



# LAWS OF ALASKA

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Chapter No.

122

## AN ACT

Relating to liability for the discharge of hazardous substances; and providing for an effective date.

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

\* Section 1. AS 46.03 is amended by adding new sections to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS SUBSTANCES. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. If an action is brought by the state to recover damages for oil pollution, liability is limited as specified in sec. 760(b) of this chapter. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

- (A) an act of war,
- (B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by, the person,
- (C) negligence on the part of the United States government or the State of Alaska, or
- (D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time.

Sec. 46.03.824. DAMAGES. Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

Sec. 46.03.826. DEFINITIONS. In secs. 822 - 828 of this chapter

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "hazardous substance" means

(A) an element or compound which, when it enters in or upon the waters or surface or subsurface lands of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;  
or

(B) oil;

(4) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(5) "owning or having control over a hazardous substance" means producing, handling, storing, transporting or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

(6) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(7) "waters, surface or subsurface lands of the state" means all waters, surface or subsurface lands within the territorial limits of the State of Alaska.

Sec. 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED. Nothing in secs. 822 - 828 of this chapter abridges or alters a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury

under sec. 822 of this chapter bars recovery in an action by another person or the state on the same cause of action for the same injury.

\* Sec. 2. AS 46.03.870 is amended to read:

Sec. 46.03.870. ACTIONABLE RIGHTS. (a) Except as specified in secs. 822 - 828 of this chapter, the bases for proceedings or actions resulting from violations of this chapter or a regulation promulgated under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new, or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in secs. 822 - 828 of this chapter, a determination or order of the department creates no presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

\* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.