



LAWS OF ALASKA

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Chapter No.

266

AN ACT

Relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products; and providing for an effective date.

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

* Section 1. AS 30 is amended by adding a new chapter to read:

CHAPTER 20. REGULATION OF TANK VESSEL TRAFFIC.

Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger of spills, the legislature finds and declares that the marine transportation of crude oil, refined petroleum products or their by-products by tankers or other carriers so engaged in the coastal waters and inside coastal waters of the state creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources. The legislature also recognizes that the state's coastal and inside coastal waters are a relatively confined saltwater environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from a large oil discharge. Certain areas of the state's coastal and inside coastal waters have limited space for maneuvering large tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products. These waters also contain many natural obstacles and phenomena and at certain times and places a high density of commercial, fishing and pleasure boat traffic. Thus, it is important that large tank vessels have sufficient capability for rapid maneuvering responses.

(b) It is also the purpose of this chapter to decrease the likelihood of oil discharges in the coastal and inside coastal waters of the state and its shorelines by requiring tank vessels engaged in the marine transportation of crude

oil, refined petroleum products or their by-products to be equipped with certain safety and maneuvering capability features and, if these vessels are above a certain size but lack these features, to be escorted by tugs while navigating in the coastal and inside coastal waters of the state.

(c) The legislature further finds and declares that the particular marine environment of the state through which tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products will navigate is potentially more hazardous than other maritime routes. The introduction of crude oil, refined petroleum products or their by-products into the marine environment of the state's coastal and inside coastal waterways causes extreme damage to the marine, estuarine and adjacent terrestrial environment lasting beyond the visible existence of the spilled, discharged or escaped oil and is potentially destructive of the valuable species of fish and shellfish that are harvested in Alaskan waters.

Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a) A tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products while navigating those portions of the navigable coastal, inside coastal or other navigable waters of the state prescribed by the department by regulation shall be equipped or fitted with

(1) LORAN-C navigational system receivers and other position location systems as may be prescribed from time to time by the department by regulation;

(2) electronically controlled collision avoidance systems where applicable to an appropriate vessel prescribed by the department by regulation; and

(3) two radars of types prescribed by the department by regulation in working order, one of which is operating.

(b) A tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products of 40,000 deadweight tons or more, which lacks the following maneuverability and stopping features, must be escorted by tugs with an aggregate shaft horsepower equivalent to five per cent of the deadweight tons of that tank vessel while navigating those portions of the navigable coastal, inside coastal or other navigable waters of the state prescribed by the department by regulation:

(1) lateral thrusters;

(2) controllable pitch propellers or astern horsepower equal to 40 per cent of rated horsepower; and

(3) redundant boilers, an auxiliary propulsion source or other backup equipment that the department may require by regulation to provide for a vessel's safe operation if the primary equipment fails.

(c) However, the department may by regulation exempt a tank vessel from the tug escort provisions of (b) of this

section in certain ports, harbors or navigable waters of the state or at certain times of the year, if the department determines that vessel safety will not be reduced by the absence of the tug escort.

Sec. 30.20.030. TANK VESSEL TRAFFIC REGULATIONS. (a) The department shall adopt and maintain a comprehensive, uniform system of traffic regulations for the operation of tank vessels engaged in the transportation of crude oil, refined petroleum products or their by-products in the navigable waters of the state that may be required to implement the provisions of this chapter and that are not in conflict with traffic regulations contained in federal navigation laws or regulations promulgated by the United States Coast Guard.

(b) In adopting these regulations, the department may prescribe the maximum and minimum speed for vessels subject to this chapter and the weather conditions under which the movement of these vessels may be prohibited.

(c) The department shall consult and cooperate with the United States Coast Guard in the establishment, adoption, maintenance, administration and enforcement of the traffic regulations adopted under this chapter.

(d) The Administrative Procedure Act (AS 44.62) applies to regulations adopted by the department under this chapter.

Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the regulations adopted under it shall be enforced by a peace officer or an employee of the department or other state agency authorized by the commissioner.

(b) An owner or operator of a tank vessel who violates a provision of this chapter, or a regulation adopted under it, upon conviction is guilty of a misdemeanor and is punishable by a fine of not less than \$1,000 nor more than \$25,000, or by imprisonment for not more than one year, or by both. Each day on which a violation occurs may be considered a separate and additional offense.

Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS, ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or of the Congress of the United States, as may be required under applicable provisions of law, the governor may execute supplementary agreements, reciprocal arrangements or compacts with any other state or with a foreign government to implement the purposes of this chapter.

Sec. 30.20.060. DEFINITIONS. In this chapter

(1) "carrier" means a person who owns or who, for compensation, operates or otherwise provides a tank vessel engaged in, used or capable of being used for, the marine transportation of crude oil, refined petroleum products or their by-products on the waters of this state;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "deadweight tons" or "DWT" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard;

(4) "department" means the Department of Environmental Conservation;

(5) "crude oil, refined petroleum products or their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane or other liquid hydrocarbons regardless of specific gravity;

(6) "operate" means to navigate or otherwise use a vessel subject to the provisions of this chapter;

(7) "operator" means the person who operates or has charge of the navigation or use of a vessel subject to the provisions of this chapter;

(8) "owner" means a person, other than a lienholder, having the property in or title to a vessel; the term includes a person entitled to the use or possession of a vessel subject to an interest of another person reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

(9) "tank vessel" means a self-propelled vessel that is specially constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships and combination carriers when carrying crude oil, petroleum products or their by-products in bulk; it does not include vessels carrying crude oil, petroleum products or their by-products in drums, barrels, or other packages, or vessels carrying crude oil, petroleum products or their by-products as fuel or stores for that vessel;

(10) "waters of the state" means the navigable coastal, inside coastal and other navigable waters within the territorial limits of this state, and the marginal sea adjacent to this state, as defined in AS 44.03 and AS 46.-03.900(22).

Sec. 30.20.070. SHORT TITLE. This chapter may be cited as the Tank Vessel Traffic Regulation Act.

* Sec. 2. AS 30 is amended by adding a new chapter to read:

CHAPTER 25. OIL TERMINAL FACILITIES: TRANSFER
OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-PRODUCTS.

Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE.

(a) The legislature finds and declares that it is a matter of the highest urgency and priority to protect the coastal and inside coastal waters, estuaries, wetlands, beaches and public lands adjoining the seacoast, taking into account

multiple use accommodations necessary to provide the broadest possible protection of public and private interests with the least possible conflicts among these diverse uses.

(b) The legislature further finds and declares that the transfer of crude oil, petroleum products or their by-products between vessels, and between vessels and onshore or offshore facilities within the jurisdiction of the state is a hazardous undertaking. Spills, discharges and escapes of crude oil, refined petroleum or their by-products that may occur as a result of procedures involved in the transfer and storage of these products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the state, to owners and users of shorefront property, to public and private recreation, to residents of the state and other interests deriving livelihood from fishing and other marine-related activities, and to the beauty of the state's coastline. These spills have occurred frequently and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as set out in this section. These state interests outweigh any economic and liability burdens imposed by the legislature upon those engaged in transferring crude oil, refined petroleum products or their by-products and related activities.

(c) The legislature intends by the enactment of this legislation to

(1) exercise the police power of the state through the Department of Environmental Conservation by conferring upon the department the authority to deal with the hazards and threats of danger and damage posed by these transfers and related activities and to encourage and ensure cooperation with the United States Coast Guard and any other state or federal department or agency;

(2) require, through the maximum practicable utilization of contractual services, the prompt containment and removal of the pollution occasioned by oil spills;

(3) provide procedures whereby persons suffering damage from these occurrences may be made whole promptly;

(4) establish a fund to provide for the inspection and supervision of oil transfer activities and guarantee the prompt cleanup of oil spills and the payment of those costs; and

(5) to establish a system of regulation by requiring the possession of a certificate of risk avoidance, the payment of risk charges and the proof of financial responsibility by owners or operators of oil terminal facilities and tank vessels engaged in the transportation or transfer of crude oil, refined petroleum products or their by-products; the risk avoidance scheme is designed to provide incentives to owners or operators of tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products to incorporate safety and maneuvering capability features in those tank vessels to reduce the risk that these vessels will release crude oil, refined petroleum products or their by-products

into the marine environment by granting a reduction in the risk established under sec. 250 of this chapter and by reducing requirements for proof of financial responsibility under sec. 50 of this chapter.

(d) The legislature further finds and declares that the preservation of the public uses referred to in this section is of grave public interest and concern to the state in promoting its general welfare, promoting health and providing for the public safety, and that the state's interest in the preservation of these interests outweighs any burdens of strict liability imposed by the legislature upon those engaged in transferring crude oil, refined petroleum products or their by-products and related activities.

ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE CARRIERS; ISSUANCE OF CERTIFICATES OF RISK AVOIDANCE.

Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF THE STATE PROHIBITED. Except as provided in AS 46.-03.740, the discharge of crude oil, refined petroleum products or their by-products into or upon any waters and lands of the state, as defined in AS 46.03.826(7), is prohibited.

Sec. 30.25.030. AUTHORITY OF DEPARTMENT. (a) The authority of the department under this chapter extends to the areas described in sec. 20 of this chapter, and in AS 44.03.

(b) Certificates of risk avoidance required under this chapter shall be obtained from and proof of financial responsibility shall be submitted to the department subject to the terms and conditions prescribed in this chapter and regulations adopted under it.

Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLICATION; PERIODIC INSPECTION. (a) No person may operate, or cause to be operated in the state, an oil terminal facility used or capable of being used in the transfer of crude oil, refined petroleum products or their by-products without proof of financial responsibility submitted to, and a certificate of risk avoidance issued by, the department under this chapter.

(b) No person may operate, or cause to be operated, a tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products without proof of financial responsibility submitted to, and a certificate of risk avoidance issued by, the department under this chapter

(1) to or from oil terminal facilities located onshore in the ports, harbors or elsewhere in the state;

(2) to or from deepwater port facilities located offshore in the waters of the state; or

(3) through the waters of the state.

(c) The department shall prohibit the loading or unloading of a tank vessel subject to the provisions of this

chapter, that does not possess a certificate of risk avoidance or proof of financial responsibility, or both the certificate and proof.

(d) Certificates of risk avoidance shall be issued on an annual basis subject to those terms and conditions the department considers necessary and prescribes by regulation to carry out the purposes of this chapter.

(e) As a condition precedent to the issuance or renewal of a certificate of risk avoidance the department shall require payment of an annual risk charge established under sec. 250 of this chapter and submission of satisfactory evidence that the applicant has, or is in the process of implementing state and federal plans and regulations for control of pollution related to crude oil, refined petroleum products or their by-products and the abatement of the pollution when a discharge occurs.

(f) In addition to the evidence supplied under this section, applicants for an oil terminal facility certificate shall demonstrate that they can provide all necessary equipment, personnel and supplies to prevent, contain, and remove discharges of oil and other pollutants, and shall submit information to the department in a form satisfactory to it, describing the following:

(1) the barrel or other measurement capacity of the terminal facility;

(2) all containment and removal equipment, including but not limited to vehicles, vessels, pumps, skimmers, booms, chemicals and communications devices to which the facility has access, whether through direct ownership or by contract or membership in an oil cleanup organization; and

(3) the terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(g) In addition to the other evidence supplied under this section, applicants for a marine carrier certificate shall demonstrate that they can provide all necessary equipment, personnel and supplies to prevent, contain, and remove discharges of oil and other pollutants, and shall submit information to the department in a form satisfactory to it, describing the following:

(1) the name and description of each tank vessel for which a certificate is sought that is engaged in, used or capable of being used by the carrier for the marine transportation of crude oil, refined petroleum products or their by-products to and from onshore and offshore oil terminal facilities in this state; the vessel description shall include, but is not limited to, the overall length, beam, draft, gross tonnage, deadweight tonnage, net tonnage, and design capacity for transporting crude oil, refined petroleum products or their by-products, and a detailed statement as to the tank vessel's seaworthiness; the department may, in addition, require that the carrier furnish a marine survey of the tank vessel's condition;

(2) a projection of the number of visits each tank vessel will make annually to or from an oil terminal facility in the state, or through the waters of the state;

(3) all containment and removal equipment, including but not limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the carrier or the tank vessel has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization; and

(4) the terms of agreement and operation plan of any discharge cleanup organization to which the carrier or the owner or operator of the tank vessel belongs.

(h) Upon showing of satisfactory containment and removal or cleanup capability under this section, and upon payment of the annual risk charge, the department shall issue the applicant a certificate of risk avoidance for each terminal facility and related appurtenances or for each tank vessel. In addition to the annual risk charge, the department may assess a penalty for late applications and a fee for the processing of an application for the issuance or renewal of a certificate of risk avoidance under this section. This fee shall be reasonably related to the administrative costs of verifying the data submitted under (e), (f) and (g) of this section.

(i) Oil terminal facilities engaged in the transfer of, and carriers engaged in the marine transportation of crude oil, refined petroleum products or their by-products, that are applicants for, or are holders of, a certificate of risk avoidance under this section are subject to inspection by the department to ensure compliance with the provisions of this chapter.

Sec. 30.25.050. PROOF OF FINANCIAL RESPONSIBILITY.

(a) Carriers and facilities subject to the provisions of this chapter shall present to the department evidence of insurance, bonding or other forms of financial responsibility acceptable to the department for property damage, personal injuries, loss of income or other losses resulting from the unlawful discharge of crude oil, refined petroleum products or their by-products.

(b) The amount of financial responsibility required for each carrier shall not be less than \$20,000,000, or an amount required under applicable federal law or regulation.

(c) The amount of financial responsibility required for each facility with a capacity of less than 200,000 barrels of crude oil, refined petroleum products or their by-products is \$100,000; the amount for the same type of facility with a capacity of 200,000 barrels or more of crude oil, refined petroleum products or their by-products is \$1,000,000.

Sec. 30.25.060. EXEMPTIONS. (a) Because of the restricted nature of their operations and the minimal danger to the environment posed by their activities, the following are exempt from the proof of financial responsibility requirements of sec. 50 of this chapter and the certificate of risk avoidance requirements of sec. 40 of this chapter:

(1) a marina used or capable of being used to store less than 10,000 barrels of refined petroleum products or their by-products;

(2) an onshore limited capacity facility used or capable of being used to store less than 25,000 barrels of refined petroleum products or their by-products; and

(3) a seafood processing vessel or tender when, incidental to its seafood processing operations, it transfers refined petroleum products to a fishing boat.

(b) For the purposes of (a) of this section

(1) "marina" means a person or facility engaged in the business, whether onshore or offshore, of servicing the fuel requirements of aircraft, pleasure watercraft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity, and the fuel capacity of the servicing or serviced vessel is less than 10,000 barrels of refined petroleum products or their by-products, and is not covered by the definition of limited capacity facility in (2) of this subsection;

(2) "limited capacity facility" means a small tank farm, small bulk fuel storage facility, or other onshore facility storing refined petroleum products or their by-products, except asphalt, and which is engaged in the business of servicing the requirements of product transporters and vendors, or storing the fuel requirements for village domestic, school or commercial use, including but not limited to fish processing, logging operations, construction projects or electric power generation.

(c) A person, facility or vessel exempt from this chapter under (a) - (b) of this section may, at his or its option, apply for and obtain a certificate of risk avoidance by complying with the applicable provisions of secs. 40 and 50 of this chapter.

Sec. 30.25.070. SCOPE OF REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter that do not conflict with federal law or regulations issued by any federal department or agency, including but not limited to the following:

(1) operating and inspection requirements for oil terminal facilities, tank vessels, personnel, equipment, supplies and other matters relating to the insured's operations under sec. 40 of this chapter;

(2) procedures and methods of reporting discharges and other occurrences prohibited by this chapter;

(3) procedures, methods, means and equipment to be used by persons subject to this chapter and the implementing regulations;

(4) procedures, methods, means and equipment to be used in the abatement, containment or removal of oil and petroleum pollutants;

(5) development and implementation of criteria and plans to meet oil and petroleum pollution discharges, spills or other occurrences of various degrees and kinds;

(6) requirements for the safety and operation of tank vessels and motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries;

(7) establishment of the risk charges for annual issuance of the certificate of risk avoidance; and

(8) those other regulations that may be required by or for emergency conditions or that reasonably may be necessary to carry out the purposes of this chapter.

ARTICLE 3. EMERGENCIES.

Sec. 30.25.080. GOVERNOR'S POWERS: EMERGENCY PROCLAMATION. (a) In addition to exercising his civil defense powers under AS 26.20, or directing the department to exercise its emergency powers under AS 46.03.820, when a disaster or catastrophe occurs or appears imminent arising from the discharge of crude oil, refined petroleum products or their by-products, the governor, or in his absence or inability, the lieutenant governor, shall by proclamation declare (1) that fact and (2) that an emergency exists in one, several or all sections of the state. A copy of the proclamation shall be filed with the lieutenant governor in the manner prescribed by law.

(b) The governor has general direction and control of the department and is responsible for carrying out the provisions of this chapter when a disaster or catastrophe occurs or appears imminent arising from the discharge of crude oil, refined petroleum products or their by-products.

(c) In performing his duties under this chapter, the governor may

(1) issue, amend and rescind the necessary orders and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him and not inconsistent with the regulations and directives of the President of the United States or of any federal department or agency that has specifically authorized emergency functions;

(2) delegate any authority vested in him under this chapter and provide for the subdelegation of that authority.

(d) When the governor is satisfied that an emergency no longer exists, he shall terminate the proclamation issued under (a) of this section by another proclamation affecting the sections of the state covered by the original proclamation. The proclamation shall be published in the newspapers of general circulation in the state and posted at other places that the governor, or the person acting in that capacity, considers appropriate.

(e) The provisions of AS 26.20 as they apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right-of-way, enforcement and compensation apply to disasters or catastrophes proclaimed by the governor under this chapter.

Sec. 30.25.090. INTERAGENCY COOPERATION. In performing his duties under sec. 80 of this chapter, the governor shall secure cooperation from all departments and agencies of the federal government, and the governments of other states and foreign countries, and the political subdivisions of them, as well as from private agencies, in all matters relating to disaster or catastrophe.

ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

Sec. 30.25.100. IMMEDIATE REMOVAL REQUIRED. A person discharging crude oil, refined petroleum products or their by-products in a manner prohibited by sec. 20 of this chapter shall immediately undertake to remove the discharge to the department's satisfaction. Notwithstanding this requirement, the department may undertake the removal of the discharge and may retain agents and enter into contracts for that purpose notwithstanding the provisions of AS 37.05.-220 -37.05.280. These agents or contractors shall operate under the direction of the department.

Sec. 30.25.110. UNEXPLAINED DISCHARGES. An unexplained discharge of crude oil, refined petroleum products or their by-products within the state's jurisdiction or discharge of crude oil, refined petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the department.

Sec. 30.25.120. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EXPENSES. (a) The department may establish and maintain at ports, harbors or other locations in the state, the personnel, equipment and supplies that, in its judgment, may be necessary to carry out the provisions of this chapter. Whenever feasible, the department shall enter into contracts with persons or private organizations to provide the oil discharge cleanup personnel, equipment or other services or supplies that may be required to carry out the provisions of this chapter.

(b) The salaries of department employees and the cost of equipment, supplies and contracts entered into under (a) of this section required to carry out the provisions of this chapter shall be paid from the coastal protection fund.

(c) The department and the Departments of Natural Resources and Fish and Game shall consult with one another periodically relative to procedures for the prevention of oil discharges into the coastal and inside coastal waters of the state from offshore drilling production facilities. These departments shall jointly establish predesignated sites for the deposit of oil discharge refuse and waste.

(d) Those inspection and enforcement employees of the department designated by the commissioner are peace officers

under AS 01.10.060(6) in their line duty under this chapter and AS 46.03.

(e) Expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting it, or the department by itself, or through its agents or contracts shall be paid solely from the coastal protection fund established under this chapter.

ARTICLE 5. ENFORCEMENT; PENALTIES.

Sec. 30.25.130. ADMINISTRATIVE ADJUDICATION. When it appears, after investigation, that there is a violation of a regulation, order or certificate issued by the department, the department shall proceed in accordance with the provisions of this chapter and the regulations adopted under it.

Sec. 30.25.140. CRIMINAL SANCTIONS. A person who violates sec. 20 of this chapter is punishable under AS 46.-03.760 or 46.03.790. A person who falsifies information required under sec. 40 of this chapter is punishable under AS 46.03.760 or 46.03.790.

Sec. 30.25.150. CIVIL PENALTIES. A person who violates a provision of this chapter or a regulation or order of the department is subject to the penalties prescribed in AS 46.03.760 - 46.03.780.

Sec. 30.25.160. INJUNCTIVE RELIEF. A person may be enjoined by the superior court from committing a violation of a provision of this chapter, or the implementing regulations.

Sec. 30.25.170. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a) Actions to recover penalties or damages under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under sec. 140 or 150 of this chapter shall be paid to the department and deposited by it in the coastal protection fund.

Sec. 30.25.180. EACH VIOLATION IS A SEPARATE OFFENSE. Each violation of a provision of this chapter, an implementing regulation, or an order or certificate issued by the department under them, is a separate and distinct offense and, in case of a continuing violation, each day the violation continues constitutes a separate offense.

Sec. 30.25.190. PENALTIES CUMULATIVE. (a) All penalties imposed under this chapter are cumulative.

(b) An action to recover a civil penalty is not a bar to an enforcement proceeding to require compliance, or to any other remedy or sanction provided by this chapter.

Sec. 30.25.200. JOINDER OF ACTIONS. Under the applicable court rules, appeals from orders of the department, and actions for recovery of damages or penalties may be joined. The court may in the interests of justice separate the actions.

Sec. 30.25.210. PRIVATE CAUSE OF ACTION. (a) A person subjected to a prohibited discharge in violation of this chapter may sue in a state court of appropriate jurisdiction for damages resulting from the prohibited discharge.

(b) A person recovering damages under this section is entitled to a reasonable attorney fee, fixed by the court, to be taxed and collected as costs of the suit.

ARTICLE 6. COASTAL PROTECTION FUND.

Sec. 30.25.220. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The coastal protection fund is created as a revolving fund. The fund shall be used by the department to carry out the purposes of this chapter.

(b) To this fund shall be credited all risk charges, damages, penalties and other fees or charges established under or related to this chapter. To this fund shall be charged all expenses of the department related to this chapter, including administrative expenses, and costs of abatement, containment or removal of discharges of pollutants.

Sec. 30.25.230. SURPLUS FUNDS. Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under this chapter shall be deposited with the commissioner of revenue to the credit of the fund and shall be invested in the manner provided in AS 37.10. Interest received on that investment shall be credited to the fund.

Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The department may allocate annually not more than five per cent of the amount then currently in the fund for research and development into the causes, effects, prevention and removal of pollution of the aquatic environment caused by crude oil, refined petroleum products, or their by-products. These allocations shall be made in accordance with the Executive Budget Act (AS 37.07).

Sec. 30.25.250. FUNDING; RISK CHARGES. (a) Annual risk charges for each classification of certificates issued by the department under sec. 40 of this chapter shall be based on the following factors:

(1) data submitted by applicants under that section;

(2) with respect to the issuance of certificates to carriers engaged in the marine transportation of crude oil, refined petroleum products or their by-products, the design characteristics of the tank vessel for which the certificate is issued, including but not limited to

(A) the presence or absence of the standard safety or maneuvering capability features prescribed in AS 30.20.020; and

(B) if the tank vessel is 40,000 deadweight tons or more, the presence or absence of

(i) flue gas or other gas inerting systems to be prescribed by the department by regulation; and

(ii) segregated ballast tanks, the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast, and which is achieved in part by fitting, throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

(3) the risk experience of oil terminal facilities and carriers during the previous period for which the certificate of risk avoidance was issued and risk charges paid; and

(4) any other data, information or standards, including but not limited to partial, complete or defensively placed ballast tanks or systems with respect to (2)(B)-(ii) of this subsection, that the department considers relevant or essential to an appropriate determination of the annual charges for the issuance of certificates of risk avoidance under sec. 40 of this chapter.

(b) The annual risk charge for a tank vessel that lacks some or all of the design characteristics prescribed in (a)(2) of this section shall be increased accordingly in the manner prescribed by the department. The annual risk charge shall be reduced when the tank vessel is equipped or fitted with the design characteristics prescribed in (a)(2) of this section.

(c) Charges may be adjusted from time to time during each year to allow for risk experience or the equipping or fitting of design characteristics prescribed in (a)(2) of this section during that period.

(d) The aggregate annual risk charges to be collected each year shall be sufficient to cover anticipated authorized disbursements from the fund for that year, except costs involved in the abatement, containment or removal of pollution under sec. 260(a)(2) of this chapter, plus 20 per cent of the amount necessary to fund the pollution abatement expense reserve established under (f) of this section.

(e) At the time the full pollution abatement expense reserve has been collected, there shall be returned to those holders of certificates of risk avoidance who paid into the fund in its first year of operation their pro rata share of the excess, if any, of risk charges paid over all disbursements from the fund made for that year plus interest on the amount of the excess returned. In each year thereafter, so long as the pollution abatement expense reserve is maintained, excess risk charges, if any, shall be paid to the certificate holders in the year following the last year for which a return of excess risk charge has been made if due or calculated and found not due.

(f) The initial pollution abatement expense reserve is \$30,000,000. At least once every five years during the fund's operation, the department shall determine an appropriate amount necessary to maintain adequate funds to abate, contain or remove anticipated oil pollution and establish a new amount for the pollution abatement expense reserve.

(g) Risk charges shall be paid to the department and upon receipt by it deposited in the coastal protection fund.

Sec. 30.25.260. DISBURSEMENTS FROM FUND. (a) Money in the coastal protection fund may be disbursed for the following purposes and no other, subject to the provisions of AS 37.07 and AS 37.10:

(1) administrative expenses, personnel expenses, contract fees, and equipment and supplies costs of the department related to the enforcement of this chapter;

(2) all costs involved in the abatement, containment or removal of pollution related to the discharge of crude oil, refined petroleum products or their by-products covered by this chapter;

(3) sums allocated to research and development in accordance with sec. 240 of this chapter; and

(4) payment of costs of insurance by the state to implement this chapter.

(b) The department shall submit annually to the legislature, through the Department of Administration and the governor, in accordance with the Executive Budget Act (AS 37.07), its recommendations for disbursements from the fund under (a) of this section and sec. 240 of this chapter.

Sec. 30.25.270. SPECIAL RISK CHARGES. (a) If a discharge occurs in any year necessitating disbursements from the fund in excess of expenses funded by that year's charges, the department shall collect from all carriers and facilities subject to the provisions of this chapter at the time the discharge occurs that amount which will reimburse the fund by the aggregate amount of the excess expenditures.

(b) The amount to be collected shall be prorated among those carriers and facilities subject to this chapter at the time of the discharge and shall be determined on the basis of the same criteria used to determine annual risk charges under sec. 250 of this chapter.

(c) If a carrier or facility subject to (a) of this section refuses to pay the special risk charges established under (a) of this section, those charges shall be prorated among the remaining carriers or facilities.

(d) Requests for payment of the special risk charges established under (a) of this section, if not paid within 30 days of demand, shall be turned over to the Department of Administration or the Department of Law, or both, for collection.

Sec. 30.25.280. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE. An operator of an oil terminal facility and a

carrier are strictly liable, without regard to fault, under AS 46.03.822 - 46.03.828 for all acts and omissions of their employees and agents. The liability of a carrier extends from the time the vessel enters state waters until the time the vessel leaves state waters.

ARTICLE 7. GENERAL, MISCELLANEOUS PROVISIONS.

Sec. 30.25.290. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The governor may execute supplementary agreements, reciprocal arrangements or compacts with any other state or with foreign governments, subject to the approval of the legislature and of the Congress of the United States that may be required by applicable provisions of law, for the purpose of implementing this chapter.

Sec. 30.25.300. ANNUAL REPORT. The department shall prepare and publish an annual report to the governor and to the legislature reviewing its work under this chapter and shall include in the report its recommendations for the enactment of appropriate legislation.

Sec. 30.25.310. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED. If a conflict occurs between a provision of this chapter, or a regulation, certificate, order, decision or other determination of the department and a charter, ordinance, permit, regulation, franchise, decision or other determination of a municipality, the provisions of this chapter or a regulation, certificate, order, decision or other determination of the department prevails. However, nothing in this chapter may be construed to preclude a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

Sec. 30.25.320. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to the adjudicatory, certificate issuing, or other proceedings of the department under this chapter. However,

(1) final administrative determinations or orders by the department are subject to judicial review under that Act; and

(2) department hearings shall be held only after at least 10 days public notice, unless it is an emergency hearing; they shall be held at a place most convenient for those interested in the subject of the hearing.

(b) Notwithstanding the provisions of (a)(1) of this section, no regulation or order of the department may be stayed pending appeal under the provisions of the Administrative Procedure Act.

(c) The Administrative Procedure Act applies to regulations promulgated by the department.

Sec. 30.25.330. LIMITATION ON LIABILITY OF THE STATE. Neither the state nor the fund is liable for any act or omission arising out of the enforcement or implementation of this chapter or the failure to enforce or implement this chapter.

Sec. 30.25.340. CONSTRUCTION. This chapter shall be liberally construed to effect the purposes set out in sec. 10 of this chapter.

Sec. 30.25.350. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "barrel" means 42 U. S. gallons at 60 degrees Fahrenheit;

(2) "board" means a board of arbitration established under this chapter;

(3) "carrier" means a person who owns or who, for compensation, operates or otherwise provides a vessel engaged in, used or capable of being used for, the marine transportation of crude oil, refined petroleum products or their by-products on the waters of this state;

(4) "commissioner" means the commissioner of environmental conservation;

(5) "deadweight tonnage" or "DWT" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "fund" means the state coastal protection fund;

(9) "municipality" means a home rule or general law borough or city including but not limited to a unified municipality organized under AS 29.68;

(10) "crude oil, refined petroleum products, or their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane or other liquid hydrocarbons regardless of specific gravity;

(11) "oil terminal facility" means an onshore or offshore facility of any kind and related appurtenances, including but not limited to a deepwater port, located in, on, or under the surface of any land or water of the state, including tide and submerged land, which is used or capable of being used for the purpose of transferring, processing or refining, or storing crude oil, refined petroleum products or their by-products; a vessel shall be considered an oil terminal facility only in the event of a ship-to-ship transfer of crude oil, refined petroleum products or their by-products, and only that vessel going to or coming from the place of transfer and the oil terminal facility; however, an oil terminal facility does not include a seafood processing

vessel or tender when, incidental to its seafood processing operations, it transfers refined petroleum products to a fishing boat;

(12) "operate" or "operator" means a person owning or operating an oil terminal facility or a carrier whether by lease, contract or any other form of agreement, or a person who navigates or has charge of the navigation or use of a vessel;

(13) "transferred" includes both onloading and offloading, between terminal and vessel and vessel to vessel;

(14) "tank vessel" means a self-propelled vessel that is specially constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying crude oil, petroleum products or their by-products in bulk; it does not include vessels carrying crude oil, petroleum products or their by-products in drums, barrels, or other packages, or vessels carrying crude oil, petroleum products or their by-products as fuel or stores for that vessel;

(15) "waters of the state" means the navigable waters within the territorial limits of the state, and the marginal sea adjacent to the state, and as defined in AS 44.03 and AS 46.03.900(22).

Sec. 30.25.360. SHORT TITLE. This chapter may be cited as the Alaska Oil Discharge Prevention and Pollution Control Act.

* Sec. 3. AS 46.03.750 is amended by adding a new subsection to read:

(e) Cargo in tank vessels, as defined in AS 30.20.-060(9), engaged in the marine transportation of crude oil, refined petroleum products or their by-products may not be placed in segregated ballast tanks, nor may ballast be placed in cargo tanks of those tank vessels having segregated ballast systems. However, the department may by regulation permit the placing of ballast in the cargo tanks of those vessels in emergency situations. All ballast placed in cargo tanks shall be processed by or in an onshore ballast water treatment facility and may not be discharged into the waters of the state.

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

Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of sec. 740 or 750 of this chapter or AS 30.25.020, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

* Sec. 5. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

(a) A person who violates or causes or permits to be violated a provision of this chapter or AS 30.25.020, or a regulation, a lawful order of the department, or a permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day thereafter on which the violation continues, and which shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation, except disbursements for pollution abatement costs under AS 30.25.260(a)(2); and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740 - 750 of this chapter is liable to the state, in a civil action brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs. That portion of the damages recovered by the state in a civil action brought under sec. 822 of this chapter attributable to costs incurred by the department in the abatement, containment or removal of the pollutant resulting from a discharge of crude oil, refined petroleum products or their by-products shall be deposited in the coastal

protection fund created under AS 30.25.220. Except for special risk charges collected under AS 30.25.270, a person holding a risk avoidance certificate may not be held liable for costs associated with the abatement, containment or removal of the pollutant.

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

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter or AS 30.25, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 7. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter or AS 30.25, or who fails to perform a duty imposed by this chapter or AS 30.25, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter or AS 30.25, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

* Sec. 8. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter or AS 30.25, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$25,000 and costs of prosecution, or by imprisonment for not more than one year, or by fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is

punishable by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

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

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or AS 30.25, or a regulation or lawful order of the department, or a permit or certificate, or a term or condition of a permit or certificate issued by the department under this chapter or AS 30.-25, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under sec. 820 of this chapter.

(b) The recipient of the determination must file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in sec. 10 of this chapter. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

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

Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter or AS 30.25 are cumulative, and the securing of relief, whether injunctive, civil or criminal, under a section of this chapter or AS 30.25 does not estop the state from obtaining relief under any other section of this chapter or AS 30.25.

* Sec. 11. SEVERABILITY. If any provision of this Act or the application of it to any person or circumstance is held invalid, particularly those provisions that establish incentives for carriers to use vessels with certain safety or maneuvering capability features, the remainder of this Act and the application to other persons or circumstances, including but not limited

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to those provisions which create a coastal protection fund, shall not be affected.

* Sec. 12. This Act takes effect July 1, 1977.

Approved by governor: June 28, 1976
Actual effective date: July 1, 1976