

Amended: 5/6/89

6-1197R

Offered: 5/4/89

Referred: Rules

Original sponsor: Senate Special
Committee on Oil and Gas

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 271 (Resources) am H
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 civil penalties for the unpermit-
7 ted discharge of oil and for the failure to implement
8 an oil discharge contingency plan in response to an
9 unpermitted discharge of crude oil; removing a maxi-
10 mum limit on civil penalties for discharges of oil;
11 and amending Rule 82, Alaska Rules of Civil Proce-
12 dure."
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
14 * Section 1. AS 46.03.758(e) is amended to read:
15 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
16 of 18,000 gallons not permitted under applicable state and federal law
17 occurs within the territorial jurisdiction of the state, or into or
18 upon the adjacent outer continental shelf of the state, the following
19 persons, in addition to the person causing or permitting the dis-
20 charge, are jointly and severally liable to the state, in a civil
21 action, for the full amount of penalties established in the regula-
22 tions adopted under this section: [, OR \$100,000,000, WHICHEVER IS
23 LESS,]
24 (1) if the discharge occurs from any commercial or indus-
25 trial facility other than a vessel or offshore platform, the owner,
26 lessee or permittee, and operator of the facility;
27 (2) if the discharge occurs from a vessel,
28 (A) the owner and operator of the vessel; and
29 (B) the owner of the oil carried as cargo on the

1 vessel at the time the vessel was loaded, if the loading occurred
2 within the territorial jurisdiction of the state, or at a deep-
3 water port or other offshore storage facility adjacent to the
4 state; however, if the owner of the oil temporarily transfers
5 ownership of the oil to another person, and the transfer has the
6 purpose or effect of evading the vicarious liability imposed by
7 this section, the transferor will be considered the owner of the
8 oil for the purposes of this subsection; and

9 (3) if the discharge occurs from an offshore platform, the
10 lessee or permittee of the tract or acreage upon which the platform is
11 situated, and the operator of the platform.

12 * Sec. 2. AS 46.03.758(1)(6) is amended to read:

13 (6) "oil" means petroleum [, CRUDE OIL,] and any substance
14 refined from petroleum, except [OR] crude oil;

15 * Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

17 (a) A person who is found to be liable under any other state law for
18 an unpermitted discharge of crude oil in excess of 18,000 gallons is,
19 in addition to liability for any other penalties or for damages or the
20 cost of containment and cleanup, liable to the state in a civil action
21 for a civil penalty, up to a maximum of \$500,000,000, in the amount of

22 (1) \$8 per gallon of crude oil discharged for the first
23 420,000 gallons discharged; and

24 (2) \$12.50 per gallon of crude oil discharged for amounts
25 discharged in excess of 420,000 gallons.

26 (b) In determining how many gallons of crude oil have been dis-
27 charged for purposes of assessing a penalty under (a) of this section,
28 the court shall deduct the number of discharged gallons of crude oil
29 that the defendant proves were removed by the defendant from the

1 environment within the first 36 hours after the discharge as a result
2 of a cleanup operation undertaken in conformity with applicable state
3 and federal law. The dispersal of oil through burning, the use of
4 chemical agents, biological additives, or sinking agents, or other
5 means is not considered removal for the purposes of this subsection.

6 (c) The court shall assess four times, subject to the
7 \$500,000,000 maximum set under (a) of this section, the penalty set
8 out in (a) of this section if the court finds

9 (1) the discharge was caused by the gross negligence or
10 intentional act of the defendant;

11 (2) the defendant did not take reasonable measures to
12 contain and clean up the discharged oil; or

13 (3) the defendant did not respond in accordance with an
14 approved oil discharge contingency plan.

15 (d) Notwithstanding AS 46.03.875, a person liable for civil
16 penalties under this section is not also liable for the discharge of
17 the crude oil under AS 46.03.760(a). A person causing or permitting a
18 discharge of crude oil of 18,000 gallons or less not permitted under
19 applicable state or federal law is liable for that discharge under the
20 penalty provisions of AS 46.03.760(a); however, the court may impose a
21 penalty of less than \$500 for the discharge.

22 (e) The court may reduce the penalty imposed under this section
23 if the defendant demonstrates, by a preponderance of the evidence,
24 that the discharge was caused solely by a negligent act of a third
25 person unless the third person is a person with whom the defendant was
26 found jointly and severally liable for the discharge under other state
27 law.

28 (f) A person otherwise liable for penalties under this section
29 is not liable if the person demonstrates, by a preponderance of the

1 evidence, that the discharge occurred solely as a result of

2 (1) an act of God;

3 (2) a negligent or intentional act of the State of Alaska
4 or the United States; or

5 (3) an act of war.

6 (g) In this section, "discharge" means entry of crude oil into
7 or upon the water or public land of the state, regardless of causa-
8 tion, except discharges into an enclosed and impervious oil spill
9 containment area.

10 * Sec. 4. AS 46.03 is amended by adding a new section to read:

11 Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action to impose
12 civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a
13 discharge of oil, the state may recover full reasonable attorney fees
14 and costs incurred by the state in maintaining the action.

15 * Sec. 5. AS 46.03.770 is amended to read:

16 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
17 FOR DAMAGES. A vessel that is used in or in aid of a violation of
18 AS 46.03.740 - 46.03.750 may be detained after a valid search by the
19 department, an agent of the department, a peace officer of the state,
20 or an authorized protection officer of the Department of Fish and
21 Game. Upon judgment of the court having jurisdiction that the vessel
22 was used in, or was the cause of, a violation of AS 46.03.740 - 46.-
23 03.750 with knowledge of its owner or under circumstances indicating
24 that the owner should reasonably have had this knowledge, the vessel
25 may be held as security for payment to the state of the amount of
26 damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.-
27 760, [AND] 46.03.822, and AS 46.04.030(g). If the damages assessed
28 are not paid within 30 days after judgment or final determination of
29 an appeal, the vessel shall be sold at public auction, or as otherwise

1 directed by the court, and the damages paid from the proceeds. The
2 balance, if any, shall be paid by the court to the owner of the ves-
3 sel. The court shall permit the release of the vessel upon posting of
4 a bond set by the court in an amount not to exceed the maximum amount
5 of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND]
6 46.03.822, and AS 46.04.030(g). The damages received under this
7 section shall be transmitted to the proper state officer for deposit
8 in the general fund. A vessel seized under this section shall be
9 returned or the bond exonerated if no damages are assessed under
10 AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-
11 030(g).

12 * Sec. 6. AS 46.04.030(g) is amended to read:

13 (g) Failure of a holder of an approved oil discharge contingency
14 plan to have access to the quality or quantity of resources identified
15 in the plan and, in the event of a spill, to respond with those re-
16 sources within the shortest feasible time is a violation of this
17 chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any
18 other applicable law. If the holder of an approved oil discharge
19 contingency plan fails to respond to an unpermitted discharge of crude
20 oil with the quality and quantity of resources identified in the plan
21 and in a manner required under the plan, the holder is strictly li-
22 able, jointly and severally, for the civil penalty assessed under
23 AS 46.03.759 or 46.03.760 against any other person for that discharge.

24 * Sec. 7. AS 46.04.040(e) is amended to read:

25 (e) Financial responsibility may be demonstrated by self-insur-
26 ance, insurance, surety, or guarantee, under terms the department may
27 prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e),
28 [OR] 46.03.822, or AS 46.04.030(g) or to collect penalties imposed
29 under AS 46.03.759 may be brought in a state court directly against

1 the insurer or another person providing evidence of financial respon-
2 sibility. The applicant, and an insurer, surety, or guarantor shall
3 appoint an agent for service of process in the state. An insurer must
4 either be authorized by the Department of Commerce and Economic Devel-
5 opment to sell insurance in the state or be an unauthorized insurer
6 listed by the Department of Commerce and Economic Development as not
7 disapproved for use in the state.

8 * Sec. 8. AS 46.04.040(i) is amended to read:

9 (i) Financial responsibility under this section extends to a
10 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
11 under AS 46.03.758, 46.03.759, [OR] 46.03.760(a), or AS 46.04.030(g).

12 * Sec. 9. AS 46.03.763, as enacted by sec. 4 of this Act, has the
13 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
14 the recovery of full reasonable attorney fees and costs in certain actions.