

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 409 (Finance) am  
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  
12 consent of the owner or occupier, enter and inspect any property or  
13 premises and copy relevant records to investigate either actual or  
14 suspected sources of pollution or contamination or to ascertain com-  
15 pliance or noncompliance with this chapter, AS 46.04, or AS 46.09, or  
16 a regulation, order of the department, permit, approval, or acceptance  
17 issued under this chapter, AS 46.04, or AS 46.09; the department shall  
18 maintain as confidential [A REGULATION WHICH MAY BE ADOPTED UNDER  
19 AS 46.03.020 - 46.03.040;] information and records relating to secret  
20 processes, [OR] methods of manufacture, financial and commercial  
21 information and records and, as agreed by the department and the owner  
22 or occupier of the property, other information and records discovered  
23 during the investigation [IS CONFIDENTIAL];

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

25 (14) to the extent permitted by the United States and Alaska  
26 Constitutions, at reasonable times enter and inspect a pervasively  
27 regulated facility if that facility is an oil terminal facility reg-  
28 ulated under AS 46.04.030, a refinery, a crude oil or gas exploration,  
29 production, or transportation facility, a hazardous waste trans-

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

25 (14) to the extent permitted by the United States and Alaska  
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27 regulated facility if that facility is an oil terminal facility reg-  
28 ulated under AS 46.04.030, a refinery, a crude oil or gas exploration,  
29 production, or transportation facility, a hazardous waste trans-

1 portation, storage, or disposal facility regulated under AS 46.03.302,  
2 a major solid waste disposal facility, or a facility with both signif-  
3 icant air and wastewater emissions regulated under this chapter, and  
4 copy relevant records to investigate either actual or suspected  
5 sources of pollution or contamination or to ascertain compliance or  
6 noncompliance with this chapter, AS 46.04, AS 46.09, or with a regu-  
7 lation, order of the department, permit, approval, or acceptance  
8 issued under this chapter, AS 46.04, or AS 46.09; the department shall  
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10 processes, methods of manufacture, financial and commercial informa-  
11 tion and records and, as agreed by the department and the owner or  
12 occupier of the property, other information and records discovered  
13 during the investigation; in this paragraph, "pervasively regulated  
14 facility" means a facility where activities or operations are or were  
15 conducted that affect a significant public interest and that the  
16 department comprehensively regulates but does not include, by way of  
17 example only, single-family residences, restaurants, hospitals, health  
18 clinics, fishing vessels, small placer mines, and service stations.

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

20       Sec. 46.03.761. ADMINISTRATIVE PENALTIES FOR POLLUTION. (a)  
21 The department may assess an administrative penalty against a person  
22 who violates or causes or permits to be violated a provision of this  
23 chapter, AS 46.04, or AS 46.09, or a regulation, order of the depart-  
24 ment, permit, approval, or certificate issued under this chapter,  
25 AS 46.04, or AS 46.09.

26       (b) Except for the adoption of regulations under AS 46.03.885,  
27 AS 44.62 does not apply to administrative proceedings conducted or  
28 judicial review sought under this section.

29       (c) An administrative penalty assessed under this section may

1 not exceed \$15,000 a day for each violation. Each violation is a  
2 separate and distinct offense and where the violation continues from  
3 day to day, each day constitutes a separate violation. In determining  
4 the amount of a penalty assessed under this section, the department  
5 shall consider the effect of the violation on the public health or the  
6 environment, a prior history of violations, deterrence of future  
7 violations, and other factors that the department considers relevant.

8 (d) The assessment notice shall be personally served on or sent  
9 by certified mail, return receipt requested, to the person affected.  
10 An administrative penalty assessed under this section becomes final 30  
11 days after receipt of the assessment notice unless an administrative  
12 hearing is requested. Failure to request an administrative hearing  
13 within 30 days after receipt of the assessment notice constitutes a  
14 waiver of the right to an administrative hearing and to judicial  
15 review.

16 (e) After the conclusion of the administrative hearing, the  
17 department may modify, rescind, or affirm the administrative penalty.  
18 A person against whom an administrative penalty is assessed may obtain  
19 judicial review of the administrative penalty by filing a notice of  
20 appeal in the superior court within 30 days after the department's  
21 issuance of the administrative hearing decision. The court may set  
22 aside the administrative penalty only if the administrative record,  
23 taken as a whole, does not contain a reasonable basis to support the  
24 finding of violation or the amount of penalty assessed by the depart-  
25 ment. Except as provided in this section, the validity, amount, and  
26 appropriateness of the administrative penalty are not subject to  
27 judicial or administrative review.

28 (f) Action by the department under this section does not limit  
29 or otherwise affect the authority of the department to enforce this

1 chapter, AS 46.04, or AS 46.09, or to recover damages, restoration  
2 expenses, investigation costs, court costs, and attorney fees. The  
3 court shall set off the administrative penalty amount paid under this  
4 section against a civil penalty subsequently awarded by a court  
5 against the person for the same violation under AS 46.03.760.

6 (g) The assessment of an administrative penalty under this  
7 section does not affect the obligation of a person to comply with this  
8 chapter, AS 46.04, AS 46.09, or with a regulation, order of the de-  
9 partment, permit, approval, or certificate issued under this chapter,  
10 AS 46.04, or AS 46.09.

11 (h) If a person fails or refuses to pay an administrative penal-  
12 ty assessed under this section after the penalty has become final, the  
13 attorney general may bring an action to collect the penalty and the  
14 defendant is liable for

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

16 (2) interest from the date the department issued the as-  
17 sessment notice under (d) of this section; and

18 (3) a nonpayment penalty of five percent for each 30-day  
19 period or fraction of a period in which the assessment remains unpaid  
20 but not to exceed 25 percent of the administrative penalty.

21 \* Sec. 4. AS 46.03.850 is repealed and reenacted to read:

22 Sec. 46.03.850. COMPLIANCE ORDER. (a) When the department  
23 finds after an investigation that a person is violating or is about to  
24 violate a provision of this chapter, AS 46.04, AS 46.09, or AS 03.05,  
25 or of a regulation, order of the department, permit, approval, or  
26 certificate issued under this chapter, AS 46.04, AS 46.09, or AS 03.-  
27 05, or is otherwise endangering or creating the potential of pollution  
28 of the surface or subsurface air, land, or water within the jurisdic-  
29 tion of the state, the department may issue a compliance order. The

1 compliance order shall describe with reasonable specificity the nature  
2 of the violation and set out the nature of the required response  
3 measures and a deadline for compliance.

4 (b) The compliance order shall be personally served on or sent  
5 by certified mail, return receipt requested, to the person affected.  
6 Service is complete on a corporation upon receipt by an officer of the  
7 corporation or by its registered agent and on a partnership on receipt  
8 by a partner. The compliance order is effective on receipt. A re-  
9 quest for an administrative hearing under (c) of this section does not  
10 stay the provisions or deadlines set out in the compliance order.

11 (c) The person affected may request an administrative hearing  
12 within 30 days after receipt of the compliance order. Failure to re-  
13 quest a hearing within 30 days after receipt of the compliance order  
14 constitutes a waiver by the person of the right to an administrative  
15 hearing and to judicial review.

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

27 (e) Except for the adoption of regulations under AS 46.03.885,  
28 AS 44.62 does not apply to administrative proceedings conducted or  
29 judicial review sought under this section.

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

4 (g) The attorney general may seek enforcement of a compliance  
5 order by bringing an action in superior court.

6 \* Sec. 5. AS 46.03 is amended by adding a new section to read:

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

11 (b) Each environmental audit shall be performed by a qualified  
12 independent contractor selected by the person required to conduct the  
13 audit. The selection of the independent contractor is subject to the  
14 approval of the commissioner.

15 (c) If an individual is required to conduct an environmental  
16 audit, the individual may refuse to provide a specific item of infor-  
17 mation on the basis of the privilege against self-incrimination. In  
18 that case, the commissioner may request the attorney general to apply  
19 to the superior court for immunity for the individual under AS 12.50.-  
20 101 and for an order compelling production of the specific item of  
21 information.

22 (d) A person may not be required to conduct more than one en-  
23 vironmental audit under this section for a specific violation at its  
24 site as long as the operations or conditions at that site remain in  
25 compliance with applicable law, permits, or approvals of the depart-  
26 ment.

27 (e) In this section

28 (1) "environmental audit" means a systematic, documented,  
29 periodic, and objective review of a person's operations, practices,

1 and performance related to meeting each applicable environmental  
2 standard and requirement, including permit conditions;

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

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

8 Sec. 46.03.885. REGULATIONS. The commissioner shall adopt  
9 regulations under the Administrative Procedure Act (AS 44.62) to  
10 implement AS 46.03.020(6) and (14), 46.03.761, 46.03.850, and 46.03.-  
11 861.