

Original sponsor: Rules Committee by
request of Governor

Offered: 4/26/71
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 ~~HOUSE CS FOR SENATE BILL NO. 75~~

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a Department of Environmental
7 Conservation; and providing for an effective date."

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

9 * Section 1. AS 44.15.010 is amended by adding a new paragraph to read:

10 (16) Department of Environmental Conservation

11 * Sec. 2. AS 44 is amended by adding a new chapter to read:

12 CHAPTER 46. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

13 ARTICLE 1. ORGANIZATION.

14 Sec. 44.46.010. COMMISSIONER OF ENVIRONMENTAL CONSERVATION. The
15 principal executive officer of the Department of Environmental Conser-
16 vation is the commissioner of environmental conservation.

17 Sec. 44.46.020. DUTIES OF DEPARTMENT. The Department of
18 Environmental Conservation shall

19 (1) have primary responsibility for the coordination and
20 review of policies, programs and actions affecting the natural
21 environment of the state;

22 (2) have primary responsibility for the promulgation and
23 enforcement of regulations for the prevention and abatement of all
24 water, land, subsurface land and air pollution, and other sources or
25 potential sources of environmental degradation;

26 (3) plan and develop programs for the protection and control
27 of the environment of the state.

28 * Sec. 3. AS 41 is amended by adding new chapters to read:

29 CHAPTER 35. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

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1 ARTICLE 1. DECLARATION OF POLICY.

2 Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the
3 state to manage the development and use of its natural resources so
4 as to improve the present and future quality of life for its citizens,
5 by maintaining a natural environment conducive to human health, safety
6 and happiness.

7 ARTICLE 2. COMMISSIONER OF ENVIRONMENTAL CONSERVATION.

8 Sec. 41.35.020. APPOINTMENT AND TERM OF OFFICE. The commis-
9 sioner shall be appointed by the governor, subject to confirmation by
10 a majority of the members of the legislature in joint session. The
11 commissioner serves at the pleasure of the governor.

12 Sec. 41.35.030. DUTIES OF THE COMMISSIONER. The commissioner
13 shall

14 (1) supervise and control the department, and appoint and
15 employ division heads, section heads, and the technical, clerical and
16 other assistants necessary for the general administration of the
17 department;

18 (2) establish divisions and sections in addition to those
19 provided for under sec. 110 of this chapter, as may be necessary to
20 carry out the responsibilities of the department;

21 (3) undertake any other actions necessary to carry out the
22 provisions of this chapter.

23 ARTICLE 3. BOARD OF ENVIRONMENTAL REVIEW.

24 Sec. 41.35.040. CREATION AND TERM OF OFFICE. There is created
25 in the Department of Environmental Conservation the Board of Environ-
26 mental Review consisting of five members appointed by the governor
27 without regard to political affiliation for overlapping five-year terms.
28 The terms of the first board members shall be one, two, three, four
29 and five years as determined by the drawing of lots. Initial terms

1 date from February 1, immediately following appointment.

2 Sec. 41.35.050. CONFIRMATION OF BOARD MEMBERS. Members of the
3 board shall be confirmed by a majority of the members of the legis-
4 lature in joint session.

5 Sec. 41.35.060. QUALIFICATIONS OF BOARD MEMBERS. Members of
6 the board shall be citizens of the state who have demonstrated a
7 continuing concern for the maintenance of a quality environment. In
8 addition, one member of the board shall be appointed from each of the
9 following occupational or professional categories:

10 (1) the life sciences, including medicine;

11 (2) the social sciences;

12 (3) the physical sciences, including engineering.

13 Sec. 41.35.070. ORGANIZATION OF THE BOARD. The board shall
14 elect a chairman from among its members. Four members of the board
15 constitutes a quorum. Actions of the board shall be by majority vote.

16 Sec. 41.35.080. BOARD MEETINGS. The board shall meet at least
17 four times a calendar year and at least once every 120 days.

18 Sec. 41.35.090. COMPENSATION OF BOARD MEMBERS. Members of the
19 board shall receive per diem and travel expenses as authorized for
20 other boards and commissions.

21 ARTICLE 4. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

22 Sec. 41.35.100. POWERS OF THE DEPARTMENT. The department may

23 (1) enter into contracts necessary or convenient to carry
24 out the functions, powers and duties of the department;

25 (2) consult with and cooperate with

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

28 (B) persons, organizations and groups, public and
29 private, using, served by, interested in or concerned with the

1 environment of the state;

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

5 (4) undertake studies, inquiries, surveys or analyses it
6 may consider essential to the accomplishment of the purposes of the
7 department; these activities may be carried out by the personnel of
8 the department or in cooperation with any public or private agencies,
9 including educational, civic and research organizations, colleges,
10 universities, institutes and foundations;

11 (5) at reasonable times enter and inspect any property or
12 premises to investigate either actual or suspected sources of pollution
13 or contamination or to ascertain compliance or noncompliance with a
14 regulation promulgated under this chapter and chs. 40 - 55 of this
15 title; no person may refuse entry or access to an authorized represen-
16 tative of the department who requests entry for purposes of inspection
17 and who presents appropriate credentials; nor may a person interfere
18 with the inspection; inspection of private dwellings is not permitted
19 without a search warrant; information relating to secret processes or
20 methods of manufacture discovered during investigation is confidential;

21 (6) develop public awareness and understanding of the
22 environment and environmental problems;

23 (7) conduct investigations and hold hearings and compel the
24 attendance of witnesses and the production of accounts, books and
25 documents by the issuance of a subpoena;

26 (8) advise and cooperate with municipal, regional and other
27 local agencies and officials within the state, to carry out the
28 purposes of this chapter;

29 (9) act as the official agency of the state in all matters

1 affecting the purposes of the department under any existing or future
2 federal law or regulation;

3 (10) require the submission by any person of reports or
4 other information of activities within areas of department concern.

5 Sec. 41.35.110. ORGANIZATION OF THE DEPARTMENT. The Department
6 of Environmental Conservation shall have the following divisions:

7 (1) division of environmental review;

8 (2) division of enforcement.

9 Sec. 41.35.120. DIVISION OF ENVIRONMENTAL REVIEW. The division
10 of environmental review shall

11 (1) make assistance available to the public in preparing
12 and submitting applications for review under the provisions of secs.
13 140 - 230 of this chapter;

14 (2) receive and process the applications for the department;

15 (3) provide the commissioner, his designee, or the board,
16 any staff reports and expert advice necessary to properly evaluate the
17 environmental impact of actions and projects for which approval is
18 requested under this chapter;

19 (4) have primary responsibility for the research activities
20 of the department;

21 (5) study the continuing need for environmental standards,
22 policies and regulations; report the results of the studies to the
23 board, and assist the board, if it requests, in drafting standards,
24 policies and regulations;

25 (6) provide staff support to the board in all matters that
26 may come before it;

27 (7) assume other duties which the commissioner may assign.

28 Sec. 41.35.130. DIVISION OF ENFORCEMENT. The division of
29 enforcement shall

1 (1) have primary responsibility for the enforcement of
2 this chapter and chs. 40 - 55 of this title, and applicable regulations
3 promulgated under those chapters, for the purpose of maintaining the
4 quality of the environment;

5 (2) have primary responsibility for the conduct of all
6 field investigations necessary to carry out the purposes of this
7 chapter and chs. 40 - 55 of this title;

8 (3) enforce the review requirements of secs. 140 - 290 of
9 this chapter, including compliance with the terms and conditions under
10 which applications submitted under secs. 140 - 150 of this chapter are
11 approved.

12 Sec. 41.35.140. ACTIONS OF STATE SUBJECT TO APPROVAL. (a) No
13 agency of the state, including a quasi-judicial or regulatory agency,
14 may, before review and approval of the department,

15 (1) construct highways, roads, airports, dams, waterworks,
16 sewer systems, canals, oil and gas transportation facilities, power
17 generation or transmission facilities, industrial installations,
18 harbors, wharves, docks, railroads, waste disposal facilities, bridges
19 or other major public works, or permit the construction of these
20 facilities on land controlled by the state or grant permits or other
21 authorization for this construction on land not controlled by the
22 state;

23 (2) adopt any land use plan, classify land, or reclassify
24 land;

25 (3) dispose of any beneficial interest in land or allow
26 the use of public land for any purpose unless the disposal or use is
27 permitted under a land use plan and land classification already
28 approved by the department;

29 (4) alter or authorize the alteration or appropriation of

1 public waters or water flows, including ground water, unless the
2 alteration or appropriation is consistent with a water use plan
3 approved by the department.

4 (b) Nothing in this section limits or revokes an existing permit
5 for or right to the use of land or waters controlled by the state or
6 extinguishes a beneficial interest of a party in the land or waters,
7 or prohibits the renewal of an existing lease or permit..

8 Sec. 41.35.150. ENVIRONMENTAL DEGRADATION PROHIBITED. No person
9 may pollute or add to the pollution of the air, land, subsurface land
10 or waters of the state, or cause the degradation of, or act in such a
11 manner as to create a significant hazard of degradation to the quality
12 of the environment unless

13 (1) the action does not violate an environmental quality
14 standard as established in an environmental quality regulation promul-
15 gated by the board; or

16 (2) the action is approved or authorized by permit issued
17 by the department.

18 Sec. 41.35.160. GRANTING OF PERMIT OR APPROVAL. (a) The depart-
19 ment shall grant a permit for an act or acts which result or may result
20 in pollution or degradation of the environment under sec. 150 of this
21 chapter or any regulation promulgated under this chapter or chs. 40 -
22 55 of this title or shall approve actions prohibited under sec. 140
23 of this chapter only if it is demonstrated that the benefits accruing to
24 the general public from such actions exceed their costs. The board
25 shall establish standards concerning the measurement and evaluation
26 of these costs and benefits. Costs in this context means the direct
27 or indirect detriments or burdens placed on or affecting the interests
28 of the general public, with reference to aesthetic and social values
29 as well as purely economic loss, and not necessarily computed according

1 to the greatest dollar value.

2 (b) The department may specify in a permit the terms and condi-
3 tions under which the rights granted by the permit may be exercised,
4 and if the permit is for the disposal of wastes in the waters of the
5 state, it may provide for the payment to the state of fees appropriate
6 and necessary to allocate the limited waste carrying capacity of the
7 waters in question among competing users or uses.

8 Sec. 41.35.170. APPLICATION FOR PERMIT OR APPROVAL. (a) A
9 person who wishes to proceed with actions prohibited by secs. 140 -
10 150 of this chapter shall submit an application for authority to
11 proceed, on forms prescribed by the commissioner. On receipt of an
12 application, the commissioner shall publish notice in two newspapers
13 of general circulation in the area to be affected by the proposed
14 action or, if no newspaper exists in the area to be affected, post
15 the notice in a public place and publish the notice in the nearest
16 newspaper of general circulation, of (1) the location of the proposed
17 action; (2) a description of the character and nature of the action;
18 (3) a summary of the environmental quality standard or regulation
19 which the action may violate, if any; and (4) a statement that the
20 application may be administratively approved without a hearing unless
21 a protest is received by the commissioner within 30 days from the
22 date of first publication. Fees for publication of notice shall be
23 paid by the applicant.

24 (b) The notice required in this section shall be mailed to every
25 person who has filed a request for notice of applications for permits
26 filed under secs. 140 - 150 of this chapter.

27 Sec. 41.35.180. ADMINISTRATIVE REVIEW OF APPLICATION. If no
28 protests to the proposed action are received by the department within
29 30 days of the date of publication, the commissioner or his designee

1 may, with or without modifications, approve the application for
2 authority under sec. 140 of this chapter or issue a permit under sec.
3 150 of this chapter. Unless the commissioner or his designee deter-
4 mines that a hearing is in the best interests of the state, an
5 unprotested application shall be acted on by the commissioner within
6 60 days from the date it is received by the department.

7 Sec. 41.35.190. ADMINISTRATIVE HEARING. (a) If a protest has
8 been received or the commissioner or his designee considers it to be
9 in the best interests of the state to hold a hearing on the action, a
10 hearing on the application shall be scheduled within a reasonable
11 time and notices of the hearing published, and, if necessary, posted
12 as provided in sec. 170 of this chapter, at least 10 days before the
13 hearing date. The hearing shall be held in the population center
14 nearest the area to be affected by the proposed action.

15 (b) Any party may testify or present written evidence and
16 exhibits at a hearing held under this section if the testimony, written
17 evidence, or exhibits are relevant in determining the costs and
18 benefits of the project or actions under consideration. The commis-
19 sioner or his designee shall render a decision on the application
20 within 20 days after the close of the hearing.

21 (c) Rules of evidence applicable under the Administrative
22 Procedure Act (AS 44.62) apply to a hearing held before the commis-
23 sioner or his designee under this chapter.

24 (d) In the interest of expeditious handling of an application,
25 the commissioner may conduct a hearing held under this section jointly
26 with the hearing or similar proceeding of another state or federal
27 agency on the same subject, provided the notice requirements of secs.
28 170 and 190 of this chapter are met and that the holding of a joint
29 hearing will in no way limit the right of possible protestants to be

1 heard.

2 Sec. 41.35.200. BOARD REVIEW OF ADMINISTRATIVE DECISION. If an
3 application against which protest is made is approved in whole or
4 in part by the commissioner or his designee, notice of the decision
5 shall be mailed to all board members within five days from the date
6 of decision. An administrative decision by the commissioner or his
7 designee becomes final after 30 days unless

8 (1) the applicant appeals the administrative decision to
9 the board; or

10 (2) a majority of the board gives written notice to the
11 commissioner of their desire to review the administrative decision;
12 if review is initiated by the applicant's appeal, the board shall hear
13 the applicant's case within 120 days of receiving his notice of
14 appeal; if review is initiated by majority request of the board, the
15 board shall meet to review the decision within 30 days from the date
16 that a majority of its members have requested review.

17 Sec. 41.35.210. REVIEW PROCEDURES TO BE FOLLOWED BY BOARD. (a)
18 In reviewing an application the board shall consider

19 (1) the original application;
20 (2) the record of the administrative hearing;
21 (3) the administrative decision of the commissioner or his
22 designee;

23 (4) any additional testimony or exhibits that the applicant
24 may wish to present.

25 (b) In addition, in reviewing an application the board may in its
26 discretion consider any additional testimony or exhibits from other
27 persons that is or may be relevant to an evaluation of the benefits
28 and costs of the action or project proposed in the application.

29 (c) In making its decision the board may sustain, modify or

1 overturn the administrative decision of the commissioner or his desig-
2 nee, and shall render a decision sustaining, modifying or overturning
3 the administrative decision within 20 days from the date it concludes
4 its review of the administrative decision of the commissioner or his
5 designee. Board action becomes final within 30 days from the date it
6 renders its decision unless further appeal proceedings are initiated
7 by the applicant.

8 Sec. 41.35.220. APPEAL TO THE GOVERNOR. Within 30 days from
9 the date the board renders its decision, the applicant may notify the
10 commissioner of his desire to appeal the decision to the governor.
11 Upon receiving the notice of appeal, the commissioner shall forward
12 the application together with a copy of the written record of the
13 departmental proceedings on it to the governor for his consideration.
14 The governor may sustain, modify or overturn the board's decision.
15 If the governor modifies or overturns the board's decision he shall
16 publish his reasons for doing so. Failure of the governor to act
17 within 60 days after receiving the appeal constitutes final approval
18 of the board's decision.

19 Sec. 41.35.230. RIGHT TO RESUBMIT APPLICATION. Nothing in this
20 chapter shall be construed to prevent an applicant from withdrawing
21 or resubmitting an application regardless of prior disposition of the
22 application in the review process.

23 Sec. 41.35.240. TERMINATION OF PERMITS. No permit issued for
24 an action prohibited under this chapter or chs. 40 - 55 of this title
25 or applicable regulations promulgated under this chapter or chs. 40 -
26 55 of this title shall be

27 (1) valid for more than three years from the date it is
28 issued;

29 (2) revoked, unless the division of enforcement finds

1 (A) that the permit was obtained by misrepresentation
2 or that the applicant failed to disclose fully all facts within
3 his knowledge, relevant to the application; or

4 (B) that the terms and conditions of the permit have
5 been violated.

6 Sec. 41.35.250. PENALTIES AND LIABILITY FOR DAMAGE. (a) A
7 person who commits an act prohibited under this chapter or chs. 40 -
8 55 of this title or applicable regulations promulgated under those
9 chapters or violates the terms of a permit issued under sec. 160 of
10 this chapter is guilty of a misdemeanor and upon conviction is punish-
11 able by a fine of not more than \$1,000, depending on the severity of
12 the violation, or by imprisonment for not more than 30 days, or by
13 both.

14 (b) Each day on which a violation of the provisions of this
15 chapter and chs. 40 - 55 of this title or applicable regulations
16 promulgated under those chapters occurs may be considered a separate
17 and additional violation.

18 (c) In addition to the penalties imposed by this section, a
19 person convicted of a violation under this chapter or chs. 40 - 55 of
20 this title or applicable regulations promulgated under those chapters
21 is liable to the state in a civil action for damages resulting from
22 the action, and if the act was wilful, is liable to the state for
23 treble damages.

24 (d) Liability for damages under (c) of this section shall include
25 an amount equal to the sum of money required to restock injured land
26 or waters, to replenish a damaged or degraded resource, or to otherwise
27 restore the environment of the state to its condition before the injury,
28 and may include costs associated with abatement and containment of a
29 pollutant for which the person is responsible.

1 (e) This section shall not apply in cases where penalties are
2 otherwise specified in this chapter and chs. 40 - 55 of this title.

3 Sec. 41.35.260. ENFORCEMENT. If the division of enforcement
4 finds that a violation has occurred under this chapter or chs. 40 - 55
5 of this title or an applicable regulation promulgated under those
6 chapters, the commissioner may notify the attorney general who, upon
7 such notification, shall institute appropriate civil or criminal action,
8 or both.

9 Sec. 41.35.270. EMERGENCY POWERS. (a) If the division of
10 enforcement finds, after investigation, that a person is causing or
11 maintaining a condition, or engaging in an activity which, in the judg-
12 ment of its director, presents an imminent or present danger to the
13 health or welfare of the people of the state or would result in or be
14 likely to result in irreversible or irreparable damage to the natural
15 environment, and it appears to be prejudicial to the interests of the
16 people of the state to delay action until the action or activity can
17 be proscribed by the promulgation of an environmental quality regula-
18 tion by the board, the commissioner may, without prior hearing, declare
19 an emergency and order the person by notice to discontinue, abate or
20 alleviate the condition or activity. The person shall immediately
21 discontinue the condition or activity.

22 (b) If a person, after receipt of adequate notice of the activity
23 or condition, fails to promptly discontinue, abate or alleviate the
24 condition or activity described in (a) of this section, he is punishable
25 as specified in sec. 250 of this chapter.

26 (c) Upon the request of the department the attorney general may
27 bring an action for an injunction against a person violating sec. 270
28 of this chapter or violating an order or determination of the depart-
29 ment.

1 (d) An emergency order issued under this section shall remain
2 in force only until the next meeting of the board, and shall be con-
3 sidered as the first order of business at the meeting.

4 Sec. 41.35.280. ACTIONABLE RIGHTS. The provisions of this
5 chapter and chs. 40 - 55 of this title do not estop the state,
6 persons or political subdivisions of the state in the exercise of
7 their rights to suppress nuisances, to seek damages, or to otherwise
8 abate or recover for the effects of pollution or other environmental
9 degradation.

10 Sec. 41.35.290. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE
11 ACT. Except as otherwise specifically provided in this chapter and
12 chs. 40 - 55 of this title, the Administrative Procedure Act
13 (AS 44.62) governs the activities and the proceedings of the depart-
14 ment.

15 CHAPTER 40. WATER POLLUTION CONTROL.

16 Sec. 41.40.010. DECLARATION OF PUBLIC POLICY. It is the public
17 policy of the state to maintain reasonable standards of purity of the
18 waters of the state consistent with public health and public enjoyment,
19 the propagation and protection of fish and wildlife, including birds,
20 mammals and other terrestrial and aquatic life, and the industrial
21 development of the state, and to require the use of all known available
22 and reasonable methods to prevent and control the pollution of the
23 waters of the state.

24 Sec. 41.40.020. AUTHORITY OF DEPARTMENT. The department has
25 jurisdiction to abate and prevent the pollution of the waters of the
26 state. Its authority includes but is not limited to the authority
27 set out in this chapter.

28 Sec. 41.40.030. WATER QUALITY AND PURITY STANDARDS. After
29 consultation with the division of environmental review the board may

1 by regulation classify or reclassify the waters of the state,
2 including ground waters, with respect to their present and prospective
3 utilization, their geographic locale, and their natural characteristics,
4 and establish by regulation minimum standards of quality and purity
5 and determine the optimum characteristics and properties appropriate
6 to the most beneficial utilization of waters so classified.

7 Sec. 41.40.040. PERMIT REQUIRED TO ALTER WATER QUALITY. No
8 person shall, without a permit issued by the department under
9 AS 41.35.160, act in such a manner as to reduce, create a significant
10 hazard of reducing, or contribute to the reduction of the quality
11 and purity of public waters, including ground waters, below the
12 minimum standards established by board regulation for those waters.
13 When optimum characteristics and properties appropriate to the
14 most beneficial utilization of waters have been established in lieu
15 of or in addition to quality and purity standards, any action which
16 lessens the appropriateness, as defined by the board, of the charac-
17 teristics and properties of the water is similarly prohibited, as is
18 any action which creates a significant hazard of reducing or lessening
19 of the appropriateness, as defined by the board under this section.

20 Sec. 41.40.050. GRANTS AND LOANS FOR WATER SUPPLY AND SEWERAGE
21 SYSTEMS. (a) The department may pay, as funds are available, 25 per
22 cent of the estimated reasonable cost, as determined by the appropriate
23 federal authority, of each waste treatment works project approved for
24 a federal grant by the Federal Water Quality Administration or its
25 predecessor, the Federal Water Pollution Control Administration, and
26 on which construction was initiated after June 30, 1967. As funds are
27 available, the department may lend on an interest-free basis for a
28 project approved after June 30, 1970 any part of an anticipated federal
29 grant. Money received from the Federal Water Quality Administration

1 for the project after the loan is given must be used to repay the
2 loan, but the loan need be repaid only to the extent of this federal
3 assistance.

4 (b) The department may pay to any municipality, as funds are
5 available, up to the lesser of 25 per cent of the estimated cost or
6 50 per cent of the estimated cost not borne by the federal government,
7 if there is federal assistance, of water systems, including collection
8 and impounding facilities, and of those portions of sewerage systems
9 not covered by (a) of this section. The estimated cost of any part
10 of a system will be as determined by the federal agency which gives
11 the most monetary assistance or, if none, by the department. Systems
12 shall be constructed according to plans and specifications approved
13 by the federal agency which gives the most monetary assistance or,
14 if none, by the department.

15 (c) There is a water supply and sewerage system fund created
16 in the department to carry out the purposes of this section.

17 Sec. 41.40.060. CONSTRUCTION OF CERTAIN FACILITIES PROHIBITED.
18 No person may construct, extend, install or operate a sewage system
19 or treatment works, or any part of a sewage system or treatment
20 works until plans for it are submitted to the department for review,
21 and the department approves them in writing and issues a written
22 permit. The department may waive the requirement that plans be sub-
23 mitted to it.

24 Sec. 41.40.070. POLLUTION PROHIBITED. It is unlawful for a
25 person to deposit in, cause to be deposited in, permit to pass into,
26 or place where it can pass into the waters of the state petroleum,
27 acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a
28 residuary product of petroleum in a manner so as to constitute
29 pollution as defined in this chapter. Pollution caused by an act of

1 God or by circumstances beyond the control of the person in charge,
2 shall be considered a defense to a charged violation.

3 Sec. 41.40.080. BALLAST WATER DISCHARGE. (a) No person may
4 pollute or add to the pollution of waters of the state by discharging
5 from any sea-going vessel ballast water, tank-cleaning waste water
6 or other waste containing oil in excess of 50 parts per million of
7 oily residue. This subsection does not apply to fishing vessels of
8 less than 300 gross tons.

9 (b) Except as provided in (c) of this section, no vessel may
10 take on oil, petroleum products, or their by-products as cargo unless
11 it arrives in ports in the state without having discharged ballast at
12 sea, and the master of the vessel certifies that fact on forms pro-
13 vided by the department.

14 (c) Vessels equipped with tanks used exclusively for ballast
15 or capable of producing ballast with an oil content less than that
16 provided for in (a) of this section may discharge that ballast at
17 sea, including the waters of the state, if it meets the standards of
18 (a) of this section and the master of the vessel certifies that fact
19 on forms provided by the department.

20 (d) A person in charge of a sea-going vessel or of an onshore
21 or offshore facility, as soon as he has knowledge of any dis-
22 charge from the vessel or facility in violation of a provision
23 of this chapter shall immediately notify the department of the
24 discharge.

25 Sec. 41.40.090. PENALTIES. (a) A person who violates secs.
26 70 - 80 of this chapter is guilty of a misdemeanor and upon con-
27 viction is punishable by a fine of not more than \$25,000, or by
28 imprisonment for not more than one year, or by both. Each unlawful
29 act constitutes a separate offense.

1 (b) In addition to the penalties provided in (a) of this
2 section, a person who violates secs. 70 - 80 of this chapter is
3 liable, in a civil action, to the state for liquidated damages to
4 be assessed by the court for an amount not less than \$5,000 nor
5 more than \$100,000, depending on the severity of the violation.

6 (c) In addition to the penalties provided in (a) of this section,
7 a person who violates a provision of sec. 80 of this chapter is liable
8 to the state, in a civil action, in the case of a vessel, for damages
9 in an amount not to exceed \$100 per gross ton of the violating vessel
10 or \$14,000,000, whichever is less and in the case of an onshore or
11 offshore facility \$100 per every \$500 evaluation of the violating
12 facility or \$14,000,000, whichever is less. However, if the state
13 shows that a violation of sec. 80 of this chapter was the result of
14 wilful negligence or wilful misconduct on the part of the person
15 charged with the violation, the person is liable to the state for
16 the full amount of damages caused. In the case of wilful negligence
17 or wilful misconduct "damages", in this subsection, means costs
18 associated with the abatement, containment or removal of a pollutant
19 and reasonable restoration of the environment to its former state.

20 (d) A person who falsely certifies information required under
21 sec. 80 of this chapter, upon conviction, is punishable by a fine of
22 not more than \$25,000, or by imprisonment for not more than one year,
23 or by both. Each unlawful act constitutes a separate offense.

24 (e) Nothing in this section affects an individual's right
25 to recover damages under other applicable statutes or the common
26 law.

27 Sec. 41.40.100. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
28 FOR DAMAGES. A vessel which is used in or in aid of a violation of
29 secs. 70 - 80 of this chapter may be detained after a valid search

1 by the department, an agent of the department, a peace officer of the
2 state, or an authorized protection officer of the Department of Fish
3 and Game. Upon judgment of the court having jurisdiction that the
4 vessel was used in or the cause of a violation of secs. 70 - 80 of this
5 chapter with knowledge of its owner or under circumstances indicating
6 that the owner should reasonably have had such knowledge, the vessel
7 may be held as security for payment to the state of the amount of
8 damages assessed by the court under sec. 90(b) of this chapter, and if
9 the damages so assessed are not paid within 30 days after judgment or
10 final determination of an appeal, the vessel shall be sold at public
11 auction, or as otherwise directed by the court, and the damages paid
12 from the proceeds. The balance, if any, shall be paid by the court to
13 the owner of the vessel. The court shall permit the release of the
14 vessel upon posting of a bond set by the court in an amount not to
15 exceed \$100,000. The damages received under this section shall be
16 transmitted to the proper state officer for deposit in the general fund.
17 A vessel seized under this section shall be returned or the bond
18 exonerated if no damages are assessed under sec. 90(b) of this chapter.

19 Sec. 41.40.110. LIABILITY OF CORPORATE OFFICERS AND DIRECTORS.

20 In an action brought against a corporation under secs. 70 - 90 of this
21 chapter, the directors and officers of the corporation are jointly and
22 severally liable for the fine imposed against the corporation.

23 Sec. 41.40.120. ENFORCEMENT. This chapter may be enforced by a
24 peace officer in the state, an authorized protection officer of the
25 Department of Fish and Game, an officer of the division of enforcement,
26 or a person authorized by the commissioner.

27 Sec. 41.40.130. DEFINITIONS. In this chapter

28 (1) "other wastes" means garbage, refuse, decayed wood,
29 sawdust, shavings, bark, trimmings from logging operations, sand, lime,

1 cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, and
2 other substances not sewage or industrial waste which may cause or
3 tend to cause pollution of the waters of the state;

4 (2) "pollution" means the contamination or altering of
5 waters of the state in a manner which creates a nuisance or makes
6 waters unclean, or noxious, or impure, or unfit so that they are
7 actually or potentially harmful or detrimental or injurious to public
8 health, safety or welfare, to domestic, commercial, industrial, or
9 recreational use, or to livestock, wild animals, birds, fish, or other
10 aquatic life;

11 (3) "sewage" means the water-carried human or animal wastes
12 from residences, buildings, industrial establishments, or other places,
13 together with ground water infiltration and surface water as may be
14 present; the admixture with sewage of industrial wastes or other wastes
15 is "sewage";

16 (4) "sewer system" or "sewerage system" means pipelines or
17 conduits, pumping stations, and force mains, and all other appurtenant
18 constructions, devices, and appliances used for conducting sewage,
19 industrial waste, or other wastes to a point of ultimate disposal;

20 (5) "standard" means the measure of purity or quality for
21 waters in relation to their reasonable and necessary use as established
22 by the board;

23 (6) "treatment works" means a plant, disposal field, lagoon,
24 pumping station, constructed drainage ditch or surface water inter-
25 cepting ditch, incinerator, area devoted to sanitary land fills, or
26 other works installed for the purpose of treating, neutralizing,
27 stabilizing or disposing of sewage, industrial waste, or other wastes;

28 (7) "waters" includes lakes, bays, sounds, ponds, impounding
29 reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes

1 inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska,
2 Bering Sea and Arctic Ocean, within the territorial limits of the
3 state, and all other bodies of surface or underground water, natural
4 or artificial, public or private, inland or coastal, fresh or salt,
5 which are wholly or partially within or bordering the state or under
6 the jurisdiction of the state.

7 CHAPTER 45. AIR POLLUTION CONTROL.

8 Sec. 41.45.010. DECLARATION OF POLICY. (a) It is declared to
9 be the policy of the state and the purpose of this chapter to achieve
10 and maintain levels of air quality that will protect human health and
11 safety, and to the greatest degree practicable, prevent injury to
12 plant and animal life and property, foster the comfort and convenience
13 of the people, promote the economic and social development of the state
14 and facilitate the enjoyment of the natural attractions of the state.

15 (b) It is also declared that local and regional air pollution
16 control programs shall be supported to the extent practicable as
17 essential instruments for the securing and maintaining of appropriate
18 levels of air quality.

19 (c) To these ends it is the purpose of this chapter to

20 (1) provide for a coordinated statewide program of air
21 pollution prevention, abatement and control;

22 (2) provide for an appropriate distribution of responsibili-
23 ties among the state and local units of government;

24 (3) facilitate cooperation across jurisdictional lines in
25 dealing with problems of air pollution not confined within single
26 jurisdictions;

27 (4) provide a framework within which all values may be
28 balanced in the public interest.

29 Sec. 41.45.020. AIR POLLUTION AND EMISSION CONTROL STANDARDS.

1 After consultation with the division of environmental review, the board
2 may by regulation classify air contaminant sources, including mobile
3 sources, which may cause or contribute to air pollution, according to
4 levels and types of emissions, geographic locale, and the effects of
5 the emissions on the health and welfare of the surrounding community,
6 and may establish by regulation quantity and quality standards for the
7 emission of sources so classified.

8 Sec. 41.45.030. PERMIT REQUIRED TO EXCEED EMISSION STANDARDS.

9 No person may, without a permit issued by the department under
10 AS 41.35.160, operate an air contaminant source producing emissions
11 which exceed the quantity and quality standards established by regu-
12 lation by the board for the air contaminant source. In addition,
13 the board may prohibit the operation of a facility or device which
14 creates a significant hazard of these emissions.

15 Sec. 41.45.040. CONFIDENTIALITY OF RECORDS. Unless the owner or
16 operator expressly agrees to their publication or availability to the
17 general public, records and information in the possession of the
18 department concerning a contaminant source, which relate to production
19 or sales figures, or to processes or production unique to the owner
20 or operator, or which would tend to adversely affect his competitive
21 position, as certified by him, shall be treated as confidential by
22 the department and used only on an incamera basis in the adminis-
23 tration of this chapter. However, the department may use these
24 records and information in compiling analyses or summaries relating
25 to the general condition of the outdoor atmosphere if the owner or
26 operator is not identified and the specific information specified
27 in this section is not revealed.

28 Sec. 41.45.050. LOCAL AIR POLLUTION CONTROL PROGRAMS. (a) A
29 municipality with a population in excess of 1,000 may, within five

1 years from August 5, 1969, establish and administer within its juris-
2 diction an air pollution control program. Organized boroughs may
3 establish the air pollution control program on an areawide basis, and
4 the exercise of powers with respect to the program is not subject to
5 the restrictions on acquiring additional areawide powers specified
6 in AS 07.15.350. However, the weighted vote shall apply to the exer-
7 cise of powers as provided in AS 07.20.070(d). This program shall

8 (1) provide by ordinance for requirements compatible with,
9 or stricter or more extensive than those imposed by or under secs. 20 -
10 30 of this chapter and applicable regulations issued under secs. 20 -
11 30 of this chapter;

12 (2) provide for the enforcement of the requirements by
13 appropriate administrative and judicial process;

14 (3) provide for administrative organization, staff, financial
15 and other resources necessary to effectively and efficiently carry out
16 the program; and

17 (4) be approved by the department as adequate to meet the
18 requirements of this chapter and applicable regulations.

19 (b) Other municipalities may establish and administer air pollu-
20 tion control programs if they meet the requirements of (a)(1) - (4)
21 of this section.

22 (c) A municipality may administer all or part of its air pollu-
23 tion control program in cooperation with one or more municipalities.

24 (d) If the department finds that the location, character or
25 extent of particular concentrations of population, air contaminant
26 sources, or geographic, topographic or meteorological considerations,
27 or a combination of these factors, makes the maintenance of appropriate
28 levels of air quality impracticable without an areawide air pollution
29 control program, the department may determine the boundaries within

1 which the program is necessary and require it as the only acceptable
2 alternative to direct state administration.

3 Sec. 41.45.060. ABSENCE OF LOCAL PROGRAM. (a) If a municipality
4 authorized to establish or participate in an air pollution control
5 program under sec. 50(a) or (d) of this chapter fails to establish a
6 program within the time specified, or if the department has reason to
7 believe that an air pollution control program in force under that
8 section is inadequate to prevent and control air pollution in the
9 jurisdiction to which the program applies, or that the program is
10 being administered in a manner inconsistent with the requirements of
11 this chapter the department shall, following due notice, conduct a
12 hearing on the matter.

13 (b) If, after the hearing, the department determines that any of
14 the deficiencies enumerated in (a) of this section exist, it shall
15 require that necessary corrective action be taken within a reasonable
16 period of time, not to exceed 90 days.

17 (c) If the municipality or the district set up under sec. 50(a)
18 or (d) of this chapter fails to take the necessary corrective action
19 within the time specified the department shall administer in the
20 municipality or district all of the regulatory provisions of this
21 chapter. The department's air pollution control program shall then
22 supersede municipal air pollution ordinances, regulations, and require-
23 ments in the affected jurisdiction.

24 (d) If the department finds that the control of a particular class
25 of air contaminant source, because of its complexity or magnitude, is
26 beyond the reasonable capability of the local air pollution control
27 authorities or may be more efficiently and economically performed at
28 the state level, it may assume and retain jurisdiction over that class
29 of air contaminant source. Classifications under this subsection may

1 be either on the basis of the nature of the sources involved or on the
2 basis of their relationship to the size of the communities in which
3 they are located.

4 (e) A municipality in which the department administers the air
5 pollution control program under this section may with the approval of
6 the department establish or resume a municipal program which meets the
7 requirements of sec. 50(a) of this chapter.

8 (f) The provisions of this chapter do not nullify a local air
9 pollution program in operation on August 5, 1969, if the program meets
10 the requirements of sec. 50(a) of this chapter within two years from
11 that date. Approval required from the department shall be considered
12 granted unless the department takes explicit action to the contrary.

13 Sec. 41.45.070. STATE AND FEDERAL AID. (a) A local government
14 unit with an air pollution program meeting the requirements of this
15 chapter and the regulations issued under it may apply to the state for
16 state aid equal to a maximum of 75 per cent of the locally funded annual
17 operating cost of the program. For a joint or areawide program estab-
18 lished under sec. 50(a) of this chapter application may be made for
19 state aid equal to a maximum of 75 per cent of the locally funded
20 operating cost. In the case of a joint or areawide program the state
21 aid may be based on the cost of the entire program or, if the depart-
22 ment finds that one or more elements of separately administered programs
23 are being carried on jointly in a way that materially increases the
24 efficiency or effectiveness of the programs, it may aid the element
25 carried on under the interlocal agreement at the rate applied to joint
26 and areawide programs generally.

27 (b) Municipalities of the state and interlocal air pollution
28 control agencies established under this chapter may apply for, receive,
29 administer and expend federal aid for the control of air pollution or

1 the development and administration of programs related to that control,
2 if the application is first submitted to and approved by the department.
3 The department shall approve an application if it is consistent with
4 this chapter and other applicable requirements of law.

5 Sec. 41.45.080. CONSTRUCTION AND IMPLEMENTATION OF SEC. 70.

6 (a) Sec. 70 of this chapter may not be construed so as to create a
7 debt of the state.

8 (b) The air pollution control support account is established.
9 Funds to carry out the provisions for state aid under sec. 70 of this
10 chapter may be appropriated annually by the legislature to the account.
11 If amounts in the account are insufficient for the purpose of the state
12 aid authorized under sec. 70 of this chapter, such funds as are avail-
13 able shall be distributed pro rata among eligible local governments or
14 air pollution control districts.

15 (c) Money in the air pollution control support account which, at
16 the end of the fiscal year for which the money is appropriated, exceeds
17 the amount required for the allocations authorized in this chapter
18 reverts to the general fund.

19 Sec. 41.45.090. LIMITATIONS. This chapter does not

20 (1) grant to the department jurisdiction or authority with
21 respect to air contamination existing solely within commercial and
22 industrial plants, works or shops;

23 (2) affect the relations between employers and employees
24 with respect to or arising out of a condition of air contamination or
25 air pollution;

26 (3) supersede or limit the applicability of a law or ordi-
27 nance relating to sanitation, industrial health or safety.

28 Sec. 41.45.100. ADDITIONAL CONTAMINANT CONTROL MEASURES. (a)

29 The department may require that notice be given to it before the

1 undertaking of the construction, installation or establishment of
2 particular types or classes of new air contaminant sources specified
3 in its regulations. Within 15 days of its receipt of the notice, the
4 department may require, as a condition precedent to this undertaking,
5 the submission of plans and other information it considers necessary
6 in order to determine whether the proposed undertaking will be in
7 accord with applicable regulations in force under this chapter. If
8 within 30 days of the receipt of these plans and information the
9 department determines that the proposed undertaking will not be in
10 accord with the requirements of this chapter and applicable regulations,
11 it shall issue an order prohibiting the undertaking. Failure to issue
12 the order within the time prescribed shall be considered an approval
13 of the plans and information and the undertaking may proceed in accor-
14 dance with them.

15 (b) A person subject to an order of prohibition as prescribed in
16 (a) of this section, upon written request in accordance with applicable
17 regulations, is entitled to a hearing on the order. This procedure
18 must be followed before invoking other available legal remedies.
19 Following the hearing the order may be affirmed, modified or withdrawn.

20 (c) For the purposes of this chapter, addition to or enlargement
21 or replacement of an air contaminant source, or a major alteration
22 of one, is construed as an undertaking for the construction, installa-
23 tion or establishment of a new air contaminant source.

24 (d) Features, machines and devices constituting parts of or
25 called for by plans or other information submitted under (a) of this
26 section shall be maintained in good working order.

27 (e) Nothing in this section may be construed to authorize the
28 department to require the use of machinery, devices or equipment from
29 a particular supplier or produced by a particular manufacturer if the

1 required performance standards may be met by machinery, devices or
2 equipment available from other sources.

3 (f) The absence of or the failure to issue a regulation or order
4 under this section does not relieve a person from compliance with
5 emission control requirements or other provisions of law.

6 (g) The department may require the payment of a reasonable fee
7 for the review of plans and information required to be submitted. No
8 fee for a single review may exceed \$25.

9 Sec. 41.45.110. NUISANCES. (a) A person is guilty of creating
10 or maintaining a nuisance if he

11 (1) places or deposits upon a lot, street, beach, premises,
12 or upon, or within 200 feet of, a public highway, unless the highway
13 abuts upon tidal waters, any garbage, offal, dead animals, or any other
14 matter or thing, which would be obnoxious or cause the spread of
15 disease or in any way endanger the health of the community;

16 (2) allows to be placed or deposited upon any premises owned
17 by him or under his control garbage, offal, dead animals, or any other
18 matter or things which would be obnoxious or offensive to the public
19 or which would produce, aggravate, or cause the spread of disease or
20 in any way endanger the health of the community.

21 (b) A person who is guilty of a violation of (a) of this section
22 and neglects or refuses to abate the nuisance upon order of the depart-
23 ment is guilty of a misdemeanor and, upon conviction, is punishable by
24 a fine of not less than \$10 nor more than \$50, or by imprisonment for
25 not less than five nor more than 25 days, or by both. In addition to
26 this punishment, if a person neglects or refuses to abate the nuisance
27 upon order of the department, the court shall assess judgment against
28 the defendant for the expenses of abating the nuisance. The judgment
29 shall be enforced in the same manner as an execution in a civil action.

1 Sec. 41.45.120. DEFINITIONS. In this chapter

2 (1) "air pollution" means the presence in the outdoor atmos-
3 phere of one or more air contaminants in quantities and duration that
4 tend to be injurious to human health or welfare, animal or plant life
5 or property or would unreasonably interfere with the enjoyment of life
6 or property;

7 (2) "municipality" means an organized borough or an incor-
8 porated city outside an organized borough, and includes all classes of
9 boroughs and cities whether home rule or otherwise.

10 CHAPTER 50. PESTICIDES CONTROL.

11 Sec. 41.50.010. PURPOSE. Through the regulation of the sale of,
12 commerce in, and application of insecticides, fungicides, rodenticides,
13 nematocides, herbicides, biocides and other pesticides and broadcast
14 chemicals, it is the purpose of this chapter to assure to the public
15 the benefits to be derived from the safe, scientific and proper use
16 of pesticides and broadcast chemicals while safeguarding the public
17 health, safety and welfare, and to protect the public interest in the
18 soils, waters, forests, wildlife, agricultural and other natural
19 resources of the state.

20 Sec. 41.50.020. PESTICIDE REGULATION. (a) After consultation
21 with the division of environmental review, the board shall establish
22 regulations concerning the storage, transportation, sale, use and
23 application of pesticides or broadcast chemicals.

24 (b) No person may, without a permit issued by the department
25 under AS 41.35.160, store, transport, sell, use, or apply pesticides
26 in violation of a regulation issued by the board.

27 (c) The board may provide by regulation for the licensing of
28 persons engaged in the custom, commercial or contract spraying or
29 application of pesticides and broadcast chemicals, including the

1 requirement of a surety bond and liability insurance for the licensee.

2 Sec. 41.50.030. PROHIBITIONS. No person may, without a permit
3 issued under AS 41.35.160, store, transport, sell, use, or disseminate
4 into the atmosphere or water, by any means, dichlorodiphenyltrich-
5 loroethane (DDT), aldrin, endrin, dieldrin, lindane, heptachlor, or
6 toxaphene, 2-4-5-T, amitrol, arsenical compounds (inorganic), azodrin,
7 bidrin, DDD (TDE), mercurial compounds, strobane, thallium sulfate
8 or any substance containing them.

9 Sec. 41.50.040. PENALTIES. A person who violates any provision
10 of this chapter or any regulation promulgated under them is, upon
11 conviction, punishable by a fine of not more than \$1,000, or by
12 imprisonment for not more than six months, or by both. In addition,
13 he may be enjoined, in the criminal action or in a civil action, from
14 continuing the violation. Each day upon which a violation occurs may
15 constitute a separate violation.

16 Sec. 41.50.050. DEFINITIONS. In this chapter

17 (1) "broadcast chemicals" means chemical substances which
18 are released into the air or onto land or water for the purpose of
19 preventing, destroying, repelling, stimulating or retarding plant or
20 animal life, or chemical substances released for meteorological control,
21 oil spill control or fire control;

22 (2) "pesticide" means any chemical or biological agent
23 intended for preventing, destroying, repelling, or mitigating plant or
24 animal life and any substance intended for use as a plant regulator,
25 defoliant or desiccant, including but not limited to insecticides, fungi-
26 cides, rodenticides, herbicides, nematocides and biocides.

27 CHAPTER 55. GENERAL PROVISIONS.

28 Sec. 41.55.010. DEFINITIONS. In chs. 35 - 55 of this title,
29 unless otherwise specified,

1 (1) "approval" means approval by the Department of Environ-
2 mental Conservation of a state action;

3 (2) "board" means the Board of Environmental Review;

4 (3) "department" means the Department of Environmental
5 Conservation;

6 (4) "land" means land as defined in AS 38.05.365(16);

7 (5) "permit" means an exemption granted to the state or
8 any other person from the requirements established by regulation under
9 chs. 35 - 55 of this title;

10 (6) "person" means a natural person, corporation, company,
11 firm, business trust, partnership, organization, association, or
12 department, agency or instrumentality of the state or a governmental
13 subdivision of the state.

14 * Sec. 4. AS 18.05.040(11) is amended to read:

15 (11) protection of public water supplies through examination
16 of waters, [ESTABLISHMENT OF MINIMUM STANDARDS OF QUALITY,] requiring
17 construction of public water supply systems or improvements to existing
18 systems necessary to protect public health, the submission of water
19 supply plans for review, proper operation of water supply systems and
20 the regulation of physical connections between public water supply
21 systems and water supply systems which may carry water of questionable
22 sanitary quality;

23 * Sec. 5. AS 18.05.040(12) is amended to read:

24 (12) unless otherwise provided for in AS 41.35 - 41.55,
25 standards for the collection and disposal of sewage and industrial
26 waste, prohibiting the pollution of surface and ground waters, con-
27 struction and use of sewers and sewage disposal facilities, sewage
28 treatment, requiring the submission of sewage works plans for review,
29 sewage treatment works operation, and additional regulations as may

1 be necessary to protect public health and to maintain sanitary waste
2 disposal;

3 * Sec. 6. AS 18.05.040(16) is amended to read:

4 (16) unless otherwise provided for in AS 41.35 - 41.55,
5 standards for the collection and disposal of garbage, refuse, and other
6 discarded solid materials, including solid-waste materials resulting
7 from industrial, commercial, and agricultural operations, and from
8 community activities;

9 * Sec. 7. All litigation, hearings, investigations and other proceedings
10 pending under any law amended or functions which have been transferred by
11 this Act, shall continue in effect and may be continued and completed under
12 the provisions of this Act. A certificate, order, rule or regulation issued
13 or filed under a law amended by this Act, or functions which have been
14 transferred by this Act and in effect upon the effective date of this Act,
15 shall remain in effect for the term issued, or until revoked, vacated, or
16 modified under the provisions of this Act. All existing contracts and
17 obligations created by any law amended or functions which have been trans-
18 ferred by this Act, and in effect upon the effective date of this Act, shall
19 remain in effect until revoked, vacated, or modified under the provisions
20 of this Act.

21 * Sec. 8. AS 18.30, AS 18.33, AS 41.03, AS 44.62.330(a)(29), and AS 46.-
22 05 are repealed.

23 * Sec. 9. This Act takes effect July 1, 1971.
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