retrofit cathodic protec-
11 tion systems, lining, spill and overflow controls, or similar systems
12 to improve the ability of an underground petroleum storage tank system
13 to prevent a release.

14 Sec. 46.03.440. CONFIDENTIALITY OF FINANCIAL RECORDS. (a)
15 Financial records submitted to the department or the board by the
16 owner or operator of an underground petroleum storage tank system are
17 confidential and not subject to inspection or copying under AS 09.25.-
18 110 - 09.25.120. The department, in consultation with the affected
19 owner or operator, shall determine which information is confidential
20 under this subsection.

21 (b) The confidentiality conferred by (a) of this section does
22 not apply to statistical information compiled by the department about
23 the number, capacity, and location of underground petroleum storage
24 tank systems in the state.

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

26 (1) "board" means the Board of Storage Tank Assistance
27 established under AS 46.03.360;

28 (2) "chemical" means any substance defined in 42 U.S.C.
29 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980), as amended, and any sub-
2 stance having the characteristics identified or listed under 42 U.S.C.
3 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-
4 er the substance is a solid waste;

5 (3) "containment and cleanup" has the meaning given in
6 AS 46.08.900 except that it does not include incidental administrative
7 costs;

8 (4) "corrective action" means action necessary to stop the
9 migration, determine the extent, and undertake recovery of petroleum
10 after its unpermitted release; clean up affected soil and groundwater;
11 and stabilize the site of the release to prevent or remove hazards to
12 public health or the environment;

13 (5) "facility" means contiguous land and structures on or
14 in the land containing underground petroleum storage tanks owned by
15 the same person;

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

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

27 (8) "release" has the meaning given in AS 46.08.900;

28 (9) "risk assessment" means a determination of potential
29 health effects including effects of containment exposure through

1 inhalation, ingestion, dermal absorption, and other means, and the
2 assessment of risk to human health and the environment from contami-
3 nants remaining in the land, air, or water as a result of a release;

4 (10) "site assessment" means investigation of suspected
5 underground petroleum storage tank system leaks and source identifica-
6 tion;

7 (11) "tank system" means an underground petroleum storage
8 tank system;

9 (12) "underground storage tank" means one or a combination
10 of stationary devices, including underground pipes connected to the
11 devices, that is designed to contain an accumulation of petroleum, the
12 volume of which, including the volume of underground pipes, is 10
13 percent or more beneath the surface of the ground, except that the
14 term does not include a

15 (A) farm or residential tank of 1,100 gallons or less
16 capacity used for storing motor fuel for noncommercial purposes;

17 (B) tank used for storing heating oil for consumptive
18 use on the premises where stored;

19 (C) septic tank;

20 (D) pipeline facility, including gathering lines,

21 (i) regulated under 49 U.S.C. 1671, et seq.,
22 (Natural Gas Pipeline Safety Act of 1968);

23 (ii) regulated under 49 U.S.C. 2001, et seq.,
24 (Hazardous Liquid Pipeline Safety Act of 1979); or

25 (iii) that is an intrastate pipeline facility
26 regulated under state laws comparable to the provisions of
27 law referred to in (i) or (ii) of this subparagraph;

28 (E) surface impoundment, pit, pond, or lagoon;

29 (F) storm water or waste water collection system;

- 1 (G) flow-through process tank;
- 2 (H) liquid trap or associated gathering lines directly
3 related to oil or gas production and gathering operations;
- 4 (I) storage tank situated in an underground area such
5 as a basement, cellar, mineworking, drift, shaft, or tunnel, if
6 the storage tank is situated upon or above the surface of the
7 floor;
- 8 (J) tank with a capacity of 110 gallons or less;
- 9 (K) tank containing hazardous wastes regulated under
10 42 U.S.C. 6921 - 6939b; or
- 11 (L) tank system that the board or the department has
12 exempted by regulations adopted under AS 46.03.365;
- 13 (13) "underground petroleum storage tank system" means an
14 underground storage tank containing petroleum together with its under-
15 ground ancillary equipment and related containment system, if any; in
16 this paragraph, "ancillary equipment" means devices used to distrib-
17 ute, meter, or control the flow of petroleum to and from the system,
18 including piping, fittings, flanges, valves, and pumps.
- 19 * Sec. 3. LIMITED IMMUNITY FROM LIABILITY. (a) Notwithstanding
20 AS 46.03.420(h), 46.03.758, 46.03.760, 46.03.780, 46.03.790, and 46.03.822,
21 a person, including a municipal school district, regional educational
22 attendance area, or municipality, is not civilly or criminally liable to
23 the state under those sections for a discharge covered by those sections if
24 the person demonstrates by a preponderance of the evidence that the person
25 (1) is the owner or operator of an underground petroleum storage
26 tank or tank system, as defined in AS 46.03.450, enacted by sec. 2 of this
27 Act, that was installed before December 22, 1988, and the discharge oc-
28 curred from that tank or tank system before December 22, 1992;
- 29 (2) acted in good faith to report, assess, and mitigate damage

1 from the discharge and to undertake corrective action in accordance with
2 applicable state and federal law and was in compliance with all applicable
3 state and federal law before the discharge occurred;

4 (3) is receiving or has been approved for state funds under
5 AS 46.03.420 - 46.03.430, enacted by sec. 2 of this Act; and

6 (4) did not intentionally cause the discharge.

7 (b) In this section, "corrective action" has the meaning given in
8 AS 46.03.450, enacted by sec. 2 of this Act.

9 * Sec. 4. NOTIFICATION FOR TANK SYSTEMS NOT IN USE. The owner or
10 operator of an underground petroleum storage tank or tank system whose tank
11 or tank system was installed after January 1, 1974, but was taken out of
12 use before the effective date of AS 46.03.380, enacted by sec. 2 of this
13 Act, shall notify the department about the tank or tank system within six
14 months after the effective date of this section by completing and returning
15 to the department a form obtained from the department. The form must
16 comply with AS 46.03.400, enacted by sec. 2 of this Act, and be similar to
17 the notification form required under AS 46.03.395, enacted by sec. 2 of
18 this Act.

19 * Sec. 5. The initial registration and information required under
20 AS 46.03.380(b), enacted by sec. 2 of this Act, is due within six months
21 after the effective date of AS 46.03.380, enacted by sec. 2 of this Act.

22 * Sec. 6. REIMBURSEMENT PROGRAM. (a) An owner or operator of an
23 underground petroleum storage tank system, other than the state or federal
24 government, who began risk assessment, containment, cleanup, corrective
25 action, upgrading, or closure activities related to the tank system on or
26 after December 22, 1988, but before the effective date of this section, may
27 apply to the department for reimbursement of a portion of the eligible
28 costs incurred by the owner or operator for those activities, as determined
29 under (b) of this section. Application under this section must be

1 submitted within six months after the effective date of this section.
2 Payments made by the department shall be from the fund established under
3 AS 46.03.410, enacted by sec. 2 of this Act.

4 (b) An applicant for reimbursement under this section shall submit
5 evidence satisfactory to the department of the costs that are eligible for
6 reimbursement under this section, as determined by the department under
7 regulations of the board. The department shall, subject to the availabil-
8 ity of funds, reimburse the applicant for 90 percent of the eligible costs
9 of containment, cleanup, corrective action, and risk assessment and 60
10 percent of the eligible costs of upgrading or closure, subject to the
11 following limitations:

12 (1) the department shall calculate the amount of costs reimburs-
13 able under this section after subtracting amounts the department determines
14 are recoverable by the owner or operator from related insurance or other
15 persons who are liable for the costs;

16 (2) total costs reimbursed under this section to an owner or
17 operator may not exceed \$200,000.

18 (c) In addition to other requirements of this section, an owner or
19 operator is not eligible for reimbursement under this section for costs of
20 containment, cleanup, risk assessment, corrective action, upgrading, or
21 closure related to a release unless the owner or operator establishes the
22 following to the department's satisfaction:

23 (1) the release was promptly reported to state authorities in
24 compliance with applicable regulations;

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

27 (3) other than the release, the tank or tank system has been in
28 compliance with state and federal laws applicable to underground petroleum
29 storage tank systems since December 22, 1988, including notification and

1 registration laws, but excluding financial responsibility requirements;

2 (4) the release was not a result of the owner's or operator's
3 gross negligence, recklessness, or intentional conduct;

4 (5) all containment, cleanup, risk assessment, corrective
5 action, upgrading, and closure activities have been performed in compliance
6 with state and federal law.

7 (d) In addition to other requirements of this section, an owner or
8 operator is not eligible for costs of risk assessment, upgrading, or clo-
9 sure unrelated to a release unless the owner or operator establishes the
10 following to the department's satisfaction:

11 (1) the tank or tank system has been in compliance with state
12 and federal laws applicable to underground petroleum storage tank systems
13 since December 22, 1988, including notification and registration laws, but
14 excluding financial responsibility requirements;

15 (2) all risk assessment, upgrading, and closure activities have
16 been performed in compliance with state and federal laws.

17 (e) The department may deny all or a portion of a request for reim-
18 bursement under this section if

19 (1) it disapproves of a method used for the risk assessment,
20 containment, cleanup, corrective action, upgrading, or closure; the owner
21 or operator may appeal a denial of payment made under this paragraph to the
22 Board of Storage Tank Assistance; the board may issue a decision on a
23 dispute brought to it under this paragraph; the decision is binding on the
24 owner, operator, and department;

25 (2) the fund established under AS 46.03.410, enacted by sec. 2
26 of this Act, lacks sufficient money; if a request for reimbursement is
27 denied under this paragraph, it shall be granted without the requirement of
28 a new application, when money is next available, subject to the existence
29 of a higher priority for use of money in the storage tank assistance fund;

1 or

2 (3) requests under AS 46.03.415 - 46.03.430, enacted by sec. 2
3 of this Act, remain unfunded; when all eligible requests for funding under
4 AS 46.03.415 - 46.03.430, enacted by sec. 2 of this Act, have been sat-
5 isfied in a given fiscal year and a balance remains in the storage tank
6 assistance fund, eligible requests under this section may be satisfied on a
7 first-come, first-served basis without the requirement of a new applica-
8 tion.

9 (f) If an owner or operator of an underground petroleum storage tank
10 system, other than the state or federal government, began risk assessment,
11 containment, cleanup, corrective action, upgrading, or closure activities
12 related to the tank system on or after December 22, 1988, and before the
13 effective date of this section, but those activities are not complete on
14 the effective day of this section, the owner or operator may apply for
15 reimbursement under this section for costs incurred before the effective
16 date of this section; the owner or operator may apply for assistance under
17 AS 46.03.420 - 46.03.430, enacted by sec. 2 of this Act, for costs incurred
18 or anticipated after the effective date of this Act. A request for reim-
19 bursement under this subsection has the same low priority as other reim-
20 bursement requests under this section, but requests for assistance to
21 complete activities begun before the effective date of this section shall
22 be prioritized with other requests made under AS 46.03.420 - 46.03.430,
23 enacted by sec. 2 of this Act, and are subject to the same requirements and
24 maximum amounts established under those sections.

25 (g) In this section,

26 (1) "board," "containment and cleanup," "corrective action,"
27 "release," "risk assessment," "tank system," and "underground petroleum
28 storage tank system" have the meanings given in AS 46.03.450, enacted by
29 sec. 2 of this Act;

1 (2) "closure" and "upgrading" have the meanings given in AS 46.-
2 03.430, enacted by sec. 2 of this Act.

3 * Sec. 7. NOTICE ABOUT REGULATIONS. The commissioner of environmental
4 conservation shall notify the Alaska Legislative Council and the revisor of
5 statutes in writing when regulations have been adopted under AS 46.03.-
6 375(a), enacted by sec. 2 of this Act, for a specific activity for which
7 certification is required under that section.

8 * Sec. 8. INITIAL APPOINTMENTS TO BOARD. The governor shall make
9 initial appointments to the Board of Storage Tank Assistance required under
10 AS 46.03.360, enacted by sec. 2 of this Act, within 45 days after the
11 effective date of AS 46.03.360, enacted by sec. 2 of this Act.

12 * Sec. 9. (a) AS 46.03.375(c) and (d), enacted by sec. 2 of this Act,
13 take effect for a specific activity for which certification is required
14 under that section, one year after the effective date of regulations adopt-
15 ed under AS 46.03.375 governing certification for that activity.

16 (b) AS 46.03.405, enacted by sec. 2 of this Act, takes effect six
17 months after the effective date of AS 46.03.380, enacted by sec. 2 of this
18 Act.

19 * Sec. 10. Except as provided in sec. 9 of this Act, this Act takes
20 effect immediately under AS 01.10.070(c).