

CS FOR SENATE BILL NO. 110(FIN)(efd fld)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/27/05

Offered: 4/18/05

Sponsor(s): SENATE 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."**

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 and the
4 United States Environmental Protection Agency to meet and confer as needed during the
5 period that the Department of Environmental Conservation is designing its permitting
6 program and seeking United States Environmental Protection Agency approval of the
7 program.

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

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

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

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

19 (3) drinking water systems under AS 46.03.720;

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

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

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

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

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

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

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

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

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

9 (3) consult with and cooperate with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (F) control of pesticides;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) **in the case of a permit** issued under a federally approved program
31 under 33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted

1 under AS 46.03.020(12) [FOR TIMBER-RELATED ACTIVITIES].

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

4 REPORT TO THE LEGISLATURE. Until full authority for administering the
5 National Pollutant Discharge Elimination System has been transferred to the Department of
6 Environmental Conservation, the Department of Environmental Conservation shall submit,
7 within 10 days after the date the legislature convenes in regular session, a report to both
8 houses of the legislature and the governor that includes the following information:

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

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

14 (3) the progress made by the Department of Environmental Conservation and
15 the United States Environmental Protection Agency during the five-year National Pollutant
16 Discharge Elimination System program transition period, the identification of the program
17 responsibilities that have been transferred to the Department of Environmental Conservation
18 and the program responsibilities retained by the United States Environmental Protection
19 Agency, and whether the transition is proceeding on schedule.