



LAWS OF ALASKA

2002

Source
CSSB 343(RES)

Chapter No.
9

AN ACT

Clarifying the term "best technology" required for use in oil discharge prevention and contingency plans; affirming existing Department of Environmental Conservation regulations defining "best technology" and oil discharge prevention and contingency plans approved using those regulations; 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 17, 2002

Actual Effective Date: April 18, 2002; the amendment to AS 46.04.030(e) made by sec. 2 is retroactive to April 4, 1997

AN ACT

1 Clarifying the term "best technology" required for use in oil discharge prevention and
2 contingency plans; affirming existing Department of Environmental Conservation regulations
3 defining "best technology" and oil discharge prevention and contingency plans approved
4 using those regulations; and providing for an effective date.

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

9 LEGISLATIVE FINDINGS, INTENT, AND PURPOSE. (a) The legislature finds
10 that

11 (1) AS 46.04.030(a) - (c) provide that certain facilities may not operate
12 without first securing an oil discharge prevention and contingency plan that has been
13 approved by the Department of Environmental Conservation;

1 existing contingency plans;

2 (D) delay and uncertainty for persons seeking new contingency plans;

3 and

4 (E) a negative effect on the development of the state's natural
5 resources.

6 (b) It is the intent of the legislature to

7 (1) clarify that the Department of Environmental Conservation's 1997
8 regulations meet the legislature's intent with respect to application of best available
9 technology through reliance on proven, appropriate, and reliable technology meeting the
10 response planning standards in AS 46.04.030(k) and the use of performance standards set in
11 regulation or other specific criteria for determining best available technology; and

12 (2) create a solution to the uncertainty caused by the Alaska Supreme Court's
13 recent ruling.

14 (c) The purpose of this Act is to overrule *Lakosh v. Alaska Department of*
15 *Environmental Conservation, Op. No. 5531 (Supreme Court file number S-9619) (February 1,*
16 *2002)*, which invalidated parts of the Department of Environmental Conservation's best
17 available technology regulations.

18 * **Sec. 2.** AS 46.04.030(e) is amended to read:

19 (e) The department may attach reasonable terms and conditions to its approval
20 or modification of a contingency plan that the department determines are necessary to
21 ensure that the applicant for a contingency plan has access to sufficient resources to
22 protect environmentally sensitive areas and to contain, clean up, and mitigate potential
23 oil discharges from the facility or vessel as provided in (k) of this section, and to
24 ensure that the applicant complies with the contingency plan. If a contingency plan
25 submitted to the department for approval relies on the services of an oil spill primary
26 response action contractor, the department may not approve the contingency plan
27 unless the primary response action contractor is registered and approved under
28 AS 46.04.035. The contingency plan must provide for the use by the applicant of the
29 best technology that was available at the time the contingency plan was submitted or
30 renewed. **The department shall identify the prevention and response technologies**
31 **that are subject to a best available technology determination. The department**

Chapter 9

1 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).