



LAWS OF ALASKA

1989

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Chapter No.

41

AN ACT

Relating to civil penalties for the unpermitted discharge of oil and for the failure to implement an oil discharge contingency plan in response to an unpermitted discharge of crude oil; removing a maximum limit on civil penalties for discharges of oil; and amending Rule 82, Alaska Rules of Civil Procedure.

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

THE ACT FOLLOWS ON PAGE 1, LINE 14

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 12, 1989
Actual Effective Date: August 10, 1989

AN ACT

Relating to civil penalties for the unpermitted discharge of oil and for the failure to implement an oil discharge contingency plan in response to an unpermitted discharge of crude oil; removing a maximum limit on civil penalties for discharges of oil; and amending Rule 82, Alaska Rules of Civil Procedure.

* Section 1. AS 46.03.758(e) is amended to read:

(e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section: [, OR \$100,000,000, WHICHEVER IS LESS,]

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the

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1 vessel at the time the vessel was loaded, if the loading occurred
2 within the territorial jurisdiction of the state, or at a deep-
3 water port or other offshore storage facility adjacent to the
4 state; however, if the owner of the oil temporarily transfers
5 ownership of the oil to another person, and the transfer has the
6 purpose or effect of evading the vicarious liability imposed by
7 this section, the transferor will be considered the owner of the
8 oil for the purposes of this subsection; and

9 (3) if the discharge occurs from an offshore platform, the
10 lessee or permittee of the tract or acreage upon which the platform is
11 situated, and the operator of the platform.

12 * Sec. 2. AS 46.03.758(1)(6) is amended to read:

13 (6) "oil" means petroleum [, CRUDE OIL,] and any substance
14 refined from petroleum, except [OR] crude oil;

15 * Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

17 (a) A person who is found to be liable under any other state law for
18 an unpermitted discharge of crude oil in excess of 18,000 gallons is,
19 in addition to liability for any other penalties or for damages or the
20 cost of containment and cleanup, liable to the state in a civil action
21 for a civil penalty, up to a maximum of \$500,000,000, in the amount of

22 (1) \$8 per gallon of crude oil discharged for the first
23 420,000 gallons discharged; and

24 (2) \$12.50 per gallon of crude oil discharged for amounts
25 discharged in excess of 420,000 gallons.

26 (b) In determining how many gallons of crude oil have been dis-
27 charged for purposes of assessing a penalty under (a) of this section,
28 the court shall deduct the number of discharged gallons of crude oil
29 that the defendant proves were removed by the defendant from the
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1 environment within the first 36 hours after the discharge as a result
2 of a cleanup operation undertaken in conformity with applicable state
3 and federal law. The dispersal of oil through burning, the use of
4 chemical agents, biological additives, or sinking agents, or other
5 means is not considered removal for the purposes of this subsection.

6 (c) The court shall assess four times, subject to the
7 \$500,000,000 maximum set under (a) of this section, the penalty set
8 out in (a) of this section if the court finds

9 (1) the discharge was caused by the gross negligence or
0 intentional act of the defendant;

1 (2) the defendant did not take reasonable measures to
2 contain and clean up the discharged oil; or

3 (3) the defendant did not respond in accordance with an
4 approved oil discharge contingency plan.

5 (d) Notwithstanding AS 46.03.875, a person liable for civil
6 penalties under this section is not also liable for the discharge of
7 the crude oil under AS 46.03.760(a). A person causing or permitting a
8 discharge of crude oil of 18,000 gallons or less not permitted under
9 applicable state or federal law is liable for that discharge under the
0 penalty provisions of AS 46.03.760(a); however, the court may impose a
1 penalty of less than \$500 for the discharge.

2 (e) The court may reduce the penalty imposed under this section
3 if the defendant demonstrates, by a preponderance of the evidence,
4 that the discharge was caused solely by a negligent act of a third
5 person unless the third person is a person with whom the defendant was
6 found jointly and severally liable for the discharge under other state
7 law.

8 (f) A person otherwise liable for penalties under this section
9 is not liable if the person demonstrates, by a preponderance of the
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evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the State of Alaska or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

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

Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

* Sec. 5. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel that is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, [AND] 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise

directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND] 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-030(g).

* Sec. 6. AS 46.04.030(g) is amended to read:

(g) Failure of a holder of an approved oil discharge contingency plan to have access to the quality or quantity of resources identified in the plan and, in the event of a spill, to respond with those resources within the shortest feasible time is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved oil discharge contingency plan fails to respond to an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.759 or 46.03.760 against any other person for that discharge.

* Sec. 7. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e), [OR] 46.03.822, or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759 may be brought in a state court directly against

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1 the insurer or another person providing evidence of financial respon-
2 sibility. The applicant, and an insurer, surety, or guarantor shall
3 appoint an agent for service of process in the state. An insurer must
4 either be authorized by the Department of Commerce and Economic Devel-
5 opment to sell insurance in the state or be an unauthorized insurer
6 listed by the Department of Commerce and Economic Development as not
7 disapproved for use in the state.

8 * Sec. 8. AS 46.04.040(i) is amended to read:

9 (i) Financial responsibility under this section extends to a
10 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
11 under AS 46.03.758, 46.03.759, [OR] 46.03.760(a), or AS 46.04.030(g).

12 * Sec. 9. AS 46.03.763, as enacted by sec. 4 of this Act, has the
13 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
14 the recovery of full reasonable attorney fees and costs in certain actions.
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