

Original sponsor(s): REP. M.DAVIS, Brown, Koponen, Navarre, Goll, Ulmer,
Ellis

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 409 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the reform of certain environ-
7 mental conservation laws and the administrative
8 penalties for their violation."

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

10 * Section 1. AS 46.03.020(6) is amended to read:

11 (6) at reasonable times enter and inspect with the consent
12 of the owner or occupier any property or premises and copy records to
13 investigate either actual or suspected sources of pollution or con-
14 tamination or to ascertain compliance or noncompliance with this
15 chapter, AS 46.04, or AS 46.09, or a regulation, order of the depart-
16 ment, permit, approval, or acceptance issued under this chapter,
17 AS 46.04, or AS 46.09; the department shall maintain as confidential
18 [A REGULATION WHICH MAY BE ADOPTED UNDER AS 46.03.020 - 46.03.040;]
19 information relating to secret processes or methods of manufacture
20 discovered during the investigation [IS CONFIDENTIAL];

21 * Sec. 2. AS 46.03.020 is amended by adding a new paragraph to read:

22 (14) at reasonable times enter and inspect the property or
23 premises of a pervasively regulated facility and copy records to
24 investigate either actual or suspected sources of pollution or con-
25 tamination or to ascertain compliance or noncompliance with this
26 chapter, AS 46.04, AS 46.09, or with a regulation, order of the de-
27 partment, permit, approval, or certificate issued under this chapter,
28 AS 46.04, or AS 46.09; the department shall maintain information
29 relating to secret processes or methods of manufacture discovered

1 during investigations as confidential; in this paragraph "pervasively
2 regulated facility" means a facility where activities or operations
3 are or were conducted that affect a significant public interest and
4 that are the subject of comprehensive regulation by the department.

5 * Sec. 3. AS 46.03.170(f) is amended to read:

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

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

10 Sec. 46.03.761. ADMINISTRATIVE PENALTIES FOR POLLUTION. (a)
11 The department may assess an administrative penalty against a person
12 who violates or causes or permits to be violated a provision of this
13 chapter, AS 46.04, or AS 46.09, or a regulation, order of the depart-
14 ment, permit, approval, or certificate issued under this chapter,
15 AS 46.04, or AS 46.09.

16 (b) The department may adopt regulations prescribing the admin-
17 istrative procedures authorized under this section. AS 44.62 does not
18 apply to administrative proceedings conducted or judicial review
19 sought under this section.

20 (c) An administrative penalty assessed under this section may
21 not exceed \$25,000 a day for each violation. Each violation is a
22 separate and distinct offense and where the violation continues from
23 day to day, each day constitutes a separate violation. In determining
24 the amount of a penalty assessed under this section, the department
25 shall consider the effect of the violation on the public health or the
26 environment, a prior history of violations, deterrence of future
27 violations, and other factors that the department considers relevant.

28 (d) The department shall issue an assessment notice to the
29 person against whom the penalty is assessed. An administrative

1 penalty assessed under this section becomes final 30 days after issu-
2 ance of the assessment notice unless an administrative hearing is
3 requested. Failure to request an administrative hearing within 30
4 days after issuance of the assessment notice constitutes a waiver of
5 the right to an administrative hearing and to judicial review. The
6 person requesting the administrative hearing has the burden of proof
7 on all issues the person raises at the hearing.

8 (e) After the conclusion of the administrative hearing, the
9 department may modify, rescind, or affirm the administrative penalty.
10 A person against whom an administrative penalty is assessed may obtain
11 judicial review of the administrative penalty by filing a notice of
12 appeal in the superior court within 30 days after the department's
13 issuance of the administrative hearing decision. The court may set
14 aside the administrative penalty only if the administrative record,
15 taken as a whole, does not contain a reasonable basis to support the
16 finding of violation or the amount of penalty assessed by the depart-
17 ment. This subsection provides the sole means for appealing an admin-
18 istrative penalty assessment. The validity, amount, and appropriate-
19 ness of the administrative penalty are not subject to collateral
20 judicial or administrative review.

21 (f) Action by the department under this section does not limit
22 or otherwise affect the authority of the department to enforce this
23 chapter, AS 46.04, or AS 46.09, or to recover damages, restoration
24 expenses, investigation costs, court costs, and attorney fees. A
25 person who pays an administrative penalty assessed under this section
26 may set off the penalty amount paid against a civil penalty subse-
27 quently awarded by a court against the person for the same violation
28 under AS 46.03.760.

29 (g) The assessment of an administrative penalty under this

1 section does not affect the obligation of a person to comply with this
2 chapter, AS 46.04, AS 46.09, or with a regulation, order of the de-
3 partment, permit, approval, or certificate issued under this chapter,
4 AS 46.04, or AS 46.09.

5 (h) If a person fails or refuses to pay an administrative penal-
6 ty assessed under this section after the penalty has become final or
7 after a court after an administrative appeal brought under this sec-
8 tion has entered a final order in favor of the state, the attorney
9 general may bring an action to collect the penalty and the defendant
10 is liable for

11 (1) the amount of the administrative penalty assessed;

12 (2) interest from the date the department issued the as-
13 sessment notice under (d) of this section;

14 (3) full reasonable attorney fees and costs incurred by the
15 state in the collection action; and

16 (4) a nonpayment penalty for each quarter year in which the
17 assessment remains unpaid of 20 percent of the assessed administrative
18 penalty.

19 * Sec. 5. AS 46.03.850 is repealed and reenacted to read:

20 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
21 the department, a person is violating or is about to violate a pro-
22 vision of this chapter, AS 46.04, AS 46.09, or AS 03.05, or of a
23 regulation, order of the department, permit, approval, or certificate
24 issued under this chapter, AS 46.04, AS 46.09, or AS 03.05, or is
25 otherwise endangering or creating the potential of pollution of the
26 surface or subsurface air, land, or water within the jurisdiction of
27 the state, the department may issue a compliance order.

28 (b) The compliance order shall be personally served on or sent
29 by certified mail to the person affected. Service is complete on a

1 corporation upon receipt by an officer of the corporation or by its
2 registered agent and on a partnership on receipt by a partner. The
3 compliance order is effective on receipt. A request for an adminis-
4 trative hearing under (c) of this section does not stay the provisions
5 or deadlines set out in the compliance order.

6 (c) The person affected may request an administrative hearing
7 within 30 days after receipt of the compliance order. Failure to re-
8 quest a hearing within 30 days after receipt of the compliance order
9 constitutes a waiver by the person of the right to an administrative
10 hearing and to judicial review. Within 30 days after receipt of a
11 request for an administrative hearing, the department shall decide
12 whether to hold the hearing. If the department grants the hearing
13 request, the department may limit the scope of the hearing to disputed
14 issues of material fact.

15 (d) After the conclusion of the administrative hearing, the
16 department may modify, rescind, or affirm the compliance order. The
17 affected person may obtain judicial review of the compliance order by
18 filing a notice of appeal in the superior court within 30 days after
19 the department's issuance of the administrative hearing decision. The
20 court may set aside the compliance order only if the administrative
21 record, taken as a whole, does not contain a reasonable basis to
22 support the provisions of the compliance order or the department's
23 decision to issue the compliance order. This subsection provides the
24 sole means for obtaining judicial review of a compliance order. The
25 compliance order is not subject to collateral judicial or administra-
26 tive review.

27 (e) The Administrative Procedure Act (AS 44.62) does not apply
28 to administrative proceedings conducted or judicial review sought
29 under this section. The person requesting the hearing has the burden

1 of proof on all issues the person raises at the hearing.

2 (f) A compliance order issued under this section is an order of
3 the department for purposes of this chapter, AS 46.04, AS 46.09, and
4 AS 03.05.

5 (g) The attorney general may seek enforcement of a compliance
6 order by bringing an action in superior court. In an action to en-
7 force a compliance order, the attorney general may recover full rea-
8 sonable attorney fees and costs incurred by the state in maintaining
9 the action.

10 * Sec. 6. AS 46.03 is amended by adding a new section to read:

11 Sec. 46.03.861. ENVIRONMENTAL AUDITS. (a) As part of a judi-
12 cial or administrative enforcement action, the commissioner may re-
13 quire a person to conduct an environmental audit and to prepare and
14 submit to the commissioner an environmental audit report.

15 (b) Each environmental audit shall be performed by a qualified
16 independent contractor selected by the person required to conduct the
17 audit. The selection of the independent contractor is subject to the
18 approval of the commissioner.

19 (c) In this section

20 (1) "environmental audit" means a systematic, documented,
21 periodic, and objective review, of a person's operations, practices,
22 and performance related to meeting each applicable environmental
23 standard and requirement, including permit conditions;

24 (2) "environmental audit report" means a written report
25 that candidly and thoroughly presents findings from a review, con-
26 ducted as part of an environmental audit, of a person's environmental
27 operations, practices, and performance.