



LAWS OF ALASKA

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220

AN ACT

Relating to the Department of Environmental Conservation; and providing for an effective date.

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

* Section 1. AS 46.03.020(10)(C) is amended to read:

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

* Sec. 2. AS 46.03.030(b) is amended to read:

(b) The department may grant to a municipality, as funds are available, up to the lesser of 50 per cent of the eligible cost or 50 per cent of the eligible cost not financed by the federal government, for public water supply, treatment and distribution systems and public sewage collection, treatment and discharge facilities for which construction has not commenced on or before the effective date of this Act. The eligible cost of a project or portions of a project will be as determined by the federal agency granting the most monetary assistance. On projects or portions of projects, for which federal participation is not available, eligible costs will be determined by the department. Projects shall be constructed in accordance with plans and specifications approved by the department.

* Sec. 3. AS 46.03.100(a) is amended to read:

(a) A person who conducts an operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must

be obtained for direct disposal and for disposal into publicly operated sewerage systems.

* Sec. 4. AS 46.03.110(a) is amended to read:

(a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

* Sec. 5. AS 46.03.110 is amended by adding a new subsection to read:

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under sec. 100 of this chapter.

* Sec. 6. AS 46.03.180 is amended to read:

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information other than emission data in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

* Sec. 7. AS 46.03.720 is amended to read:

Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES PROHIBITED. (a) No person may construct, extend, install or operate a sewerage system or treatment works, or any part of a sewerage system or treatment works, until plans for it are submitted to the department for review and the department approves them in writing and issues a written permit.

(b) No person may construct, extend, install or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section.

* Sec. 8. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in

charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of sec. 740 or 750 of this chapter, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

* Sec. 9. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

(a) A person who violates or causes or permits to be violated a provision of this chapter or a regulation, a lawful order of the department, or a permit or term or condition of a permit issued under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day thereafter on which the violation continues, and which shall reflect, where applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation; and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740 - 750 of this chapter is liable to the state, in a civil action brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and

indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 11. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than \$25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than \$25,000 and costs of prosecution, or by imprisonment for not more than one year, or by fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 12. AS 46.03.810(a) is amended to read:

(a) A person is guilty of creating or maintaining a nuisance if he

(1) places or deposits upon a lot, street, beach, or premises, or upon or anywhere within 200 feet of a public highway, any garbage, offal, dead animals, or any other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal,

dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

* Sec. 13. AS 46.03.822 is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS SUBSTANCES. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by, the person,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time.

* Sec. 14. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or a regulation or lawful order of the department, or a permit or a term of a permit issued by the department, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under sec. 820 of this chapter.

(b) The recipient of the determination must file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in sec. 10 of this chapter. A copy of the compliance order shall be served personally or sent by

certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt, the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing, the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

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

Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter are cumulative, and the securing of relief, whether injunctive, civil or criminal, under a section of this chapter does not estop the state from obtaining relief under any other section of this chapter.

* Sec. 16. AS 46.03.900(12) is amended to read:

(12) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

* Sec. 17. AS 46.03.900(20) is amended to read:

(20) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

* Sec. 18. AS 44.62.330 is amended by adding a new paragraph to read:

(43) Department of Environmental Conservation, except to the extent that secs. 360 - 400 of this chapter are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.

* Sec. 19. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.-240 and 46.03.750(d) are repealed.

* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).