

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 504

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 the strengthening of the state's
7 oil contingency plan requirements, financial respon-
8 sibility requirements, and inspection authority under
9 AS 46.04; and providing for an effective date."

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

11 * Section 1. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person
13 may not cause or permit the operation of an oil terminal facility in
14 the state unless an oil discharge contingency plan for the facility
15 has been approved by the department and has been properly implemented.
16 [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO
17 APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS
18 SECTION.]

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit
20 the operation of an offshore exploration or production facility in the
21 state unless an oil discharge contingency plan for the facility has
22 been approved by the department and has been properly implemented.

23 (c) A person may not operate a tanker vessel or an oil barge
24 within the waters of the state, or cause or permit the transfer of oil
25 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]
26 an oil barge, unless an oil discharge contingency plan for the tank
27 vessel or oil barge has been approved by the department and has been
28 properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),
29 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
3 APPROVED BY THE DEPARTMENT.]

4 (d) The department is the only state agency that has the power
5 to approve, modify, or revoke an oil contingency plan for the purposes
6 of this section, and the department shall exercise its power in a
7 timely manner. Except for prosecutions under AS 46.03.790(b), it is
8 not a defense to an action brought for a violation of (a) - (c) of
9 this section that the person charged believed that a current oil
10 discharge contingency plan had been approved by the department.

11 (e) Before the department approves or modifies an oil discharge
12 contingency plan under this section, the department shall provide a
13 copy of the oil discharge contingency plan to the Department of Fish
14 and Game and to the Department of Natural Resources and shall provide
15 those departments a reasonable opportunity to review and comment on
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required
18 by this section shall maintain in its area of operation, singly or in
19 conjunction with other operators in its area of operation, sufficient
20 oil discharge containment, storage, transfer, and removal equipment,
21 manpower, and resources to rapidly contain a realistic maximum oil
22 discharge and to remove that discharge within the shortest possible
23 time.

24 (g) An oil discharge contingency plan must be renewed at least
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and
27 conditions to its approval or modification of an oil discharge
28 contingency plan which the department [IT] determines are necessary to
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive
2 areas and to contain, clean up, and mitigate potential oil discharges
3 from the facility or vessel within the shortest possible time after
4 the discharge and to ensure that the applicant properly implements the
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil
6 discharge contingency plan must provide for the use of the best
7 available technology by the applicant. The department may require an
8 applicant or holder of an approved contingency plan to take steps
9 necessary to demonstrate its ability to carry out the contingency
10 plan, including

- 11 (1) periodic training;
- 12 (2) response team exercises; and
- 13 (3) verifying access to inventories of available equipment,
14 supplies, and personnel.

15 (i) [(f)] The department, after notice and opportunity for
16 hearing, may modify its approval of an oil discharge contingency plan
17 if the department [IT] determines that a change has occurred in the
18 operation of a facility[, MARINA] or vessel necessitating an amended
19 or supplemented plan, or the operator's discharge experience
20 demonstrates a necessity for modification. The department, after
21 notice and opportunity for hearing, may revoke its approval of an oil
22 discharge contingency plan if the department [IT] determines that

- 23 (1) approval was obtained by fraud or misrepresentation;
- 24 (2) the operator does not have access to the quality or
25 quantity of resources identified in the plan; [OR]
- 26 (3) a term or condition of approval or modification has
27 been violated; or
- 28 (4) the plan has not been properly implemented.

29 (j) [(g)] Failure of a holder of an approved or modified oil

1 discharge contingency plan to properly implement the plan, or to have
2 access to the quality or quantity of resources identified in the plan
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources
4 within the shortest feasible time in the event of a spill, is a
5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
6 46.03.790, and any other applicable law. If the holder of an approved
7 or modified oil discharge contingency plan fails to respond to and
8 conduct cleanup operations of an unpermitted discharge of crude oil
9 with the quality and quantity of resources identified in the plan and
10 in a manner required under the plan, the holder is strictly liable,
11 jointly and severally, for the civil penalty assessed under
12 AS 46.03.758, 46.03.759, or 46.03.760 against any other person for
13 that discharge.

14 * Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A
16 person may not cause or permit the operation of a crude [AN] oil
17 terminal facility in the state unless the person has furnished to the
18 department, and the department has approved, proof of financial
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE
20 DEPARTMENT]. Proof of financial responsibility may not be less than
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER
23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a
26 non-crude oil terminal or storage facility in the state unless the
27 person has furnished to the department, and the department has ap-
28 proved, proof of financial ability to respond in damages. Proof of
29 financial responsibility may not be less than

1 (1) \$1,000,000 for terminal or storage facilities with a
2 total storage capacity of 5,000 to 10,000 barrels; and

3 (2) \$50,000,000 for terminal or storage facilities with a
4 total storage capacity of greater than 10,000 barrels.

5 (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the
6 operation of an offshore exploration or production facility in the
7 state unless the person has furnished to the department, and the
8 department has approved, proof of financial ability to respond in
9 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
10 responsibility may not be less than \$50,000,000 [\$35,000,000] per
11 incident.

12 (d) [(c)] A person may not operate a tanker vessel or an oil
13 barge within the waters of the state, or cause or permit the transfer
14 of oil to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR
15 FROM] or an oil barge, unless the person has furnished to the
16 department, and the department has approved, proof of financial
17 [RESPONSIBILITY] ability to respond in damages [FOR THE TANK VESSEL OR
18 BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial
19 responsibility may not be less than

20 (1) \$500,000,000 per incident for a tank vessel or barge
21 carrying crude oil;

22 (2) \$20,000,000 for a tank vessel or barge carrying
23 non-crude oil or other hazardous substance greater than 300 gross
24 tons;

25 (3) \$1,000,000 for a tank vessel or barge carrying
26 non-crude oil or other hazardous substance less than or equal to 300
27 gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE

28 IN THE FOLLOWING AMOUNTS:

29 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

1 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY
2 THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.
3 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
8 GREATER.]

9 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is
10 not a defense to an action brought for violation of (a) - (c) [(c)] of
11 this section that the person charged believed in good faith that proof
12 of financial ability to respond in damages had been furnished to, and
13 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF
14 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

15 (f) [(e)] Financial responsibility may be demonstrated by
16 self-insurance, insurance, surety, [OR] guarantee, or other security
17 approved by the department, under terms the department may prescribe.
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER
20 AS 46.03.759] may be brought in a state court directly against the
21 insurer or another person providing evidence of financial
22 responsibility. The applicant, and an insurer, surety, [OR]
23 guarantor, or other person providing security approved by the
24 department shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an
27 unauthorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

2 (1) one year from its issuance for self-insurance;

3 (2) on the effective date of a change in the surety bond,
4 guarantee, [OR] insurance agreement, or other security approved by the
5 department; or

6 (3) on the expiration or cancellation of the surety bond,
7 guarantee, [OR] insurance agreement, or other security approved by the
8 department.

9 (h) [(g)] The person whose proof of financial responsibility is
10 accepted by the department under this section shall notify the
11 department at least 30 days before the effective date of a change,
12 expiration or cancellation in the surety bond, guarantee, [OR]
13 insurance agreement, or other security approved by the department.
14 Application for renewal of acceptance of proof of financial
15 responsibility under this section must be filed at least 30 days
16 before the date of expiration.

17 (i) [(h)] The department, after notice and hearing, may revoke
18 acceptance of proof of financial responsibility if it determines that

19 (1) acceptance was procured by fraud or misrepresentation;
20 or

21 (2) a change of circumstance has occurred other than a
22 change specified in (f)(1) - (3) of this section, which would have
23 warranted denial of the application.

24 (j) [(i)] Financial responsibility under this section extends to
25 a loss compensable under AS 46.03.760(e) or 46.03.822 and an
26 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or
27 AS 46.04.030(g).

28 * Sec. 3. AS 46.04.050 is amended to read:

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

1 the operations and the minimal danger to the environment posed by the
2 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an
3 oil terminal facility that has an effective storage capacity of less
4 than 5,000 [10,000] barrels of oil.

5 * Sec. 4. AS 46.04.060 is amended to read:

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of
7 access or inspection conferred upon the department by law or
8 otherwise, the department may at reasonable times enter and inspect
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production
10 facilities, tank vessels, and oil barges within the territorial
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE
12 DEPARTMENT] to

13 (1) ensure compliance with the provisions of this chapter;

14 or

15 (2) examine the structural integrity of tank vessels and
16 oil barges.

17 * Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum
19 and most damaging oil discharge that the department estimates could
20 occur during the lifetime of the vessel or facility based on the size,
21 location, and capacity of the vessel or facility; on the department's
22 knowledge and experience with the vessel or facility or with similar
23 vessels or facilities; and on the department's analysis of possible
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).