

CS FOR SENATE BILL NO. 50(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 3/11/97

Referred: Judiciary, Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative penalties for violation of public water supply
2 system requirements; amending Rule 602(b), Alaska Rules of Appellate Procedure;
3 and providing for an effective date."

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

5 * **Section 1. FINDINGS.** The legislature finds that

6 (1) the federal government has required, in the federal Safe Drinking Water
7 Act amendments of 1996 (P.L. 104-182), that states have administrative penalty authority in
8 order to maintain primary enforcement authority for the federal drinking water program (42
9 U.S.C. 300f - 300j-26);

10 (2) the state cannot receive federal money for construction of public drinking
11 water systems unless it maintains primacy under the federal program (sec. 130, P.L. 104-182);

12 (3) maintaining state primary enforcement authority for the federal program
13 is in the best interests of the state so as to provide maximum flexibility and local control of
14 this program and to ensure continued federal money for Alaska public water supply system

1 construction projects;

2 (4) ensuring public health through protection of public water supplies is of
3 fundamental importance to the people of the state;

4 (5) this Act is in the public interest by enacting administrative penalty authority
5 in order to meet the federal requirements for maintaining state primary enforcement authority
6 for the federal drinking water program.

7 * **Sec. 2.** AS 46.03 is amended by adding a new section to read:

8 **Sec. 46.03.721. Administrative penalties.** (a) After following the procedures
9 in this section, the department may assess an administrative penalty against a person
10 who violates or causes or permits to be violated a provision of AS 46.03.720(b) or a
11 term or condition of a regulation, order, permit, approval, or certificate of the
12 department issued or adopted under AS 46.03.720(b).

13 (b) Before assessing an administrative penalty under this section, the
14 department shall

15 (1) communicate about the alleged noncompliance with the owner or
16 operator of the public water system and the governing body of the community or
17 municipality whose residents are served by the system; communication under this
18 paragraph must be in language designed to be easily understood by the owner,
19 operator, and governing body and must clearly describe the nature of the alleged
20 noncompliance;

21 (2) offer technical assistance to aid in correcting the alleged
22 noncompliance when the department has reason to believe that the system owner and
23 operator may lack the resources or expertise to get technical assistance from other
24 sources; and

25 (3) unless the alleged noncompliance poses an immediate threat to the
26 public health, give the system's owner and operator a reasonable amount of time to
27 correct the alleged noncompliance after the department has complied with (1) and (2)
28 of this subsection.

29 (c) If, after complying with (b) of this section, the department determines that
30 noncompliance still exists and the violation is subject to a penalty under this section,
31 the department may assess the penalty. The department shall provide notice of the

1 assessment and instructions for contesting and appealing the assessment to the person
2 assessed by personal service or by certified mail, return receipt requested. The notice
3 must inform the person of the amount of the proposed penalty and that the person has
4 45 days within which to file a notice with the department contesting the proposed
5 penalty. If, within 45 days after the receipt of the notification issued by the
6 department, the person fails to file a notice contesting the proposed penalty, the
7 proposed penalty is considered a final order. The department may extend the time
8 periods specified in this subsection for good cause.

9 (d) If a person sends notice to the department contesting a proposed penalty
10 under (c) of this section, the department shall afford an opportunity for a hearing in
11 accordance with its adjudicatory hearing procedures. After an opportunity for a
12 hearing, the department shall issue an order, based upon findings of fact, affirming,
13 modifying, or rescinding the administrative penalty. The order is the final agency
14 action on the penalty.

15 (e) A person against whom an administrative penalty is assessed under this
16 section may obtain judicial review of the administrative penalty by filing a notice of
17 appeal in the superior court as provided by the Alaska Rules of Appellate Procedure.
18 An order of the department under (d) of this section becomes final and is not subject
19 to review by a court if a notice of appeal is not filed with the superior court within the
20 period provided for by the Alaska Rules of Appellate Procedure.

21 (f) Unless the notice of appeal is incomplete or otherwise not in conformance
22 with court rules, a notice of appeal under (e) of this section is considered to be filed
23 with the superior court on the day the person delivers the appropriate documents and
24 fee to either the appropriate superior court or to a district court within the area served
25 by the appropriate superior court. If a notice of appeal is delivered to a district court
26 under this subsection, the district court shall promptly forward it to the superior court.
27 The responsibility for determining whether the notice of appeal is complete and
28 otherwise in conformance with court rules is the responsibility of the superior court.

29 (g) An administrative penalty assessed under this section may not exceed (1)
30 \$1,000 a day for each violation if the affected public water supply system serves a
31 population of more than 10,000 persons; (2) \$500 a day for each violation if the

1 affected public water supply system serves a population of 10,000 or fewer persons but
2 more than 1,000 persons; and (3) \$100 a day for each violation if the public water
3 supply system serves 1,000 or fewer persons. Each provision, term, or condition
4 violated is a separate and distinct violation. If a violation of a provision, term, or
5 condition continues from day to day, each day is a separate violation.

6 (h) In determining the amount of a penalty assessed under this section, the
7 department shall consider

8 (1) the effect of the violation on the public health or the environment;

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

11 (3) the economic savings realized by the person by not complying with
12 the requirement for which a violation is charged;

13 (4) any previous history of compliance or noncompliance with this
14 chapter, AS 46.04, AS 46.09, and AS 46.14;

15 (5) the need to deter future violations;

16 (6) the extent and seriousness of the violation, including the potential
17 for the violation to threaten public health or the environment;

18 (7) whether the person achieved compliance with the requirement
19 violated within the shortest feasible time; and

20 (8) other factors considered relevant to the assessment that are adopted
21 by the department in regulation.

22 (i) If a person fails to pay an administrative penalty assessed under this section
23 after the penalty becomes final, the department may bring an action to collect the
24 penalty. The amount of the penalty is not subject to review by the court in such an
25 action.

26 (j) Action under this section by the department does not limit or otherwise
27 affect the authority of the department to otherwise enforce this chapter, AS 46.04,
28 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
29 recover damages, restoration expenses, investigation costs, court costs, attorney fees,
30 or other necessary expenses. The court shall set off against a judicial civil assessment
31 subsequently awarded under AS 46.03.760 an amount ordered to be paid under this

1 section by the same person for the same violation.

2 * **Sec. 3.** The provisions of AS 46.03.721(f), added by sec. 2 of this Act, have the effect
3 of amending Rule 602(b), Alaska Rules of Appellate Procedure, by providing that delivery of
4 a notice of appeal to a district court constitutes filing of the notice of appeal with the
5 associated superior court.

6 * **Sec. 4.** TRANSITION: REGULATIONS. The Department of Environmental
7 Conservation may proceed to adopt regulations to implement changes made by this Act. The
8 department shall notify each legislator about its proposed regulations at least 30 days before
9 adopting the regulations. The regulations take effect under AS 44.62 (Administrative
10 Procedure Act), but not before the effective date of sec. 1 of this Act.

11 * **Sec. 5.** Except as provided in sec. 7 of this Act, this Act takes effect on the effective date
12 of regulations adopted by the United States Environmental Protection Agency implementing
13 the state administrative penalty requirement for state primary enforcement authority under 42
14 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if the Environmental Protection
15 Agency determines that regulations are not necessary, on the date the Environmental
16 Protection Agency requires under the authority of that statute that the state must have
17 administrative penalty authority to maintain its state primacy over the federal drinking water
18 program, whichever occurs first. The commissioner of environmental conservation shall notify
19 the lieutenant governor and the revisor of statutes of the effective date of the state
20 administrative penalty authority requirement.

21 * **Sec. 6.** AS 46.03.721(f), added by sec. 2 of this Act, takes effect only if sec. 3 of this
22 Act receives the two-thirds majority vote of each house of the legislature required by art. IV,
23 sec. 15, Constitution of the State of Alaska.

24 * **Sec. 7.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).