

BY REP. M. DAVIS, Brown, Koponen, Navarre, Goll

1 IN THE HOUSE

2

HOUSE BILL NO. 409

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the reform of certain environmental conservation laws and the penalties for their violation."

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

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* Section 1. AS 44.62.330(a)(44) is amended to read:

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(44) Department of Environmental Conservation, except

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(A) to the extent that AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated under AS 46.03;

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(B) as provided under AS 46.03.850(b);

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* Sec. 2. AS 46.03.170(f) is amended to read:

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(f) A variance or renewal granted under this section may not be construed to prevent or limit the application of [THE EMERGENCY] orders of the commissioner issued under AS 46.03.850 [AS 46.03.820].

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

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Sec. 46.03.761. ADMINISTRATIVE PENALTIES FOR POLLUTION. (a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, or AS 46.09, is liable, in addition to any other penalty provided by law, for an administrative penalty in an amount established by the commissioner not to exceed \$25,000 a day for each violation.

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1 (b) Each violation is a separate and distinct offense and, in
2 continuing violations, the continuance of the violation is, each day,
3 a separate violation. The commissioner shall establish the penalty
4 amount in consideration of the previous history of the violator and
5 the severity of the impact of the violation on the public health or
6 environment in addition to other factors considered significant by the
7 commissioner.

8 (c) The commissioner may adopt regulations to implement this
9 section.

10 * Sec. 4. AS 46.03.790(a) is amended to read:

11 (a) A [EXCEPT AS PROVIDED IN (d) - (f) OF THIS SECTION, A]
12 person is guilty of a class A misdemeanor who negligently

13 (1) violates a provision of this chapter, AS 46.04, or
14 AS 46.09, or of a regulation, lawful order of the department, or
15 permit, approval, or acceptance, or term or condition of a permit,
16 approval, or acceptance issued under this chapter, AS 46.04, or
17 AS 46.09;

18 (2) fails to provide information or provides false infor-
19 mation required under AS 46.03.755, AS 46.04, or AS 46.09; or

20 (3) makes a false statement or representation in an appli-
21 cation, label, manifest, record, report, permit, or other document
22 filed, maintained, or used for purposes of compliance with the hazard-
23 ous waste provisions of AS 46.03.250 - 46.03.314 or regulations adopt-
24 ed under those provisions [IS GUILTY OF A CLASS B MISDEMEANOR].

25 * Sec. 5. AS 46.03.790(b) is amended to read:

26 (b) A [EXCEPT AS PROVIDED IN (d) - (f) OF THIS SECTION, A]
27 person is guilty of a class C felony who knowingly

28 (1) violates a provision of this chapter, AS 46.04, or
29 AS 46.09, or of a regulation, lawful order of the department, or

1 permit, approval, or acceptance, or term or condition of a permit,
2 approval, or acceptance issued under this chapter, AS 46.04, or
3 AS 46.09;

4 (2) fails to provide information, or provides false infor-
5 mation, required under AS 46.03.755, AS 46.04, or AS 46.09;

6 (3) transports a hazardous waste to a facility without a
7 permit required under AS 46.03.250 - 46.03.314;

8 (4) treats, stores, or disposes of hazardous waste without
9 a permit required under AS 46.03.250 - 46.03.314; or

10 (5) makes a false statement or representation in an appli-
11 cation, label, manifest, record, report, permit, or other document
12 filed, maintained, or used for purposes of compliance with the hazard-
13 ous waste provisions of AS 46.03.250 - 46.03.314 or regulations adopt-
14 ed under these provisions [IS GUILTY OF A CLASS A MISDEMEANOR].

15 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

16 (g) Criminal charges may be brought under this section against a
17 responsible employee or official of a person that is an entity even if
18 charges are also being brought or could also be brought against the
19 entity.

20 * Sec. 7. AS 46.03.800(b) is amended to read:

21 (b) A person who neglects [OR REFUSES] to abate the nuisance
22 upon order of the department is guilty of a class A misdemeanor. A
23 person who refuses to abate the nuisance upon order of the department
24 is guilty of a class C felony [AND IS PUNISHABLE AS PROVIDED IN
25 AS 46.03.790]. In addition to this punishment, the court shall assess
26 damages against the defendant for the expenses of abating the nui-
27 sance.

28 * Sec. 8. AS 46.03.810(b) is amended to read:

29 (b) A person who neglects [OR REFUSES] to abate the nuisance

1 upon order of the department [AN OFFICER OF THE DEPARTMENT OF ENVIRON-
2 MENTAL CONSERVATION] is guilty of a class A misdemeanor. A person who
3 refuses to abate the nuisance upon order of the department is guilty
4 of a class C felony [AND IS PUNISHABLE AS PROVIDED IN AS 46.03.790].

5 In addition to this punishment, the court shall assess damages against
6 the defendant for the expenses of abating the nuisance.

7 * Sec. 9. AS 46.03.850 is repealed and reenacted to read:

8 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
9 the department, a person is violating or is about to violate a pro-
10 vision of this chapter or AS 46.04, a regulation or lawful order of
11 the department, or a term or condition of a permit or certificate
12 issued by the department under this chapter or AS 46.04, the depart-
13 ment may issue a compliance order in conformity with the authority of
14 the department and the public policy declared in AS 46.03.010. A copy
15 of the compliance order shall be served personally or sent by certi-
16 fied mail to the person affected. A compliance order is effective
17 upon receipt.

18 (b) The Administrative Procedure Act (AS 44.62) does not apply
19 to the issuance of a compliance order under (a) of this section. A
20 person described in (a) of this section may not seek review of or
21 appeal the compliance order to the superior court until the department

22 (1) seeks to recover response costs, damages, or contribu-
23 tions; or

24 (2) brings an action to enforce the order.

25 (c) The attorney general shall enforce a compliance order.

26 * Sec. 10. AS 46.03.865(b) is amended to read:

27 (b) A person to whom an order is directed shall comply with it
28 immediately, but, except as provided under AS 46.03.850, on applica-
29 tion to the department shall be given a hearing under the

1 Administrative Procedure Act (AS 44.62). The [THEREAFTER THE] depart-
2 ment may affirm, revoke, or modify the order.
3 * Sec. 11. AS 46.03.790(d), 46.03.790(e), 46.03.790(f), and 46.03.820
4 are repealed.