

CCS HB 220

5/8/90

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

BY THE CONFERENCE COMMITTEE

CONFERENCE CS FOR HOUSE BILL NO. 220
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - SECOND SESSION
A BILL

"An Act relating to motor fuels, petroleum and chemical storage tanks, and investigation, containment, and cleanup of oil and hazardous substances; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE AND INTENT. (a) The purpose of this Act is to provide for

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

and

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

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

(c) It is the intent of the legislature that the owners and operators of underground petroleum storage tank systems train their employees in the proper handling of petroleum products and the use of leak, spill, and overflow protection devices.

(d) It is also the intent of the legislature to develop a program for

underground storage tank systems that will be approved by the federal government.

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

ARTICLE 6A. UNDERGROUND STORAGE TANK SYSTEMS.

Sec. 46.03.360. BOARD OF STORAGE TANK ASSISTANCE. (a) There is established the Board of Storage Tank Assistance. For administrative purposes, the board is located in the department. The board consists of the commissioners of environmental conservation and transportation and public facilities, or their designees, and the following persons who shall be appointed by the governor to serve at the pleasure of the governor for staggered four-year terms:

(1) an engineer registered under AS 08.48 who is knowledgeable about installing, upgrading, repairing, or closing underground petroleum storage tank systems;

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

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

(4) a member of the insurance industry.

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

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

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

(e) Under the Administrative Procedure Act (AS 44.62), the board shall adopt regulations under which the department shall

(1) determine which costs of tightness testing and site assessment are eligible costs under AS 46.03.415;

(2) rank requests for assistance under AS 46.03.420;

(3) determine which costs of risk assessment, containment, corrective action, and cleanup are eligible costs under AS 46.03.420;

(4) determine which costs of upgrading and closure are eligible costs under AS 46.03.430.

(f) If the department determines that a cost is not eligible under AS 46.03.415 - 46.30.430 and the affected owner or operator disputes that determination, or if an owner or operator disputes the ranking assigned to a request for assistance under AS 46.03.420, the owner or operator may apply to the board for resolution of the dispute. The board may issue a decision in a dispute brought to it under this subsection. The decision is binding on the owner, operator, and department.

(g) The board may adopt regulations to limit the number of sites per calendar year for which an owner or operator may be awarded financial assistance under AS 46.03.420 - 46.03.430. The department shall implement the regulations.

Sec. 46.03.363. REPORTS. The board and the department shall each submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature.

Each report may include information considered significant by the reporting entity but must include, as applicable

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

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

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

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

(5) a brief summary of disputes involving the board under AS 46.03.360(f) and other laws authorizing the board to review disputes; and

(6) recommendations for amendments or additions to AS 46.03.360 - 46.03.450.

Sec. 46.03.365. REGULATION OF UNDERGROUND PETROLEUM STORAGE TANK

SYSTEMS. (a) The department shall develop a program to abate and prevent pollution from underground petroleum storage tank systems through the adoption of regulations under the Administrative Procedure Act (AS 44.62). Consistent with other provisions in AS 46.03.360 - 46.03.450, the regulations may govern

(1) notification and registration;

(2) inspection and record keeping;

(3) construction, installation, and performance;

(4) maintenance, operation, and repair;

(5) technical standards, including standards for spill and overfill control, corrosion prevention, and release detection and reporting;

(6) financial responsibility;

(7) certification of underground petroleum storage tank system workers;

(8) corrective action and cost recovery;

(9) closure and abandonment;

(10) enforcement of regulations; and

(11) prevention of releases to protect the public health and environment.

(b) In the regulations adopted under (a) of this section, the department may

(1) distinguish among the sizes, types, classes, locations, and ages of underground petroleum storage tank systems;

(2) provide for exemptions and deferrals determined to be necessary by the department; exemptions and deferrals under this

paragraph must be consistent with those granted under federal laws and regulations.

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

(d) Before adopting a regulation that sets a standard for the level of a contaminant that is allowed to remain in soil or groundwater after cleanup of a release from or associated with an underground petroleum storage tank, the department shall consult with the board. Before the department may adopt a regulation specifying allowable technologies for testing, containment and cleanup, or corrective action, the regulation must be approved by the board.

Sec. 46.03.370. EDUCATIONAL ASSISTANCE. The department shall provide

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

(2) the public with information to help the public understand the effects associated with the release of petroleum and chemical products into the environment, including releases from petroleum and chemical storage tank systems.

Sec. 46.03.375. CERTIFICATION OF STORAGE TANK WORKERS. (a) The department shall adopt regulations governing the certification of persons who install, test, close, repair, or significantly change the configuration of underground petroleum storage tanks and tank systems.

The certification program shall be administered by the division of occupational licensing, Department of Commerce and Economic Development. In consultation with the Department of Environmental Conservation, the division shall make every reasonable attempt to ensure that opportunities for obtaining certification under this section are available throughout the state. The division shall organize presentation of national training courses that are available in the state and assist residents of isolated communities who request assistance in becoming certified. The division may contract with the University of Alaska, a vocational technical school, or a regional nonprofit orga-

nization to provide the education and testing necessary for certification.

(b) The division shall establish fees applicable to certification under this section in an amount necessary to cover the costs of the certification program. The fees shall be collected by the division. The commissioner of administration shall separately account for fees deposited in the general fund by the Department of Commerce and Economic Development under this subsection. The legislature may appropriate the annual estimated balance of the account to the Department of Commerce and Economic Development for operation of the certification program.

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

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

- (1) the person performs the work under the direct supervision of another who is certified for that work under this section;
- (2) the supervisor inspects the work performed; and
- (3) after inspection, the supervisor approves the work in writing.

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

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

(g) In this section,

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

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

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

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

(1) proof of plans for prompt site assessment or testing for tank tightness;

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

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

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

(B) if the tank or tank system did not perform satisfactorily during the test, or the site assessment showed evidence of contamination,

(i) a summary of the upgrading, repair, containment, or cleanup efforts that have been or will be used for the tank, tank system, or site; or

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

Sec. 46.03.385. REGISTRATION FEE. (a) At the time of registration under AS 46.03.380, and annually thereafter, the owner or operator shall pay to the department a registration fee for each tank

registered unless the owner or operator has notified the department under AS 46.03.395 that the tank has been taken out of service. An underground storage tank that has leak detection, spill and overflow protection, and corrosion protection that meet requirements of the department is subject to a \$50 annual registration fee, regardless of tank capacity. An underground storage tank system that lacks any or all of these features is subject to an annual registration fee of

(1) \$150 if the underground storage tank capacity is less than 1,000 gallons;

(2) \$300 if the underground storage tank capacity is 1,000 - 5,000 gallons;

(3) \$500 if the underground storage tank capacity is over 5,000 gallons.

(b) An underground petroleum storage tank or tank system owned or operated by the federal or state government is exempt from the registration fee in (a) of this section.

(c) A registration fee that is not paid within 30 days of when it is due shall be increased by a late payment fee equal to \$10 per day until the day of payment.

(d) The first annual fee under this section must be accompanied by the information required under AS 46.03.400. Subsequent annual fees must be accompanied by the names and addresses of the owner and operator of the tank system, and the location and capacity of, and substance being stored in, the tanks for which the fee is being submitted.

(e) The commissioner of administration shall separately account for money deposited in the general fund by the department under this section. The legislature may appropriate the annual estimated balance of the account to the storage tank assistance fund established under AS 46.03.410.

Sec. 46.03.390. NOTIFICATION OF CHANGES IN TANK SYSTEMS. An owner or operator who intends to significantly change the configuration of an underground petroleum storage tank system shall notify the department before beginning work on the change by completing and returning to the department a notification form obtained from the department.

Sec. 46.03.395. NOTIFICATION OF TANK SYSTEM CLOSURE. If an

underground petroleum tank or storage tank system is taken out of operation, the owner or operator of the tank or tank system, or an agent on the owner's or operator's behalf, shall provide on forms obtained from the department

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

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

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

Sec. 46.03.405. PROHIBITIONS. A person, including a governmental entity or institution, or a public corporation, may not operate an underground petroleum storage tank or tank system unless

(1) the tank and tank system is registered with the department as provided in AS 46.03.360 - 46.03.450 or other law; and

(2) except as provided in AS 46.03.420(c)(1)(D), the person has provided to the department proof of financial responsibility to the extent required under regulations adopted under AS 46.03.365 or proof of application for arrangements that would satisfy state financial responsibility requirements.

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

(b) The commissioner may use money in the fund to pay for
(1) tank tightness tests or site assessments under AS 46.03.415;

(2) grants and loans under AS 46.03.420 for risk assessment, containment, corrective action, and cleanup costs; and

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

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

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

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

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

(4) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where department activities have been completed or are expected to start or be continued during the fiscal year;

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

Sec. 46.03.415. TANK TIGHTNESS AND SITE ASSESSMENT INCENTIVE PROGRAM. (a) The owner or operator of an underground petroleum storage tank or tank system that was installed before the effective date of this Act and is operating on the effective date of this Act, other than the state or federal government, may request the department to use money from the storage tank assistance fund to reimburse the owner or operator for eligible costs of a tank tightness test or site

assessment in order to determine if there has been a release of petroleum from the owner's or operator's tank system. The department shall reimburse up to 50 percent of the cost, not to exceed \$300 per tank for tightness tests up to a maximum of \$1,200 per facility, or \$800 per tank for site assessment up to a maximum of \$3,200 per facility.

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

(c) Notification of intent to request reimbursement under this section must be submitted to the department at the time of registration under AS 46.03.380(b). The activities for which reimbursement is requested must be completed within 12 months after registration is due under AS 46.03.380 unless the owner or operator demonstrates to the department's satisfaction that there is good cause for extending the deadline. Good cause may be demonstrated by a showing that a qualified site assessor or tank system tester was not available, seasonal climatic conditions render the appropriate activities unsafe or impracticable, or other justification acceptable to the department.

If the department finds good cause for extending the deadline, the department may extend the deadline for completion of activities for which reimbursement is requested for a period of time specified by the department.

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

Sec. 46.03.420. TANK CLEANUP PROGRAM. (a) Subject to (b) - (j) of this section, application may be made to the department by the owner or operator of an underground petroleum storage tank system, other than the state or federal government, for grants and loans from the storage tank assistance fund to pay for the costs of risk assessment, containment, corrective action, and cleanup resulting from a release of petroleum from or associated with an underground petroleum storage tank system. Applications for assistance under this section must be submitted to the department before July 1, 1994. Under regulations of the board, the department shall rank requests under this section in order of priority, giving greatest priority to those tank systems that present the greatest threat or potential threat to human health.

(b) Grants made by the department under this section shall

exclude a portion of the risk assessment, containment, corrective action, and cleanup costs. The portion of these costs not payable as a grant by the department under this section is 10 percent of total costs, up to a maximum of \$25,000 not payable by the department; this portion of the costs shall be loaned at no interest by the department to the owner or operator on request with repayment to be made according to a schedule agreed to by the parties. The department may require security or collateral for a loan made under this subsection and may charge a fee for a late loan repayment equal to five percent of the amount of the late payment. At the department's discretion, a loan or grant under this section may be disbursed in partial payments according to a schedule related to costs anticipated to be incurred during specified time periods.

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

(1) establishes the following to the department's reasonable satisfaction:

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

(B) the owner or operator promptly reported the release to the department in compliance with applicable regulations;

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

(D) the owner and operator have, within six months after the effective date of this section, been in compliance with all state and federal laws applicable to underground petroleum storage tank systems and releases from them, including notification and registration laws, but excluding financial responsibility requirements;

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

(2) agrees to

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

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

(3) agrees to submit a plan for risk assessment, containment, corrective action, and cleanup to the department for its review and approval; if the department and the owner or operator cannot reach agreement on a plan or on later changes in the plan, the owner or operator may apply to the board to review the dispute; the board may issue a recommendation to the department in a dispute brought to it under this paragraph.

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

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

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

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

(e) A request for a grant under this section, and a grant payment made under this section, may not exceed \$1,000,000 per occurrence, less the amount not payable as a grant under (b) of this sec-

tion.

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

(g) The department shall adopt regulations reasonably necessary to implement this section. The regulations must be consistent with federal law except as provided in (c)(2)(A) of this section.

(h) This section does not affect the liability under state or federal law of any person, or other entity that receives assistance under this section, for the costs of risk management, containment, corrective action, and cleanup resulting from a release of petroleum.

However, notwithstanding the provisions of AS 46.08.070(a), the department may not seek reimbursement of a grant made under this section unless the department determines that the grant was requested under false pretenses or that other circumstances render the grant inconsistent with this section or with applicable regulations. This section does not affect the authority of the department to seek recovery from the owner or operator of costs other than grants and loans actually made to an owner or operator under this section.

(i) The commissioner of administration shall separately account for money deposited by the department under this section. The legislature may appropriate the annual estimated balance of the account to the fund established under AS 46.03.410.

Sec. 46.03.430. TANK UPGRADING AND CLOSURE PROGRAM. (a) The department shall, by regulation, establish a grant program under which the owner or operator of an underground petroleum storage tank, other than the state or federal government, may, upon application, receive a grant for 60 percent of the eligible costs of tank upgrading or closure, subject to a maximum total grant of \$60,000 per facility.

(b) Under regulations adopted by the board, the department shall determine which costs of upgrading and closure are eligible for payment under this section.

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

(d) In this section,

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

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

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

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

Sec. 46.03.450. DEFINITIONS. In AS 46.03.360 - 46.03.450

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

(2) "chemical" means any substance defined in 42 U.S.C.

9601(14) (sec. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980), as amended, and any substance having the characteristics identified or listed under 42 U.S.C.

6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of whether the substance is a solid waste;

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

(4) "corrective action" means action necessary to stop the migration, determine the extent, and undertake recovery of petroleum after its unpermitted release; clean up affected soil and groundwater;

and stabilize the site of the release to prevent or remove hazards to

public health or the environment;

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

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

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

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

(9) "risk assessment" means a determination of potential health effects including effects of containment exposure through inhalation, ingestion, dermal absorption, and other means, and the assessment of risk to human health and the environment from contaminants remaining in the land, air, or water as a result of a release;

(10) "site assessment" means investigation of suspected underground petroleum storage tank system leaks and source identification;

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

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

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

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

- (C) septic tank;
- (D) pipeline facility, including gathering lines,
 - (i) regulated under 49 U.S.C. 1671, et seq., (Natural Gas Pipeline Safety Act of 1968);
 - (ii) regulated under 49 U.S.C. 2001, et seq., (Hazardous Liquid Pipeline Safety Act of 1979); or
 - (iii) that is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to in (i) or (ii) of this subparagraph;
- (E) surface impoundment, pit, pond, or lagoon;
- (F) storm water or waste water collection system;
- (G) flow-through process tank;
- (H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (I) storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;
- (J) tank with a capacity of 110 gallons or less;
- (K) tank containing hazardous wastes regulated under 42 U.S.C. 6921 - 6939b; or
- (L) tank system that the department has exempted by regulations adopted under AS 46.03.365;

(13) "underground petroleum storage tank system" means an underground storage tank containing petroleum together with its underground ancillary equipment and related containment system, if any; in this paragraph, "ancillary equipment" means devices used to distribute, meter, or control the flow of petroleum to and from the system, including piping, fittings, flanges, valves, and pumps.

* Sec. 3. AS 44.66.010(a) is amended by adding a new paragraph to read:

(17) Board of Storage Tank Assistance (AS 46.03.360) - June 30, 1996.

* Sec. 4. LIMITED IMMUNITY FROM LIABILITY. (a) Notwithstanding AS 46.03.420(h), 46.03.758, 46.03.760, 46.03.780, 46.03.790, and 46.03.822, a person, including a municipal school district, regional educational attendance area, or municipality, is not civilly or criminally liable to the state under those sections for a discharge covered by those sections if the person demonstrates by a preponderance of the evidence that the person

(1) is the owner or operator of an underground petroleum storage tank or tank system, as defined in AS 46.03.450, enacted by sec. 2 of this Act, that was installed before December 22, 1988, and the discharge occurred from that tank or tank system before December 22, 1992;

(2) acted in good faith to report, assess, and mitigate damage from the discharge and to undertake corrective action in accordance with applicable state and federal law and was in compliance with all applicable state and federal law before the discharge occurred;

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

(4) did not intentionally cause the discharge.

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

* Sec. 5. NOTIFICATION FOR TANK SYSTEMS NOT IN USE. The owner or operator of an underground petroleum storage tank or tank system whose tank or tank system was installed after January 1, 1974, but was taken out of use before the effective date of AS 46.03.380, enacted by sec. 2 of this Act, shall notify the department about the tank or tank system within six months after the effective date of this section by completing and returning to the department a form obtained from the department. The form must comply with AS 46.03.400, enacted by sec. 2 of this Act, and be similar to the notification form required under AS 46.03.395, enacted by sec. 2 of this Act.

* Sec. 6. The initial registration and information required under AS 46.03.380(b), enacted by sec. 2 of this Act, is due within six months after the effective date of AS 46.03.380, enacted by sec. 2 of this Act.

* Sec. 7. REIMBURSEMENT PROGRAM. (a) An owner or operator of an underground petroleum storage tank system, other than the state or federal government, who began risk assessment, containment, cleanup, corrective action, upgrading, or closure activities related to the tank system on or after December 22, 1988, but before the effective date of this section, may apply to the department for reimbursement of a portion of the eligible

costs incurred by the owner or operator for those activities, as determined under (b) of this section. Application under this section must be submitted within six months after the effective date of this section. Payments made by the department shall be from the fund established under AS 46.03.-410, enacted by sec. 2 of this Act.

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

(1) the department shall calculate the amount of costs reimbursable under this section after subtracting amounts the department determines are recoverable by the owner or operator from related insurance or other persons or entities who are liable for the costs;

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

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

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

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

(3) other than the release, the tank or tank system has been in compliance with state and federal laws applicable to underground petroleum storage tank systems since December 22, 1988, including notification and registration laws, but excluding financial responsibility requirements;

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

(5) all containment, cleanup, risk assessment, corrective action, upgrading, and closure activities have been performed in compliance

with state and federal law.

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

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

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

(e) The department may deny all or a portion of a request for reimbursement under this section if

(1) it disapproves of a method used for the risk assessment, containment, cleanup, corrective action, upgrading, or closure; the owner or operator may request the board to review a denial of payment made under this paragraph; the board may issue a recommendation to the department on a dispute brought to it under this paragraph;

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

or

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

(f) If an owner or operator of an underground petroleum storage tank system, other than the state or federal government, began risk assessment, containment, cleanup, corrective action, upgrading, or closure activities related to the tank system on or after December 22, 1988, and before the effective date of this section, but those activities are not complete on the effective day of this section, the owner or operator may apply for reimbursement under this section for costs incurred before the effective

date of this section; the owner or operator may apply for assistance under AS 46.03.420 - 46.03.430, enacted by sec. 2 of this Act, for costs incurred or anticipated after the effective date of this Act. A request for reimbursement under this subsection has the same low priority as other reimbursement requests under this section, but requests for assistance to complete activities begun before the effective date of this section shall be prioritized with other requests made under AS 46.03.420 - 46.03.430, enacted by sec. 2 of this Act, and are subject to the same requirements and maximum amounts established under those sections.

(g) The department shall adopt regulations reasonably necessary to implement this section except that the department shall implement regulations that the board shall adopt for determining costs that are eligible for reimbursement under this section. If the department determines that a cost is not eligible for reimbursement under this section, and the affected owner or operator disputes that determination, the owner or operator may apply to the board for resolution of the dispute. The board may issue a decision in a dispute brought to it under this subsection. The decision is binding on the owner, operator, and department.

(h) In this section,

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

(2) "closure" and "upgrading" have the meanings given in AS 46.03.430, enacted by sec. 2 of this Act.

* Sec. 8. NOTICE ABOUT REGULATIONS. The commissioner of environmental conservation shall notify the Alaska Legislative Council and the revisor of statutes in writing when regulations have been adopted under AS 46.03.375(a), enacted by sec. 2 of this Act, for a specific activity for which certification is required under that section.

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

* Sec. 10. APPLICABILITY. (a) AS 46.03.375(c) and (d), enacted by sec. 2 of this Act, do not apply to a specific activity for which certification is required under that section until one year after the effective date of regulations adopted under AS 46.03.375 governing certification for that activity.

(b) AS 46.03.405, enacted by sec. 2 of this Act does not apply until six months after the effective date of AS 46.03.380, enacted by sec. 2 of this Act.

* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).