



# LAWS OF ALASKA

2002

**Source**

CSSB 153(FIN)

**Chapter No.**

41

**AN ACT**

Replacing the storage tank assistance fund with the underground storage tank revolving loan fund and relating to that revolving loan fund; repealing the tank cleanup program and the tank upgrading and closure program; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** June 7, 2002

**Actual Effective Date:** Sections 2, 3, 5, 7, 9 - 12, 15, and 17 - 20 take effect July 1, 2002; sections 1, 4, 6, 8, 13, 14, 16, and 21 take effect July 1, 2004; section 22 takes effect June 8, 2002



AN ACT

1 Replacing the storage tank assistance fund with the underground storage tank revolving loan  
2 fund and relating to that revolving loan fund; repealing the tank cleanup program and the tank  
3 upgrading and closure program; and providing for an effective date.

4

5 \* **Section 1.** AS 46.03.360(e) is amended to read:

6 (e) Under AS 44.62 (Administrative Procedure Act), the board shall adopt  
7 regulations under which the department shall

8 (1) rank requests for assistance under AS 46.03.422 [AS 46.03.420  
9 AND 46.03.422];

10 (2) determine which costs of risk assessment, containment, corrective  
11 action, and cleanup are eligible costs under AS 46.03.422 [AS 46.03.420 AND  
12 46.03.422].

13 \* **Sec. 2.** AS 46.03.360(f) is amended to read:

Chapter 41

1 (f) If the department determines that an owner or operator is not eligible for  
2 assistance under AS 46.03.410 - 46.03.422 [AS 46.03.410 - 46.03.430] or that a cost is  
3 not eligible [UNDER AS 46.03.415 - 46.30.430] and the affected owner or operator  
4 disputes that determination, or if an owner or operator disputes the ranking assigned to  
5 the [A] request for assistance [UNDER AS 46.03.420 OR 46.03.422], the owner or  
6 operator may apply to the board for resolution of the dispute. The board may issue a  
7 decision in a dispute brought to it under this subsection. The decision is binding on  
8 the owner, operator, and department.

9 \* Sec. 3. AS 46.03.360(g) is amended to read:

10 (g) The board may adopt regulations to limit the number of sites per calendar  
11 year for which an owner or operator may be awarded financial assistance under  
12 AS 46.03.410 - 46.03.422 [AS 46.03.420 - 46.03.430]. The department shall  
13 implement the regulations.

14 \* Sec. 4. AS 46.03.365(c) is amended to read:

15 (c) When [EXCEPT AS PROVIDED IN AS 46.03.420(c)(2)(A). WHEN] the  
16 regulations adopted under this section address areas governed by federal laws or  
17 regulations, the state regulations must be consistent with federal laws and regulations  
18 and may not be more stringent than the federal laws and regulations.

19 \* Sec. 5. AS 46.03.385(e) is amended to read:

20 (e) The department shall deposit fees collected under this section into  
21 [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE  
22 OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF  
23 ADMINISTRATION UNDER AS 37.05.142 TO] the underground storage tank  
24 revolving loan [ASSISTANCE] fund established under AS 46.03.410.

25 \* Sec. 6. AS 46.03.405 is amended to read:

26 **Sec. 46.03.405. Prohibitions.** A person, including a governmental entity or  
27 institution [,] or a public corporation, may not operate an underground petroleum  
28 storage tank or tank system unless

29 (1) the tank and tank system are [IS] registered with the department as  
30 provided in AS 46.03.360 - 46.03.450 or other law; and

31 (2) [EXCEPT AS PROVIDED IN AS 46.03.420(c)(1)(D),] the person

1 has provided to the department proof of financial responsibility to the extent required  
2 under regulations adopted under AS 46.03.365 or proof of application for  
3 arrangements that would satisfy state financial responsibility requirements.

4 \* Sec. 7. AS 46.03.410 is amended to read:

5 **Sec. 46.03.410. Underground storage [STORAGE] tank revolving loan**  
6 **[ASSISTANCE] fund.** (a) There is established the underground storage tank  
7 revolving loan [ASSISTANCE] fund. It consists of money appropriated to it by law,  
8 repayments of principal and interest on loans made or fees collected under  
9 AS 46.03.385 - 46.03.450, and income earned on money in the fund [. THE  
10 DEPARTMENT SHALL DEPOSIT EARNINGS ON MONEY IN THE FUND IN  
11 THE GENERAL FUND. THE LEGISLATURE MAY USE THE ESTIMATED  
12 BALANCE IN THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF  
13 ADMINISTRATION UNDER AS 37.05.142 TO MAKE APPROPRIATIONS TO  
14 THE FUND]. The legislature may appropriate unencumbered money from the fund  
15 for the cost of risk assessment, containment, corrective action, and cleanup relating to  
16 an underground petroleum storage tank system owned or operated by the state, the  
17 University of Alaska, a public corporation, a school district, or another political  
18 subdivision or instrumentality of the state. The legislature may also appropriate  
19 unencumbered money from the fund for state legal and regulatory expenses associated  
20 with underground petroleum storage tanks. An application for funds under  
21 AS 46.03.420 and [,] 46.03.422 [, AND 46.03.430] is not considered an encumbrance  
22 for purposes of this subsection.

23 (b) The commissioner may use money in the underground storage tank  
24 revolving loan fund to pay for

25 (1) grants and loans under AS 46.03.420 and 46.03.422 for risk  
26 assessment, containment, corrective action, and cleanup costs; [AND]

27 (2) costs of administering the fund and the tank cleanup loan  
28 program under AS 46.03.422; and

29 (3) costs of the Board of Storage Tank Assistance (AS 46.03.360)  
30 [GRANTS UNDER AS 46.03.430 FOR TANK SYSTEM UPGRADING AND  
31 CLOSURE].

Chapter 41

1 (c) The commissioner shall prepare a report on the status of the underground  
2 storage tank revolving loan [ASSISTANCE] fund and notify the legislature not later  
3 than the 10th day following the convening of each regular session of the legislature  
4 that the report is available. The report may include information considered significant  
5 by the commissioner but must include

6 (1) the amount and source of money received by the fund during the  
7 preceding fiscal year;

8 (2) the amount of money expended during the preceding fiscal year for  
9 each type of expense authorized under (b) of this section;

10 (3) a detailed summary of department activities paid for from the fund  
11 during the preceding fiscal year, including how many requests for assistance have  
12 been made to the department to use the fund for grants or loans for testing, site  
13 assessment, risk assessment, upgrading, closure, containment, corrective action, and  
14 cleanup costs, and the number of requests funded in each activity area;

15 (4) the projected cost for the next fiscal year of monitoring, operating,  
16 and maintaining sites where department activities have been completed or are  
17 expected to start or be continued during the fiscal year;

18 (5) the priority list of tank system sites for which the department  
19 expects to provide financial assistance in the next fiscal year.

20 \* Sec. 8. AS 46.03.410 is amended to read:

21 **Sec. 46.03.410. Underground storage tank revolving loan fund.** (a) There  
22 is established the underground storage tank revolving loan fund. It consists of money  
23 appropriated to it by law, repayments of principal and interest on loans made or fees  
24 collected under AS 46.03.385 - 46.03.450, and income earned on money in the fund.  
25 The legislature may appropriate unencumbered money from the fund for the cost of  
26 risk assessment, containment, corrective action, and cleanup relating to an  
27 underground petroleum storage tank system owned or operated by the state, the  
28 University of Alaska, a public corporation, a school district, or another political  
29 subdivision or instrumentality of the state. The legislature may also appropriate  
30 unencumbered money from the fund for state legal and regulatory expenses associated  
31 with underground petroleum storage tanks. An application for funds under

1 AS 46.03.422 [AS 46.03.420 AND 46.03.422] is not considered an encumbrance for  
2 purposes of this subsection.

3 (b) The commissioner may use money in the underground storage tank  
4 revolving loan fund to pay for

5 (1) [GRANTS AND] loans under AS 46.03.422 [AS 46.03.420 AND  
6 46.03.422] for risk assessment, containment, corrective action, and cleanup costs;

7 (2) costs of administering the fund and the tank cleanup loan program  
8 under AS 46.03.422; and

9 (3) costs of the Board of Storage Tank Assistance (AS 46.03.360).

10 (c) The commissioner shall prepare a report on the status of the underground  
11 storage tank revolving loan fund and notify the legislature not later than the 10th day  
12 following the convening of each regular session of the legislature that the report is  
13 available. The report may include information considered significant by the  
14 commissioner but must include

15 (1) the amount and source of money received by the fund during the  
16 preceding fiscal year;

17 (2) the amount of money expended during the preceding fiscal year for  
18 each type of expense authorized under (b) of this section;

19 (3) a detailed summary of department activities paid for from the fund  
20 during the preceding fiscal year, including how many requests [FOR ASSISTANCE]  
21 have been made to the department to use the fund for [GRANTS OR] loans for testing,  
22 site assessment, risk assessment, upgrading, closure, containment, corrective action,  
23 and cleanup costs, and the number of requests funded in each activity area;

24 (4) the projected cost for the next fiscal year of monitoring, operating,  
25 and maintaining sites where department activities have been completed or are  
26 expected to start or be continued during the fiscal year;

27 (5) the priority list of tank system sites for which the department  
28 expects to provide loans [FINANCIAL ASSISTANCE] in the next fiscal year.

29 \* Sec. 9. AS 46.03.420(a) is amended to read:

30 (a) The commissioner may make a grant from the underground storage tank  
31 revolving loan [ASSISTANCE] fund to an owner or operator of an underground

Chapter 41

1 petroleum storage tank system, other than the state or federal government, for the costs  
2 of risk assessment, containment, corrective action, and cleanup resulting from a  
3 release of petroleum from or associated with an underground petroleum storage tank  
4 system if the owner or operator meets the requirements of this section. Applications  
5 for assistance under this section must be submitted to the department before July 1,  
6 1994. Under regulations of the board, the department shall rank requests under this  
7 section in order of priority, giving greatest priority to those tank systems that present  
8 the greatest threat or potential threat to human health.

9 \* Sec. 10. AS 46.03.420(e) is amended to read:

10 (e) A request for a grant under this section, and a grant payment made under  
11 this section, may not exceed \$250,000, less the amount not payable as a grant under  
12 (b) of this section. Furthermore, a grant payment under this section

13 (1) when combined with a grant payment under former AS 46.03.430  
14 to the same owner or operator, may not exceed \$250,000; and

15 (2) when combined with grants and loans to the same owner or  
16 operator under AS 46.03.422 and former AS 46.03.430 [46.03.430], may not exceed  
17 \$500,000.

18 \* Sec. 11. AS 46.03.420(i) is amended to read:

19 (i) The department shall deposit money collected under this section into  
20 [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE  
21 OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF  
22 ADMINISTRATION UNDER AS 37.05.142 TO] the underground storage tank  
23 revolving loan [ASSISTANCE] fund established under AS 46.03.410.

24 \* Sec. 12. AS 46.03.422(a) is amended to read:

25 (a) The commissioner may make a loan from the underground storage tank  
26 revolving loan [ASSISTANCE] fund to an owner or operator of an underground  
27 petroleum storage tank system for the costs of risk assessment, containment, corrective  
28 action, and cleanup resulting from a release of petroleum from or associated with an  
29 underground petroleum storage tank system if the owner or operator submitted a  
30 timely application for a grant under AS 46.03.420 and agrees

31 (1) to accept a loan in the same or lesser amount instead of a grant for



1 the same project;

2 (2) to provide additional security or collateral for the loan if requested  
3 by the department;

4 (3) [EITHER] to

5 (A) upgrade all underground petroleum storage tanks located at  
6 the facility from which the release occurred to the standards set by state and  
7 federal regulations according to a time line established by the department; or

8 (B) remove and properly dispose of all liquids and sludges  
9 from the underground petroleum storage tanks located at the facility from  
10 which the release occurred, conduct a site assessment, and either fill the tanks  
11 with inert solid material or properly dismantle, remove, and dispose of the  
12 tanks in accordance with applicable state and federal regulations; and

13 (4) to submit a plan for risk assessment, containment, corrective  
14 action, and cleanup to the department for its review and approval; if the department  
15 and the owner or operator cannot reach agreement on a plan, on later changes in the  
16 plan, or on a cleanup decision, the owner or operator may apply to the board to review  
17 the dispute; the board may issue a recommendation to the department in a dispute  
18 brought to it under this paragraph; the recommendation may include a suggested time  
19 limit for completing appropriate cleanup activities or reaching a cleanup decision.

20 \* **Sec. 13.** AS 46.03.422(a) is amended to read:

21 (a) The commissioner may make a loan from the underground storage tank  
22 revolving loan fund to an owner or operator of an underground petroleum storage tank  
23 system for the costs of risk assessment, containment, corrective action, and cleanup  
24 resulting from a release of petroleum from or associated with an underground  
25 petroleum storage tank system if the owner or operator submitted a timely application  
26 for a grant under former AS 46.03.420 and agrees

27 (1) to accept a loan in the same or lesser amount instead of a grant for  
28 the same project;

29 (2) to provide additional security or collateral for the loan if requested  
30 by the department;

31 (3) to

Chapter 41

1 (A) upgrade all underground petroleum storage tanks located at  
2 the facility from which the release occurred to the standards set by state and  
3 federal regulations according to a time line established by the department; or

4 (B) remove and properly dispose of all liquids and sludges  
5 from the underground petroleum storage tanks located at the facility from  
6 which the release occurred, conduct a site assessment, and either fill the tanks  
7 with inert solid material or properly dismantle, remove, and dispose of the  
8 tanks in accordance with applicable state and federal regulations; and

9 (4) to submit a plan for risk assessment, containment, corrective  
10 action, and cleanup to the department for its review and approval; if the department  
11 and the owner or operator cannot reach agreement on a plan, on later changes in the  
12 plan, or on a cleanup decision, the owner or operator may apply to the board to review  
13 the dispute; the board may issue a recommendation to the department in a dispute  
14 brought to it under this paragraph; the recommendation may include a suggested time  
15 limit for completing appropriate cleanup activities or reaching a cleanup decision.

16 \* Sec. 14. AS 46.03.422(e) is amended to read:

17 (e) This section does not affect

18 (1) the liability under state or federal law of a person or entity that  
19 receives a loan [ASSISTANCE] under this section for the costs of risk management,  
20 containment, corrective action, and cleanup resulting from a release of petroleum; or

21 (2) the authority of the department to seek recovery from the owner or  
22 operator of costs other than [GRANTS OR] loans actually made to an owner or  
23 operator under this section.

24 \* Sec. 15. AS 46.03.422(g) is amended to read:

25 (g) A loan payment under this section, when combined with loans and grants  
26 to the same owner or operator under AS 46.03.420 and former AS 46.03.430  
27 [46.03.430], may not exceed \$500,000.

28 \* Sec. 16. AS 46.03.422(g) is amended to read:

29 (g) A loan payment under this section, when combined with loans and grants  
30 to the same owner or operator under former AS 46.03.420 and former AS 46.03.430,  
31 may not exceed \$500,000.

1 \* Sec. 17. AS 46.03.422(h) is amended to read:

2 (h) The department shall deposit loan repayments and other money  
3 collected under this section into [LEGISLATURE MAY APPROPRIATE TO] the  
4 underground storage tank revolving loan [ASSISTANCE] fund established under  
5 AS 46.03.410 [THE ANNUAL ESTIMATED BALANCE OF THE ACCOUNT  
6 MAINTAINED UNDER AS 37.05.142 BY THE COMMISSIONER OF  
7 ADMINISTRATION TO KEEP TRACK OF LOAN REPAYMENTS, INCLUDING  
8 INTEREST PAYMENTS, UNDER THIS SECTION].

9 \* Sec. 18. AS 46.03.422 is amended by adding a new subsection to read:

10 (i) To be eligible for a loan under this section, an owner or operator shall  
11 provide the department with a written sworn statement on a form provided by the  
12 department that the owner or operator has not been eligible for self-insurance under 40  
13 CFR 280.95 at any time on or after July 1, 2002. This subsection does not apply to an  
14 owner or operator that is a municipality. For purposes of this subsection, "sworn  
15 statement" has the meaning given in AS 11.56.240.

16 \* Sec. 19. AS 46.08.040(a) is amended to read:

17 (a) In addition to money in the response account of the fund that is transferred  
18 to the commissioner of community and economic development to make grants under  
19 AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the  
20 commissioner of environmental conservation may use money

21 (1) from the response account in the fund

22 (A) when authorized by AS 46.08.045, to investigate and  
23 evaluate the release or threatened release of oil or a hazardous substance, and  
24 contain, clean up, and take other necessary action, such as monitoring and  
25 assessing, to address a release or threatened release of oil or a hazardous  
26 substance that poses an imminent and substantial threat to the public health or  
27 welfare, or to the environment;

28 (B) to provide matching funds in the event of a release of oil or  
29 a hazardous substance for which use of the response account is authorized by  
30 AS 46.08.045 for participation

31 (i) in federal oil discharge cleanup activities; and

Chapter 41

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(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) to recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance for which money was expended from the response account;

(2) from the prevention account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a), and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(B) pay all costs incurred

(i) to establish and maintain the oil and hazardous substance response office;

(ii) under agreements entered into under AS 46.04.090 or AS 46.09.040;

(iii) to review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(iv) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(v) to verify or establish proof of financial responsibility required by AS 46.04.040;

(C) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, the expenses incurred by the

1 Department of Military and Veterans' Affairs for Alaska State Emergency  
2 Response Commission activities, including staff support, when the activities  
3 and staff support relate to oil or hazardous substances, and for the costs of  
4 being prepared for responding to a request by the department for support in  
5 response and restoration, but not including the costs of maintaining the  
6 response corps and the emergency response depots under AS 26.23.045;

7 (D) pay all costs incurred to acquire, repair, or improve an asset  
8 having an anticipated life of more than one year and that is acquired, repaired,  
9 or improved as a preparedness measure by which the state may respond to,  
10 recover from, reduce, or eliminate the effects of a release or threatened release  
11 of oil or a hazardous substance;

12 (E) pay the costs, if approved by the commissioner, that were  
13 incurred by local emergency planning committees to carry out the duties  
14 assigned them by AS 26.23.073(g);

15 (F) provide matching funds in the event of the release of oil or  
16 a hazardous substance, except a release of oil for the containment and cleanup  
17 of which use of the response account is authorized by AS 46.08.045, for  
18 participation

19 (i) in federal oil discharge cleanup activities; and

20 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive  
21 Environmental Response, Compensation, and Liability Act of 1980);

22 (G) pay or reimburse the underground storage tank revolving  
23 loan [ASSISTANCE] fund established in AS 46.03.410 for expenditures from  
24 that fund authorized by AS 46.03.410(b);

25 (H) transfer to the Department of Community and Economic  
26 Development for payment by the commissioner of community and economic  
27 development of

28 (i) municipal impact grants when authorized under  
29 AS 29.60.510(b)(2);

30 (ii) assessments of the social and economic effects of  
31 the release of oil or hazardous substances as required by AS 29.60.560

Chapter 41

1 when, in the judgment of the commissioner, the release of oil or a  
2 hazardous substance is not one that is described in AS 46.08.045; and

3 (iii) grants to repair, improve, or replace fuel storage  
4 facilities under the bulk fuel system emergency repair and upgrade  
5 program;

6 (I) recover the costs to the state, a municipality, a village, or a  
7 school district of a containment and cleanup resulting from the release or  
8 threatened release of oil or a hazardous substance for which money was  
9 expended from the prevention account;

10 (J) prepare, review, and revise

11 (i) the state's master oil and hazardous substance  
12 discharge prevention and contingency plan required by AS 46.04.200;  
13 and

14 (ii) a regional master oil and hazardous substance  
15 discharge prevention and contingency plan required by AS 46.04.210;  
16 and

17 (K) restore the environment by addressing the effects of an oil  
18 or hazardous substance release.

19 \* **Sec. 20.** AS 46.03.360(e)(3) and 46.03.430 are repealed.

20 \* **Sec. 21.** AS 46.03.420 is repealed.

21 \* **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 **TRANSITIONAL PROVISIONS.** (a) The underground storage tank revolving loan  
24 fund established in AS 46.03.410, as amended in secs. 7 and 8 of this Act, is the successor to  
25 the storage tank assistance fund, and the balance in the storage tank assistance fund on the  
26 effective date of sec. 7 of this Act shall be retained in the underground storage tank revolving  
27 loan fund. Grants entered into by the Department of Environmental Conservation before the  
28 effective date of sec. 7 of this Act that would have been paid from the storage tank assistance  
29 fund shall be paid from the underground storage tank revolving loan fund.

30 (b) The Department of Environmental Conservation may not pay grants under  
31 AS 46.03.430 after June 30, 2002. The Department of Environmental Conservation may not

## Chapter 41

1 enter into a grant agreement under other provisions of AS 46.03.410 - 46.03.450 that requires  
2 payment by the department after June 30, 2004, of grant money from any source. On or after  
3 July 1, 2004, the department may not pay money for a grant from the underground storage  
4 tank revolving loan fund.

5 \* **Sec. 23.** Sections 2, 3, 5, 7, 9 - 12, 15, and 17 - 20 of this Act take effect July 1, 2002.

6 \* **Sec. 24.** Sections 1, 4, 6, 8, 13, 14, 16, and 21 of this Act take effect July 1, 2004.

7 \* **Sec. 25.** Section 22 of this Act takes effect immediately under AS 01.10.070(c).