



LAWS OF ALASKA

2005

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Chapter No.

95

AN ACT

Relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to regulation of the discharge of pollutants under the National Pollutant Discharge
2 Elimination System.

3 _____

4 * **Section 1.** AS 44.46.025(a) is amended to read:

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

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

13 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
14 46.14.510;

- 1 (3) drinking water systems under AS 46.03.720;
- 2 (4) water and wastewater operator training under AS 46.30;
- 3 (5) waste management and disposal authorizations under
- 4 AS 46.03.100;
- 5 (6) certification of laboratories conducting environmental analyses of
- 6 public drinking water systems or of oil or hazardous substances, or conducting other
- 7 analyses required by the department;
- 8 (7) certification of federal permits or authorizations under 33 U.S.C.
- 9 1341 (sec. 401, Clean Water Act);
- 10 (8) regulation of point source discharges of pollutants [ASSOCIATED
- 11 WITH TIMBER-RELATED ACTIVITIES] under the program authorized by
- 12 AS 46.03.020(12).

13 * **Sec. 2.** AS 46.03.020 is amended to read:

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

- 15 (1) enter into contracts and compliance agreements necessary or
- 16 convenient to carry out the functions, powers, and duties of the department;
- 17 (2) review and appraise programs and activities of state departments
- 18 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
- 19 determining the extent to which the programs and activities are contributing to the
- 20 achievement of that policy and to make recommendations to the departments and
- 21 agencies, including [BUT NOT LIMITED TO,] environmental guidelines;
- 22 (3) consult with and cooperate with
- 23 (A) officials and representatives of any nonprofit corporation or
- 24 organization in the state;
- 25 (B) persons, organizations, and groups, public and private,
- 26 using, served by, interested in, or concerned with the environment of the state;
- 27 (4) appear and participate in proceedings before any state or federal
- 28 regulatory agency involving or affecting the purposes of the department;
- 29 (5) undertake studies, inquiries, surveys, or analyses it may consider
- 30 essential to the accomplishment of the purposes of the department; these activities
- 31 may be carried out by the personnel of the department or in cooperation with public or

1 private agencies, including educational, civic, and research organizations, colleges,
2 universities, institutes, and foundations;

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

9 (7) conduct investigations and hold hearings and compel the
10 attendance of witnesses and the production of accounts, books, and documents by the
11 issuance of a subpoena;

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

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

16 (10) adopt regulations necessary to **carry out** [EFFECTUATE] the
17 purposes of this chapter, including, by way of example and not limitation, regulations
18 providing for

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

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

23 (C) protection of public water supplies by establishing
24 minimum drinking water standards, and standards for the construction,
25 improvement, and maintenance of public water supply systems;

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

27 (E) collection and disposal of garbage, refuse, and other
28 discarded solid materials from industrial, commercial, agricultural, and
29 community activities or operations;

30 (F) control of pesticides;

31 (G) other purposes as may be required for the implementation

1 of the policy declared in AS 46.03.010;

2 (H) handling, transportation, treatment, storage, and disposal of
3 hazardous wastes;

4 (11) inspect the premises of sellers and suppliers of paint, vessels, and
5 marine and boating supplies, and take other actions necessary to enforce
6 AS 46.03.715;

7 (12) notwithstanding any other provision of law, take all actions
8 necessary to receive authorization from the administrator of the United States
9 Environmental Protection Agency to administer and enforce a [PARTIAL] National
10 Pollutant Discharge Elimination System program in accordance with 33 U.S.C. 1342
11 (sec. 402, Clean Water Act), **33 U.S.C. 1345 (sec. 405, Clean Water Act)**, [AND] 40
12 C.F.R. Part 123, **and 40 C.F.R. Part 403, as amended** [COVERING DISCHARGES
13 ASSOCIATED WITH TIMBER-RELATED ACTIVITIES].

14 * **Sec. 3.** AS 46.03.100 is amended by adding new subsections to read:

15 (h) The program developed to issue permits by the department to authorize
16 discharge of pollutants into surface waters and submitted to the United States
17 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean
18 Water Act) shall include the monitoring and reporting requirements included in the
19 permits, limited to those requirements mandated by law, including any legal
20 settlements, and those necessary to ascertain compliance with the effluent limitations
21 contained in the permit and with state water quality standards.

22 (i) A person who applies for a permit under the program may review and
23 provide comments and amendments to a draft permit and discuss the draft permit with
24 the staff of the department before that draft permit undergoes public notice and
25 comment under AS 46.03.110.

26 (j) A person who applies for a permit under the program has the opportunity to
27 review a proposed final permit and discuss it with the staff of the department before
28 the department issues the permit.

29 (k) A permit issued under the program is not automatically stayed by the filing
30 of a request for an adjudicatory hearing on the permit; a request to stay a permit issued
31 under the program shall be decided by the commissioner or the commissioner's

1 designee.

2 (l) Permits issued under this section shall be issued as expeditiously as
3 possible.

4 * **Sec. 4.** AS 46.03.120(b) is amended to read:

5 (b) The department may modify a permit or other authorization issued under
6 AS 46.03.100, or may rescind a person's authority to dispose of waste in accordance
7 with regulations adopted under AS 46.03.100(b)(3),

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

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

11 (3) **in the case of a permit** issued under a federally approved program
12 under 33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted
13 under AS 46.03.020(12) [FOR TIMBER-RELATED ACTIVITIES].

14 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 DUTIES OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. (a)

17 The Department of Environmental Conservation shall seek primacy under the National
18 Pollutant Discharge Elimination System by filing a complete application with the United
19 States Environmental Protection Agency before July 1, 2006.

20 (b) The Department of Environmental Conservation shall establish a workgroup that
21 includes representatives of permittees affected under the National Pollutant Discharge
22 Elimination System and the United States Environmental Protection Agency to meet and
23 confer as needed during the period that the Department of Environmental Conservation is
24 designing its permitting program and seeking approval of the program by the United States
25 Environmental Protection Agency. The workgroup shall provide public notification of its
26 meetings and shall make available to the public minutes of its meetings.

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

29 REPORT TO THE LEGISLATURE. Until full authority for administering the
30 National Pollutant Discharge Elimination System has been transferred to the Department of
31 Environmental Conservation, the Department of Environmental Conservation shall submit,

1 within 10 days after the date the legislature convenes in regular session, a report to both
2 houses of the legislature and the governor that includes the following information:

3 (1) the department's progress in preparing and submitting its application to the
4 United States Environmental Protection Agency by June 30, 2006;

5 (2) a description of the progress by the United States Environmental
6 Protection Agency in reviewing the state's application and the expected or actual date and
7 contents of the agency's approval; and

8 (3) the progress made by the Department of Environmental Conservation and
9 the United States Environmental Protection Agency during the five-year National Pollutant
10 Discharge Elimination System program transition period, the identification of the program
11 responsibilities that have been transferred to the Department of Environmental Conservation
12 and the program responsibilities retained by the United States Environmental Protection
13 Agency, whether the transition is proceeding on schedule, and identification of relevant
14 statutory, regulatory, or financial impediments to obtaining National Pollutant Discharge
15 Elimination System primacy as intended by the legislature.