

HOUSE BILL NO. 160

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/5/03

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the emission control permit program; relating to fees for that
2 program and to the accounting of receipts deposited in the emission control permit
3 receipts account; and providing for an effective date."

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

5 * **Section 1.** AS 37.05.146(c) is amended by adding a new paragraph to read:

6 (77) emission control permit receipts account (AS 46.14.265).

7 * **Sec. 2.** AS 37.10.058(2) is amended to read:

8 (2) "designated regulatory service" means a regulatory service
9 provided under the following regulatory programs:

10 (A) control of solid waste facilities under AS 46.03.020(10)(D)

11 and (E);

12 (B) regulation of the disposal of waste into waters of the state
13 under AS 46.03.100;

14 (C) certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act);

2 (D) a coastal management consistency determination relating to
3 a permit or authorization issued under a program listed in (A) - (C) of this
4 paragraph, if the determination is made by the agency issuing the permit or
5 authorization; [AND]

6 (E) any authorization for the use or appropriation of water
7 under AS 46.15; **and**

8 **(F) administration of emission control permits for the air**
9 **quality control program under AS 46.14;**

10 * **Sec. 3.** AS 46.14.010(b) is amended to read:

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

15 (1) a regulation that establishes an ambient air quality standard for an
16 air **pollutant** [CONTAMINANT] for which there is no corresponding federal
17 standard;

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

20 (3) a regulation that establishes an equivalent emission limitation for a
21 hazardous air **pollutant** [CONTAMINANT] for which the federal administrator has
22 not adopted a corresponding maximum achievable control technology standard; or

23 (4) a regulation that regulates emissions from **an emission unit** [A
24 SOURCE] or **stationary source** [FACILITY] or establishes an emission standard
25 under the authority of AS 46.14.120(e) **or 46.14.130(c)(2)** [, 46.14.130(a)(3)(B), OR
26 46.14.130(b)(4)(B)].

27 * **Sec. 4.** AS 46.14.010(c) is amended to read:

28 (c) In preparation for peer review under AS 46.14.015 and before adopting a
29 regulation described under (b) of this section, the department shall

30 (1) find in writing that exposure profiles and either meteorological
31 conditions or **emission unit** [SOURCE] characteristics in the state or in an area of the

1 state reasonably require the ambient air quality standard, or emission standard to
 2 protect human health and welfare or the environment; this paragraph does not apply to
 3 a regulation under (b)(3) of this section;

4 (2) find in writing that the proposed standard or emission limitation is
 5 technologically feasible; and

6 (3) prepare a written analysis of the economic feasibility of the
 7 proposal.

8 * **Sec. 5.** AS 46.14.010(d) is amended to read:

9 (d) Before adopting a regulation described in (b)(2) of this section, the
 10 department shall find in writing that exposure profiles and either meteorological
 11 conditions or **emission unit** [SOURCE] characteristics are significantly different in
 12 the state or in an area of the state from those upon which the corresponding federal
 13 regulation is based.

14 * **Sec. 6.** AS 46.14.010(e) is amended to read:

15 (e) When incorporated into more than one permit, emission standards and
 16 limitations, emissions monitoring and reporting requirements, and compliance
 17 verification requirements that are generally applicable statewide or are generally
 18 applicable to individual **emission unit** [SOURCE] or **stationary source** [FACILITY]
 19 types shall be adopted in regulation unless they have been requested by the owner and
 20 operator to whom the permit is issued. The department shall, by regulation, adopt a
 21 standard, limitation, or requirement described in **this** [THE] subsection as soon as its
 22 general applicability is reasonably foreseeable.

23 * **Sec. 7.** AS 46.14.010(f) is amended to read:

24 (f) An emission standard adopted by the department may be applicable to
 25 individual **emission units** [SOURCES] within a **stationary source** [FACILITY] or to
 26 all **emission units** [SOURCES] within a **stationary source** [FACILITY]. For
 27 purposes of determining compliance with applicable regulations and with permit
 28 limitations, the department may allow numerical averaging of the emissions of each
 29 air **pollutant** [CONTAMINANT] from several **emission units** [SOURCES] within a
 30 **stationary source** [FACILITY] if

31 (1) requested by the owner and operator; and

1 (2) allowed under 42 U.S.C. 7401 - 7671q (Clean Air Act), as
 2 amended, and regulations adopted under those sections.

3 * **Sec. 8.** AS 46.14.020 is amended to read:

4 **Sec. 46.14.020. Classification of stationary sources [FACILITIES] or**
 5 **emission units [SOURCES]; reporting.** (a) The department, by regulation, may
 6 classify stationary sources [FACILITIES] or emission units [SOURCES] that, in the
 7 department's determination, are likely to cause or contribute to air pollution, according
 8 to the levels and types of emissions and other characteristics that relate to air quality.
 9 The department may make a classification under this subsection applicable to the state
 10 as a whole or to a designated area of the state. The department shall base the
 11 classifications on consideration of health, economic, and social factors, sensitivity of
 12 the receiving environment, and physical effects on property.

13 (b) The department or a local air quality control program authorized under
 14 AS 46.14.400 may require an owner and operator of a stationary source [FACILITY]
 15 or emission unit [SOURCE] classified under this section to report information to the
 16 department or the authorized local program concerning location, size, and height of
 17 stacks [CONTAMINANT OUTLETS] or area emission units [SOURCES], processes
 18 employed, fuels used, the nature and time periods or duration of emissions, and other
 19 information relevant to air quality that is available or reasonably capable of being
 20 calculated and compiled.

21 * **Sec. 9.** AS 46.14.120(a) is amended to read:

22 (a) Before constructing, installing, modifying, [RECONSTRUCTING,] or
 23 establishing a stationary source [FACILITY] subject to AS 46.14.130(a), the owner
 24 and operator shall obtain a construction permit under this chapter.

25 * **Sec. 10.** AS 46.14.120(b) is amended to read:

26 (b) Except when considered to be in compliance with this chapter under
 27 AS 46.14.275 or under a regulation adopted under AS 46.14.140(a)(11), the owner and
 28 operator shall obtain an operating permit under this chapter before operating a
 29 stationary source [FACILITY] subject to AS 46.14.130(b).

30 * **Sec. 11.** AS 46.14.120(e) is amended to read:

31 (e) If the federal administrator exempts a stationary source from the

1 requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner
 2 shall consider the factors used by the administrator in reaching that determination and,
 3 by regulation, shall issue a similar determination unless public health or air quality
 4 effects provide a reasonable basis to regulate the **stationary** source.

5 * **Sec. 12.** AS 46.14.120 is amended by adding new subsections to read:

6 (f) The department may exempt a stationary source from the requirement of
 7 AS 46.14.130(b) to the extent allowed under 40 C. F.R. 70.3(b).

8 (g) Before constructing, installing, modifying, operating, or establishing a
 9 stationary source subject to AS 46.14.130(c), the owner or operator shall obtain a
 10 minor permit under this chapter.

11 * **Sec. 13.** AS 46.14.130 is amended to read:

12 **Sec. 46.14.130. Stationary sources [FACILITIES] requiring permits.** (a)
 13 Before constructing, installing, modifying, [RECONSTRUCTING,] or establishing a
 14 **stationary source** [FACILITY], the owner and operator shall obtain a construction
 15 permit from the department if the **stationary source** [FACILITY] is any one of the
 16 following:

17 (1) a new **stationary source** [FACILITY] that emits or has the
 18 potential to emit 250 tons per year (TPY) or more of a regulated air **pollutant**
 19 [CONTAMINANT];

20 (2) a new **stationary source** [FACILITY] of a type classified under
 21 AS 46.14.020 that emits or has the potential to emit 100 TPY or more of a regulated
 22 air **pollutant** [CONTAMINANT];

23 (3) [A NEW FACILITY OF A TYPE CLASSIFIED UNDER
 24 AS 46.14.020

25 (A) AS HAVING THE POTENTIAL TO VIOLATE THE
 26 AMBIENT AIR QUALITY STANDARDS; OR

27 (B) UNDER A FINDING BY THE DEPARTMENT THAT
 28 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A
 29 REASONABLE BASIS TO REGULATE THE SOURCE;

30 (4) a new **stationary source** [FACILITY] that emits or has the
 31 potential to emit 10 TPY or more of a hazardous air **pollutant** [CONTAMINANT] or

1 25 TPY or more, in the aggregate, of two or more hazardous air **pollutants**
 2 [CONTAMINANTS];

3 **(4)** [(5)] an existing **stationary source** [FACILITY] for which

4 [(A)] a modification is proposed that would increase actual
 5 emissions of an air **pollutant** [CONTAMINANT] by an amount equal to or
 6 greater than the emission quantity set out in regulations adopted under
 7 AS 46.14.010, 46.14.020, or 46.14.140[; OR

8 (B) RECONSTRUCTION IS PROPOSED].

9 (b) **Except for the owner and operator of a stationary source exempted**
 10 **under AS 46.14.120(e) or (f), the** [THE] owner and operator of a **stationary source**
 11 [FACILITY] shall obtain an operating permit from the department if the **stationary**
 12 **source** [FACILITY IS A FACILITY SUBJECT TO (a) OF THIS SECTION OR A
 13 FACILITY THAT]

14 (1) emits or has the potential to emit 100 TPY or more of a regulated
 15 **air pollutant** [CONTAMINANT];

16 (2) emits or has the potential to emit 10 TPY or more of a hazardous
 17 air **pollutant** [CONTAMINANT] or 25 TPY or more, in the aggregate, of two or more
 18 hazardous air **pollutants** [CONTAMINANTS];

19 (3) contains **an emission unit** [A SOURCE] subject to federal new
 20 source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or
 21 national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412
 22 (Clean Air Act, sec. 112); or

23 (4) contains another stationary source designated by

24 [(A)] the federal administrator by regulation[; OR

25 (B) THE DEPARTMENT UNDER A FINDING THAT
 26 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A
 27 REASONABLE BASIS TO REGULATE THE SOURCE].

28 * **Sec. 14.** AS 46.14.130 is amended by adding a new subsection to read:

29 (c) Unless the owner and operator of a stationary source are required to obtain
 30 a construction permit under (a) of this section, before constructing, installing,
 31 modifying, operating, or establishing a stationary source the owner and operator shall

1 obtain a minor permit from the department if the stationary source is of a type
2 classified under AS 46.14.020

3 (1) as having the potential to violate the ambient air quality standards;
4 or

5 (2) under a finding by the department that public health or air quality
6 effects provide a reasonable basis to regulate the stationary source.

7 * **Sec. 15.** AS 46.14.140(a) is amended to read:

8 (a) The department shall adopt regulations to address substantive and
9 procedural elements of the emission control permit program established under this
10 chapter that are not addressed in statute, except elements that relate only to the internal
11 management of the department and do not affect the public or govern the way the
12 department deals with the public. The regulations must be reasonable and adequate,
13 and provide flexibility in the operation of a **stationary source** [FACILITY] consistent
14 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal
15 regulations. **Except for regulations concerning minor permits required under**
16 **AS 46.14.130(c), the** [THE] regulations must include

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

19 (2) procedures for preparation and submission of a monitoring,
20 reporting, and quality assurance plan and, if required, a compliance schedule
21 describing how a permitted **stationary source** [FACILITY] will comply with the
22 applicable requirements of this chapter;

23 (3) procedures for

24 (A) specifying when permit applications and renewal requests
25 are to be submitted;

26 (B) specifying the time duration for department review of
27 permit applications;

28 (C) processing and reviewing an application;

29 (D) providing public notice, including opportunity for public
30 comment and hearing; and

31 (E) issuing permits, including procedures for issuing permits

1 for temporary operations or open burn activities;

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

3 (A) emission standards and limitations;

4 (B) monitoring, record keeping, and reporting for facilities

5 subject to AS 46.14.130;

6 (C) inspection and entry;

7 (D) certification of corporate or other business organization

8 reports;

9 (E) annual certification of compliance;

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

11 (G) equipment malfunctions and emergencies;

12 (5) fees and procedures for collecting fees;

13 (6) provisions addressing late payment or nonpayment of fees, which

14 may include assessment of penalties and interest or refusal to issue, amend, modify, or

15 renew an air quality control permit;

16 (7) the duration of permits;

17 (8) procedures for modifying or amending a permit that provide

18 flexibility in the operation of the stationary source [FACILITY], including

19 procedures to allow changes to a permitted stationary source [FACILITY] without

20 requiring a permit modification, consistent with the purposes of this chapter and with

21 42 U.S.C. 7401 - 7671q (Clean Air Act);

22 (9) reasonable provisions for renewing, reopening, revoking and

23 reissuing, and terminating a permit consistent with the purposes of this chapter and 42

24 U.S.C. 7401 - 7671q (Clean Air Act);

25 (10) provisions allowing for physical or operational limitations that

26 will reduce a stationary source's [FACILITY'S] emissions to levels below those that

27 would make the stationary source [FACILITY] subject to part or all of AS 46.14.120

28 and 46.14.130;

29 (11) provisions authorizing stationary source [FACILITY] operation

30 while a permit application is pending, consistent with 42. U.S.C. 7661b(d) (Clean Air

31 Act, sec. 503(d));

1 (12) provisions for ensuring that compliance with an operating permit
 2 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
 3 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
 4 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
 5 Act) and regulations adopted under state and federal law; and

6 (13) provisions allowing for certification of inspectors who evaluate
 7 compliance with the terms and conditions of a permit, order, regulation, or other
 8 provision of law authorized under this chapter.

9 * **Sec. 16.** AS 46.14.140(b) is amended to read:

10 (b) A permit issued under this chapter may not require a person to use

11 (1) machinery, devices, or equipment of a particular type, from a
 12 particular supplier, or produced by a particular manufacturer; or

13 (2) specific methods, processes, procedures, or designs for the
 14 management and operation of a **stationary source** [FACILITY] regulated under this
 15 chapter except to the extent that the federal administrator has

16 (A) adopted a design, equipment work practice, or operational
 17 standard under 42 U.S.C. 7412(h), as amended, for the control of a hazardous
 18 air pollutant; or

19 (B) approved an alternative hazardous air pollutant standard
 20 under 42 U.S.C. 7412(h)(3), as amended.

21 * **Sec. 17.** AS 46.14.150(a) is amended to read:

22 (a) The owner and operator of a **stationary source** [FACILITY] required to
 23 have an operating permit under this chapter shall submit the required application and
 24 other information required by the department by regulation no later than [(1)] 12
 25 months after the date on which the **stationary source** [FACILITY] becomes subject to
 26 AS 46.14.120(b)[; OR (2) 60 DAYS BEFORE BEGINNING CONSTRUCTION OF
 27 A SOURCE IF THE FACILITY CONTAINING THE SOURCE IS A NEW
 28 FACILITY THAT IS NOT REQUIRED TO OBTAIN A CONSTRUCTION PERMIT
 29 UNDER AS 46.14.130(a), WHICHEVER IS EARLIER].

30 * **Sec. 18.** AS 46.14.170(b) is amended to read:

31 (b) Notwithstanding (a) of this section, the department may establish a phased

1 schedule for acting on operating permit applications submitted within 12 months
 2 following the date on which the federal administrator approves the state program
 3 under 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of
 4 the applications submitted during the first 12 months of the state's operation of its
 5 permit program after federal approval will be acted on by the department during each
 6 of the first three 12-month periods following federal approval of the program. The
 7 department shall give priority to the issuance of permits for new **stationary sources**
 8 [FACILITIES] and modifications of existing **stationary sources** [FACILITIES].

9 * **Sec. 19.** AS 46.14.170(c) is amended to read:

10 (c) Failure by the department to act within the time limits established in or
 11 under (a), [OR] (b), **or (d)** of this section is considered to be a final agency action, but
 12 only for the purpose of judicial review to determine whether the court will require that
 13 action be taken by the department.

14 * **Sec. 20.** AS 46.14.170 is amended by adding a new subsection to read:

15 (d) The department shall issue or deny a minor permit under AS 46.14.130(c)
 16 within 30 days after the close of the public comment period or within 30 days after
 17 receipt of the complete application by the department if a public comment period is
 18 not required under this chapter.

19 * **Sec. 21.** AS 46.14.180 is amended to read:

20 **Sec. 46.14.180. Monitoring.** Monitoring by the owner and operator of stack
 21 emissions or ambient air quality shall be required by the department only for purposes
 22 of demonstrating compliance with applicable permit program requirements.
 23 Monitoring requirements must be reasonable and based on test methods, analytical
 24 procedures, and statistical conventions approved by the federal administrator or the
 25 department or otherwise generally accepted as scientifically competent. Unless
 26 otherwise agreed to by the owner and operator and the department,

27 (1) the department may not require an owner and operator of **an**
 28 **emission unit** [A SOURCE] to monitor emissions or ambient air quality solely for the
 29 purpose of scientific investigation or research; and

30 (2) monitoring activities must be consistent with the applicable
 31 emission standards and other permit or permit application requirements.

1 * **Sec. 22.** AS 46.14.190 is amended to read:

2 **Sec. 46.14.190. Single permit.** (a) Except as provided in (b) of this section,
3 the department shall issue only a single operating permit to a **stationary source**
4 [FACILITY], regardless of whether **the stationary source** [A FACILITY] contains a
5 single **emission unit** [SOURCE] or multiple **emission units** [SOURCES].

6 (b) The department may, upon request of a **stationary source** [FACILITY]
7 owner or operator, issue more than one permit for **the stationary source** [A
8 FACILITY]. Substantive and procedural requirements otherwise applicable to a
9 **stationary source** [FACILITY] remain applicable regardless of whether the
10 **stationary source** [FACILITY] owner and operator apply for one or more permits.

11 * **Sec. 23.** AS 46.14.200 is amended to read:

12 **Sec. 46.14.200. Review of permit action.** A person who has a private,
13 substantive, legally protected interest under state law that may be adversely affected
14 by the permit action, the owner and operator, or, **if a public comment process is**
15 **required or solicited**, a person who participated in the public comment process may
16 request an adjudicatory hearing under the department's adjudicatory hearing
17 procedures. After the issuance of an adjudicatory hearing decision, a party to the
18 hearing may obtain judicial review of that decision as provided in the Alaska Rules of
19 Appellate Procedure.

20 * **Sec. 24.** AS 46.14.210 is amended to read:

21 **Sec. 46.14.210. General operating permits.** After notice and opportunity for
22 public comment and hearing, the department may, unless the permit is disapproved by
23 the federal administrator, establish a general operating permit that would be applicable
24 to more than one **stationary source** [FACILITY] determined by the department to be
25 similar in **emission unit** [SOURCE] structure. A general operating permit must
26 contain provisions that meet the requirements of this chapter that are applicable to
27 operating permits. A general operating permit issued to a particular person takes
28 effect when the person's application is determined to be complete unless the
29 department notifies the applicant that the general permit is not applicable to the
30 person's **stationary source** [FACILITY].

31 * **Sec. 25.** AS 46.14 is amended by adding a new section to read:

1 **Sec. 46.14.211. General minor permits.** After notice and opportunity for
 2 public comment and hearing, the department may establish a general minor permit that
 3 would be applicable to more than one stationary source determined by the department
 4 to be similar in structure. If authorized by the department, a permit issued under this
 5 section may be valid for multiple locations in this state. A general minor permit must
 6 contain provisions that meet the requirements of this chapter that are applicable to a
 7 minor permit. A general minor permit issued to a particular person takes effect when
 8 the person's application is determined to be complete unless the department notifies
 9 the applicant that the general permit is not applicable to the person's stationary source.

10 * **Sec. 26.** AS 46.14.215 is amended to read:

11 **Sec. 46.14.215. Temporary operations.** For purposes of AS 46.14.130(b),
 12 the [THE] department may issue a single operating permit under AS 46.14.170,
 13 authorizing a stationary source [FACILITY] to operate at specific multiple locations
 14 in the state for temporary periods of time. A permit described in this section is valid
 15 only for the specific locations identified in the application and authorized by the
 16 department. The department may not issue a permit under this section unless the
 17 permit contains conditions that will ensure compliance with this chapter at each
 18 authorized location, including compliance with ambient air quality standards and
 19 applicable increment or visibility requirements adopted under this chapter. A permit
 20 under this section must require the owner and operator to notify the department at least
 21 30 days before a change in location of a stationary source [FACILITY] permitted
 22 under this section.

23 * **Sec. 27.** AS 46.14.240(a) is amended to read:

24 (a) The owner or operator of a stationary source [FACILITY] who is
 25 required to apply for a permit under AS 46.14.130 shall pay to the department all
 26 assessed permit administration fees established under (b) of this section except that the
 27 person named in a permit issued under AS 46.14.170 shall pay assessed permit
 28 administration fees incurred after the date the permit is issued.

29 * **Sec. 28.** AS 46.14.240(b) is repealed and reenacted to read:

30 (b) The department shall establish by regulation permit administration fees in
 31 accordance with AS 37.10.050 - 37.10.058.

1 * **Sec. 29.** AS 46.14.240(c) is amended to read:

2 (c) In (a) and (b) of this section, "permit administration fees" are fees assessed
3 to recover costs incurred by the department and other state or local governmental
4 agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal
5 regulations implementing that provision, for the following services to a specific
6 **stationary source** [FACILITY] that are performed in order to implement the permit
7 program established under this chapter:

8 (1) providing preapplication consultation, assistance, and completeness
9 review of applications for a permit, permit amendment, permit modification, or
10 renewal, except as provided in (d) of this section;

11 (2) reviewing or assisting in preparation of **stationary source**
12 [FACILITY] specific permit support documents, including on-site evaluations, except
13 as provided in (d) of this section;

14 (3) receiving, reviewing, preparing, processing, and issuing permits,
15 permit amendments, modifications, reopenings, renewals and revocations, and
16 reissuance;

17 (4) preparing general operating permits under AS 46.14.210; however,
18 costs must be allocated on an equitable basis to each **stationary source** [FACILITY]
19 covered by the general operating permit;

20 (5) performing **stationary source** [FACILITY] inspections and
21 compliance evaluations;

22 (6) reviewing, compiling, and reporting **stationary source**
23 [FACILITY] specific emission, ambient monitoring, or process measurement data;

24 (7) preparing, evaluating, or processing plans or documents to obtain
25 **stationary source** [FACILITY] compliance or rectify noncompliance with permit
26 terms and conditions, but not including any enforcement actions; and

27 (8) assessing and collecting delinquent permit administration fees and
28 emission fees.

29 * **Sec. 30.** AS 46.14.240(d) is amended to read:

30 (d) Costs incurred by the department and other state or local governmental
31 agencies **that are assessed against small business** [FOR SERVICES DESCRIBED

1 IN (c)(1) - (2) OF THIS SECTION TO] facilities that qualify for assistance under
 2 AS 46.14.300 - 46.14.310 shall be recovered from emission fees under
 3 AS 46.14.250(h)(2) **for the following services:**

4 **(1) providing preapplication consultation, assistance, and**
 5 **completeness review of applications for a permit, an amendment, a permit**
 6 **modification, or a renewal of a permit;**

7 **(2) reviewing or assisting in the preparation of specific documents**
 8 **to support a permit for a stationary source; the documents described in this**
 9 **paragraph include on-site evaluations.**

10 * **Sec. 31.** AS 46.14.250 is amended to read:

11 **Sec. 46.14.250. Emission fees.** (a) A person named as permittee in a permit
 12 issued under **this chapter** [AS 46.14.170] shall pay to the department all assessed
 13 emission fees established under this section.

14 (b) The department shall establish by regulation an emission fee rate. The rate
 15 shall be set on the basis of dollars per ton of air **pollutant** [CONTAMINANT]
 16 emitted. The department shall assess emission fees annually on or before July 1 based
 17 on a **stationary source's** [FACILITY'S] estimated assessable emissions for the
 18 subsequent fiscal year. The department may allow installment payments of assessed
 19 emission fees.

20 (c) For a **stationary source** [FACILITY] that begins operation during a fiscal
 21 year, the department shall prorate the first year's fee to cover the time period occurring
 22 before the next annual payment date. The owner or operator shall pay the initial
 23 emission fee upon commencement of lawful **stationary source** [FACILITY]
 24 operation unless authorized to pay by installments under (b) of this section. The first
 25 year's emission fee may not duplicate a fee paid by a permittee under AS 44.46.025
 26 for the same **emission units** [SOURCES] for the same time period. If the fees would
 27 otherwise be duplicative, the department shall provide a credit toward the emission fee
 28 in the amount of the unused balance of the fee collected under AS 44.46.025. The
 29 unused balance to be credited shall be based on prorating the total original fee under
 30 AS 44.46.025 for the time period for which an emission fee applies.

31 (d) The department shall design the emission fee rate to distribute the total

1 annual incurred costs described under (h) of this section in a manner so that each
 2 permittee is assessed an annual emission fee that reflects an equitable apportionment
 3 of the fees paid by each **stationary source** [FACILITY] type, size, or category. In
 4 making an apportionment under (f)(6) of this section, the department shall consider
 5 factors such as exemptions or reduced rates for small amounts of emissions, limits
 6 upon assessable emissions, exempting small business facilities from the costs of the
 7 small business assistance program established under AS 46.14.300, air pollution
 8 prevention efforts, and other factors that may ensure fair distribution of the costs
 9 described under (h) of this section.

10 (e) The department shall set the initial fee rate for the first two years following
 11 approval of the permit program under this chapter by the federal administrator on the
 12 basis of dollars per ton of assessable emissions. In calculating assessable emissions
 13 for the purpose of this subsection, the department may not include an amount in excess
 14 of 4,000 tons per year of an air **pollutant** [CONTAMINANT] not defined as a
 15 regulated pollutant under 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec.
 16 502(3)(B)(ii)).

17 (f) After the two years described in (e) of this section, the department shall set
 18 the emission fee rate in regulation to implement the policy established in (d) of this
 19 section. The department shall base the regulation on the findings of a report, which
 20 the department shall make available to the public with proper notice before adoption
 21 of the regulation, that examines

- 22 (1) fees assessed;
- 23 (2) alternative fee rates or formulas;
- 24 (3) types, sizes, or categories of **stationary sources** [FACILITIES],
 25 their respective emission quantities, and their previous or proposed fee burden;
- 26 (4) apparent inequities encountered in the initial fee rate;
- 27 (5) total costs incurred or anticipated to be incurred under (h) of this
 28 section; and
- 29 (6) other factors that ensure fair distribution of the costs described in
 30 (h) of this section.

31 (g) The department shall periodically, and at least every **four** [THREE] years,

1 evaluate the fee rate set under this section to determine if it is responsive to the policy
2 established in (d) of this section and shall provide its findings in a report.

3 (h) In this section,

4 (1) "assessable emission" means the quantity of each air **pollutant**
5 [CONTAMINANT] for which emission fees are assessed and is the lesser of

6 (A) the **stationary source's potential to emit** [ANNUAL
7 RATE OF EMISSIONS], in tons per year, [OF] each air **pollutant**
8 [CONTAMINANT AUTHORIZED BY THE FACILITY'S OPERATING
9 PERMIT]; or

10 (B) the projected annual rate of emissions, in tons per year, of
11 each air **pollutant** [CONTAMINANT] by the **stationary source** [FACILITY]
12 based upon previous actual annual emissions if the permittee can demonstrate
13 to the department its previous actual annual rate of emissions through
14 monitoring, modelling, calculations, or other method acceptable to the
15 department;

16 (2) "emission fees" mean fees assessed to recover costs incurred by the
17 department and other state or local governmental agencies, to the extent required
18 under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision,
19 for execution of the permit program established under this chapter that are generally
20 not associated with service provided to a specific **stationary source** [FACILITY],
21 including the costs incurred by the department or a local air quality program to comply
22 with AS 46.14.010 - 46.14.015; the costs may include rent, utilities, permit program
23 management, administrative and accounting services, and other costs as identified by
24 the department in regulations; the fees shall also be sufficient to recover the cost of the
25 small business assistance program under AS 46.14.300 - 46.14.310.

26 * **Sec. 32.** AS 46.14.250(h)(2) is amended to read:

27 (2) "emission fees" mean fees assessed to recover costs incurred by the
28 department and other state or local governmental agencies **for the implementation of**
29 **minor permits, for the implementation of construction permits, and for operating**
30 **permits**[,] to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal
31 regulations implementing that provision, for execution of the permit program

1 established under this chapter that are generally not associated with service provided
 2 to a specific stationary source, including the costs incurred by the department or a
 3 local air quality program to comply with AS 46.14.010 - 46.14.015; the costs may
 4 include rent, utilities, permit program management, administrative and accounting
 5 services, and other costs as identified by the department in regulations; the fees shall
 6 also be sufficient to recover the cost of the small business assistance program under
 7 AS 46.14.300 - 46.14.310.

8 * **Sec. 33.** AS 46.14.260(b) is amended to read:

9 (b) The money deposited into the clean air protection fund may only be used
 10 to cover the reasonable direct and indirect costs required to support the permit
 11 program under this chapter and the activities of the small business assistance program
 12 that are directed at stationary sources [FACILITIES] subject to this chapter, not
 13 including court costs or other costs associated with an enforcement action.

14 * **Sec. 34.** AS 46.14 is amended by adding a new section to read: `

15 **Sec. 46.14.265. Emission control permit receipts account.** (a) The
 16 emission control permit receipts account is established in the state treasury. Under
 17 AS 37.05.146(c), money received by the department in payment of fees under
 18 AS 46.14.240 and 46.14.250 and under regulations adopted under AS 46.14.140, other
 19 than fees described in AS 46.14.260(a), shall be deposited in the account.
 20 Appropriations from the account are not made from the unrestricted general fund.

21 (b) Nothing in this section creates a dedicated fund.

22 * **Sec. 35.** AS 46.14.280(a) is amended to read:

23 (a) After 30 days' written notice to the permittee, the department

24 (1) may terminate, modify, or revoke and reissue a construction, [OR]
 25 operating, or minor permit if the department finds that

26 (A) the permit was obtained by misrepresentation of material
 27 fact or by failure of the owner and operator to disclose fully the facts relating
 28 to issuance of the permit;

29 (B) the permittee has violated this chapter, a regulation, a
 30 judicial or administrative order, or a material term or condition of a permit,
 31 approval, or acceptance issued under this chapter; or

1 (C) the permittee has failed to construct or modify a **stationary**
 2 **source** [FACILITY] within the time period specified in a construction permit,
 3 if any, required under AS 46.14.130(a);

4 (2) may modify, or revoke and reissue a construction, [OR] operating,
 5 **or minor** permit if the department finds that

6 (A) the permit contains a material mistake; or

7 (B) there has been a material change in the quantity or type of
 8 air **pollutant** [CONTAMINANT] emitted from the **stationary source**
 9 [FACILITY]; or

10 (3) shall reopen a permit issued under this chapter

11 (A) based on a determination of the federal administrator or the
 12 department that the permit must be revised to comply with 42 U.S.C. 7401-
 13 7671q (Clean Air Act) and regulations adopted thereunder; or

14 (B) to incorporate changes in law, or to impose equivalent
 15 emission limitations, that become applicable after the permit is issued if the
 16 permit is issued to a major **stationary source** [FACILITY] and has a
 17 remaining duration of three or more years; the department shall make revisions
 18 allowed under this subparagraph as soon as practicable, but, regarding a
 19 change in law, no later than 18 months after the change in law takes effect; the
 20 department may not reopen the permit of a major **stationary source**
 21 [FACILITY] under this subparagraph if the change in law is not effective until
 22 after the date that the permit expires.

23 * **Sec. 36.** AS 46.14.285(a) is amended to read:

24 (a) A permittee may request

25 (1) a permit amendment that provides for administrative changes to a
 26 permit that do not result in material changes in permit terms or conditions, such as
 27 changes in the name of the owner or operator, mailing address, registered agent, or
 28 assessable emissions;

29 (2) an expedited authorization for minor changes in permit terms and
 30 conditions that provide for flexibility in the operation of a **stationary source**
 31 [FACILITY] consistent with 42 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)),

1 and regulations adopted under that paragraph; the department may adopt regulations
 2 that include procedures under which the public may participate when an expedited
 3 authorization is requested under this paragraph; or

4 (3) a modification of a permit to authorize significant changes in
 5 permit terms and conditions consistent with this chapter and regulations adopted under
 6 AS 46.14.140.

7 * **Sec. 37.** AS 46.14.290 is amended to read:

8 **Sec. 46.14.290. Permit as shield.** (a) To the extent allowed under 42.U.S.C.
 9 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in compliance with
 10 applicable requirements of this chapter, regulations adopted under this chapter and 42
 11 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it, if

12 (1) the applicable requirements are included and specifically identified
 13 in the owner or operator's permit; or

14 (2) the requirements are determined in writing not to be applicable to
 15 the permitted **stationary source** [FACILITY]; a determination made under this
 16 paragraph shall be included in the permit.

17 (b) This section does not alter or affect

18 (1) the owner's and operator's obligation to comply with an emergency
 19 order issued under AS 46.03.820 or 42.U.S.C. 7603 (Clean Air Act, sec. 303);

20 (2) the liability of an owner and operator for a violation of applicable
 21 requirements of law before or at the time of permit issuance; or

22 (3) the ability of the department to obtain information from an owner
 23 or operator of a **stationary source** [FACILITY] under AS 46.14.020(b).

24 * **Sec. 38.** AS 46.14.300(c) is amended to read:

25 (c) Except as provided in AS 46.14.310(b), the department shall provide
 26 assistance as described in (b) of this section to a requesting **stationary source**
 27 [FACILITY] that is not a small business concern as defined in 15 U.S.C. 631 but that
 28 is subject to the requirements of this chapter if the legislature appropriates money from
 29 the general fund for this purpose.

30 * **Sec. 39.** AS 46.14.400(c) is amended to read:

31 (c) If the department finds that the location, character, or extent of particular

1 concentrations of population, air **pollutant emission units** [CONTAMINANT
 2 SOURCES], the geographic, topographic, or meteorological considerations, or a
 3 combination of these factors make impracticable the maintenance of appropriate levels
 4 of air quality without an areawide air pollution control program, the department may
 5 determine the boundaries within which a local air quality control program is necessary
 6 and direct that a local air quality control program spanning those boundaries is the
 7 only acceptable alternative to direct state administration.

8 * **Sec. 40.** AS 46.14.400(f) is amended to read:

9 (f) A municipality or a local air quality district administering a program under
 10 this section shall administer its local air quality control program according to this
 11 chapter, regulations adopted under those sections, and its cooperative agreement under
 12 (d) of this section. A municipality or local air quality district's program may, upon a
 13 finding by the local agency and an affirmative agreement by the department, establish
 14 a more stringent requirement than the stationary **emission unit** [SOURCE] permit
 15 program authorized under this chapter if public health or air quality effects provide a
 16 reasonable basis to regulate the **emission unit** [SOURCE] with the additional or more
 17 stringent requirement and the municipality or district has used procedures substantially
 18 equivalent to those required under AS 46.14.010 - 46.14.015 before establishing the
 19 more stringent requirement. This subsection does not prohibit a municipality or local
 20 air quality control district from establishing a mobile source emissions program more
 21 stringent than the state program without making findings of public health or air quality
 22 effects or using procedures substantially equivalent to those required under
 23 AS 46.14.010 - 46.14.015. In this subsection, "mobile source" does not include tank
 24 vessels or other watercraft.

25 * **Sec. 41.** AS 46.14.410(e) is amended to read:

26 (e) If the department finds that control of a particular class of **stationary**
 27 **source** [FACILITY] or **emission unit** [SOURCE], because of its complexity or
 28 magnitude, is beyond the reasonable capability of the municipality or the local air
 29 quality district or may be more efficiently and economically controlled at the state
 30 level, the department may assume and retain jurisdiction over the class of **stationary**
 31 **source** [FACILITY] or **emission unit** [SOURCE]. Classifications under this

1 subsection may be based on the nature of **stationary sources** [FACILITIES] or
2 **emission units** [SOURCES] involved, their size relative to the size of the
3 communities in which they are located, or another basis established by the department.

4 * **Sec. 42.** AS 46.14.500(b) is amended to read:

5 (b) In adopting regulations under this section, the department shall ensure that
6 **stationary sources** [FACILITIES] located within 25 miles of the seaward boundary of
7 the state are subject to the same air quality control requirements that would be
8 applicable if the **stationary source** [FACILITY] were located in the corresponding
9 onshore area. For purposes of this subsection, **stationary sources** [FACILITIES]
10 located within 25 miles of the seaward boundary of the state include a vessel servicing
11 or associated with the **stationary source** [FACILITY] while at the **stationary source**
12 [FACILITY] or en route to or from the **stationary source** [FACILITY] and within 25
13 miles of the **stationary source** [FACILITY].

14 * **Sec. 43.** AS 46.14.500(c) is amended to read:

15 (c) In this section, "corresponding onshore area" means, with respect to a
16 **stationary source** [FACILITY] located within 25 miles of the seaward boundary of
17 the state, the onshore attainment or nonattainment area that is closest to the **stationary**
18 **source** [FACILITY], unless the commissioner determines that another area with more
19 stringent requirements relating to control and abatement of air pollution may
20 reasonably be expected to be affected by emissions from the offshore **stationary**
21 **source** [FACILITY]; this determination shall be based on the potential for air
22 **pollutants** [CONTAMINANTS] from the **stationary source** [FACILITY] to reach
23 the other onshore area and the potential of the air **pollutants** [CONTAMINANTS] to
24 affect the efforts of the other onshore area to attain or maintain a federal ambient air
25 quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C, Clean Air Act) or a
26 state equivalent.

27 * **Sec. 44.** AS 46.14.515(a) is amended to read:

28 (a) An officer or employee of the department designated by the commissioner
29 or an inspector authorized by the commissioner and certified under regulations
30 adopted under AS 46.14.140(a)(13) may, upon presentation of credentials and at
31 reasonable times with the consent of the owner or operator, enter upon or through any

1 premises of a **stationary source** [FACILITY] regulated under this chapter to

2 (1) inspect and copy any records required to be maintained;

3 (2) inspect any **emission unit** [SOURCE], monitoring equipment, or
4 method required to be used; or

5 (3) sample any emissions that the owner and operator of the **stationary**
6 **source** [FACILITY] is required to sample.

7 * **Sec. 45.** AS 46.14.540(a) is amended to read:

8 (a) When the commissioner finds that an act of God, act of war, act of
9 terrorism, or similar catastrophe necessitates emergency use of an unpermitted
10 **emission unit** [SOURCE] or emergency use of a permitted **emission unit** [SOURCE]
11 in a manner not authorized by the permit, the commissioner may waive procedural
12 requirements of this chapter and issue an order to authorize emergency use of the
13 **emission unit** [SOURCE]. When acting under this section, the commissioner shall
14 impose conditions necessary to protect life, human health, welfare, property, and the
15 environment and may impose other conditions the commissioner finds necessary and
16 appropriate.

17 * **Sec. 46.** AS 46.14.550 is amended to read:

18 **Sec. 46.14.550. Responsibilities of owner and operator; agent for service.**

19 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,
20 before issuance of a permit under **this chapter** [AS 46.14.170] both the owner and
21 operator of a **stationary source** [FACILITY] are responsible for compliance with this
22 chapter and regulations adopted under this chapter. If the owner and operator of the
23 **stationary source** [FACILITY] are separate persons, only one person is required to
24 discharge a specific responsibility. After issuance of a permit under **this chapter**
25 [AS 46.14.170], only the permittee is responsible for permitted operations. The
26 permittee shall have a designated agent for service of process in the state.

27 * **Sec. 47.** AS 46.14.560 is amended to read:

28 **Sec. 46.14.560. Unavoidable malfunctions and emergencies.** Excess
29 emissions caused by an unavoidable emergency, malfunction, or nonroutine repairs of
30 **an emission unit** [A SOURCE] including pollution control equipment or process
31 equipment constitute an affirmative defense, when asserted under regulations adopted

1 under AS 46.14.140, to an action brought for noncompliance with a technology-based
 2 emission standard. This section does not limit the department's power to enjoin the
 3 emission or require corrective action. This provision is in addition to any emergency
 4 or upset provision contained in an applicable requirement.

5 * **Sec. 48.** AS 46.14.990(2) is amended to read:

6 (2) "ambient air" **has the meaning given in 40 C.F.R. 50.1** [MEANS
 7 THAT PORTION OF THE ATMOSPHERE, EXTERNAL TO BUILDINGS, TO
 8 WHICH THE GENERAL PUBLIC HAS ACCESS];

9 * **Sec. 49.** AS 46.14.990(5) is repealed and reenacted to read:

10 (5) "construction" has the meaning given in 40 C.F.R. 51.166(b);

11 * **Sec. 50.** AS 46.14.990(9) is amended to read:

12 (9) "emission" means a release of one or more air **pollutants**
 13 [CONTAMINANTS] to the atmosphere;

14 * **Sec. 51.** AS 46.14.990(10) is repealed and reenacted to read:

15 (10) "emission limitation" and "emission standard" have the meaning
 16 given in 40 C.F.R. 51.100;

17 * **Sec. 52.** AS 46.14.990(13) is repealed and reenacted to read:

18 (13) "fugitive emissions" has the meaning given in 40 C.F.R.
 19 51.166(b);

20 * **Sec. 53.** AS 46.14.990(14) is amended to read:

21 (14) "hazardous air **pollutant** [CONTAMINANT]" means a pollutant
 22 listed in or under 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));

23 * **Sec. 54.** AS 46.14.990(16) is repealed and reenacted to read:

24 (16) "modification" has the meaning given in 42 U.S.C. 7411(a)
 25 (Clean Air Act, sec. 111(a));

26 * **Sec. 55.** AS 46.14.990(18) is amended to read:

27 (18) "operator" means a person or persons who direct, control, or
 28 supervise a **stationary source or emission unit** [FACILITY OR SOURCE] that has
 29 the potential to emit an air **pollutant** [CONTAMINANT] to the atmosphere;

30 * **Sec. 56.** AS 46.14.990(19) is amended to read:

31 (19) "owner" means a person or persons with a proprietary or

1 possessory interest in a **stationary source or emission unit** [FACILITY OR
2 SOURCE] that has the potential to emit an air **pollutant** [CONTAMINANT] to the
3 atmosphere;

4 * **Sec. 57.** AS 46.14.990(21) is repealed and reenacted to read:

5 (21) "potential to emit" has the meaning given in 40 C.F.R. 51.166(b);

6 * **Sec. 58.** AS 46.14.990(24) is amended to read:

7 (24) "small business facility" means a **stationary source** [FACILITY]

8 that

9 (A) is owned or operated by a person who employees 100 or
10 fewer individuals;

11 (B) is a small business concern as defined in 15 U.S.C. 631
12 (Small Business Act); and

13 (C) emits less than 100 TPY of regulated air **pollutants**
14 [CONTAMINANTS];

15 * **Sec. 59.** AS 46.14.990 is amended by adding new paragraphs to read:

16 (28) "air pollutant" has the meaning given in 42 U.S.C. 7602 (Clean
17 Air Act, sec. 302);

18 (29) "building, structure, facility, or installation" has the meaning
19 given in 40 C.F.R. 51.166(b) except that it includes a vessel

20 (A) that is anchored or otherwise permanently or temporarily
21 stationed within a locale;

22 (B) upon which a stationary source or stationary sources are
23 located; not including stationary sources engaged in propulsion of the vessel;
24 and

25 (C) that is used for an industrial process, excluding a tank
26 vessel in the trade of transporting cargo; in this subparagraph, "industrial
27 process" means the extraction of raw material or the physical or chemical
28 transformation of raw material in either composition or character;

29 (30) "emission unit" has the meaning given in 40 C.F.R. 51.166(b);

30 (31) "regulated air pollutant" means an air pollutant subject to
31 regulation under 42 U.S.C. 7401 - 7671q (Clean Air Act);

1 (32) "stack" has the meaning given in 40 C.F.R. 51.100;

2 (33) "stationary source" has the meaning given in 40 C.F.R. 51.166(b);

3 * **Sec. 60.** (a) AS 46.14.990(1), 46.14.990(7), 46.14.990(11), 46.14.990(22),
4 46.14.990(23), and 46.14.990(25) are repealed.

5 (b) AS 46.14.240(c) is repealed.

6 * **Sec. 61.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: MINOR PERMITS. (a) If, on the day before the effective date of
9 sec. 12 of this Act, the owner or operator of a facility has a valid permit issued under
10 AS 46.14.130(a) or (b), as those provisions existed on the day before the effective date of
11 sec. 13 of this Act, and is required to obtain a minor permit under AS 46.14.130(c), enacted
12 by sec. 14 of this Act, the previously issued valid permit remains valid until the earliest of the
13 following occurs:

14 (1) that permit is revoked by the department under AS 46.14;

15 (2) the department issues or denies issuance of the application for a minor
16 permit.

17 (b) In this section,

18 (1) "department" means the Department of Environmental Conservation;

19 (2) "facility" has the meaning given in AS 46.14.990(11), as that provision
20 existed on the day before the effective date of sec. 60 of this Act.

21 * **Sec. 62.** The uncodified law of the State of Alaska is amended by adding new section to
22 read:

23 TRANSITION: REGULATIONS. The Department of Environmental Conservation
24 may proceed to adopt regulations necessary to implement the changes made by this Act. The
25 regulations take effect under AS 44.62 (Administrative Procedures Act), but not before the
26 effective date of the respective provision of this Act.

27 * **Sec. 63.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 REVISOR'S INSTRUCTION. (a) In regulations adopted by the Department of
30 Environmental Conservation to implement AS 46.14 and in effect on the day before the
31 effective date of secs. 59 and 60 of this Act, wherever the terms "facility" and "source" are

1 used, they shall be read as "stationary source" and "emission unit," respectively,

2 (1) when to do so would be consistent with the changes made by this Act; and

3 (2) until the Department of Environmental Conservation amends its
4 regulations consistent with the changes made by this Act.

5 (b) The regulations attorney is instructed to make changes in the Department of
6 Environmental Conservation regulations as described in (a) of this section.

7 * **Sec. 64.** Sections 3 - 27, 29, 31, 33, 35 - 59, 60(a), and 61 - 63 of this Act take effect
8 immediately under AS 01.10.070(c)

9 * **Sec. 65.** Sections 2, 28, 30, 32, and 60(b) of this Act take effect January 1, 2005.

10 * **Sec. 66.** Sections 1 and 34 of this Act take effect July 1, 2005.