

SENATE BILL NO. 270

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS BY REQUEST

Introduced: 4/26/91

Referred: Senate Special Committee on Oil and Gas, Judiciary

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 file contingency plans and to provide response action are adequate to protect the public in the
12 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) except for a response action contractor, any person who by contract,
19 agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for
20 transport for disposal or treatment, of hazardous substances owned or possessed by the person,
21 other than domestic sewage, or by any other party or entity, at any facility or vessel owned or
22 operated by another party or entity and containing hazardous substances, from which there is a
23 release, or a threatened release that causes the incurrence of response costs, of a hazardous
24 substance;

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

29 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

30 (k) In this section, "damages" include damage to persons or to public or private property,
31 damage to the natural resources of the state or a municipality, and damage caused by acts or

1 omissions of a response action contractor for which the response action contractor is not liable
2 under AS 46.03.823 or 46.03.825.

3 * Sec. 4. AS 46.03.823(a) is amended to read:

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

14 * Sec. 5. AS 46.03.823(g) is repealed and reenacted to read:

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

19 * Sec. 6. AS 46.03 is amended by adding a new section to read:

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

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

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

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

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

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

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

9 (3) an act or omission that occurs more than 30 days after the release.

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

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

22 * Sec. 7. AS 46.03.826 is amended by adding new paragraphs to read:

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

26 (A) the department;

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

29 (C) a federal agency with jurisdiction over the release or threatened
30 release; or

31 (D) another person potentially liable for the release or threatened release

1 under state or federal law;

2 (15) "response action contractor" means

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

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

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

12 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).