

**HOUSE BILL NO. 377**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein**

**Introduced: 1/13/92**

**Referred: Resources, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to prevention, abatement, and control of air pollution; and providing for  
2 an effective date."

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

4 \* **Section 1. FINDINGS; PURPOSE.** (a) The legislature finds that

5 (1) the federal Clean Air Act Amendments of 1990 made many changes in federal clean  
6 air laws that require action by the state;

7 (2) failure of a state to comply with federal clean air laws can result in sanctions,  
8 including the loss of federal air pollution control grants or federal highway funds and federal takeover  
9 of air quality regulation in the state; and

10 (3) it would be in the state's interest to avoid the loss of federal funds for air pollution  
11 control and highways and federal takeover of air quality regulation.

12 (b) It is the purpose of this Act to ensure that the Department of Environmental Conservation  
13 has sufficient statutory authority to regulate air quality in the state in a manner that complies with the  
14 requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act Amendments of 1990).



1 \* Sec. 2. AS 37.05.146(4) is amended by adding a new subparagraph to read:

2 (P) air pollution control fund (AS 46.03.177).

3 \* Sec. 3. AS 44.46.025(a) is amended to read:

4 (a) The Department of Environmental Conservation may adopt regulations that prescribe  
5 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs  
6 of the following services provided by the department:

7 (1) inspections, permit administration, plan review and approval, and other related  
8 services provided under AS 03.05, AS 17.20, and AS 18.35;

9 (2) state operation of a vehicle inspection and maintenance program if a state  
10 vehicle inspection and maintenance program is operated under AS 46.03.190 or  
11 46.03.220(d); a fee established under this paragraph shall also cover the indirect costs of the  
12 program to the extent required under federal law [AIR QUALITY PERMITS UNDER  
13 AS 46.03.140 AND 46.03.160];

14 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;

15 (4) plan approvals and permits for sewerage system and treatment works and  
16 wastewater disposal systems, and plan approvals for drinking water systems, under AS 46.03.720;

17 (5) oil discharge financial responsibility approvals under AS 46.04.040;

18 (6) oil discharge contingency plan approvals under AS 46.04.030;

19 (7) water and wastewater operator training under AS 46.30.

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

21 Sec. 46.03.135. POLICY; STATE PLANS. (a) It is the policy of the state to have a  
22 program to prevent, abate, and control air pollution that complies with the requirements of  
23 42 U.S.C. 7401 - 7671q, as amended, and federal regulations adopted under those laws.

24 (b) In order to carry out the policy described in (a) of this section, the department shall  
25 prepare and submit to the federal government the plans and programs required under 42 U.S.C.  
26 7401 - 7671q, as amended. The department shall revise and resubmit a plan or program required  
27 under this subsection when revision and resubmission is necessary to maintain compliance with  
28 the requirements of applicable federal laws and regulations. The department may also revise and  
29 resubmit a plan or program when determined desirable by the department, but revisions must be  
30 in compliance with applicable federal laws and regulations.

31 (c) The planning process for a plan or program developed under (b) of this section shall

1 comply with the requirements of federal laws and regulations, including the consultation and  
2 participation requirements of 42 U.S.C. 7504.

3 \* Sec. 5. AS 46.03.160(a) is amended to read:

4 (a) The department shall, by regulation, implement a permit program that meets  
5 the requirements of 42 U.S.C. 7661 - 7661q, as amended, and regulations adopted under  
6 those laws. The department shall [MAY] require that notice be given to it before the  
7 undertaking of the construction, installation, or establishment of particular types or classes of new  
8 air contaminant sources specified in its regulations or in applicable federal regulations. Within  
9 15 days of its receipt of the notice, the department shall require, as a condition precedent to the  
10 undertaking, the submission of plans and other information it considers necessary in order to  
11 determine whether the proposed undertaking will be in accord with applicable regulations in force  
12 under AS 46.03.140 - 46.03.150 or applicable federal laws.

13 \* Sec. 6. AS 46.03.160(b) is amended to read:

14 (b) Within 30 days of receipt of the plans and information for a proposed undertaking,  
15 the department shall notify the applicant as to whether the plans and information are  
16 sufficiently complete and whether it appears to the department that the proposed  
17 undertaking requires a permit. Within the time requirements of federal law, the  
18 department shall either approve the undertaking and issue a permit, or if the department  
19 determines that the proposed undertaking will not meet the requirements of AS 46.03.140 -  
20 46.03.150 and applicable regulations, including federal regulations, it shall issue a prohibition  
21 order against the undertaking. A permit issued under this subsection must

22 (1) specify all requirements applicable to the permittee; and

23 (2) be for a specified term; the term may be no longer than five years unless  
24 a different time period is required or allowed under federal law or federal regulations and  
25 the department has adopted a corresponding state regulation.

26 \* Sec. 7. AS 46.03 is amended by adding new sections to read:

27 Sec. 46.03.163. RENEWAL OF PERMITS. (a) A person who has a permit issued under  
28 AS 46.03.160 who intends to continue the permitted operation after the date on which the permit  
29 expires shall submit to the department a timely and complete application for renewal of the  
30 permit.

31 (b) Notwithstanding the terms of a permit, if a person submits a timely and complete



1 application for renewal of a permit under (a) of this section, the

2 (1) permit for which renewal is sought does not expire until the application for  
3 renewal has been approved or denied; and

4 (2) terms and conditions of the permit for which renewal is sought remain in  
5 effect until the application for renewal has been approved or denied.

6 Sec. 46.03.165. TERMINATION OR MODIFICATION OF PERMITS. (a) The  
7 department may terminate a permit issued under AS 46.03.160 upon 30 days' written notice if  
8 the department finds

9 (1) that the permit was procured by misrepresentation of material fact or by  
10 failure of the applicant to disclose fully the facts relating to its issuance;

11 (2) that there has been a violation of the conditions of the permit;

12 (3) that there has been a material change in the quantity or type of emissions from  
13 the permitted source; or

14 (4) other cause.

15 (b) The department may modify, or revoke and reissue, a permit issued under  
16 AS 46.03.160 if the department finds

17 (1) that a material change in the quality or classification of the air of the state has  
18 occurred;

19 (2) that applicable state or federal laws or regulations have changed since the  
20 permit was issued in a way that necessitates a new permit; or

21 (3) other cause.

22 \* Sec. 8. AS 46.03 is amended by adding new sections to read:

23 Sec. 46.03.175. FEES RELATED TO PERMITS OR REVIEWS. (a) The department  
24 shall charge and collect an annual fee from a person who is issued a permit under AS 46.03.160.  
25 The department shall by regulation adopt a fee structure that meets the requirements of 42 U.S.C.  
26 7661a(a)(3), as amended.

27 (b) The department shall charge and collect a processing fee of \$100 from a person who  
28 applies for a permit under AS 46.03.160 if the department determines that the permit applied for  
29 is not required.

30 (c) Notwithstanding AS 37.10.050, the department shall deposit fees collected under this  
31 section into the air pollution control fund established under AS 46.03.177.

1           Sec. 46.03.177. AIR POLLUTION CONTROL FUND. (a) The air pollution control  
2 fund is established in the department. The fund consists of money appropriated to it and money  
3 deposited by the department under AS 46.03.175(c). Unless otherwise specified in an  
4 appropriation to the fund, an appropriation to the fund does not lapse. Money deposited to the  
5 fund under AS 46.03.175 does not lapse. Interest earned on money in the fund shall be deposited  
6 by the commissioner in compliance with AS 37.10.050.

7           (b) Money in the fund is available exclusively to pay for the reasonable direct and  
8 indirect costs incurred to develop and administer the permit program required under  
9 AS 46.03.160, including the reasonable costs of

- 10                   (1) reviewing and acting upon permit applications;
- 11                   (2) enforcing the terms and conditions of permits;
- 12                   (3) emissions and ambient monitoring;
- 13                   (4) preparing regulations and giving technical assistance;
- 14                   (5) modeling, analyses, and demonstrations; and
- 15                   (6) preparing inventories and tracking emissions.

16           (c) The commissioner shall administer the fund.

17           (d) In this section, "fund" means the air pollution control fund established under this  
18 section.

19           Sec. 46.03.179. REGISTRATION PROGRAM. The department may require registration  
20 of facilities that emit air contaminants but that are not required to have permits under  
21 AS 46.03.160.

22 \* Sec. 9. AS 46.03.210(a) is amended to read:

23           (a) A municipality with a population in excess of 1,000 may, within five years from  
24 August 5, 1969, establish and administer within its jurisdiction an air pollution control program.  
25 Organized boroughs may establish an air pollution control program on an areawide basis, and the  
26 exercise of powers with respect to the program is not subject to the restrictions on acquiring  
27 additional areawide powers specified in AS 29.35.300 - 29.35.330. Local programs shall

28                   (1) provide by ordinance for requirements compatible with those imposed by the  
29 provisions of AS 46.03.035 - 46.03.179, 42 U.S.C. 7401 - 7671a, as amended, [AS 46.03.140  
30 AND 46.03.170] and applicable state and federal regulations;

31                   (2) provide for the enforcement of the requirements imposed through appropriate

1 administrative and judicial processes;

2 (3) provide for a local administrative organization, staff, and other resources  
3 necessary to effectively carry out the purposes of the program;

4 (4) be approved by the department as being satisfactory to meet the requirements  
5 of AS 46.03.135 - 46.03.179, 42 U.S.C. 7401 - 7671a, as amended, [AS 46.03.140 - 46.03.170]  
6 and the applicable state and federal regulations; and

7 (5) provide for the exemption of a locally registered motor vehicle from the  
8 requirements of a local emission control program established under this section if the vehicle is  
9 not used within the jurisdiction and the exemption is not prohibited under federal law.

10 \* Sec. 10. AS 46.03.220(d) is amended to read:

11 (d) If the department finds that the control of a particular class of air contaminant source,  
12 because of its complexity or magnitude, is beyond the reasonable capability of the local air  
13 pollution control authorities or may be more efficiently and economically performed at the state  
14 level, it may assume and retain jurisdiction over the class of air contaminant source.  
15 Classifications under this subsection may be either on the basis of the nature of sources involved  
16 or on the basis of their relationship to the size of the communities in which they are located.  
17 Classifications under this subsection may be statewide or pertain to an area defined in  
18 regulations of the department.

19 \* Sec. 11. AS 46.03 is amended by adding new sections to read:

20 Sec. 46.03.227. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM. The  
21 department shall establish a small business stationary source technical and environmental  
22 compliance assistance program that complies with the requirements of 42 U.S.C. 7661f, including  
23 the requirements that the department

24 (1) develop, collect, and coordinate information about methods and technologies  
25 that can be used by small business stationary sources to comply with state and federal air  
26 pollution control laws and regulations;

27 (2) encourage lawful cooperation among small businesses and other persons to  
28 further compliance with state and federal air pollution control laws and regulations;

29 (3) designate an office within the department to serve as ombudsman for small  
30 business stationary sources in connection with their compliance with state and federal air  
31 pollution control laws and regulations;

1 (4) ensure that small business stationary sources receive notice of their rights  
2 under state and federal air pollution control laws and regulations in a manner and form that gives  
3 them reasonably adequate time to evaluate compliance methods and relevant proposed or final  
4 regulations or standards issued under state and federal air pollution control laws.

5 Sec. 46.03.228. COMPLIANCE ADVISORY PANEL. (a) The small business air  
6 pollution control compliance advisory panel is created. The panel consists of

7 (1) two members, who are not owners or representatives of owners of small  
8 business stationary sources, selected by the governor to represent the general public;

9 (2) one member selected by the commissioner to represent the department; and

10 (3) four members, who are owners or representatives of owners of small business  
11 stationary sources, selected as follows:

12 (A) one shall be selected by the president of the senate and one shall be  
13 selected by the speaker of the house;

14 (B) if there are members of the senate who are not part of the majority  
15 caucus of the senate, the leader of the largest nonmajority group shall select a panel  
16 member; if all members of the senate are in the majority caucus, then the president of the  
17 senate shall select a second panel member in addition to the selection authorized under  
18 (A) of this paragraph;

19 (C) if there are members of the house who are not part of the majority  
20 caucus of the house, the leader of the largest nonmajority group shall select a panel  
21 member; if all members of the house are in the majority caucus, then the speaker of the  
22 house shall select a second panel member in addition to the selection authorized under  
23 (A) of this paragraph.

24 (b) The panel shall

25 (1) render advisory opinions concerning the effectiveness of the assistance  
26 program established under AS 46.03.227, difficulties encountered by small businesses that are  
27 required to comply with state and federal air pollution control programs, and the degree and  
28 severity of enforcement procedures used against small businesses that are required to comply with  
29 state and federal air pollution control programs;

30 (2) make periodic reports to the federal government as required under 42 U.S.C.  
31 7661f(e)(1)(A), as amended; and



1 (3) review information prepared by the department for small business stationary  
2 sources to ensure that the information is understandable by laypersons.

3 (c) The department shall provide technical and clerical support for the panel and shall  
4 disseminate the reports and advisory opinions issued by the panel.

5 (d) In this section, "panel" means the compliance advisory panel created under this  
6 section.

7 Sec. 46.03.229. DEFINITION. In AS 46.03.227 - 46.03.229, "small business stationary  
8 source" means a stationary source of air pollutants that meets all of the following conditions:

9 (1) is owned or operated by a person that employs 100 or fewer individuals;

10 (2) is a small-business concern, as defined under 15 U.S.C. 632(a) (Small  
11 Business Act);

12 (3) is not a major stationary source, as defined in regulations of the department;

13 (4) does not emit 50 tons or more per year of a single air pollutant regulated  
14 under state or federal law or regulations; and

15 (5) emits less than a total of 75 tons per year of all air pollutants regulated under  
16 state or federal law or regulations.

17 \* Sec. 12. AS 46.03.760(a) is amended to read:

18 (a) Except as provided in (f) and (g) of this section, a [A] person who violates or  
19 causes or permits to be violated a provision of this chapter [OTHER THAN AS 46.03.250 -  
20 46.03.314,] or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the  
21 department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or  
22 acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
23 state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the  
24 initial violation, nor more than \$5,000 for each day after that on which the violation continues,  
25 and that shall reflect, when applicable,

26 (1) reasonable compensation in the nature of liquidated damages for any adverse  
27 environmental effects caused by the violation, which shall be determined by the court according  
28 to the toxicity, degradability and dispersal characteristics of the substance discharged, the  
29 sensitivity of the receiving environment, and the degree to which the discharge degrades existing  
30 environmental quality;

31 (2) reasonable costs incurred by the state in detection, investigation, and attempted

1 correction of the violation;

2 (3) the economic savings realized by the person in not complying with the  
3 requirement for which a violation is charged.

4 \* Sec. 13. AS 46.03.760 is amended by adding a new subsection to read:

5 (g) A person who fails to have a permit that is required under AS 46.03.135 - 46.03.245,  
6 who, after proper assessment, fails to pay a fee that is required under AS 46.03.165(a), or who  
7 violates or causes or permits to be violated a term or condition of a permit issued under  
8 AS 46.03.160 is liable, in a civil action, to the state for a sum to be assessed by the court of not  
9 less than \$10,000 for each day that the failure or violation exists. The sum assessed by the court  
10 must reflect, when applicable, the factors described in (f)(1) - (4) of this section.

11 \* Sec. 14. AS 46.03.790 is amended by adding a new subsection to read:

12 (h) Notwithstanding AS 12.55.035, a person, other than an organization, convicted of a  
13 class A misdemeanor under (a) of this section for failure to have a permit under AS 46.03.135 -  
14 46.03.245, for failure to pay a fee required under AS 46.03.165(a), or for violating or causing  
15 or permitting to be violated a term or condition of a permit issued under AS 46.03.160 shall be  
16 fined a minimum of \$10,000 for each day of failure or violation.

17 \* Sec. 15. AS 46.03.170 is repealed.

18 \* Sec. 16. TRANSITIONAL PROVISIONS. (a) The Department of Environmental Conservation  
19 shall submit to the federal government the plans and programs necessary to comply with 42 U.S.C.  
20 7401 - 7671q, as required by AS 46.03.135(b), as enacted by sec. 4 of this Act, by November 15, 1993.

21 (b) The Department of Environmental Conservation shall adopt regulations to implement the  
22 plans and programs described in (a) of this section in a timely manner so that the regulations take effect  
23 November 15, 1993.

24 (c) The Department of Environmental Conservation shall establish the assistance program  
25 required under sec. 11 of this Act by November 1, 1992.

26 (d) The persons responsible for selecting the members of the advisory panel established under  
27 sec. 11 of this Act shall make their selections by November 1, 1992.

28 \* Sec. 17. MUNICIPAL PROGRAMS. (a) A municipality that is administering an air pollution  
29 control program under AS 46.03.210 on November 14, 1993, may not continue administering that  
30 program unless it has submitted to the Department of Environmental Conservation new documentation  
31 showing that the program complies with the new requirements of AS 46.03.210, as amended by sec. 9

1 of this Act.

2 (b) If a municipality submits new documentation of compliance under (a) of this section by  
3 November 14, 1993, the Department of Environmental Conservation shall, within 45 days of the  
4 submission, either approve the local program or send the municipality written notice of specific areas  
5 of inadequacy.

6 (c) Within 45 days after sending written notice under (b) of this section, the Department of  
7 Environmental Conservation shall conduct a hearing on the matter. The hearing and subsequent actions  
8 are governed by AS 46.03.260(b) - (h).

9 \* Sec. 18. Sections 11 and 16 of this Act take effect immediately under AS 01.10.070(c).

10 \* Sec. 19. Except as provided in sec. 18 of this Act, this Act takes effect November 15, 1993.