

HOUSE BILL NO. 516

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GREEN

Introduced: 2/12/96

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control."

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

3 * **Section 1.** AS 46.14.010(b) is amended to read:

4 (b) Unless the governor has determined that an emergency exists that requires
5 emergency regulations under AS 44.62.250, the department may adopt the following
6 types of regulations only after the procedures established in (a), (c), and (d) of this
7 section and compliance with AS 46.14.015:

8 (1) a regulation that establishes an ambient air quality standard for an
9 air contaminant for which there is no corresponding federal standard;

10 (2) a regulation that establishes an ambient air quality standard or
11 emission standard that is more stringent than a corresponding federal standard;

12 (3) a regulation that establishes an equivalent emission limitation for
13 a hazardous air contaminant for which the federal administrator has not adopted a
14 corresponding maximum achievable control technology standard; or

15 (4) a regulation that requires a facility to obtain an operating permit

1 [REGULATES EMISSIONS FROM A SOURCE OR FACILITY OR ESTABLISHES
2 AN EMISSION STANDARD] under the authority of AS 46.14.120(e) [,
3 46.14.130(a)(3)(B),] or 46.14.130(b)(4)(B), **requires a facility to obtain a**
4 **construction permit under AS 46.14.130(a)(3)(B), or imposes requirements for**
5 **approval of a construction permit application that are more stringent than**
6 **required under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended.**

7 * **Sec. 2.** AS 46.14.030 is amended to read:

8 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for
9 the state in any negotiations relative to the state air quality control plan developed
10 under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended. The department may
11 adopt regulations necessary to implement the state plan **but may not include in the**
12 **state plan a regulation that is not required to be in the state plan under 42 U.S.C.**
13 **7401 - 7671q, as amended. The department may not adopt the state plan as a**
14 **regulation except to the extent required under 42 U.S.C. 7401 - 7671q, as**
15 **amended.**

16 * **Sec. 3.** AS 46.14.130 is amended by adding a new subsection to read:

17 (c) Regulations adopted to implement (a) of this section

18 (1) must be consistent with, and no more stringent than, federal
19 regulations adopted under 42 U.S.C. 7401 - 7515 (Subchapter I, Clean Air Act), as
20 amended;

21 (2) must provide an expedited procedure for processing construction
22 permit applications for proposed minor facilities and for minor modifications to
23 existing facilities; and

24 (3) may not include requirements relating to ambient impact, increment
25 consumption, or visibility analyses unless required under 42 U.S.C. 7401 - 7515, as
26 amended.

27 * **Sec. 4.** AS 46.14.140(a) is amended to read:

28 (a) The department shall adopt regulations to address substantive and
29 procedural elements of the **operating** [EMISSION CONTROL] permit program
30 established under this chapter that are not addressed in statute, except elements that
31 relate only to the internal management of the department and do not affect the public

1 or govern the way the department deals with the public. The regulations must be
2 [REASONABLE AND ADEQUATE, AND PROVIDE FLEXIBILITY IN THE
3 OPERATION OF A FACILITY] consistent with, and no more stringent than, the
4 requirements of 42 U.S.C. 7661a [42 U.S.C. 7401 - 7671q (CLEAN AIR ACT)], as
5 amended, and [APPLICABLE] federal regulations adopted under 42 U.S.C. 7661a,
6 as amended. The regulations must include

7 (1) a standard permit application form that meets the requirements of
8 federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));

9 (2) procedures for preparation and submission of a monitoring,
10 reporting, and quality assurance plan and, if required, a compliance schedule describing
11 how a permitted facility will comply with the applicable requirements of this chapter;

12 (3) procedures for

13 (A) specifying when permit applications and renewal requests
14 are to be submitted;

15 (B) specifying the time duration for department review of
16 permit applications;

17 (C) processing and reviewing an application;

18 (D) providing public notice, including opportunity for public
19 comment and hearing; and

20 (E) issuing permits, including procedures for issuing permits for
21 temporary operations or open burn activities;

22 (4) reasonable standard permit conditions, including conditions for

23 (A) emission standards and limitations;

24 (B) monitoring, record keeping, and reporting for facilities
25 subject to AS 46.14.130;

26 (C) inspection and entry;

27 (D) certification of corporate or other business organization
28 reports;

29 (E) annual certification of compliance;

30 (F) excess emission or process deviation reporting; and

31 (G) equipment malfunctions and emergencies;

- 1 (5) fees and procedures for collecting fees;
- 2 (6) provisions addressing late payment or nonpayment of fees, which
3 may include assessment of penalties and interest or refusal to issue, amend, modify,
4 or renew an air quality control permit;
- 5 (7) the duration of permits;
- 6 (8) procedures for modifying or amending a permit that provide
7 flexibility in the operation of the facility, including procedures to allow changes to a
8 permitted facility without requiring a permit modification, consistent with the purposes
9 of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 10 (9) reasonable provisions for renewing, reopening, revoking and
11 reissuing, and terminating a permit consistent with the purposes of this chapter and 42
12 U.S.C. 7401 - 7671q (Clean Air Act);
- 13 (10) provisions allowing for physical or operational limitations that will
14 reduce a facility's emissions to levels below those that would make the facility subject
15 to part or all of AS 46.14.120 and 46.14.130;
- 16 (11) provisions authorizing facility operation while a permit application
17 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));
- 18 (12) provisions for ensuring that compliance with an operating permit
19 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
20 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
21 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
22 Act) and regulations adopted under state and federal law; and
- 23 (13) provisions allowing for certification of inspectors who evaluate
24 compliance with the terms and conditions of a permit, order, regulation, or other
25 provision of law authorized under this chapter.

26 * **Sec. 5.** AS 46.14.140 is amended by adding a new subsection to read:

27 (d) The department shall submit the operating permit program established
28 under this section to the federal administrator for approval under 42 U.S.C. 7661a.
29 The department may not propose the program for incorporation into the state
30 implementation plan except to the extent specifically required under federal law.

31 * **Sec. 6.** AS 46.14 is amended by adding a new section to read:

1 Sec. 46.14.175. CONDITIONS IN OPERATING PERMITS. (a) A condition
2 in an operating permit must be based upon, and no more stringent than necessary to
3 ensure compliance with, one or more applicable requirements. An operating permit
4 must include a specific reference to the applicable requirement that authorizes each
5 condition in the permit and must identify any difference in form as compared to the
6 requirement upon which the condition is based.

7 (b) In this section, "applicable requirement"

8 (1) means, except as provided in (2) of this subsection,

9 (A) federal requirements determined by the federal administrator
10 under regulations adopted under 42 U.S.C. 7661a; and

11 (B) for each facility, emission standards that were contained in
12 the last air quality control operating permit that was issued to the facility before
13 the effective date of the operating permit program under this chapter;

14 (2) notwithstanding a provision in an air quality control permit, does
15 not include ambient air quality standards, increments, or visibility requirements, except
16 as they would apply to temporary sources.

17 * **Sec. 7.** AS 46.14.560 is repealed and reenacted to read:

18 Sec. 46.14.560. UNAVOIDABLE EXCESS EMISSIONS. (a) Excess
19 emissions determined by the department to be unavoidable are excused and are not
20 subject to penalty under this chapter or AS 46.03. The department shall adopt
21 regulations that

22 (1) define the circumstances under which excess emission during start-
23 up, shutdown, scheduled maintenance, and upsets will be considered to be unavoidable;
24 and

25 (2) establish procedures for the reporting of unavoidable excess
26 emissions.

27 (b) This section does not limit the department's power to enjoin an emission
28 or to require corrective action. This provision is in addition to any emergency
29 provision contained in the department's operating permit regulations.

30 * **Sec. 8.** AS 46.14.990(5) is amended to read:

31 (5) "construct" or "construction" means [TO FABRICATE, ERECT, OR

1 INSTALL, OR] to make a physical change or a change in the method of operation,
2 including fabrication, erection, installation, demolition, or modification of a
3 source, that would result in a change in actual emissions;

4 * **Sec. 9.** AS 46.14.990(16) is amended to read:

5 (16) "modification" or "modify" means to make a **physical** change or
6 a **change in the method of** [SERIES OF CHANGES IN] operation **for** [, OR ANY
7 PHYSICAL CHANGE OR ADDITION TO] a facility or source [,] that increases the
8 **amount** [ACTUAL EMISSIONS] of an air contaminant **emitted by the facility or**
9 **source or that results in the emission of an air contaminant not previously emitted**
10 **from the facility or source; "modification" and "modify" shall be construed in a**
11 **manner that makes the terms consistent with the definition of "modification" in**
12 **42 U.S.C. 7411, as amended, and federal regulations that implement that section;**

13 * **Sec. 10.** AS 46.14.990 is amended by adding new paragraphs to read:

14 (28) "minor facility" means a facility that is not classified as a major
15 source or major stationary source under 42 U.S.C. 7401 - 7671q (Clean Air Act), as
16 amended;

17 (29) "minor modification" means a modification that is not classified
18 as a major modification under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended;

19 (30) "shutdown" means the cessation of operations of a source for any
20 purpose;

21 (31) "start-up" means the setting in operation of a source for any
22 purpose.

23 * **Sec. 11.** **REQUIRED ACTIONS.** By February 1, 1997, the Department of
24 Environmental Conservation shall

25 (1) submit to the administrator of the United States Environmental Protection
26 Agency a proposal to remove from the state implementation plan prepared under AS 46.14
27 all regulations that are not required by the agency to be elements of the state implementation
28 plan;

29 (2) review the department's regulations that govern the construction permit
30 program under AS 46.14 and adopt amendments that will take effect by February 1, 1997, so
31 that the revised regulations comply with AS 46.14.130, as amended by this Act; by May 1,

- 1 1997, the department shall submit the revised regulations to the administrator of the United
- 2 States Environmental Protection Agency as amendments to the state implementation plan.