

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 am H (e.date added)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

re-engrossed

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the 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 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, [IF THERE IS FEDERAL
19 ASSISTANCE,] for [OF] public 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 [OR, IF
27 NONE, BY THE DEPARTMENT]. On projects or portions of projects, for which
28 federal participation is not available, eligible costs will be deter-
29 mined by the department. Projects [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 disposal,
18 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
3 which relate to production or sales figures or to processes or produc-
4 tion techniques of the owner or operator of an air contaminant source
5 are considered confidential records of the department after application
6 by the party and certification that their public disclosure would tend
7 to 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
11 a sewerage [SEWAGE] system or treatment works, or any part of a
12 sewerage [SEWAGE] system or treatment works, until plans for it are
13 submitted to the department for review[,] and the department approves
14 them in writing and issues a written permit. [THE DEPARTMENT MAY
15 WAIVE THE 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
18 until plans for it are submitted to the department for review and the
19 department 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 secs.
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
7 the 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, where 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
26 the person complying, within the shortest feasible time, with the
27 requirement 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
9 removal of the pollutant, restoration of the environment to its former
10 state, and all incidental administrative costs.

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

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

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

23 Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates
24 or who causes or permits a violation of a provision of this chapter,
25 or of a regulation, lawful order of the department, or permit or term
26 or condition of a permit issued under this chapter is guilty of a
27 misdemeanor, and, upon conviction, shall be punished by a fine of not
28 more than \$25,000 and costs of prosecution.

29 (b) A person who wilfully violates a provision of this chapter, or

1 of a regulation, lawful order of the department, or permit or term or
2 condition of a permit issued under this chapter is guilty of a
3 misdemeanor, and, upon conviction, shall be punished by a fine of not
4 more than \$25,000 and costs of prosecution, or by imprisonment for not
5 more than one year, or by both fine, costs, and imprisonment.

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

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

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

14 (a) A person is guilty of creating or maintaining a nuisance if
15 he

16 (1) places or deposits upon a lot, street, beach, or pre-
17 mises, or upon[,] or anywhere within 200 feet of a public highway,
18 [UNLESS THE HIGHWAY ABUTS UPON TIDAL WATER,] any garbage, offal, dead
19 animals, or any other matter or thing, which would be obnoxious or
20 cause the spread of disease or in any way endanger the health of the
21 community;

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

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

28 Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS
29 SUBSTANCES. To the extent not otherwise preempted by federal law, a

1 person owning or having control over a hazardous substance which
2 enters in or upon the waters, surface or subsurface lands of the state
3 is strictly liable, without regard to fault, for the damages to persons
4 or property, public or private, caused by the entry. [IF AN ACTION IS
5 BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY
6 IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action
7 to recover damages, the person is relieved from strict liability,
8 without regard to fault, if he can prove

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

12 (A) an act of war,

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

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

18 (D) an act of God; and

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

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

25 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
26 the department, a person is violating or is about to violate a pro-
27 vision of this chapter or a regulation or lawful order of the department,
28 or a permit or a term of a permit issued by the department, the depart-
29 ment may notify the person of its determination by personal service or

1 certified mail. The determination and notice do not constitute an
2 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 are proposed to be
6 taken, to correct or control the conditions outlined in the notice.

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

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

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

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

24 * Sec. 15. AS 46.03 is amended by adding a new section to read:

25 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
26 this chapter are cumulative, and the securing of relief, whether in-
27 junctive, civil or criminal, under a section of this chapter does not
28 estop the state from obtaining relief under any other section of this
29 chapter.

1 * Sec. 16. AS 46.03.900(12) is amended to read:

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

8 * Sec. 17. AS 46.03.900(20) is amended to read:

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

12 * Sec. 18. AS 44.62.330 is amended by adding a new paragraph to read:

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

17 * Sec. 19. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.240 and
18 46.03.750(d) are repealed.

19 * Sec. 20. This Act takes effect immediately in accordance with AS 01.10.
20 070(c).