

HOUSE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/25/04

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to regulation of the discharge of pollutants from timber-related**
2 **activities under the National Pollutant Discharge Elimination System; relating to waste**
3 **treatment and disposal permits; making conforming amendments; and providing for an**
4 **effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that
9 (1) fulfilling the state's responsibilities as a trustee of the environment and
10 manager of the state's land and water resources requires greater state control over permitting
11 programs affecting all land and waters within the state, including programs such as the
12 National Pollutant Discharge Elimination System administered by the United States
13 Environmental Protection Agency (EPA) under 33 U.S.C. 1342 (sec. 402, Clean Water Act);
14 (2) assuming primacy over a portion of the NPDES program limited to a

1 single industry sector would enable the state to gain experience in administering the program
2 and coordinating with the EPA at a pilot-project level;

3 (3) Alaska's timber industry sector is a good subject for single-sector primacy
4 assumption because the Department of Environmental Conservation already possesses
5 substantial expertise on technological and water quality-related aspects of timber industry
6 discharges to waters of the state.

7 (b) It is the intent of the legislature that the Department of Environmental
8 Conservation seek partial NPDES primacy for the timber sector and, if partial primacy is
9 approved, administer a state timber NPDES program for the purposes of providing greater
10 state control over a portion of this permitting program and gaining experience with NPDES
11 permitting for use in future consideration of broader assumption of the NPDES program.

12 * **Sec. 2.** AS 44.46.025(a) is amended to read:

13 (a) Except as otherwise provided in AS 37.10.050 - 37.10.056, the Department
14 of Environmental Conservation may adopt regulations that prescribe reasonable fees,
15 and establish procedures for the collection of those fees, to cover the applicable direct
16 costs, not including travel except in the case of a designated regulatory service, as that
17 term is defined in AS 37.10.058, of inspections, permit preparation and administration,
18 plan review and approval, and other services provided by the department relating to

19 (1) agriculture and animals under AS 03.05; food, drugs, and
20 cosmetics under AS 17.20; and public accommodations and facilities under AS 18.35;

21 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
22 46.14.510;

23 (3) sewerage system and treatment works and wastewater disposal
24 systems, and drinking water systems, under AS 46.03.720;

25 (4) water and wastewater operator training under AS 46.30;

26 (5) control of solid waste facilities under AS 46.03.020(10) and
27 46.03.100;

28 (6) certification of laboratories conducting environmental analyses of
29 public drinking water systems or of oil or hazardous substances, or conducting other
30 analyses required by the department;

31 (7) certification of federal permits or authorizations under 33 U.S.C.

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

2 **(8) regulation of point source discharges of pollutants associated**
 3 **with timber-related activities under the program authorized by AS 46.03.020(13).**

4 * **Sec. 3.** AS 46.03.020 is amended by adding a new paragraph to read:

5 (13) notwithstanding any other provision of law, take all actions
 6 necessary to receive authorization from the administrator of the Environmental
 7 Protection Agency to administer and enforce a partial National Pollutant Discharge
 8 Elimination System program in accordance with 33 U.S.C. 1342 (sec. 402, Clean
 9 Water Act) and 40 C.F.R. Part 123 covering discharges associated with timber-related
 10 activities.

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

12 (a) An application for a permit shall be made on forms prescribed by the
 13 department or on forms prescribed by the United States Environmental Protection
 14 Agency and must contain the name and address of the applicant, a description of the
 15 applicant's operations, the quantity and type of waste material sought to be disposed
 16 of, the proposed method of disposal, and any other information considered necessary
 17 by the department. [APPLICATION FOR PERMIT SHALL BE MADE AT LEAST
 18 60 DAYS BEFORE COMMENCEMENT OF A PROPOSED DISCHARGE.] The
 19 applicant may request that a general permit be issued under AS 46.03.100(h), or the
 20 department may, on its own initiative, propose that an applicant be issued a general
 21 permit.

22 * **Sec. 5.** AS 46.03.110(b) is amended to read:

23 (b) **After** [UPON] receipt of a proper application for an individual or general
 24 permit or [UPON] a determination by the department that a general permit should be
 25 proposed, the department shall publish notice of the application or proposal, **or of the**
 26 **availability of a draft permit for comment**, as applicable, in **at least one**
 27 **publication** [TWO SEPARATE PUBLICATIONS] of a newspaper of general
 28 circulation within the general area in which the disposal of waste material is proposed
 29 to be made. The notice shall also be posted on the Alaska Online Public Notice
 30 System maintained under AS 44.62.175 and may also be published in other
 31 appropriate information media. The notice must include a statement that a person who

1 wants to present views to the department in regard to the application, [OR] proposal,
 2 **or draft permit** may do so in writing to the department within 30 days after the **first**
 3 [SECOND] publication of the notice. The written response entitles the writer to a
 4 copy of the application **or draft permit** and, in the case of an application or proposal
 5 to issue a general permit, the application or proposal shall also be posted by the
 6 department on the Internet at the same time that notice is published under this
 7 subsection.

8 * **Sec. 6.** AS 46.03.110(d) is amended to read:

9 (d) The department may specify in a permit the terms and conditions under
 10 which waste material or water may be disposed of. The terms and conditions shall be
 11 directed to avoiding pollution and to otherwise carry out the policies of this chapter.
 12 The commissioner may provide, as a term of a general permit, that a person intending
 13 to dispose of waste material or water under the general permit shall first obtain
 14 specific authorization from the department. A general permit shall be posted on the
 15 Internet by the department; the posting must include the names of persons authorized
 16 to make disposals under the permit and the locations at which disposals may be made
 17 if those locations are specifically authorized under this subsection. A permit may not
 18 be **issued** [EFFECTIVE] for a **term** [PERIOD] in excess of five years from the date of
 19 issuance. **The department may prescribe in regulations the circumstances under**
 20 **which an expiring permit may be administratively continued.**

21 * **Sec. 7.** AS 46.03.120 is amended to read:

22 **Sec. 46.03.120. Termination or modification of waste disposal permit.** (a)

23 The department may terminate a permit upon 30 days' written notice if the department
 24 finds

25 (1) that the permit was procured by misrepresentation of material fact
 26 or by failure of the applicant to disclose fully the facts relating to its issuance;

27 (2) that there has been a violation of the conditions of the permit;

28 (3) that there has been a material change in the quantity or type of
 29 waste disposed of; **or**

30 **(4) for a permit issued under a federally approved program under**
 31 **33 U.S.C. 1342 (sec. 402, Clean Water Act),**

1 **(A) that a change in any condition of the receiving**
 2 **environment or the quality of discharge requires either a temporary or**
 3 **permanent reduction of the authorization or elimination of the authorized**
 4 **discharge; or**

5 **(B) that the permittee had made a material**
 6 **misrepresentation of fact to the department relevant to the authorized**
 7 **activity at any time.**

8 (b) The department may modify a permit

9 **(1) for any of the causes for termination listed in (a) of this section;**

10 **(2) if the department finds that a material change in the quality or**
 11 **classification of the waters of the state has occurred; or**

12 **(3) for a permit issued under a federally approved program under**
 13 **33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted**
 14 **under AS 46.03.020(13) for timber-related activities.**

15 * **Sec. 8.** AS 46.03.760(e) is amended to read:

16 (e) A person who violates or causes or permits to be violated a provision of
 17 AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful
 18 order of the department, or a permit, approval, or acceptance, or term or condition of a
 19 permit, approval, or acceptance issued under AS 46.03.250 - 46.03.313, 46.03.460 -
 20 46.03.475, [OR] AS 46.14, **or under the program authorized by AS 46.03.020(13),**
 21 is liable, in a civil action, to the state for a sum to be assessed by the court of not less
 22 than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for
 23 each day after that on which the violation continues, and that shall reflect, when
 24 applicable,

25 (1) reasonable compensation in the nature of liquidated damages for
 26 any adverse environmental effects caused by the violation, that shall be determined by
 27 the court according to the toxicity, degradability and dispersal characteristics of the
 28 substance discharged, the sensitivity of the receiving environment, and the degree to
 29 which the discharge degrades existing environmental quality; for a violation relating to
 30 AS 46.14, the court, in making its determination under this paragraph, shall also
 31 consider the degree to which the discharge causes harm to persons or property; for a

1 violation of AS 46.03.463, the court, in making its determination under this paragraph,
 2 shall also consider the volume of the graywater, sewage, or other wastewater
 3 discharged; this paragraph may not be construed to limit the right of parties other than
 4 the state to recover for personal injuries or damage to their property;

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

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

9 (4) the need for an enhanced civil penalty to deter future
 10 noncompliance.

11 * **Sec. 9.** AS 46.03.790(a) is amended to read:

12 (a) Except as provided in (d) of this section, a person is guilty of a class A
 13 misdemeanor if the person with criminal negligence

14 (1) violates a provision of this chapter, AS 46.04, AS 46.09, or
 15 AS 46.14, a regulation or order of the department, or a permit, approval, or
 16 acceptance, or a term or condition of a permit, approval, or acceptance issued under
 17 this chapter, AS 46.04, AS 46.09, or AS 46.14;

18 (2) fails to provide information or provides false information required
 19 by AS 46.03.465, 46.03.475, 46.03.755, AS 46.04, or AS 46.09, or by a regulation
 20 adopted by the department under AS 46.03.020(13), 46.03.460 [AS 46.03.460],
 21 46.03.755, AS 46.04, or AS 46.09;

22 (3) makes a false statement or representation in an application, label,
 23 manifest, record, report, permit, or other document filed, maintained, or used for
 24 purposes of compliance with AS 46.03.250 - 46.03.313 applicable to hazardous wastes
 25 or a regulation adopted by the department under AS 46.03.250 - 46.03.313;

26 (4) makes a false statement, representation, or certification in an
 27 application, notice, record, report, permit, or other document filed, maintained, or used
 28 for purposes of compliance with AS 46.03.460 - 46.03.475, AS 46.14, or a regulation
 29 adopted under AS 46.03.020(13), 46.03.460, [AS 46.03.460] or AS 46.14; or

30 (5) renders inaccurate a monitoring device or method required to be
 31 maintained under AS 46.14, a regulation adopted under AS 46.03.020(13) or

1 AS 46.14, [OR] a permit issued by the department or a local air quality control
2 program under AS 46.14, **or a permit issued by the department under the program**
3 **authorized by AS 46.03.020(13).**

4 * **Sec. 10.** AS 46.03.790(h) is amended to read:

5 (h) Notwithstanding AS 12.55.035(b), upon conviction of a violation **of a**
6 **regulation adopted under AS 46.03.020(13), or of a violation** related to AS 46.14
7 and described in (a) of this section, a defendant who is not an organization may be
8 sentenced to pay a fine of not more than \$10,000 for each separate violation.

9 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).