

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/16/92

Referred: Finance

Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Ellis

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing suits to enforce environmental laws."**

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

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

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

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

8 (d) Except as provided in (g) of this section, a person who has an interest that is or may
9 be adversely affected by the violation 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; for the purposes of this paragraph, "person" does not include
13 a municipality having within its boundaries taxable real and personal property with a full value
14 determination of \$100,000,000 or less as determined by the Department of Community and

1 Regional Affairs under AS 14.17.140 as of January 1 of the second fiscal year preceding the
2 alleged violation; or

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

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

8 (f) In an action under (d)(1) of this section, the court may assess civil penalties under
9 AS 46.03.760, issue an injunction under AS 46.03.765, and order other equitable relief. In an
10 action under (d)(2) of this section, the court may issue an injunction and order other equitable
11 relief. Nothing in this section authorizes a court to award damages to a party in an action
12 brought under this section.

13 (g) A person may not file a civil action under (d) of this section unless the violation is
14 substantial and is either continuing, intermittent, or likely to recur. In addition, a person may not
15 file a civil action

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

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

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

23 (2) under (d)(2) of this section until 60 days after the person has given notice of
24 the violation to the commissioner.

25 (h) In an action involving a hazardous waste, a hazardous substance as defined under
26 AS 46.03.826 or AS 46.09.900, or a hazardous air pollutant as defined under 42 U.S.C. 7412,
27 the time limits under (g)(1)(A) and (2) of this section are reduced to

28 (1) 10 days after giving notice under (g)(1)(A) or (2), as appropriate; or

29 (2) immediately after giving notice under (g)(1)(A) or (2), as appropriate, if the
30 action may involve an imminent and substantial endangerment to health or the environment.

31 (i) A settlement of a suit brought under this section shall be approved by the court. The

1 court may not approve a settlement that requires a payment for other than attorney fees or
2 litigation costs, unless the payment is expressly intended for a project that is related, directly or
3 indirectly, to the environmental harm caused or threatened by the alleged violation.

4 * Sec. 3. AS 46.03.890(a) is repealed and reenacted to read:

5 (a) A police officer of the state and a state employee authorized by the commissioner are
6 authorized to enforce this chapter. This section does not limit the right of a person under
7 AS 46.03.870(d) - (i).

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