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Referred: Resources

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HCS SS

SENATE BILL NO. 267

(R.D.A.) (Rules) am H
(Cre-on.)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Department of Environmental
7 Conservation."

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

9 * Section 1. AS 46.03.100 is amended to read:

10 Sec. 46.03.100. WASTE DISCHARGE [DISPOSAL] PERMIT. (a) A
11 person who conducts an [A COMMERCIAL OR INDUSTRIAL] operation which
12 results in the discharge [DISPOSAL] of solid or liquid waste material
13 or heated process or cooling water into the waters or onto the land
14 of the state must procure a permit from the department before discharging
15 [DISPOSING OF] the waste material or water. The permit must be obtained
16 for direct discharge [DISPOSAL] and for discharge [DISPOSAL] into
17 publicly operated sewerage systems. The department may waive the
18 requirements of this section that a permit be obtained.

19 (b). This section does not apply to a person discharging only
20 domestic sewage into a sewerage system.

21 * Sec. 2. AS 46.03.110(a) is amended to read:

22 Sec. 46.03.110(a). WASTE DISCHARGE [DISPOSAL] PERMIT PROCEDURE.
23 (a) An application for a permit shall be made on forms prescribed by
24 the department or on forms prescribed by the federal Environmental
25 Protection Agency and shall contain the name and address of the applicant,
26 a description of his operations, the quantity and type of waste material
27 sought to be discharged [DISPOSED OF], the proposed method of treatment
28 and discharge [DISPOSAL], and any other information considered necessary
29 by the department. Application for a permit shall be made at least 60

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1 days before commencement of a proposed discharge.

2 * Sec. 3. AS 46.03.120 is amended to read:

3 Sec. 46.03.120. TERMINATION OR MODIFICATION OF WASTE DISCHARGE
4 [DISPOSAL] PERMIT. (a) The department may terminate a permit upon 30
5 days written notice if the department finds

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

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

11 (3) that there has been a material change in the quantity
12 or type of waste discharged [DISPOSED OF].

13 (b) The department may modify a permit if the department finds
14 that a material change in the quality or classification of the waters
15 of the state has occurred.

16 * Sec. 4. AS 46.03.180 is amended to read:

17 Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and infor-
18 mation other than emission data in the possession of the department
19 which relate to production or sales figures or to processes or produc-
20 tion techniques of the owner or operator of an air contaminant source
21 are considered confidential records of the department after application
22 by the party and certification that their public disclosure would tend
23 to adversely affect his competitive position.

24 * Sec. 5. AS 46.03.720 is amended to read:

25 Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES
26 PROHIBITED. No person may construct, extend, install, alter, or
27 operate a sewage system or treatment works, or any part of a sewage
28 system or treatment works, or a public water supply system, until
29 plans for it are submitted to the department for review[,] and the

1 department approves them in writing and issues a written permit. The
2 department may waive the requirements of this section [THAT PLANS BE
3 SUBMITTED TO IT].

4 * Sec. 6. AS 46.03.760 is repealed and re-enacted to read:

5 Sec. 46.03.760. POLLUTION PENALTIES. (a) A person who violates
6 or causes or permits to be violated a provision of this chapter, or a
7 regulation, written order or directive of the department, or a permit
8 or term or condition of a permit, is liable, in a civil action, to the
9 state for a civil penalty to be assessed by the court for an amount
10 not less than \$500 nor more than \$100,000, depending on the severity
11 of the violation. Each day upon which the violation continues is
12 considered a separate violation.

13 (b) In addition to the penalties provided in (a) of this section,
14 a person who violates or causes or permits to be violated a provision
15 of secs. 740 - 750 of this chapter is liable to the state, in a civil
16 action, brought under sec. 822 of this chapter, for the full amount of
17 damages caused by the violation, including direct and indirect costs
18 associated with the abatement, containment or removal of a pollutant,
19 restoration of the environment to its former state, and all incidental
20 administrative costs.

21 (c) A person who fails to provide or falsely certifies information
22 required under sec. 750 of this chapter is, upon conviction, punishable
23 by a fine of not more than \$25,000, or by imprisonment for not more
24 than one year, or by both. Each unlawful act constitutes a separate
25 offense.

26 (d) Nothing in this section affects a person's or the state's
27 right to recover damages under other applicable statutes or the common
28 law.

29 * Sec. 7. AS 46.03.790(a) is amended to read:

1 (a) A person found guilty of wilfully violating a provision of
2 this chapter, or a regulation, written order or directive of the de-
3 partment, or of a court, or of a permit or term or condition of a
4 permit, made or issued under this chapter is guilty of a misdemeanor,
5 and upon conviction shall be punished by a fine of not more than
6 \$25,000 [\$1,000] and costs of prosecution, or by imprisonment for not
7 more than one year, or by both such fine, cost, and imprisonment at
8 the discretion of the court.

9 * Sec. 8. AS 46.03 is amended by adding a new section to read:

10 Sec. 46.03.797. INJUNCTION. The superior courts have jurisdiction
11 to enjoin a violation of this chapter, or of a regulation, written
12 order or directive of the department, or a permit or term or condition
13 of a permit. In actions brought under this section, temporary or
14 preliminary relief may be obtained upon a showing of an imminent
15 threat of violation, and probable success on the merits, without the
16 necessity of demonstrating irreparable harm, or a favorable balance of
17 equities.

18 * Sec. 9. AS 46.03.800(b) is amended to read:

19 (b) A person who neglects or refuses to abate the nuisance upon
20 order of the department is guilty of a misdemeanor and is punishable
21 as provided in sec. 760 [790] of this chapter. In addition to this
22 punishment, the court shall assess damages against the defendant for
23 the expenses of abating the nuisance.

24 * Sec. 10. AS 46.03.810 is amended to read:

25 Sec. 46.03.810. AIR AND LAND NUISANCES. (a) A person is guilty
26 of creating or maintaining a nuisance if he

27 (1) places or deposits upon a lot, street, beach, or premises,
28 or upon[,] or within 200 feet of a public highway, [UNLESS THE HIGHWAY
29 ABUTS UPON TIDAL WATER,] any garbage, offal, dead animals, or any

1 other matter or thing, which would be obnoxious or cause the spread of
2 disease or in any way endanger the health of the community;

3 (2) allows to be placed or deposited upon any premises owned
4 by him or under his control garbage, offal, dead animals, or any other
5 matter or thing which would be obnoxious or offensive to the public or
6 which would produce, aggravate, or cause the spread of disease or in
7 any way endanger the health of the community.

8 (b) A person who neglects or refuses to abate the nuisance upon
9 order of an officer of the Department of Environmental Conservation is
10 guilty of a misdemeanor and is punishable as provided in sec. 760
11 [790] of this chapter. In addition to this punishment, the court
12 shall assess damages against the defendant for the expenses of abating
13 the nuisance.

14 * Sec. 11. AS 46.03.820(a) is amended to read:

15 (a) When the department finds, after investigation, that a
16 person is causing, engaging in or maintaining a condition or activity
17 which, in the judgment of its commissioner presents an imminent or
18 present danger to the health or welfare of the people of the state or
19 would result in or be likely to result in irreversible or irreparable
20 damage to the natural resources or environment, and it appears to be
21 prejudicial to the interests of the people of the state to delay
22 action until an opportunity for a hearing can be provided, the depart-
23 ment may, without prior hearing, order that person by notice to discon-
24 tinue, abate or alleviate the condition or activity. If the [THE]
25 proscribed condition or activity is not [SHALL BE] immediately discon-
26 tinued, abated or alleviated the attorney general may seek enforcement
27 of the order by injunction or by other appropriate summary proceedings.

28 * Sec. 12. AS 46.03.822 is amended to read:

29 Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS

1 SUBSTANCES. To the extent not otherwise preempted by federal law, a
2 person owning or having control over a hazardous substance which
3 enters in or upon the waters, surface or subsurface lands of the state
4 is strictly liable, without regard to fault, for the damages to persons
5 or property, public or private, caused by the entry. [IF AN ACTION IS
6 BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY
7 IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action
8 to recover damages, the person is relieved from strict liability,
9 without regard to fault, if he can prove

10 (1) that the hazardous substance to which the damages
11 relate entered in or upon the waters, surface or subsurface lands of
12 the state solely as a result of

13 (A) an act of war;

14 (B) an intentional act or a negligent act of a third
15 party, other than a party (or its employees) in privity of contract
16 with, or employed by, the person;

17 (C) negligence on the part of the United States govern-
18 ment or the State of Alaska; or

19 (D) an act of God; and

20 (2) in relation to (1)(B), (C) or (D) of this section, that
21 he discovered the entry of the hazardous substance in or upon the
22 waters, surface or subsurface lands of the state and began operations
23 to contain and clean up the hazardous substance within a reasonable
24 period of time.

25 * Sec. 13. AS 46.03 is amended by adding a new section to read:

26 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
27 the department, a person is violating or is about to violate a provision
28 of this chapter or a regulation or lawful order of the department, the
29 department may notify the person of its determination by personal

1 service or certified mail. The determination and notice do not consti-
2 tute an order under sec. 820 of this chapter.

3 (b) The recipient of the determination must file with the depart-
4 ment, within the time period specified in the notice, a report stating
5 what measures have been and are being taken, or proposed to be taken,
6 to correct or control the conditions outlined in the notice from the
7 department.

8 (c) Thereafter, the department may issue a compliance order in
9 conformity with the authority of the department and the public policy
10 declared in sec. 10 of this chapter. A copy of the compliance order
11 shall be served personally or sent by certified mail to the person
12 affected. A compliance order is effective upon receipt.

13 (d) Within 30 days of receipt, a person affected may request a
14 hearing to review the compliance order. Failure to request a hearing
15 within 30 days of the receipt of a compliance order constitutes a
16 waiver of the recipient's right of review.

17 (e) The department shall hold a hearing within 20 days after
18 receipt of the application. After hearing, the department may rescind,
19 modify or affirm the compliance order.

20 (f) The attorney general shall seek enforcement of a compliance
21 order.

22 * Sec. 14. AS 46.03.900(12) is amended to read:

23 (12) "other wastes" means garbage, refuse, decayed wood,
24 sawdust, shavings, bark, trimmings from logging operations, sand, lime
25 cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat
26 from cooling or other operations, and other substances not sewage or
27 industrial waste which may cause or tend to cause pollution of the
28 waters of the state;

29 * Sec. 15. AS 46.03.900(20) is amended to read:

1 (20) "standard" means a [THE] measure of environmental
2 [PURITY OR] quality [FOR WATERS IN RELATION TO THEIR REASONABLE AND
3 NECESSARY USE] as established by the department;

4 * Sec. 16. AS 46.03.030 and 46.03.130 are repealed.
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