

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY REPRESENTATIVES KOPONEN, Brown, Ellis

Introduced: 2/19/91

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing suits to enforce environmental laws; and having the effect of
2 amending Rules 24 and 82 of the Alaska Rules of Civil Procedure."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 46.03.870(b) is amended to read:

5 (b) Except as provided [SPECIFIED] in AS 46.03.822 - 46.03.828 and except in an
6 action under (d) of this section, a determination or order of the department does not create a
7 presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

8 * **Sec. 2.** AS 46.03.870 is amended by adding new subsections to read:

9 (d) Except as provided in (g) of this section, a person may file a civil action against

10 (1) a person, including the state or an agency of the state, where the person is
11 alleged to be in violation of a law, regulation, permit, plan, or order established under this
12 chapter, AS 46.04, or AS 46.09; or

13 (2) the commissioner where a failure of the commissioner to perform a
14 nondiscretionary act or duty specified under this chapter, AS 46.04, or AS 46.09 is alleged.

1 (e) For purposes of this section, the decision or duty of the commissioner to bring an
2 enforcement action against a person alleged to be in violation of a law, regulation, permit, plan,
3 or order established under this chapter, AS 46.04, or AS 46.09 is a discretionary act or duty.

4 (f) In an action under (d)(1) of this section, the court may assess civil penalties under
5 AS 46.03.760, issue an injunction under AS 46.03.765, and order other relief. In an action under
6 (d)(2) of this section, the court may issue an injunction and order other relief.

7 (g) A person may not file a civil action

8 (1) under (d)(1) of this section

9 (A) until 60 days after the plaintiff has given notice of the violation to the
10 commissioner and to the person alleged to be in violation of a law, regulation, permit,
11 plan, or order; or

12 (B) if the commissioner has commenced and is diligently prosecuting a
13 civil action or administrative penalty proceeding to require compliance with the law,
14 regulation, permit, plan, or order;

15 (2) under (d)(2) of this section until 60 days after the plaintiff has given notice
16 of the violation to the commissioner.

17 (h) Notwithstanding (g)(1)(A) and (2) of this section, a person may file a civil action
18 under (d)(1) or (2) of this section immediately after giving notice under (g)(1)(A) or (2), as
19 appropriate, in an action involving

20 (1) a hazardous waste as defined under AS 46.03.900;

21 (2) a hazardous substance as defined under AS 46.03.826 or AS 46.09.900; or

22 (3) a hazardous air pollutant as defined under 42 U.S.C. 7412.

23 (i) The commissioner may intervene in a civil action under (d)(1) of this section as a
24 matter of right. A person unable to file a civil action under (g) of this section may intervene as
25 a matter of right in a civil action or administrative proceeding described under (g)(1)(B) of this
26 section.

27 (j) In the issuance of an order under this section, the court may award the costs of
28 litigation, including reasonable attorney and expert witness fees, to

29 (1) a substantially prevailing plaintiff; or

30 (2) a defendant if the court finds that the plaintiff's action was wholly frivolous.

31 * Sec. 3. AS 46.03.890 is repealed and reenacted to read:

1 Sec. 46.03.890. ENFORCEMENT AUTHORITY. A police officer of the state and a
2 state employee authorized by the commissioner are authorized to enforce this chapter. This
3 section does not limit the right of a person under AS 46.03.870(d) - (j).

4 * Sec. 4. AS 46.03.870(a) is repealed.

5 * Sec. 5. The provisions of AS 46.03.870(i), enacted by sec. 2 of this Act, have the effect of
6 changing Alaska Rule of Civil Procedure 24 by limiting the court's control over intervention of parties.

7 * Sec. 6. AS 46.03.870(i), enacted by sec. 2 of this Act, takes effect only if sec. 5 of this Act
8 receives a two-thirds majority vote of each house as required by art. IV, sec. 15, Constitution of the State
9 of Alaska.

10 * Sec. 7. The provisions of AS 46.03.870(j), enacted in sec. 2 of this Act, have the effect of changing
11 Alaska Rule of Civil Procedure 82 by revising the standards for the award of attorney fees and costs.

12 * Sec. 8. AS 46.03.870(j), enacted in sec. 2 of this Act, takes effect only if sec. 7 of this Act receives
13 a two-thirds majority vote of each house as required by art. IV, sec. 15, Constitution of the State of
14 Alaska.