

CS FOR HOUSE BILL NO. 546(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/21/04

Referred: Finance

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

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 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 Environmental Protection Agency 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 the 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(12).**

4 * **Sec. 3.** AS 46.03.020 is amended to read:

5 **Sec. 46.03.020. Powers of the department.** The department may

6 (1) enter into contracts and compliance agreements necessary or
 7 convenient to carry out the functions, powers, and duties of the department;

8 (2) review and appraise programs and activities of state departments
 9 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
 10 determining the extent to which the programs and activities are contributing to the
 11 achievement of that policy and to make recommendations to the departments and
 12 agencies, including but not limited to, environmental guidelines;

13 (3) consult with and cooperate with

14 (A) officials and representatives of any nonprofit corporation or
 15 organization in the state;

16 (B) persons, organizations, and groups, public and private,
 17 using, served by, interested in, or concerned with the environment of the state;

18 (4) appear and participate in proceedings before any state or federal
 19 regulatory agency involving or affecting the purposes of the department;

20 (5) undertake studies, inquiries, surveys, or analyses it may consider
 21 essential to the accomplishment of the purposes of the department; these activities
 22 may be carried out by the personnel of the department or in cooperation with public or
 23 private agencies, including educational, civic, and research organizations, colleges,
 24 universities, institutes, and foundations;

25 (6) at reasonable times, enter and inspect with the consent of the owner
 26 or occupier any property or premises to investigate either actual or suspected sources
 27 of pollution or contamination or to ascertain compliance or noncompliance with a
 28 regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating
 29 to secret processes or methods of manufacture discovered during investigation is
 30 confidential;

31 (7) conduct investigations and hold hearings and compel the

1 attendance of witnesses and the production of accounts, books, and documents by the
2 issuance of a subpoena;

3 (8) advise and cooperate with municipal, regional, and other local
4 agencies and officials in the state, to carry out the purposes of this chapter;

5 (9) act as the official agency of the state in all matters affecting the
6 purposes of the department under federal laws now or hereafter enacted;

7 (10) adopt regulations necessary to effectuate the purposes of this
8 chapter, including, by way of example and not limitation, regulations providing for

9 (A) control, prevention, and abatement of air, water, or land or
10 subsurface land pollution;

11 (B) safeguard standards for petroleum and natural gas pipeline
12 construction, operation, modification, or alteration;

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

16 (D) collection and disposal of sewage and industrial waste;

17 (E) collection and disposal of garbage, refuse, and other
18 discarded solid materials from industrial, commercial, agricultural, and
19 community activities or operations;

20 (F) control of pesticides;

21 (G) other purposes as may be required for the implementation
22 of the policy declared in AS 46.03.010;

23 (H) handling, transportation, treatment, storage, and disposal of
24 hazardous wastes;

25 (11) [REPEALED

26 (12)] inspect the premises of sellers and suppliers of paint, vessels, and
27 marine and boating supplies, and take other actions necessary to enforce
28 AS 46.03.715;

29 **(12) notwithstanding any other provision of law, take all actions**
30 **necessary to receive authorization from the administrator of the United States**
31 **Environmental Protection Agency to administer and enforce a partial National**

1 **Pollutant Discharge Elimination System program in accordance with 33 U.S.C.**
 2 **1342 (sec. 402, Clean Water Act) and 40 C.F.R. Part 123 covering discharges**
 3 **associated with timber-related activities.**

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

5 (a) An application for a permit shall be made on forms prescribed by the
 6 department or on forms prescribed by the United States Environmental Protection
 7 Agency and must contain the name and address of the applicant, a description of the
 8 applicant's operations, the quantity and type of waste material sought to be disposed
 9 of, the proposed method of disposal, and any other information considered necessary
 10 by the department. [APPLICATION FOR PERMIT SHALL BE MADE AT LEAST
 11 60 DAYS BEFORE COMMENCEMENT OF A PROPOSED DISCHARGE.] The
 12 applicant may request that a general permit be issued under AS 46.03.100(h), or the
 13 department may, on its own initiative, propose that an applicant be issued a general
 14 permit.

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

16 (b) **After** [UPON] receipt of a proper application for an individual or general
 17 permit or [UPON] a determination by the department that a general permit should be
 18 proposed, the department shall publish notice of the application or proposal **or of the**
 19 **availability of a draft permit for comment**, as applicable, in **at least** two
 20 [SEPARATE] publications of a newspaper of general circulation within the general
 21 area in which the disposal of waste material is proposed to be made. The notice shall
 22 also be posted on the Alaska Online Public Notice System maintained under
 23 AS 44.62.175 and may also be published in other appropriate information media. The
 24 notice must include a statement that a person who wants to present views to the
 25 department **with** [IN] regard to the application, [OR] proposal, **or draft permit** may
 26 do so in writing to the department within 30 days after the **first** [SECOND]
 27 publication of the notice. The written response entitles the writer to a copy of the
 28 application **or draft permit**, and, in the case of an application or proposal to issue a
 29 general permit, the application or proposal shall also be posted by the department on
 30 the Internet at the same time that notice is published under this subsection.

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

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

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

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

15 The department may terminate a permit upon 30 days' written notice if the department
 16 finds

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

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

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

22 **(4) for a permit issued under a federally approved program under**
 23 **33 U.S.C. 1342 (sec. 402, Clean Water Act), that**

24 **(A) a change in any condition of the receiving environment**
 25 **or the quality of discharge requires either a temporary or permanent**
 26 **reduction of the authorization or elimination of the authorized discharge;**
 27 **or**

28 **(B) the permittee had made a material misrepresentation of**
 29 **fact to the department relevant to the authorized activity at any time.**

30 (b) The department may modify a permit

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

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

3 **(3) issued under a federally approved program under 33 U.S.C.**
 4 **1342 (sec. 402, Clean Water Act), as provided in regulations adopted under**
 5 **AS 46.03.020(12) for timber-related activities.**

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

7 (e) A person who violates or causes or permits to be violated a provision of
 8 AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful
 9 order of the department, or a permit, approval, or acceptance, or term or condition of a
 10 permit, approval, or acceptance issued under AS 46.03.250 - 46.03.313, 46.03.460 -
 11 46.03.475, [OR] AS 46.14, **or under the program authorized by AS 46.03.020(12),**
 12 is liable, in a civil action, to the state for a sum to be assessed by the court of not less
 13 than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for
 14 each day after that on which the violation continues, and that shall reflect, when
 15 applicable,

16 (1) reasonable compensation in the nature of liquidated damages for
 17 any adverse environmental effects caused by the violation, that shall be determined by
 18 the court according to the toxicity, degradability and dispersal characteristics of the
 19 substance discharged, the sensitivity of the receiving environment, and the degree to
 20 which the discharge degrades existing environmental quality; for a violation relating to
 21 AS 46.14, the court, in making its determination under this paragraph, shall also
 22 consider the degree to which the discharge causes harm to persons or property; for a
 23 violation of AS 46.03.463, the court, in making its determination under this paragraph,
 24 shall also consider the volume of the graywater, sewage, or other wastewater
 25 discharged; this paragraph may not be construed to limit the right of parties other than
 26 the state to recover for personal injuries or damage to their property;

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

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

31 (4) the need for an enhanced civil penalty to deter future

1 noncompliance.

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

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

5 (1) violates a provision of this chapter, AS 46.04, AS 46.09, or
6 AS 46.14, a regulation or order of the department, or a permit, approval, or
7 acceptance, or a term or condition of a permit, approval, or acceptance issued under
8 this chapter, AS 46.04, AS 46.09, or AS 46.14;

9 (2) fails to provide information or provides false information required
10 by AS 46.03.465, 46.03.475, 46.03.755, AS 46.04, or AS 46.09, or by a regulation
11 adopted by the department under **AS 46.03.020(12), 46.03.460** [AS 46.03.460],
12 46.03.755, AS 46.04, or AS 46.09;

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

17 (4) makes a false statement, representation, or certification in an
18 application, notice, record, report, permit, or other document filed, maintained, or used
19 for purposes of compliance with AS 46.03.460 - 46.03.475, AS 46.14, or a regulation
20 adopted under **AS 46.03.020(12), 46.03.460,** [AS 46.03.460] or AS 46.14; or

21 (5) renders inaccurate a monitoring device or method required to be
22 maintained under AS 46.14, a regulation adopted under **AS 46.03.020(12) or**
23 AS 46.14, [OR] a permit issued by the department or a local air quality control
24 program under AS 46.14, **or a permit issued by the department under the program**
25 **authorized by AS 46.03.020(12).**

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

27 (h) Notwithstanding AS 12.55.035(b), upon conviction of a violation **of a**
28 **regulation adopted under AS 46.03.020(12) or of a violation** related to AS 46.14
29 and described in (a) of this section, a defendant who is not an organization may be
30 sentenced to pay a fine of not more than \$10,000 for each separate violation.

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