



LAWS OF ALASKA

2001

Source
CSSB 16(RLS)

Chapter No.
8

AN ACT

Regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of "response action" that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: April 6, 2001
Actual Effective Date: April 7, 2001

AN ACT

1 Regarding oil discharge prevention and cleanup involving self-propelled nontank vessels
2 exceeding 400 gross registered tonnage and railroad tank cars and related facilities and
3 operations and requiring preparation and implementation of oil discharge contingency plans
4 for those nontank vessels and railroad tank cars; amending the definition of "response action"
5 that relates to releases or threatened releases of oil and thereby amending the duties and
6 liabilities of response action contractors; authorizing compliance verification for nontank
7 vessels and for trains and related facilities and operations; and providing for an effective date.

8
9 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 INTENT. It is the intent of the legislature that the report of the Task Force on

Chapter 8

1 Motorized Oil Transport (sec. 5, ch. 128, SLA 2000), the documents the task force used in
2 preparing the report, and the transcripts of the task force meetings be used by the Department
3 of Environmental Conservation as the guidelines for drafting regulations to implement this
4 legislation.

5 * **Sec. 2.** AS 46.03.825(a) is amended to read:

6 (a) A response action contractor who responds to a release or threatened
7 release of oil is not civilly liable for removal costs or damages that result from an act
8 or omission in the course of providing care, assistance, or advice

9 (1) consistent with a contingency plan

10 (A) approved under AS 46.04.030 **or 46.04.055** if the response
11 action contractor is listed in the contingency plan; or

12 (B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C.
13 1321(d) if the response action contractor is not listed in the contingency plan;
14 or

15 (2) as otherwise directed by the federal or state on-scene coordinator.

16 * **Sec. 3.** AS 46.03.825(b) is amended to read:

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

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

19 (2) a response action contractor who

20 (A) would otherwise have been liable for the release or
21 threatened release under AS 46.03.822;

22 (B) acts with gross negligence or intentional misconduct; or

23 (C) has agreed in writing to be listed as a primary response
24 action contractor, who is listed as a primary response action contractor in a
25 contingency plan approved under AS 46.04.030 **or 46.04.055**, and who fails to
26 respond to a release or threatened release of oil that the primary response
27 action contractor was required to respond to under its contract with the
28 applicable contingency plan holder; this subparagraph does not apply to a
29 primary response action contractor if the failure to respond to a release or
30 threatened release of oil results from a prior and ongoing response under
31 another contingency plan approved under AS 46.04.030 **or 46.04.055** in which

1 the primary response action contractor has the primary duty to respond and a
2 significant portion of the response action contractor's oil spill cleanup
3 equipment listed in the contingency plan approved under AS 46.04.030 or
4 46.04.055 is in use.

5 * Sec. 4. AS 46.03.825(f) is amended to read:

6 (f) Nothing in this section is intended to amend AS 46.04.030(l) or 46.04.055,
7 or to create a cleanup or performance standard that must be met by a holder of a
8 contingency plan or by a primary response action contractor.

9 * Sec. 5. AS 46.03.825(g)(3) is amended to read:

10 (3) "response action" means an action taken to respond to a release or
11 threatened release of oil, including mitigation, clean up, marine salvage, incident
12 management team services, response plan facilitator services, or removal of a
13 release or threatened release of oil.

14 * Sec. 6. AS 46.04.055(a) is amended to read:

15 (a) A person may not operate [CAUSE OR PERMIT THE OPERATION OF]
16 a nontank vessel within the waters of the state or cause or permit the transfer of oil to
17 or from a nontank vessel unless the person has furnished to the department and the
18 department has approved proof of financial ability to respond to damages meeting the
19 requirements of AS 46.04.040. Proof of financial responsibility required under this
20 subsection is subject to adjustment of dollar amounts under AS 46.04.045 and is
21 established, for a nontank vessel that carries

22 (1) predominantly persistent product, at \$300 per incident for each
23 barrel of oil storage capacity on the vessel or \$5,000,000, whichever is greater; and

24 (2) predominantly nonpersistent product, at \$100 per incident for each
25 barrel of oil storage capacity on the vessel or \$1,000,000, whichever is greater.

26 * Sec. 7. AS 46.04.055(e) is amended to read:

27 (e) The requirements of [(a) - (d) OF] this section do not apply to a nontank
28 vessel operating in the waters of the state if the nontank vessel

29 (1) is engaged in innocent passage; for purposes of this paragraph, a
30 nontank vessel is engaged in innocent passage if its operation in state waters,
31 irrespective of whether it is a United States or foreign-flag vessel, would constitute

Chapter 8

1 innocent passage under the Convention on the Territorial Sea and the Contiguous
2 Zone, April 29, 1958, 15 U.S.T. 1606, or the United Nations Convention on the Law
3 of the Sea 1982, December 10, 1982, U.N. Publication No. E 83.V.5, 21 I.L.M. 1261
4 (1982), were the vessel a foreign-flag vessel;

5 (2) enters state waters because of imminent danger to the crew, or in an
6 effort to prevent an oil spill or other harm to public safety or the environment, and are
7 inapplicable only until the vessel is able to leave state waters as soon as it may do so
8 without imminent risk of harm to the crew, public safety, or the environment; or

9 (3) enters state waters after the United States Coast Guard has
10 determined that the vessel is in distress, and are inapplicable only until the vessel is
11 able to leave state waters as soon as it may do so without imminent risk of harm to the
12 crew, public safety, or the environment.

13 * **Sec. 8.** AS 46.04.055 is amended by adding new subsections to read:

14 (f) On and after the date that is 180 days after the effective date of the
15 regulations initially adopted by the department under (l) of this section to implement
16 the requirements of this subsection and (g) and (h) of this section, a person may not
17 operate a nontank vessel within the waters of the state or cause or permit the transfer
18 of oil to or from a nontank vessel unless the department has approved an oil discharge
19 prevention and contingency plan covering that nontank vessel and the person is in
20 compliance with the plan.

21 (g) The oil discharge prevention and contingency plan for a nontank vessel
22 required by (f) of this section must include

23 (1) vessel-specific information;

24 (2) a response plan consisting of

25 (A) initial notification procedures;

26 (B) a certification that the applicant for the nontank vessel
27 contingency plan is a member of, or has a contract with, an oil spill response
28 organization that is an oil spill primary response action contractor with a
29 response action plan approved by the department as meeting the response
30 planning standards of (c)(1) of this section for the maximum oil capacity of the
31 nontank vessel; and

1 (C) a certification that the applicant for the nontank vessel
2 contingency plan has contracted with an oil spill primary response action
3 contractor providing incident management team services; and

4 (3) a prevention plan certification stating that the nontank vessel for
5 which contingency plan approval is made complies with applicable federal and
6 International Maritime Organization requirements.

7 (h) In lieu of the requirements

8 (1) of (g)(2)(B) of this section, a person may comply with the
9 requirement of (g)(2)(B) of this section by demonstrating, to the satisfaction of the
10 department, that the person is maintaining an oil spill response plan and equivalent
11 equipment, personnel, and resources to enable the person to meet the requirements of
12 this section; and

13 (2) of (g)(2)(C) of this section, a person may comply with the
14 requirement of (g)(2)(C) of this section by demonstrating, to the satisfaction of the
15 department, that the person is maintaining an incident management team in order to
16 implement a planned response to a release or threatened release of oil from its nontank
17 vessel.

18 (i) The provisions of AS 46.04.030(d) - (l), (n), (o), and (r) apply to a nontank
19 vessel, to a nontank vessel contingency plan required by this section, and to a person
20 applying for and holding an approved nontank vessel contingency plan.

21 (j) On and after the date that is 180 days after the effective date of the
22 regulations initially adopted by the department under (l) of this section to implement
23 the requirements of this subsection, a person may not transport oil by railroad tank car
24 or cause or permit the transfer of oil to or from a railroad tank car unless the
25 department has approved an oil discharge prevention and contingency plan covering
26 the transportation of oil by railroad tank cars by the railroad and the person is in
27 compliance with the plan.

28 (k) The provisions of AS 46.04.030(d) - (l), (n), (o), and (r) apply to a railroad
29 tank car, to a railroad tank car contingency plan required by this section, and to a
30 person applying for and holding an approved railroad tank car contingency plan.

31 (l) The department shall adopt regulations under AS 46.04.070 to implement

Chapter 8

1 (1) the requirements of response planning standards under (c) of this
2 section;

3 (2) the requirements of (f) - (i) of this section as applicable to nontank
4 vessels; and

5 (3) the requirements of (j) and (k) of this section as applicable to
6 railroad tank cars.

7 * **Sec. 9.** AS 46.04 is amended by adding a new section to read:

8 **Sec. 46.04.065. Compliance verification for nontank vessels and for trains**
9 **and related facilities and operations.** In addition to other rights of access or
10 examination conferred upon the department by law or otherwise, to ensure compliance
11 with the provisions of this chapter relating to oil pollution control, the department may
12 at reasonable times and in a safe manner enter and examine

13 (1) nontank vessels; and

14 (2) trains, railroad tracks, associated facilities, and railroad operations.

15 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS. The lieutenant
18 governor shall certify to the revisor of statutes

19 (1) the effective date of the regulations initially adopted by the Department of
20 Environmental Conservation under AS 46.04.055(l), added by sec. 8 of this Act, to implement
21 the requirements of AS 46.04.055(f) - (i), added by sec. 8 of this Act, as applicable to nontank
22 vessels; and

23 (2) the effective date of the regulations initially adopted by the Department of
24 Environmental Conservation under AS 46.04.055(l), added by sec. 8 of this Act, to implement
25 the requirements of AS 46.04.055(j) and (k), added by sec. 8 of this Act, as applicable to
26 railroad tank cars.

27 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).