

CS FOR HOUSE BILL NO. 153(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/17/05

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 under the National**
2 **Pollutant Discharge Elimination System; and providing for an effective date."**

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

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

6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that fulfilling
7 the state's responsibility as a trustee of the environment and manager of the state's land and
8 water resources requires greater state control over permitting programs affecting all land and
9 waters within the state, including programs such as the National Pollutant Discharge
10 Elimination System administered by the United States Environmental Protection Agency
11 under 33 U.S.C. 1342 (sec. 402, Clean Water Act).

12 (b) It is the intent of the legislature that the Department of Environmental
13 Conservation

14 (1) seek National Pollutant Discharge Elimination System primacy, with a

1 complete application for such primacy to be filed with the United States Environmental
2 Protection Agency by June 30, 2006; and

3 (2) maintain a workgroup with representatives of affected permittees, the
4 public, and the United States Environmental Protection Agency to meet in a public forum
5 following notice under AS 44.62 (Administrative Procedure Act) and confer as needed during
6 the period that the Department of Environmental Conservation is designing its permitting
7 program and seeking United States Environmental Protection Agency approval of the
8 program.

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

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

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

18 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
19 46.14.510;

20 (3) drinking water systems under AS 46.03.720;

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

22 (5) waste management and disposal authorizations under
23 AS 46.03.100;

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

27 (7) certification of federal permits or authorizations under 33 U.S.C.
28 1341 (sec. 401, Clean Water Act);

29 (8) regulation of point source discharges of pollutants [ASSOCIATED
30 WITH TIMBER-RELATED ACTIVITIES] under the program authorized by
31 AS 46.03.020(12).

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

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

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

5 (2) review and appraise programs and activities of state departments
6 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
7 determining the extent to which the programs and activities are contributing to the
8 achievement of that policy and to make recommendations to the departments and
9 agencies, including [BUT NOT LIMITED TO,] environmental guidelines;

10 (3) consult with and cooperate with

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

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

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

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

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

28 (7) conduct investigations and hold hearings and compel the
29 attendance of witnesses and the production of accounts, books, and documents by the
30 issuance of a subpoena;

31 (8) advise and cooperate with municipal, regional, and other local

1 agencies and officials in the state, to carry out the purposes of this chapter;

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

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

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

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

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

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

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

18 (F) control of pesticides;

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

21 (H) handling, transportation, treatment, storage, and disposal of
22 hazardous wastes;

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

26 (12) notwithstanding any other provision of law, take all actions
27 necessary to receive authorization from the administrator of the United States
28 Environmental Protection Agency to administer and enforce a [PARTIAL] National
29 Pollutant Discharge Elimination System program in accordance with 33 U.S.C. 1342
30 (sec. 402, Clean Water Act), **33 U.S.C. 1345 (sec. 405, Clean Water Act)**, [AND] 40
31 C.F.R. Part 123, **and 40 C.F.R. Part 403, as amended** [COVERING DISCHARGES

1 ASSOCIATED WITH TIMBER-RELATED ACTIVITIES].

2 * **Sec. 4.** AS 46.03.100 is amended by adding a new subsection to read:

3 (h) The program developed to issue permits by the department to authorize
4 discharge of pollutants into surface waters and submitted to the United States
5 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean
6 Water Act) shall include the following:

7 (1) the monitoring and reporting requirements included in the permits
8 are limited to those requirements mandated by law, including any legal settlements,
9 and those necessary to ascertain compliance with the effluent limitations contained in
10 the permit and with state water quality standards;

11 (2) a person who applies for a permit under the program has the
12 opportunity to review a draft permit and to discuss it with the staff of the department
13 before that draft permit undergoes public notice and comment under AS 46.03.110;

14 (3) a person who applies for a permit under the program or comments
15 on a draft permit has the opportunity to review a proposed final permit and to discuss
16 it with the staff of the department before the department issues the permit;

17 (4) the department shall develop in regulations a process for using
18 contractors to assist it in the development of the permit to be issued by the department;
19 and

20 (5) a permit issued under the program is not automatically stayed by
21 the filing of a request for an adjudicatory hearing on the permit; a request to stay a
22 permit issued under the program shall be decided by the commissioner or the
23 commissioner's designee.

24 * **Sec. 5.** AS 46.03.120(b) is amended to read:

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

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

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

31 (3) **in the case of a permit** issued under a federally approved program

1 under 33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted
2 under AS 46.03.020(12) [FOR TIMBER-RELATED ACTIVITIES].

3 * **Sec. 6.** AS 46.03 is amended by adding a new section to read:

4 **Sec. 46.03.125. Report.** Following the date that the Department of
5 Environmental Conservation begins administering an approved National Pollutant
6 Discharge Elimination System program and within 10 days after the date the
7 legislature convenes in regular session, the Department of Environmental
8 Conservation shall submit a report to both houses of the legislature and the governor
9 that includes the following information:

10 (1) the time between the date an initial permit application is filed and
11 the date on which a permit is issued;

12 (2) an explanation for the length of the time period if the time reported
13 under (1) of this section is greater than 18 months;

14 (3) the cost to the department for reviewing an application and issuing
15 a permit;

16 (4) the cost to a permittee for applying for and receiving a permit; and

17 (5) whether the costs reported under (3) and (4) of this section have
18 increased or decreased since the previous report and an explanation for the change.

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

21 **REPORT TO THE LEGISLATURE.** Within 10 days after the date the legislature
22 convenes in regular session, the Department of Environmental Conservation shall submit a
23 report to both houses of the legislature and the governor that includes the following
24 information:

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

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

30 (3) the progress made by the Department of Environmental Conservation and
31 the United States Environmental Protection Agency during the five-year National Pollutant

1 Discharge Elimination System program transition period, the identification of the program
2 responsibilities that have been transferred to the Department of Environmental Conservation
3 and the program responsibilities retained by the United States Environmental Protection
4 Agency, and whether the transition is proceeding on schedule.

5 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).