

**CS FOR HOUSE BILL NO. 196 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE RESOURCES COMMITTEE

**Offered: 4/19/91
Referred: Judiciary, Finance**

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; and providing for an effective date."

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

6 * **Section 1. FINDING AND INTENT.** The legislature finds that the entire subject of response action
7 contractor civil liability is in need of review. The legislature intends to review the subject of response
8 action contractor civil liability and to complete a report on this subject before January 15, 1992. The
9 legislature also intends to include in the report modifications necessary to state laws on response action
10 contractor civil liability, and an analysis of whether the present state laws that require shippers and
11 owners to contract with response action contractors to carry out contingency plans are adequate to protect
12 the public in the event of an oil spill.

13 * **Sec. 2. AS 46.03.822(a) is amended to read:**

14 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

1 set out in (b) of this section and the exception set out in (i) of this section, the following persons
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
7 threat of an unpermitted release of a hazardous substance:

8 (1) the owner of, and the person having control over, the hazardous substance at
9 the time of the release or threatened release; this paragraph does not apply to a consumer product
10 in consumer use;

11 (2) the owner and the operator of a vessel or facility, from which there is a
12 release, or a threatened release that causes the incurrence of response costs, of a hazardous
13 substance;

14 (3) any person who at the time of disposal of any hazardous substance owned or
15 operated any facility or vessel at which the hazardous substances were disposed of, from which
16 there is a release, or a threatened release that causes the incurrence of response costs, of a
17 hazardous substance;

18 (4) any person who by contract, agreement, or otherwise arranged for disposal or
19 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
20 substances owned or possessed by the person, other than domestic sewage, or by any other party
21 or entity, at any facility or vessel owned or operated by another party or entity and containing
22 hazardous substances, from which there is a release, or a threatened release that causes the
23 incurrence of response costs, of a hazardous substance;

24 (5) any person who accepts or accepted any hazardous substances, other than
25 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
26 from which there is a release, or a threatened release that causes the incurrence of response costs,
27 of a hazardous substance.

28 * Sec. 3. AS 46.03.822(a) is repealed and reenacted to read:

29 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
30 set out in (b) of this section and the exception set out in (i) of this section, the following persons
31 are strictly liable, jointly and severally, for damages to persons or property, whether public or

1 private, including damage to the natural resources of the state or a municipality, and for the costs
2 of response, containment, removal, or remedial action incurred by the state or a municipality,
3 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
4 the substantial threat of an unpermitted release of a hazardous substance:

5 (1) the owner of, and the person having control over, the hazardous substance at
6 the time of the release or threatened release; this paragraph does not apply to a consumer product
7 in consumer use;

8 (2) the owner and the operator of a vessel or facility, from which there is a
9 release, or a threatened release that causes the incurrence of response costs, of a hazardous
10 substance;

11 (3) any person who at the time of disposal of any hazardous substance owned or
12 operated any facility or vessel at which the hazardous substances were disposed of, from which
13 there is a release, or a threatened release that causes the incurrence of response costs, of a
14 hazardous substance;

15 (4) any person who by contract, agreement, or otherwise arranged for disposal or
16 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
17 substances owned or possessed by the person, other than domestic sewage, or by any other party
18 or entity, at any facility or vessel owned or operated by another party or entity and containing
19 hazardous substances, from which there is a release, or a threatened release that causes the
20 incurrence of response costs, of a hazardous substance;

21 (5) any person who accepts or accepted any hazardous substances, other than
22 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
23 from which there is a release, or a threatened release that causes the incurrence of response costs,
24 of a hazardous substance.

25 * Sec. 4. AS 46.03.822 is amended by adding a new subsection to read:

26 (k) In this section, "damages" include damage to persons or to public or private property,
27 damage to the natural resources of the state or a municipality, and damage caused by acts or
28 omissions of a response action contractor for which the response action contractor is not liable
29 under AS 46.03.823 or 46.03.825.

30 * Sec. 5. AS 46.03.823(a) is amended to read:

31 (a) A person who is a response action contractor with respect to a release or threatened

1 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
2 response plan or order by a state or federal agency having jurisdiction over the release or
3 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
4 results from the release or threatened release unless the release or threatened release is caused
5 by an act or omission of the response action contractor that is negligent or grossly negligent or
6 constitutes intentional misconduct. To show negligence by a response action contractor, a
7 claimant must show that the acts or omissions of the contractor under the response action contract
8 were not in accordance with generally accepted professional standards and practices at the time
9 the response action services were performed.

10 * Sec. 6. AS 46.03.823(a) is repealed and reenacted to read:

11 (a) A person who is a response action contractor with respect to a release or threatened
12 release of a hazardous substance whose acts or omissions are not contrary to a response plan or
13 order by a state or federal agency having jurisdiction over the release or threatened release is not
14 civilly liable for injuries, costs, damages, expenses, or other liability that results from the release
15 or threatened release unless the release or threatened release is caused by an act or omission of
16 the response action contractor that is negligent or grossly negligent or constitutes intentional
17 misconduct. To show negligence by a response action contractor, a claimant must show that the
18 acts or omissions of the contractor under the response action contract were not in accordance
19 with generally accepted professional standards and practices at the time the response action
20 services were performed.

21 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

22 (g) In this section, "response action" means an action taken in connection with the
23 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
24 including investigation, evaluation, plan development, mapping and surveying, engineering,
25 design and construction, removal, and equipment provision.

26 * Sec. 8. AS 46.03.823(g) is repealed and reenacted to read:

27 (g) In this section,

28 (1) "response action" means an action taken in connection with the mitigation or
29 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
30 plan development, mapping and surveying, engineering, design and construction, removal, and
31 equipment provision;

1 (2) "response action contract" means a written contract or agreement to provide
2 response action with respect to a release or threatened release of a hazardous substance, entered
3 into by a person with

4 (A) the department;

5 (B) another person who has entered into an agreement with the department
6 that provides for response action subject to the department's oversight and control;

7 (C) a federal agency with jurisdiction over the release or threatened
8 release; or

9 (D) another person potentially liable for the release or threatened release
10 under state or federal law;

11 (3) "response action contractor" means

12 (A) a person who enters into a response action contract with respect to a
13 release or threatened release of a hazardous substance and who is carrying out the
14 contract, including a cooperative organization formed to maintain and supply response
15 equipment and materials that enters into a response action contract relating to a release
16 or threatened release; and

17 (B) a person who is retained or hired by and is under the control of a
18 person described in (A) of this paragraph to provide services related to the response
19 action contract.

20 * Sec. 9. AS 46.03 is amended by adding a new section to read:

21 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
22 is a response action contractor with respect to a release or threatened release of oil whose act or
23 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
24 liable for injuries, costs, damages, expenses, or other liability that results from the release or
25 threatened release, or from the response action contractor's act or omission in response to the
26 release or threatened release, unless the person bringing a claim against the response action
27 contractor proves by a preponderance of the evidence that

28 (1) the response action contractor would have been liable for the initial release
29 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
30 action;

31 (2) the response action contractor acted with gross negligence or intentional

1 misconduct; or

2 (3) the response action contractor, without approval by the federal or state on-
3 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
4 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible
5 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
6 of that plan under a contract with parties responsible for the release under AS 46.03.822.

7 (b) The limitation on liability contained in (a) of this section does not apply to

8 (1) an action for personal injury or death;

9 (2) an action for damages to tangible personal property not caused by oil; or

10 (3) an act or omission that occurs more than 15 days after the release; the 15-day
11 period provided in this paragraph may be extended for an additional 15 days if approved by the
12 state on scene coordinator.

13 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
14 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
15 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
16 other liability that results from the response action contractor's act or omission with respect to
17 a release or threatened release of oil unless the act or omission of the oil spill response action
18 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
19 does not apply to an oil spill response action contractor who would have been liable for the
20 initial release or threatened release of oil under AS 46.03.822 even if that contractor had not
21 carried out a response action.

22 (d) In this section, "response action" means an action taken to respond to a release or
23 threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release
24 or threatened release of oil.

25 * Sec. 10. AS 46.03.826 is amended by adding new paragraphs to read:

26 (14) "response action contract" means a written contract or agreement to provide
27 response action with respect to a release or threatened release of a hazardous substance entered
28 into by a person with

29 (A) the department;

30 (B) another person who has entered into an agreement with the department
31 that provides for response action subject to the department's oversight and control;

1 (C) a federal agency with jurisdiction over the release or threatened
2 release; or

3 (D) another person potentially liable for the release or threatened release
4 under state or federal law;

5 (15) "response action contractor" means

6 (A) a person who enters into a response action contract with respect to a
7 release or threatened release of a hazardous substance and who is carrying out the
8 contract, including a cooperative organization formed to maintain and supply response
9 equipment and materials that enters into a response action contract relating to a release
10 or threatened release;

11 (B) a person who is retained or hired by and is under the control of a
12 person described in (A) of this paragraph to provide services related to the response
13 action contract; and

14 (C) a person who acts as a volunteer and is engaged in a response action.

15 * Sec. 11. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

16 * Sec. 12. Sections 3, 6, 8, and 11 of this Act take effect July 1, 1994.

17 * Sec. 13. Sections 1, 2, 4, 5, 7, 9, and 10 of this Act take effect immediately under AS 01.10.070(c).