

Original sponsor: Rules Committee by
request of the Governor

Offered: 5/26/76
For Today's Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND 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 46.03.020(10)(C) is amended to read:

10 (C) protection of public water supplies by establish-
11 ing minimum drinking water standards, and [SETTING] standards for
12 the construction, improvement, and maintenance of public water
13 supply systems;

14 * Sec. 2. AS 46.03.030(b) is amended to read:

15 (b) The department may grant [PAY] to a municipality, as funds
16 are available, up to the lesser of 50 [25] per cent of the eligible
17 [ESTIMATED] cost or 50 per cent of the eligible [ESTIMATED] cost not
18 financed [BORNE] by the federal government, for public [IF THERE IS
19 FEDERAL ASSISTANCE, OF] water supply, treatment and distribution
20 systems and public sewage collection, treatment and discharge facilities
21 for which construction has not commenced on or before the effective date
22 of this Act [SYSTEMS, INCLUDING COLLECTION AND IMPOUNDING FACILITIES,
23 AND OF THOSE PORTIONS OF SEWERAGE SYSTEMS NOT COVERED BY (a) OF THIS
24 SECTION]. The eligible [ESTIMATED] cost of a project or portions of a
25 project [ANY PART OF A SYSTEM] will be as determined by the federal
26 agency granting [WHICH GIVES] the most monetary assistance. On pro-
27 jects or portions of projects, for which federal participation is not
28 available, eligible costs will be determined by the department. Pro-
29 jects [OR, IF NONE, BY THE DEPARTMENT. SYSTEMS] shall be constructed

1 in accordance with [ACCORDING TO] plans and specifications approved by
2 [THE FEDERAL AGENCY WHICH GIVES THE MOST MONETARY ASSISTANCE OR, IF
3 NONE, BY] the department.

4 * Sec. 3. AS 46.03.100(a) is amended to read:

5 (a) A person who conducts an [A COMMERCIAL OR INDUSTRIAL] opera-
6 tion which results in the disposal of solid or liquid waste material
7 or heated process or cooling water into the waters or onto the land of
8 the state must procure a permit from the department before disposing
9 of the waste material or water. The permit must be obtained for
10 direct disposal and for disposal into publicly operated sewerage
11 systems.

12 * Sec. 4. AS 46.03.110(a) is amended to read:

13 (a) An application for a permit shall be made on forms prescribed
14 by the department or on forms prescribed by the United States Environ-
15 mental Protection Agency and shall contain the name and address of the
16 applicant, a description of his operations, the quantity and type of
17 waste material sought to be disposed of, the proposed method of dis-
18 posal, and any other information considered necessary by the department.
19 Application for permit shall be made at least 60 days before commence-
20 ment of a proposed discharge.

21 * Sec. 5. AS 46.03.110 is amended by adding a new subsection to read:

22 (e) If the department has certified a National Pollutant Discharge
23 Elimination System permit under sec. 401 of the Federal Water Pollution
24 Control Act Amendments of 1972 (33 U.S.C. sec. 1341), and the United
25 States Environmental Protection Agency has issued that permit to a
26 person, the department may waive the requirements of this section, and
27 adopt the federal permit as the permit required under sec. 100 of this
28 chapter.

29 * Sec. 6. AS 46.03.180 is amended to read:

1 Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and informa-
2 tion other than emission data in the possession of the department which
3 relate to production or sales figures or to processes or production
4 techniques of the owner or operator of an air contaminant source are
5 considered confidential records of the department after application by
6 the party and certification that their public disclosure would tend to
7 adversely affect his competitive position.

8 * Sec. 7. AS 46.03.720 is amended to read:

9 Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES
10 PROHIBITED. (a) No person may construct, extend, install or operate a
11 sewerage [SEWAGE] system or treatment works, or any part of a sewerage
12 [SEWAGE] system or treatment works, until plans for it are submitted to
13 the department for review [,] and the department approves them in
14 writing and issues a written permit. [THE DEPARTMENT MAY WAIVE THE
15 REQUIREMENT THAT PLANS BE SUBMITTED TO IT.]

16 (b) No person may construct, extend, install or operate a public
17 water supply system, or any part of a public water supply system, until
18 plans for it are submitted to the department for review and the depart-
19 ment approves them in writing.

20 (c) The department may waive the requirements of this section.

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

22 Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of
23 a facility, operation or vessel, as soon as he has knowledge of any
24 discharge from the facility, operation or vessel in violation of sec.
25 740 or 750 of this chapter, shall immediately notify the department of
26 the discharge.

27 (b) Notwithstanding (a) of this section, the department may enter
28 into a written agreement with a person for the periodic reporting of
29 minor discharges other than into the waters of the state.

1 * Sec. 9. AS 46.03.760 is repealed and re-enacted to read:

2 Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A
3 person who violates or causes or permits to be violated a provision of
4 this chapter or a regulation, a lawful order of the department, or a
5 permit or term or condition of a permit issued under this chapter is
6 liable, in a civil action, to the state for a sum to be assessed by the
7 court of not less than \$500 nor more than \$100,000 for the initial
8 violation, nor more than \$5,000 for each day thereafter on which the
9 violation continues, and which shall reflect, when applicable,

10 (1) reasonable compensation in the nature of liquidated
11 damages for any adverse environmental effects caused by the violation,
12 which shall be determined by the court according to the toxicity, de-
13 gradability and dispersal characteristics of the substance discharged,
14 the sensitivity of the receiving environment, and the degree to which
15 the discharge degrades existing environmental quality;

16 (2) reasonable costs incurred by the state in detection,
17 investigation, and attempted correction of the violation; and

18 (3) the economic savings realized by the person in not
19 complying with the requirement for which a violation is charged.

20 (b) Actions under this section may not be used for punitive
21 purposes, and sums assessed by the court must be compensatory and
22 remedial in nature.

23 (c) The court, upon motion of the department or upon its own
24 motion, may defer assessment of all or part of that portion of the sum
25 imposed upon a person under (a)(3) of this section conditioned upon the
26 person complying, within the shortest feasible time, with the require-
27 ment for which a violation is shown.

28 (d) As used in this section, "economic savings" means that sum
29 which a person would be required to expend for the planning, acquisi-

1 tion, siting, construction, installation and operation of facilities
2 necessary to effect compliance with the standard violated.

3 (e) In addition to liability under (a) - (d) of this section, a
4 person who violates or causes or permits to be violated a provision of
5 secs. 740 - 750 of this chapter is liable to the state, in a civil
6 action brought under sec. 822 of this chapter, for the full amount of
7 actual damages caused to the state by the violation, including direct
8 and indirect costs associated with the abatement, containment or removal
9 of the pollutant, restoration of the environment to its former state,
10 and all incidental administrative costs.

11 (f) Nothing in this section affects an individual's right to
12 recover damages or to obtain injunctive relief under sec. 895 of this
13 chapter, other applicable statutes, or the common law.

14 * Sec. 10. AS 46.03 is amended by adding a new section to read:

15 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction
16 to enjoin a violation of this chapter, or of a regulation, lawful order
17 of the department, or permit or term or condition of a permit issued
18 under this chapter. In actions brought under this section, temporary or
19 preliminary relief may be obtained upon a showing of an imminent threat
20 of continued violation, and probable success on the merits, without the
21 necessity of demonstrating physical irreparable harm. The balance of
22 equities in actions under this section may affect the timing of compli-
23 ance, but not the necessity of compliance within a reasonable period of
24 time.

25 * Sec. 11. AS 46.03.790 is repealed and re-enacted to read:

26 Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or
27 who causes or permits a violation of a provision of this chapter, or of
28 a regulation, lawful order of the department, or permit or term or
29 condition of a permit issued under this chapter is guilty of a misde-

1 meanor, and, upon conviction, is punishable by a fine of not more than
2 \$25,000 and costs of prosecution.

3 (b) A person who wilfully violates a provision of this chapter, or
4 of a regulation, lawful order of the department, or permit or term or
5 condition of a permit issued under this chapter is guilty of a misde-
6 meanor, and, upon conviction, is punishable by a fine of not more than
7 \$25,000 and costs of prosecution, or by imprisonment for not more than
8 one year, or by fine, costs, and imprisonment.

9 (c) Each day on which a violation described in (a) or (b) of this
10 section occurs is considered a separate violation.

11 (d) A person who fails to provide or falsely states information
12 required under sec. 755 of this chapter is guilty of a misdemeanor, and,
13 upon conviction, is punishable by a fine of not more than \$25,000, or by
14 imprisonment for not more than one year, or by both. Each unlawful act
15 constitutes a separate offense.

16 * Sec. 12. AS 46.03.810(a) is amended to read:

17 (a) A person is guilty of creating or maintaining a nuisance if he
18 (1) places or deposits upon a lot, street, beach, or pre-
19 mises, or upon [,] or anywhere within 200 feet of a public highway,
20 [UNLESS THE HIGHWAY ABUTS UPON TIDAL WATER,] any garbage, offal, dead
21 animals, or any other matter or thing, which would be obnoxious or cause
22 the spread of disease or in any way endanger the health of the com-
23 munity;

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

29 * Sec. 13. AS 46.03.822 is amended to read:

1 Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS
2 SUBSTANCES. To the extent not otherwise preempted by federal law, a
3 person owning or having control over a hazardous substance which enters
4 in or upon the waters, surface or subsurface lands of the state is
5 strictly liable, without regard to fault, for the damages to persons or
6 property, public or private, caused by the entry. [IF AN ACTION IS
7 BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY IS
8 LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action to
9 recover damages, the person is relieved from strict liability, without
10 regard to fault, if he can prove

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

14 (A) an act of war,

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

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

20 (D) an act of God; and

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

26
27 * Sec. 14. AS 46.03 is amended by adding a new section to read:

28 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
29 the department, a person is violating or is about to violate a provision
of this chapter or a regulation or lawful order of the department, or a

1 permit or a term of a permit issued by the department, the department
2 may notify the person of its determination by personal service or
3 certified mail. The determination and notice do not constitute an order
4 under sec. 820 of this chapter.

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

9 (c) After the report is filed under (b) of this section or the
10 time period specified for it has elapsed, the department may issue a
11 compliance order in conformity with the authority of the department and
12 the public policy declared in sec. 10 of this chapter. A copy of the
13 compliance order shall be served personally or sent by certified mail to
14 the person affected. A compliance order is effective upon receipt.

15 (d) Within 30 days after receipt the recipient may request a
16 hearing to review the compliance order. Failure to request a hearing
17 within 30 days after the receipt of a compliance order constitutes a
18 waiver of the recipient's right of review.

19 (e) The department shall hold a hearing within 20 days after
20 receipt of a request for one under (d) of this section. After the
21 hearing the department may rescind, modify or affirm the compliance
22 order.

23 (f) The attorney general shall seek enforcement of a compliance
24 order.

25 * Sec. 15. AS 46.03.870(a) is amended to read:

26 (a) Except as specified in secs. 822 - 828 of this chapter, the
27 bases for proceedings or actions resulting from violations of this
28 chapter or a regulation promulgated under this chapter inure solely to
29 and are for the benefit of the state, and are not intended to in any

1 way create new, or enlarge existing rights of persons or groups of
2 persons in the state except as provided in sec. 895 of this chapter.

3 * Sec. 16. AS 46.03 is amended by adding a new section to read:

4 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
5 this chapter are cumulative, and the securing of relief, whether in-
6 junctive, civil or criminal, under a section of this chapter does not
7 estop the state from obtaining relief under any other section of this
8 chapter.

9 * Sec. 17. AS 46.03 is amended by adding a new section to read:

10 Sec. 46.03.895. STANDING TO ENFORCE CHAPTER. (a) A person may
11 submit a formal request to the department or an appropriate municipality
12 vested with local pollution control powers that either the department or
13 municipality take action to abate a specified form of air or water
14 pollution or nuisance which is potentially injurious to human health or
15 welfare, animal or plant life, or property or would unreasonably inter-
16 fere with the enjoyment of life or property. If the request is formally
17 rejected or the department or municipality has not affirmatively re-
18 sponded to the request within 30 days after it was received, the person
19 submitting the request has standing to enforce the provisions of this
20 chapter in abating the pollution or nuisance. A person bringing the
21 action must show that he is a member of the public affected by the
22 potentially injurious pollution or nuisance but need not allege or show
23 injury different in kind, or degree, from that sustained by the affected
24 public to prevail.

25 (b) As used in this section, "affirmatively responded" means that
26 the department or appropriate municipality has determined and formally
27 replied that action will be taken to abate the pollution, degradation or
28 nuisance complained of.

29 * Sec. 18. AS 46.03.900(12) is amended to read:

1 (12) "other wastes" means garbage, refuse, decayed wood,
2 sawdust, shavings, bark, trimmings from logging operations, sand, lime
3 cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from
4 cooling or other operations, and other substances not sewage or indus-
5 trial waste which may cause or tend to cause pollution of the waters of
6 the state;

7 * Sec. 19. AS 46.03.900(20) is amended to read:

8 (20) "standard" means the measure of purity or quality for
9 air, water, and land [WATERS] in relation to their reasonable and neces-
10 sary use as established by the department;

11 * Sec. 20. AS 44.62.330 is amended by adding a new paragraph to read:

12 (43) Department of Environmental Conservation, except to the
13 extent that secs. 360 - 400 of this chapter are inconsistent with the
14 manner in which proceedings are initiated under the provisions of
15 AS 46.03.

16 * Sec. 21. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.240 and
17 46.03.750(d) are repealed.