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Referred: Resources and
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 393

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE -- SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state assumption of the national
7 pollutant discharge elimination system; and providing
8 for an effective date."

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

10 * Section 1. AS 46.03.010 is amended by adding a new subsection to
11 read:

12 (c) It is the policy of the state that the prevention, control,
13 and abatement of water pollution is principally a state responsibility,
14 and the legislature intends by this chapter to confer upon the depart-
15 ment all power and authority necessary to implement those programs
16 which can be delegated to a state under the Federal Water Pollution
17 Control Act.

18 * Sec. 2. AS 46.03.020(10)(D) is amended to read:

19 (D) collection and disposal of wastewater [SEWAGE AND
20 INDUSTRIAL WASTE];

21 * Sec. 3. AS 46.03.020(10) is amended by adding a new subparagraph to
22 read:

23 (I) implementation of the provisions of the Federal
24 Water Pollution Control Act.

25 * Sec. 4. AS 46.03 is amended by adding a new section to read:

26 Sec. 46.03.095. EFFLUENT LIMITATIONS. (a) The department may,
27 by regulation, adopt effluent limitations promulgated by the admini-
28 strator under secs. 301, 302, 306, 307, or 403 of the Federal Water
29 Pollution Control Act. The adoption by the department of effluent

1 limitations promulgated by the administrator is subject to AS 44.62.-
2 300 only to the extent of determining whether the adoption complies
3 with the procedural requirements of AS 44.62.040 - 44.62.210.

4 (b) Alternatively, and to the extent permissible under the
5 Federal Water Pollution Control Act, the department, if it determines
6 that effluent limitations promulgated by the administrator do not
7 reflect the appropriate standard of the Federal Water Pollution Control
8 Act in this state, may adopt effluent limitations which in its judg-
9 ment do reflect the appropriate standard in this state.

10 (c) If the administrator has not adopted effluent limitations
11 for a category or source the department may, in consultation with the
12 administrator, establish effluent limitations on a case-by-case basis,
13 applying the applicable standard of the Federal Water Pollution
14 Control Act.

15 * Sec. 5. AS 46.03.100 is repealed and re-enacted to read:

16 Sec. 46.03.100. WATER POLLUTION CONTROL PERMIT. (a) A person
17 who conducts an operation which results in the entry of a pollutant to
18 the water of the state must obtain a permit from the department.

19 (b) If, on the effective date of this Act, an entry of a pollu-
20 tant is permitted under secs. 402(a)(1) or 404(a) of the Federal Water
21 Pollution Control Act, and the department has certified that permit
22 under sec. 401(a)(1) of the Federal Water Pollution Control Act, the
23 person need not obtain a permit under (a) of this section until the
24 expiration of the federally issued permit. The person shall apply for
25 a permit under (a) of this section no later than 180 days before the
26 expiration of the federally issued permit. A violation of a term or
27 condition of a federally issued permit adopted under this subsection
28 is considered a violation of a permit issued by the department under
29 the authority of this chapter.

1 (c) For operations commencing after the effective date of this
2 Act, application must be made at least 180 days before commencement of
3 this operation.

4 (d) For operations which commenced before the effective date of
5 this Act, and which do not fall within the exemption of (b) of this
6 section, application must be made within 60 days after the effective
7 date of this Act.

8 (e) The department may issue general permits under this section
9 for classes or categories of operations which, individually or cumu-
10 latively, do not significantly affect water quality.

11 * Sec. 6. AS 46.03 is amended by adding new sections to read:

12 Sec. 46.03.105. PERMIT REVIEW CRITERIA; TERMS AND CONDITIONS.

13 (a) The department shall issue a permit under sec. 100 of this chapter
14 if the applicant demonstrates that the operation will comply with:

15 (1) water quality standards adopted under secs. 70 and 80
16 of this chapter, and maximum daily load requirements which may be
17 adopted to implement water quality standards under sec. 303(d) of the
18 Federal Water Pollution Control Act;

19 (2) applicable effluent limitations established under sec.
20 95 of this chapter;

21 (3) the applicable areawide waste treatment management plan
22 approved under sec. 208 of the Federal Water Pollution Control Act;
23 and

24 (4) standards adopted by the department which are in
25 substantial conformity with guidelines and standards promulgated under
26 sec. 404 of the Federal Water Pollution Control Act.

27 (b) No permit may be issued for:

28 (1) the discharge of any radiological, chemical, or biologi-
29 cal warfare agent or high-level radioactive waste;

1 (2) any discharge which the Secretary of the Army, acting
2 through the Chief of Engineers, finds would substantially impair
3 anchorage and navigation of any water of the United States; or

4 (3) any discharge to which the administrator has objected
5 pursuant to any right provided to the administrator under the Federal
6 Water Pollution Control Act.

7 (c) The department may impose as conditions in permits for the
8 discharge of pollutants from publicly-owned treatment works require-
9 ments for information to be provided by the permittee concerning new
10 introductions of pollutants or substantial changes in the volume or
11 character of pollutants being introduced into the treatment works.

12 (d) The department may impose as conditions in permits for the
13 discharge of pollutants from publicly-owned treatment works appropriate
14 measures to establish and insure compliance by industrial users with a
15 system of user charges.

16 (e) No permit may be issued for a period greater than five
17 years.

18 (f) The department may attach to a permit the terms and con-
19 ditions, including schedules of compliance, it finds necessary to
20 ensure compliance with any applicable standard.

21 Sec. 46.03.107. MONITORING AND INSPECTION. (a) The department
22 may require any owner or operator of any source of a pollutant to:

23 (1) establish and maintain records;
24 (2) make reports;
25 (3) install, calibrate, use and maintain monitoring equip-
26 ment or methods (including, where appropriate, biological monitoring
27 methods);

28 (4) sample discharges in accordance with methods the de-
29 partment may prescribe; and

1 (5) provide other information relating to the entry of a
2 pollutant into water of the state or to introduction of a pollutant
3 into publicly owned treatment works as the department may reasonably
4 require.

5 (b) The department, upon presentation of credentials,

6 (1) has a right of entry to, upon, or through any premises
7 in which any pollutant source is located or in which any records are
8 required to be maintained;

9 (2) may at reasonable times have access to and copy any
10 records required to be maintained;

11 (3) may inspect any monitoring equipment or method which is
12 required; and

13 (4) may have access to and sample any entry of a pollutant
14 to the water of the state or to publicly owned treatment works result-
15 ing from activities or operations of the owner or operator of the
16 premises in which the source of a pollutant is located.

17 (c) For the purpose of this section, "source of a pollutant" in-
18 cludes any permittee under sec. 100 of this chapter (other than a
19 general permittee), and any source of introduction of a pollutant into
20 publicly owned treatment works by an industrial user.

21 * Sec. 7. AS 46.03.110 is repealed and re-enacted to read:

22 Sec. 46.03.110. PERMIT PROCEDURES. (a) The department shall
23 adopt regulations establishing procedures for review of permit appli-
24 cations, including provisions for public notice and public hearing, in
25 accordance with applicable provisions of the Federal Water Pollution
26 Control Act.

27 (b) When the department receives an application, the commis-
28 sioner shall immediately send copies of the application to the com-
29 missioner of fish and game, the commissioner of natural resources,

1 the commissioner of commerce and economic development, the commissioner
2 of health and social services, and the commissioner of transportation
3 and public facilities.

4 * Sec. 8. AS 46.03.120 is repealed and re-enacted to read:

5 Sec. 46.03.120. TERMINATION OR MODIFICATION OF WASTE DISPOSAL
6 PERMIT. The department may terminate or modify a permit issued under
7 sec. 100 of this chapter if the department finds that:

8 (1) the permit was procured by misrepresentation of a mate-
9 rial fact or by failure of the applicant to disclose fully the facts
10 relating to its issuance;

11 (2) there has been a violation of a condition of the per-
12 mit; or

13 (3) there has been a change in any condition that requires
14 either a temporary or permanent reduction or elimination of the entry
15 of pollutants.

16 * Sec. 9. AS 46.03.160(b) is amended to read:

17 (b) Within 60 [30] days of receipt of the plans and information
18 for a proposed undertaking, the department shall either approve the
19 undertaking and issue a permit, or if the department determines that
20 the proposed undertaking will not meet the requirements of secs. 140 -
21 150 of this chapter and applicable regulations, it shall issue a
22 prohibition order against the undertaking.

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

24 Sec. 46.03.715. SOLID WASTE PERMIT. (a) No person may estab-
25 lish, expand, or operate a solid waste disposal facility without
26 obtaining a permit from the department.

27 (b) Upon receipt of a proper application for a permit under this
28 section the department shall publish notice of the application in two
29 separate publications of a newspaper of general circulation within the

1 general, affected area. The notice may also be published in other
2 appropriate information media. The notice must include a statement
3 that a person who wants to present his views to the department in
4 regard to the application may do so in writing to the department
5 within 30 days after the second publication of the notice. The written
6 response entitles the writer to a copy of the application.

7 (c) When the department receives an application, the commis-
8 sioner shall immediately send copies of the application to the com-
9 missioner of fish and game, the commissioner of natural resources, the
10 commissioner of commerce and economic development, the commissioner of
11 health and social services, and the commissioner of transportation and
12 public facilities.

13 (d) The department may attach terms and conditions to a permit
14 to ensure compliance with appropriate standards. No permit may be
15 effective for a period of more than five years from the date of issu-
16 ance.

17 (e) As used in this section, "solid waste disposal facility"
18 means an intermediate disposal facility, transfer station, landfill,
19 incinerator, composting plant, recycling or reclamation facility, or
20 any site used for the reduction, consolidation, conversion, processing,
21 or disposal of solid waste, except:

22 (1) a single-family or duplex residence in which solid
23 waste is generated and disposed of on-premises;

24 (2) a farm on which solid waste generated from the opera-
25 tion of that farm is disposed of; and

26 (3) incinerator facilities having a total capacity of less
27 than 200 pounds of solid waste per hour.

28 * Sec. 11. AS 46.03.760(c) is amended to read:

29 (c) The court [, UPON MOTION OF THE DEPARTMENT OR UPON ITS OWN

1 MOTION,] may defer assessment of [ALL OR PART OF] that portion of the
2 sum imposed upon a person under (a)(3) of this section which repre-
3 sents the economic savings which the person will realize by continued
4 non-compliance, conditioned upon the person complying, within the
5 shortest feasible time, with the requirement for which a violation is
6 shown.

7 * Sec. 12. AS 46.03 is amended by adding a new section to read:

8 Sec. 46.03.865. CONFIDENTIALITY. Upon a satisfactory showing to
9 the commissioner that any information obtained pursuant to any permit
10 requirement of this chapter would, if made public, divulge methods or
11 processes entitled to protection as trade secrets of the person, the
12 commissioner shall protect the information as confidential. However,
13 information accorded confidential treatment may be disclosed or trans-
14 mitted, for a specific purpose stated in writing by the potential
15 recipient, to other offices, employees, or authorized representatives
16 of this state or of the United States concerned with carrying out any
17 program related to the prevention, abatement, or control of water,
18 air, or land pollution. Confidential information so disclosed or
19 transmitted retains its confidential status and may not be further
20 disclosed or transmitted by the recipient.

21 * Sec. 13. AS 46.03.900 is repealed and re-enacted to read:

22 Sec. 46.03.900. DEFINITIONS. In this chapter

23 (1) "administrator" means the administrator of the United
24 States Environmental Protection Agency, or his designee;

25 (2) "air contaminant" means dust, fumes, mist, smoke, other
26 particulate matter, vapor, gas, odorous substances, or a combination
27 of these;

28 (3) "air pollution" means the presence in the outdoor
29 atmosphere of one or more air contaminants in quantities and duration

1 which tend to be injurious to human health or welfare, animal or plant
2 life, or property or which would unreasonably interfere with the
3 enjoyment of life or property;

4 (4) "atomic radiation" means all ionizing radiation;

5 (5) "broadcast chemicals" means chemical substances which
6 are released into the air or onto land or water for the purpose of
7 preventing, destroying, repelling, stimulating or retarding plant or
8 animal life, or chemical substances released for meteorological con-
9 trol, oil spill control, or fire control;

10 (6) "commissioner" means the commissioner of environmental
11 conservation;

12 (7) "department" means the Department of Environmental
13 Conservation;

14 (8) "effluent limitation" means any limitation, standard of
15 performance, guideline, prohibition, pretreatment standard, or other
16 standard which implements secs. 301, 302, 306, 307, or 403 of the
17 Federal Water Pollution Control Act;

18 (9) "electronic product" means a manufactured product which

19 (A) when in operation, contains or acts as part of an
20 electronic circuit and emits, or in the absence of effective
21 shielding or other controls would emit, electronic product
22 radiation; or

23 (B) is intended for use as a component, part, or
24 accessory of a product described in (A) of this paragraph and
25 which when in operation emits, or in the absence of effective
26 shielding or other controls would emit, electronic product
27 radiation;

28 (10) "electronic product radiation" means an atomic radia-
29 tion or nonionizing, electro-magnetic or particulate radiation, or a

1 sonic, infrasonic, or ultrasonic wave which is emitted from an elec-
2 tronic product as the result of the operation of an electronic circuit
3 in the product;

4 (11) "entry of a pollutant to the water of the state" means
5 the addition of a pollutant to the water of the state by any means,
6 except:

7 (A) approved aquaculture projects;

8 (B) any discharge of any pollutant when the discharge
9 conforms with the national contingency plan for removal of oil
10 and hazardous substances, published under sec. 311(c)(2) of the
11 Federal Water Pollution Control Act, and any applicable state
12 plan or requirement;

13 (C) water, gas, or other material which is injected
14 into a well to facilitate production of oil or gas;

15 (D) additions of wastewater into publicly owned treat-
16 ment works; this exclusion applies only to the actual addition of
17 materials into the publicly owned treatment works; plans or
18 agreements to make additions in the future do not relieve dis-
19 chargers of the obligation to apply for and receive a permit
20 until the entry of any pollutants to water of the state is
21 actually eliminated; this exclusion does not relieve the person
22 causing the addition from complying with the pretreatment stan-
23 dards adopted under sec. 95 of this chapter; and

24 (E) runoff from activities occurring solely outside
25 the water of the state, until activities creating a significant
26 water quality problem due to runoff are identified as requiring a
27 permit under sec. 100 of this chapter in an applicable areawide
28 waste treatment management plan approved under sec. 208 of the
29 Federal Water Pollution Control Act; this exclusion applies only

1 to the permit requirement of sec. 100 of this chapter; it does
2 not exempt activities creating runoff from any other standard or
3 requirement of this chapter;

4 (12) "facility" means any offshore or onshore structure,
5 improvement, vessel, vehicle, land, enterprise, or endeavor;

6 (13) "Federal Water Pollution Control Act" means the
7 Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. sec.
8 1251, et seq., and all Acts amending or supplementing it which are
9 reasonably within the scope and purpose of the 1972 Act;

10 (14) "industrial use" means those industries identified in
11 the Standard Industrial Classification Manual, Bureau of the Budget,
12 1967, as amended and supplemented, under the category "Division D -
13 Manufacturing, and other classes of significant waste producers as, by
14 regulation, the administrator or department considers appropriate;

15 (15) "motor vehicle" has the same meaning as in AS 28.20.-
16 630;

17 (16) "municipality" means an organized borough or an
18 incorporated city outside an organized borough, and includes all
19 classes of boroughs and cities whether home rule or otherwise;

20 (17) "person" means any individual, public or private
21 corporation, political subdivision, government agency, municipality,
22 industry, co-partnership, association, firm, trust, estate, or any
23 other entity whatsoever;

24 (18) "pesticide" means any chemical or biological agent
25 intended for preventing, destroying, repelling, or mitigating plant or
26 animal life and any substance intended for use as a plant regulator,
27 defoliant or desiccant, including but not limited to insecticides,
28 fungicides, rodenticides, herbicides, nematocides, and biocides;

29 (19) "pollutant" means anything which alters the chemical,

1 physical, biological or radiological integrity, including heat from
2 cooling or other operations, and is either man-made or man-induced;

3 (20) "pollution" means the contamination or altering of
4 water, land, or subsurface land of the state in a manner which creates
5 a nuisance or makes the water, land, or subsurface land unclean,
6 noxious, impure, or unfit so that it is actually or potentially harm-
7 ful, detrimental or injurious to public health, safety or welfare, to
8 domestic, commercial, industrial, or recreational use, or to live-
9 stock, wild animals, birds, fish, or other aquatic life;

10 (21) "radiation" means all atomic and electronic product
11 radiation;

12 (22) "radiation source" means any substance, machine, or
13 electronic product which emits radiation;

14 (23) "schedule of compliance" means a schedule of remedial
15 measures including an enforceable sequence of actions or operations
16 leading to compliance with an effluent limitation, other limitation,
17 prohibition, or standard;

18 (24) "sewage" means the water-carried human or animal
19 wastes from residences, buildings, industrial establishments, or other
20 places, together with ground water infiltration and surface water as
21 may be present; the admixture with sewage of industrial wastes or
22 other wastes is "sewage";

23 (25) "sewer system" or "sewerage system" means pipelines or
24 conduits, pumping stations, and force mains, and all other appurtenant
25 constructions, devices, and appliances used for conducting wastewater
26 to a point of ultimate disposal;

27 (26) "solid waste" means all unwanted, abandoned, or dis-
28 carded solid or semi-solid material whether putrescible or non-put-
29 rescible, originating from any source, including but not limited to

1 garbage, paper, wood, metal, glass, plastic, rubber, cloth, ashes,
2 litter and street sweepings, dewatered sewage sludge, dead animals,
3 offal, junked vehicles and equipment, material and debris resulting
4 from construction or demolition projects or logging operations,
5 abandoned and decaying structures, hazardous wastes, mine wastes,
6 gravel pit, quarry and dredge spoils, and overburden except that
7 originating from the construction of single buildings;

8 (27) "treatment works" means a plant, disposal field,
9 lagoon, pumping station, constructed drainage ditch or surface water
10 intercepting ditch, incinerator or other works installed or used for
11 the purpose of treating, neutralizing, stabilizing or disposing of
12 wastewater;

13 (28) "wastewater" means sewage, waterborne industrial
14 waste, laundry liquid effluent, shower or sink water, or other wastes
15 which are waterborne or in a liquid state;

16 (29) "water quality standard" means the measure of purity
17 or quality of water, the maintenance of which is necessary to assure
18 the water's integrity for its reasonable and appropriate use as estab-
19 lished by the department;

20 (30) "water" includes lakes, bays, sounds, ponds, impound-
21 ing reservoirs, springs, wells, rivers, streams, creeks, estuaries,
22 marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of
23 Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the
24 state, and all other bodies of surface or underground water, natural
25 or artificial, public or private, inland or coastal, fresh or salt,
26 which are wholly or partially in or bordering the state or under the
27 jurisdiction of the state; the term includes all water subject to
28 federal jurisdiction under the Federal Water Pollution Control Act.

29 * Sec. 14. AS 46.03.180 is repealed.

1 * Sec. 15. This Act takes effect upon approval of the state's National
2 Pollutant Discharge Elimination System program by the administrator of the
3 United States Environmental Protection Agency, or his designee, under sec.
4 402 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat.
5 816).

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