



# LAWS OF ALASKA

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Chapter No.

86

## AN ACT

Providing for the conservation of the air quality of the state and the prevention and control of air pollution.

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

\* Section 1. AS 18.30 is repealed.

\* Sec. 2. AS 18 is amended by adding a new chapter to read:

#### CHAPTER 31. AIR POLLUTION.

Sec. 18.31.010. DECLARATION OF POLICY. (a) It is declared to be the policy of the state and the purpose of this chapter to achieve and maintain levels of air quality that will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state and facilitate the enjoyment of the natural attractions of the state.

(b) It is also declared that local and regional air pollution control programs shall be supported to the extent practicable as essential instruments for the securing and maintaining of appropriate levels of air quality.

(c) To these ends it is the purpose of this chapter to

(1) provide for a coordinated statewide program of air pollution prevention, abatement and control;

(2) provide for an appropriate distribution of responsibilities among the state and local units of government;

(3) facilitate cooperation across jurisdictional

lines in dealing with problems of air pollution not confined within single jurisdictions;

(4) provide a framework within which all values may be balanced in the public interest.

Sec. 18.31.020. AIR POLLUTION CONTROL COMMISSION. There is created within the Department of Health and Welfare the Air Pollution Control Commission, the members of which shall be the commissioners of the Departments of Economic Development, Fish and Game, Health and Welfare, and Natural Resources, and five members appointed by the governor. Of the five members appointed by the governor, insofar as practicable one shall be a licensed physician knowledgeable in the health effects of air pollution; one shall be a professional engineer experienced in the field of air pollution control; one shall be a representative of local and regional air pollution control agencies; one shall be a representative of industry, employed by a manufacturing, power generating or fuels firm in the state, and be experienced in air pollution control; and one shall be chosen at large. The commission shall select its own chairman from among its members.

Sec. 18.31.030. TERM. The terms of the appointed members shall be four years except that of the initially-appointed members, one shall serve for one year, one shall serve for two years, one shall serve for three years and two shall serve for four years, as designated by the governor at the time of appointment. When a vacancy occurs, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy.

Sec. 18.31.040. MEETINGS. The commission shall hold at least two regular meetings each year and additional meetings which the chairman considers desirable, at a place and time to be fixed by the chairman. Special meetings shall be called by the chairman upon the written request of four members. Five members shall constitute a quorum. Each of the four department heads on the commission may designate a principal deputy or assistant to act in his place on the commission.

Sec. 18.31.050. EXPENSES. Members of the commission receive no salary, but are entitled to per diem and travel expenses as provided by law while attending commission business.

Sec. 18.31.060. COMMISSION PERSONNEL. The commissioner of health and welfare shall, with the approval of the commission, employ an executive director, who may be a member of the commission and who shall be an experienced administrator. The commission may employ engineers, examiners, hearing officers, experts, clerks, accountants and other assistants it considers necessary and shall set the compensation for them when compensation for such employees has not already been established by the state.

Sec. 18.31.070. ADMINISTRATIVE SUPERVISION. The commission is under the general administrative supervision of the commissioner of health and welfare.

Sec. 18.31.080. POWERS. In addition to other powers

conferred on it by law the commission shall have power to

(1) adopt rules and regulations implementing this chapter;

(2) hold hearings relating to any aspect of the administration of this chapter and in that regard compel the attendance of witnesses and the production of evidence;

(3) issue orders necessary to effectuate the purposes of this chapter and enforce them by appropriate administrative and judicial proceedings;

(4) require access to records relating to emissions which cause or contribute to air contamination;

(5) secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(6) prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in the state;

(7) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(8) encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and provide technical and consultative assistance for this;

(9) encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control;

(10) determine by means of field studies and sampling the degree of air contamination and air pollution in the several areas of the state;

(11) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the state and make recommendations to appropriate public and private bodies with respect to this;

(12) establish ambient air quality standards for the state as a whole or for any part of it;

(13) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(14) advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government and with interested persons or groups;

(15) consult, upon request, with any person

proposing to construct, install, or otherwise acquire an air contaminant source or a device or system for its control, concerning the efficacy of the device or system or the air pollution problem which may be related to the source, device or system; nothing in this consultation may be construed to relieve a person from compliance with this chapter, rules and regulations in force under it or other provisions of law;

(16) accept and administer grants or other funds or gifts from public and private sources, including the federal government, for carrying out the purposes of this chapter.

Sec. 18.31.090. CLASSIFICATION AND REPORTING. (a) The commission by rule or regulation may classify air contaminant sources, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for the classifications. Classifications made under this subsection may be for application to the state as a whole or to a designated area of the state and shall be made with special reference to effects on health, economic and social factors and physical effects on property.

(b) A person operating or responsible for the operation of air contaminant sources of a class for which the rules and regulations of the commission require reporting shall make reports containing the information required by the commission concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and other information relevant to air pollution and available or reasonably capable of being assembled.

Sec. 18.31.100. ADDITIONAL CONTAMINANT CONTROL MEASURES. (a) The commission may require that notice be given to it before the undertaking of the construction, installation or establishment of particular types or classes of new air contaminant sources specified in its rules and regulations. Within 15 days of its receipt of the notice, the commission may require, as a condition precedent to this undertaking, the submission of plans and other information it considers necessary in order to determine whether the proposed undertaking will be in accord with applicable rules and regulations in force under this chapter. If within 30 days of the receipt of these plans and information the commission determines that the proposed undertaking will not be in accord with the requirements of this chapter and applicable rules and regulations, it shall issue an order prohibiting the undertaking. Failure to issue the order within the time prescribed shall be considered an approval of the plans and information and the undertaking may proceed in accordance with them.

(b) A person subject to an order of prohibition as prescribed in (a) of this section, upon written request in accordance with rules of the commission, is entitled to a hearing on the order. This procedure must be followed before invoking other available legal remedies.

Following the hearing the order may be affirmed, modified or withdrawn.

(c) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or a major alteration of one, shall be construed as an undertaking for the construction, installation or establishment of a new air contaminant source.

(d) Features, machines and devices constituting parts of or called for by plans or other information submitted under (a) of this section shall be maintained in good working order.

(e) Nothing in this section may be construed to authorize the commission to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices or equipment available from other sources.

(f) The absence of or the commission's failure to issue a rule, regulation or order under this section does not relieve a person from compliance with emission control requirements or other provisions of law.

(g) The commission may require the payment of a reasonable fee for the review of plans and information required to be submitted. No fee for a single review may exceed \$25.

Sec. 18.31.110. INSPECTION. For the purpose of ascertaining the state of compliance with this chapter and appropriate rules and regulations a duly authorized officer, employee or representative of the commission may, at a reasonable time, enter and inspect the property and premises where an air contaminant source is located or is being constructed. No person may refuse entry or access to an authorized representative of the commission who requests entry for purposes of inspection and who presents appropriate credentials; nor may a person interfere with the inspection. The commission shall give the person who owns or is in control of the premises a report setting out all facts found which relate to compliance status. Inspection of private dwellings may not be permitted without a search warrant.

Sec. 18.31.120. EMISSION CONTROL REQUIREMENTS. The commission may establish emission control requirements which in its judgment are necessary to prevent, abate or control air pollution. These requirements may be for the state as a whole or may vary from area to area as may be appropriate to facilitate accomplishment of the purposes of this chapter and in order to take account of varying local conditions.

Sec. 18.31.130. EMERGENCY PROCEDURE. (a) If the director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety he shall, with the concurrence of the governor, order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air

contaminants. The order shall fix a place and time, not more than 24 hours later, for a hearing to be held before the commission. Within 24 hours after the commencement of the hearing, and without adjournment of it, the commission shall affirm, modify or set aside the order of the director.

(b) In the absence of a generalized condition of air pollution of the type referred to in (a) of this section, but if the director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard to sec. 220 of this chapter. If an order is issued, the hearing requirements of (a) of this section apply.

(c) Nothing in this section may be construed to limit the constitutional, statutory or inherent power of the governor or other officer to declare an emergency and act on the basis of that declaration.

Sec. 18.31.140. VARIANCES. (a) A person who owns or is in control of a plant, building, structure, establishment, process or equipment may apply to the commission for a variance from rules or regulations. The commission may grant the variance, but only after public hearing following due notice, if it finds that

(1) the emissions occurring or proposed to occur do not endanger human health or safety; and

(2) compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance may be granted under this section until the commission has considered the relative interests of the applicant, other owners of property likely to be affected by the emissions and the general public.

(c) A variance or its renewal, granted under (a) of this section, shall be for periods and under conditions consistent with the reasons for it and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, subject to the taking of substitute or alternate measures that the commission may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period, it shall be for a period not to exceed the reasonable time which in the opinion of the commission is necessary. A variance granted on this ground shall contain a timetable for taking action in an expeditious manner and shall be conditioned on adherence to the timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in (c)(1) and (2) of this section, it shall be for not more than one year.

(d) A variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commission on account of the variance no renewal of it shall be granted unless, after public hearing on the complaint following due notice, the commission finds that renewal is justified. No renewal may be granted except upon application for it. This application shall be made at least 60 days before the expiration of the variance. Immediately upon receipt of an application for renewal the commission shall give public notice of it.

(e) A variance or renewal is not a right of the applicant but shall be in the discretion of the commission. However, a person adversely affected by a variance or renewal granted by the commission may obtain judicial review of the commission order in accordance with the Administrative Procedure Act (AS 44.62). Judicial review of the denial of a variance or renewal may be had only on the ground that the denial was arbitrary or capricious.

(f) No variance or renewal granted under this section may be construed to prevent or limit the application of the emergency provisions of sec. 130 of this chapter.

Sec. 18.31.150. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. Except as otherwise specifically provided in this chapter, the Administrative Procedure Act (AS 44.-62) governs the activities and the proceedings of the commission.

Sec. 18.31.160. CONFIDENTIALITY OF RECORDS. Unless the owner or operator expressly agrees to their publication or availability to the general public, records and information in the possession of the commission concerning a contaminant source, which records and information relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to adversely affect his competitive position, as certified by him, shall be only for the confidential use of the commission on an incamera basis in the administration of this chapter. The commission may, nevertheless, use these records and information in compiling analyses or summaries relating to the general condition of the outdoor atmosphere so long as the owner or operator is not identified and no information specified in the preceding sentence is revealed.

Sec. 18.31.170. LOCAL AIR POLLUTION CONTROL PROGRAMS. (a) A municipality with a population in excess of 1,000 may, within five years from the effective date of this chapter, establish and administer within its jurisdiction an air pollution control program. Organized boroughs may establish the air pollution control program on an areawide basis, and the exercise of powers with respect to the program is not subject to the restrictions on acquiring additional areawide powers specified in AS 07.15.350. However, the weighted vote shall apply to the exercise of powers as

provided in AS 07.20.070(d). This program shall

(1) provide by ordinance for requirements compatible with, or stricter or more extensive than those imposed by secs. 120, 130 and 140 of this chapter and regulations issued under those sections;

(2) provide for the enforcement of the requirements by appropriate administrative and judicial process;

(3) provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out the program; and

(4) be approved by the commission as adequate to meet the requirements of this chapter and applicable rules and regulations.

(b) Other municipalities may establish and administer air pollution control programs if they meet the requirements of (a)(1) - (4) of this section.

(c) A municipality may administer all or part of its air pollution control program in cooperation with one or more municipalities.

(d) If the commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or a combination of these factors, make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the commission may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

Sec. 18.31.180. ABSENCE OF LOCAL PROGRAM. (a) If a municipality authorized to establish or participate in an air pollution control program under sec. 170(a) or (d) of this chapter fails to establish a program within the time specified, or if the commission has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter the commission shall, following due notice, conduct a hearing on the matter.

(b) If, after the hearing, the commission determines that any of the deficiencies enumerated in (a) of this section exist, it shall require that necessary corrective action be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality or the district set up under sec. 170(a) or (d) of this chapter fails to take the necessary corrective action within the time specified the commission shall administer in the municipality or district all of the regulatory provisions of this chapter. The commission's air pollution control program shall then supersede municipal air pollution ordinances, regulations,

and requirements in the affected jurisdiction.

(d) If the commission finds that the control of a particular class of air contaminant source, because of its complexity or magnitude, is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of air contaminant source. Classifications under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(e) A municipality in which the commission administers the air pollution control program under this section may with the approval of the commission establish or resume a municipal program which meets the requirements of sec. 170(a) of this chapter.

(f) The provisions of this chapter do not nullify a local air pollution program in operation on the effective date of this chapter, if the program meets the requirements of sec. 170(a) of this chapter within two years from that date. Approval required from the commission shall be considered granted unless the commission takes explicit action to the contrary.

Sec. 18.31.190. STATE AND FEDERAL AID. (a) A local government unit with an air pollution program meeting the requirements of this chapter and the rules and regulations issued under it may apply to the state for state aid equal to 75 per cent of the locally funded annual operating cost of the program. For a joint or areawide program established under sec. 170 of this chapter application may be made for state aid equal to 75 per cent of the locally funded operating cost. In the case of a joint or areawide program the state aid may be based on the cost of the entire program or, if the commission finds that one or more elements of separately administered programs are being carried on jointly in a way that materially increases the efficiency or effectiveness of the programs, it may aid the element carried on under the interlocal agreement at the rate applied to joint and areawide programs generally.

(b) Municipalities of the state and interlocal air pollution control agencies established under this chapter may apply for, receive, administer and expend federal aid for the control of air pollution or the development and administration of programs related to that control, if the application is first submitted to and approved by the commission. The commission shall approve an application if it is consistent with this chapter and other applicable requirements of law.

Sec. 18.31.195. CONSTRUCTION AND IMPLEMENTATION OF SEC. 190. (a) Sec. 190 of this chapter may not be construed so as to create a debt of the state.

(b) The air pollution control support account is established. Funds to carry out the provisions for state aid under sec. 190 of this chapter may be appropriated annually by the legislature to the account. If amounts in

the account are insufficient for the purpose of the state aid authorized under sec. 190 of this chapter, such funds as are available shall be distributed pro rata among eligible local governments or air pollution control districts.

(c) Money in the air pollution control support account which, at the end of the fiscal year for which the money is appropriated, exceeds the amount required for the allocations authorized in this chapter reverts to the general fund.

Sec. 18.31.200. MOTOR VEHICLE POLLUTION. (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this chapter, the commission may provide by rules and regulations for the control of these emissions. The rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of this equipment.

(b) Except as permitted by law, no person may fail to maintain in operation any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle if it is required by rules or regulations of the commission to be maintained in or on the vehicle. A failure to maintain this equipment in operation shall subject the owner or operator to suspension or cancellation of the registration of the vehicle, and it may not be again eligible for registration until this equipment is restored to operation.

(c) The commission shall consult with the Department of Public Safety and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(d) When the commission has issued rules and regulations requiring the maintenance of features or equipment in or on motor vehicles for the purpose of controlling emission from the vehicles, no motor vehicle may be issued a certificate of inspection and approval if required, unless the required features or equipment have been inspected in accordance with the standards, testing techniques and instructions furnished by the board and have been found to meet those standards.

Sec. 18.31.210. LIMITATIONS. This chapter does not

(1) grant to the commission jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(2) affect the relations between employers and employees with respect to or arising out of a condition of air contamination or air pollution;

(3) supersede or limit the applicability of a law or ordinance relating to sanitation, industrial health or safety.

Sec. 18.31.220. ENFORCEMENT. (a) When the commission has reason to believe that a violation of this chapter or a rule or regulation issued under this chapter has occurred, the commission may serve written notice upon the suspected violator. The notice shall specify the provision believed to be violated and the facts believed to constitute the violation and may include an order that necessary corrective action be taken within a reasonable time. This order shall become final unless within 15 days after the notice and order are served the person named requests in writing a hearing before the commission, which hearing shall be held within a reasonable time. In lieu of an order the commission may require the suspected violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges.

(b) If, after a hearing held under (a) of this section, the commission finds that a violation has occurred, it shall affirm or modify its order previously issued or issue an appropriate order for taking corrective action. If the commission finds that no violation has occurred it shall rescind its previous order, if any. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions.

(c) The commission may make efforts to obtain voluntary compliance through warning, conference or other appropriate means.

(d) In connection with a hearing held under this section, the commission shall have power and upon application by a party to the hearing it shall have the duty to compel the attendance of witnesses and the production of evidence on behalf of all parties.

Sec. 18.31.230. PENALTIES. (a) In addition to procedures provided by sec. 220 of this chapter, a person who violates a provision of this chapter or a rule or regulation in force under it, other than secs. 160, 200 and 240 of this chapter, upon conviction, is punishable by a fine of not to exceed \$1,000. Each day of violation shall constitute a separate offense.

(b) A person who violates sec. 160 of this chapter, knowing the information to be of a confidential nature, upon conviction is punishable by a fine of not to exceed \$750.

(c) Conviction as specified in (a) and (b) of this section shall not be a bar to enforcement of this chapter, and the rules, regulations and orders issued under it. The commission shall have power to institute and maintain in the name of the state all enforcement proceedings.

(d) This chapter does not affect the right of a person to bring an action for damages or other relief because of an injury caused by air pollution.

Sec. 18.31.240. NUISANCES. (a) A person is guilty of creating or maintaining a nuisance if he