

CS FOR HOUSE BILL NO. 377 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/24/92

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and control of air
2 pollution; relating to civil and criminal penalties, damages, and other remedies for air
3 quality control violations; amending the definition of 'hazardous substance'; relating to use
4 of the oil and hazardous substance release response fund; relating to inspection and
5 enforcement powers of the Department of Environmental Conservation; and providing for
6 an effective date."

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

8 * **Section 1. PURPOSES.** (a) The primary purpose of this Act is to bring the state into compliance
9 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
10 in state law are necessary to allow the state to continue to have primary management of air quality in
11 the state and to retain federal approval of the state's air quality control program in order to ensure the
12 continued receipt of federal highway and air pollution control money. The federal Environmental
13 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold

1 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

2 (b) The legislature also recognizes that the replacement of automobiles, light trucks, and vans
3 in the state fleet with vehicles fueled by energy sources other than gasoline will contribute to the
4 improvement of air quality in the communities in which they are used. Therefore, another purpose of
5 this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate
6 matter to procure alternative-fueled vehicles.

7 * Sec. 2. AS 14.09 is amended by adding a new section to read:

8 Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans
9 to encourage contractors that provide school bus transportation to procure alternative-fueled
10 buses. In this section, "alternative-fueled" means capable of operating on a fuel such as
11 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
12 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
13 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

14 * Sec. 3. AS 36.30 is amended by adding a new section to article 1 to read:

15 Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the
16 Department of Transportation and Public Facilities procures an automobile, light truck, or van
17 for addition to the state fleet at a location in a nonattainment area in which the Department of
18 Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement
19 officer shall procure only an alternative fueled vehicle if an alternative-fueled vehicle is available
20 from an original equipment manufacturing company.

21 (b) In making a procurement under this section, the procurement officer may give a
22 preference to an automobile, light truck, or van operated on compressed natural gas.

23 (c) In this section, "alternative-fueled" means capable of operating on a fuel such as
24 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
25 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
26 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

27 * Sec. 4. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 14. AIR QUALITY CONTROL.

29 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

30 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the
31 department may adopt regulations under this chapter as necessary to prevent, abate, control, or

1 identify air pollution due to emissions, including regulations setting emission standards,
2 performance standards, and limitations. The standards and limitations may be based on risk
3 assessments or on available technology and may be for the state as a whole or may vary from
4 area to area in recognition of local conditions.

5 (b) In implementing this chapter, the department may not require a person to use
6 machinery, devices, or equipment from a particular supplier or produced by a particular
7 manufacturer if the required emission limitations or performance standards may be met by
8 machinery, devices, or equipment available from another manufacturer.

9 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING.

10 (a) The department, by regulation, may classify facilities or sources that, in the department's
11 determination, are likely to cause or contribute to air pollution, according to the levels and types
12 of emissions and other characteristics that relate to air quality. The department may make a
13 classification under this subsection applicable to the state as a whole or to a designated area of
14 the state. The department shall base the classifications on consideration of health, economic, and
15 social factors, sensitivity of the receiving environment, and physical effects on property.

16 (b) The department or a local program authorized under AS 46.14.500 may require an
17 owner and operator of a facility or source classified under this section to report information to
18 the department or the authorized local program concerning location, size, and height of
19 contaminant outlets or area sources, processes employed, fuels used, the nature and time periods
20 or duration of emissions, and other information relevant to air quality that is available or
21 reasonably capable of being calculated and compiled.

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
24 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a
25 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an
26 order or other determination of the department under this chapter.

27 (b) A person may not operate a major facility or a facility that contains one or more of
28 the sources listed in AS 46.14.205(b) except in compliance with the operating permit and an
29 order or other determination of the department under this chapter.

30 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply
31 with the terms and conditions of that permit.

1 (d) The department shall ensure that permits issued, modified, amended, or renewed
2 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.
3 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control
4 plan.

5 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.
6 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source
7 from some or all of the requirements of this chapter.

8 Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a) Before constructing,
9 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain
10 a construction permit from the department if the facility is any one of the following:

11 (1) a new facility that has the potential to emit greater than 250 tons per year
12 (TPY) of a regulated air contaminant;

13 (2) a new facility of a type classified under AS 46.14.020 that has the potential
14 to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions;

15 (3) a new facility of a type classified under AS 46.14.020 that has the potential
16 to violate the ambient air quality standards or otherwise pose a threat to public health;

17 (4) a new facility that has the potential to emit greater than 10 TPY of a
18 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air
19 contaminants;

20 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this
21 subsection, for which a modification is proposed that would increase actual emissions of an air
22 contaminant to an amount equal to or greater than the annual emission quantity set out in
23 regulations adopted under AS 46.14.010.

24 (b) The owner and operator of a facility shall obtain an operating permit from the
25 department if the facility is a major facility or if the facility contains one or more of the
26 following sources:

27 (1) a stationary source, including an area source, subject to federal new source
28 performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission
29 standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

30 (2) another stationary source designated by the federal administrator or the
31 department, by regulation.

1 **Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)**
2 **The department may adopt regulations to implement AS 46.14.200 - 46.14.290. The department**
3 **shall adopt regulations to address the following elements of the emission control permit program:**

4 (1) a standard permit application form that meets the requirements of federal
5 regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));

6 (2) procedures for preparation and submission of a monitoring, reporting, and
7 quality assurance plan and, if required, a compliance schedule describing how a permitted facility
8 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

9 (3) procedures for

10 (A) expeditiously determining when a permit application is complete;

11 (B) processing and reviewing an application; and

12 (C) providing public notice, including opportunity for public comment and
13 hearing;

14 (4) standard permit conditions, including conditions for

15 (A) emission standards and limitations;

16 (B) monitoring, recordkeeping, and reporting;

17 (C) inspection and entry;

18 (D) certification of corporate or other business organization reports;

19 (E) annual certification of compliance; and

20 (F) excess emission or process deviation reporting;

21 (5) fees, and procedures for collecting fees;

22 (6) procedures for renewing, modifying, amending, or revising a permit that
23 provide maximum flexibility in the operation of the facility consistent with the purposes of this
24 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

25 (7) procedures for approving physical or operational limitations that will reduce
26 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200
27 and 46.14.205.

28 (b) The absence of, or the department's failure to adopt, a regulation under this section
29 does not relieve a person from compliance with a permit issued under this chapter and with other
30 provisions of law, including emission control requirements.

31 **Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy**

1 of the state to have a program to prevent, abate, control, and identify air pollution that complies
2 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under
3 those laws.

4 (b) The department shall act for the state in any negotiations relative to the state air
5 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department
6 may adopt regulations necessary to implement the state plan.

7 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner
8 and operator of a facility required to have an operating permit under this chapter shall submit the
9 required application and monitoring, reporting, and quality assurance plan no later than 12
10 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time
11 if required by the department.

12 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except
13 as provided in AS 46.14.245, after receipt of a complete application, and after notice and
14 opportunity for public comment and hearing, the department shall issue or deny

15 (1) a construction permit within 30 days after the close of the public comment
16 period;

17 (2) an operating permit, other than a general operating permit, within 18 months
18 after receipt of the complete application by the department.

19 (b) Notwithstanding (a) of this section, the department may establish a phased schedule
20 for acting on operating permit applications submitted on or before November 15, 1994. A phased
21 schedule must ensure that at least one-third of the applications submitted on or before
22 November 15, 1994, will be acted on by the department during each of the three years after
23 November 15, 1994. On or before November 15, 1997, the department shall act on all
24 applications received on or before November 15, 1994.

25 (c) Failure by the department to act within the time limits established in or under (a) or
26 (b) of this section shall be treated as a final agency action, but only for purposes of judicial
27 review to require that action be taken by the department.

28 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
29 this chapter, the owner and operator, a person who participated in the public comment process,
30 or a person with standing under state or federal law to obtain administrative or judicial review
31 of a permit action under this chapter may request an adjudicatory hearing under the department's

1 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party
2 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of
3 Appellate Procedure.

4 Sec. 46.14.235. SINGLE PERMIT. Regardless of whether a facility contains a single
5 source or multiple sources, only a single operating permit is required for the facility.

6 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for
7 public comment and hearing, and after approval by the federal administrator, the department may
8 establish a general operating permit that would be applicable to more than one facility determined
9 by the department to be similar in source structure. A general operating permit must contain
10 provisions that meet the requirements of this chapter applicable to operating permits. A general
11 operating permit is not effective for a specific facility until the owner and operator of the facility
12 has submitted an application under AS 46.14.220 and the department has issued the general
13 operating permit. The department shall issue or deny a general operating permit within 30 days
14 after receipt of a complete application.

15 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating
16 permit may not be issued under this chapter until the federal administrator approves the permit,
17 or until 45 days after a copy of the final draft permit has been provided by the department to the
18 federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator
19 files an objection with the department, the department shall notify the applicant of the objection.
20 The permit may not be issued until the objection is resolved or the permit is revised to meet the
21 objection of the federal administrator.

22 (b) Within 60 days after the close of the 45-day period under (a) of this section, and in
23 accordance with procedures established in federal regulations adopted under 42 U.S.C. 7661b(2)
24 (Clean Air Act, sec. 505b(2)), a person may petition the federal administrator to file an objection
25 to the permit.

26 Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and
27 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the
28 applicable fees set out in the fee schedule adopted by the department under (b) of this section.
29 The owner and operator shall pay the fees to the department or to the public entity designated
30 by the department.

31 (b) The department shall adopt, by regulation, a fee schedule based upon the type of

1 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source
2 classifications; and other factors reflecting the cost of administering the emission control permit
3 program under this chapter. Fees must be sufficient to cover, but not significantly exceed, the
4 reasonable direct and indirect costs required to develop and implement the permit program and
5 the federally mandated aspects of the small business assistance program established in this
6 chapter. For purposes of this subsection, "costs" include expenditures for

- 7 (1) preparing and adopting regulations to implement the permit program;
- 8 (2) preparing guidance on the permit program;
- 9 (3) reviewing and acting upon a permit application;
- 10 (4) implementing and enforcing the terms and conditions of a permit, excluding
11 court costs and attorney fees;
- 12 (5) monitoring of emissions and ambient air quality;
- 13 (6) reviewing and executing models, analyses, and demonstrations to evaluate
14 emissions;
- 15 (7) preparing inventories and tracking of facility emissions;
- 16 (8) performing data management, analysis, and report writing;
- 17 (9) conducting training, audits, or other services as provided under the small
18 business assistance program under AS 46.14.400 - 46.14.430; and
- 19 (10) reviewing and acting upon plans and other information submitted under
20 AS 46.14.200 - 46.14.290.

21 (c) The department shall review the fee structure adopted under (b) of this section at least
22 every five years and when there are changes in state or federal laws that affect the costs of
23 operating the permit program or the federally mandated aspects of the small business assistance
24 program. Upon review, the department shall amend the fee structure as necessary to ensure that
25 the fees cover, but do not significantly exceed, the reasonable costs authorized by (b) of this
26 section.

27 **Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT.** The department
28 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee
29 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and
30 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also
31 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is

1 due under this chapter and is unpaid.

2 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit
3 under this chapter shall be issued for a fixed term established by the department, but in no case
4 may the term exceed five years after the date of issue.

5 (b) If a timely and complete application for renewal of an operating permit is submitted
6 to the department, the existing permit issued under this chapter does not expire until the renewal
7 permit has been issued or denied.

8 Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this chapter
9 is subject to review and reopening by the department based on the determination of the federal
10 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air
11 Act).

12 (b) A permit issued under this chapter is subject to review and reopening by the
13 department if the permit is issued to a major facility and is valid for a term of three or more
14 years. The department shall reopen a permit described in this subsection to incorporate changes
15 in law, or to impose equivalent emission limitations, that became applicable after the permit was
16 issued. The department shall make incorporations allowed under this subsection as soon as
17 practicable, but, regarding a change in law, no later than 18 months after the change in law took
18 effect. The department is not required to reopen a permit under this subsection if the change in
19 law is not effective until after the date that the permit expires. Reopening of a permit under this
20 subsection may be treated as a permit renewal by the department if the procedural requirements
21 for permit renewal have been met.

22 (c) Proceedings to reopen a permit shall follow the same procedure as for initial permit
23 issuance and affect only those parts of the permit for which the department had cause to reopen
24 under this section.

25 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR
26 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the
27 permittee, the department may terminate, modify, amend, or revoke and reissue a construction
28 or operating permit if the department finds that

29 (1) the permit was obtained by misrepresentation of material fact or by failure of
30 the owner and operator to disclose fully the facts relating to issuance of the permit;

31 (2) the permit contains a material mistake;

1 (3) the permittee has violated this chapter, a regulation, a judicial or
2 administrative order, or a term or condition of a permit, approval, or acceptance issued under this
3 chapter;

4 (4) there has been a material change in the quantity or type of air contaminant
5 emitted from the facility; or

6 (5) the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty
7 or interest imposed under AS 46.14.255.

8 Sec. 46.14.275. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION
9 AND REISSUANCE OF PERMITS. The department shall take measures practicable and
10 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal
11 administrator of permits issued by the department under this chapter.

12 Sec. 46.14.280. TEMPORARY OPERATIONS. The department may issue a single
13 operating permit under AS 46.14.225, authorizing a facility to operate at specific multiple
14 locations in the state for temporary periods of time not to exceed one year at any one location.
15 A permit described in this section is valid only for the specific locations identified in the
16 application and authorized by the department. The department may not issue a permit under this
17 section unless the permit contains conditions that will ensure compliance with this chapter at each
18 authorized location, including compliance with ambient air quality standards and applicable
19 increment or visibility requirements adopted under this chapter. A permit under this section must
20 require the owner and operator to notify the department at least 30 days before a change in
21 location of a facility permitted under this section.

22 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued
23 under this chapter is considered to be compliance with the operating permit program established
24 under this chapter.

25 (b) Nothing in this section alters or affects

26 (1) the owner's and operator's obligation to comply with an emergency order
27 issued under AS 46.03.820 or 42 U.S.C. 7603 (Clean Air Act, sec. 303); and

28 (2) the liability of an owner and operator for a violation of applicable
29 requirements of law before or at the time of permit issuance.

30 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
31 and operator have submitted a timely and complete application for a permit or a permit renewal,

1 as applicable, but final action has not been taken on the application, the owner's and operator's
2 failure to have an operating permit is not a violation of this chapter unless the delay in final
3 action was due to the failure of the owner and operator to timely submit information required or
4 requested to process the application. An owner and operator required to have an operating permit
5 under this chapter are not in violation of the operating permit program established under this
6 chapter before the date on which the owner and operator are required to submit an application
7 under AS 46.14.220.

8 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

9 Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department determines
10 that the state of knowledge and technology may allow or make appropriate the control of
11 emissions from motor vehicles to further air quality control, the department may provide, by
12 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
13 requirements for the installation and use of equipment designed to reduce or eliminate emissions
14 and for the proper maintenance of this equipment.

15 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
16 element of the air pollution control system or mechanism of a motor vehicle if the department
17 adopts regulations requiring that an air pollution control system or mechanism be maintained in
18 or on the motor vehicle. Failure to maintain a required system or mechanism in operating
19 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle
20 whose registration has been suspended or canceled under this subsection is not eligible for
21 subsequent registration until the owner or operator obtains certification from the department,
22 based on a demonstration that the air pollution control system or mechanism is restored to
23 operating condition.

24 (c) The department shall consult with the Department of Public Safety regarding
25 implementation of the motor vehicle pollution control program. The Department of Public Safety
26 shall cooperate with the department in implementing the program.

27 (d) If the department adopts regulations requiring the maintenance of air pollution control
28 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle
29 subject to those regulations may not be issued a certificate of inspection unless the required air
30 pollution control system or mechanism has been inspected in accordance with the standards,
31 testing techniques, and instructions furnished by the department and the motor vehicle has been

1 found to meet those standards. A valid certificate of inspection for the emission control system,
2 if required by the department, must be presented to the Department of Public Safety before that
3 department may register a motor vehicle.

4 **ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.**

5 **Sec. 46.14.400. DEVELOPMENT OF PROGRAM.** A small business assistance program
6 is established in the department. The program shall be included in the state air quality control
7 plan under AS 46.14.215.

8 **Sec. 46.14.410. SCOPE OF PROGRAM.** (a) The small business assistance program
9 shall

10 (1) collect, coordinate, and disseminate information on methods and technologies
11 that will assist small business facilities to comply with this chapter and regulations adopted under
12 this chapter;

13 (2) encourage lawful cooperation among small business facilities and other
14 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

15 (3) provide small business facilities with information on pollution prevention and
16 accidental release detection and prevention, including information on alternative technologies,
17 process changes, products, and methods of operation that help reduce air pollution;

18 (4) assist small business facilities in determining applicable requirements and in
19 receiving permits under this chapter in a timely and efficient manner;

20 (5) ensure that small business facilities receive notice of their rights under this
21 chapter in a manner and form that ensures adequate time for the facilities to evaluate compliance
22 methods and to evaluate applicable proposed or final regulations adopted or standards issued
23 under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

24 (6) inform small business facilities of their obligations under this chapter and
25 regulations adopted under this chapter;

26 (7) provide small business facility operators with a list of auditors available for
27 auditing the operation of the facility or, if possible, and at the request of a facility owner or
28 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under
29 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

30 (8) assist in developing and implementing modified work practices or technical
31 changes to processes to facilitate compliance with this chapter and regulations adopted under this

1 chapter;

2 (9) coordinate with the federal small business stationary source technical and
3 environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air
4 Act, sec. 507(b));

5 (10) collect and make available guidance prepared by the federal small business
6 stationary source technical and environmental compliance assistance program;

7 (11) at the request of a facility owner or operator, refer questions concerning
8 compliance with this chapter, or with a regulation adopted or permit issued under this chapter,
9 to air quality management personnel of the department; and

10 (12) designate a person to be an advocate for small businesses while serving as
11 a liaison between small businesses and air quality management personnel of the department.

12 (b) If the legislature appropriates money from the general fund for purposes of the small
13 business assistance program, the department shall provide the services listed in (a) of this section
14 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that
15 otherwise meets the definition of a small business facility under AS 46.14.990 and is subject to
16 the requirements of this chapter.

17 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
18 administrator and the administrator of the United States Small Business Administration, and after
19 providing notice and opportunity for public hearing, the department may exclude from the scope
20 of the small business assistance program established in AS 46.14.410 a category or subcategory
21 of small business facilities that the department finds to have sufficient technical and financial
22 capabilities to meet the requirements of this chapter and federal law without the assistance
23 provided under AS 46.14.400 - 46.14.430.

24 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel
25 is established in the department. The panel members shall serve without compensation, but are
26 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

27 (b) The panel consists of

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

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

31 (3) four members, who are owners or representatives of owners of small business

1 stationary sources, selected as follows:

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

4 (B) if there are members of the senate who are not part of the majority
5 caucus of the senate, the leader of the largest nonmajority group shall select a panel
6 member; if all members of the senate are in the majority caucus, then the president of the
7 senate shall select a second panel member in addition to the selection authorized under
8 (A) of this paragraph;

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

14 (c) The compliance advisory panel shall

15 (1) elect a chair and agree upon procedures by which the panel will function;

16 (2) meet semi-annually at the call of the chair and give public notice of panel
17 meetings as required under AS 44.62.310 - 44.62.312;

18 (3) prepare advisory opinions concerning the effectiveness of the small business
19 assistance program, difficulties encountered in making the program efficient and effective, and
20 degree of enforcement and severity of air pollution offenses;

21 (4) make periodic reports to the administrator concerning the compliance of the
22 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction
23 Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);

24 (5) review information designed to assist small business facilities in complying
25 with this chapter to ensure that the information is understandable by laypersons; and

26 (6) have the small business advocate designated under AS 46.14.410(a)(12) assist
27 the panel in the development and dissemination of panel reports and advisory opinions.

28 ARTICLE 5. LOCAL PROGRAMS.

29 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the
30 approval of the department, a municipality with a population of 1,000 or more may establish and
31 administer within its jurisdiction a local air quality control program that is consistent with all or

1 part of the department's air quality program as established under this chapter. A first or second
2 class borough may administer an air quality control program approved by the department under
3 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional
4 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer
5 an air quality control program approved by the department under this subsection only in a service
6 area formed under AS 29.35.490(b) or (c).

7 (b) With the approval of the department, two or more municipalities or other entities may
8 create a local air quality district for the purpose of jointly administering an air quality control
9 program within the boundaries of the air quality district.

10 (c) The department may require expansion or contraction of the jurisdictional boundaries
11 of a local air quality control program approved under (a) or (b) of this section to include an
12 adjacent municipality or contiguous area in the unorganized borough if the department determines
13 that the expansion or contraction is necessary for the effectiveness and efficiency of the
14 administration of a local program based upon an evaluation of

15 (1) the location, character, or extent of particular concentrations of population;

16 (2) local air contaminant sources; or

17 (3) relevant geographic, topographic, or meteorological factors.

18 (d) A municipality or a local air quality district seeking department approval for a local
19 air quality control program shall enter into a cooperative agreement with the department. The
20 cooperative agreement must include provisions specifying

21 (1) the respective duties and authority of the department and the municipality or
22 local air quality district in the administration of the local air quality control program;

23 (2) the authority of the municipality or the local air quality district to employ staff
24 to administer the local air quality control program;

25 (3) duties of staff employed under (2) of this subsection;

26 (4) respective enforcement responsibilities of the department and the municipality
27 or the local air quality district.

28 (e) A local air quality control program shall provide for the exemption of a locally
29 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.14.300
30 if the motor vehicle is not used within the program's jurisdiction.

31 (f) A municipality or a local air quality district administering a program under this

1 section shall administer its local air quality control program according to this chapter, regulations
2 adopted under this chapter, and its cooperative agreement under (d) of this section, except that
3 a municipality's or local air quality district's program may be more stringent than the program
4 administered by the department if the municipality or district has additional legal authority
5 authorizing additional requirements.

6 (g) A decision, order, permit, or other determination made or issued under a local air
7 quality control program is considered to be a decision, order, permit, or other determination of
8 the department.

9 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
10 local air quality district has an approved air quality control program under AS 46.14.500 and the
11 department determines that the program is being implemented in a manner that fails to prevent
12 or control air pollution in the jurisdiction to which the program applies, the department shall give
13 written notice, setting out its determination, to the municipality or local air quality district.
14 Within 45 days after giving written notice, the department shall conduct a public hearing on the
15 matter.

16 (b) If, after the hearing, the department upholds the determination made in the written
17 notice, the department shall provide the municipality or local air quality district with a written
18 finding setting out the nature of the deficiencies and a description of the necessary action to be
19 taken in order for the program to prevent or control air pollution. The department shall provide
20 its finding to the municipality or district within 45 days after the closure of the public hearing
21 record. The department shall set a reasonable period of time for the municipality or local air
22 quality district to take corrective action in response to the department's finding.

23 (c) If the municipality or local air quality district fails to take corrective action within
24 the time period set by the department under (b) of this section, the department shall terminate
25 the cooperative agreement and resume management of the program in the affected jurisdiction.
26 If the municipality or the local air quality district partially remedies, to the department's
27 satisfaction, the deficiencies found in the determination, the department shall amend the
28 cooperative agreement to reflect a modified allocation of responsibilities between the department
29 and municipality or the local air quality district.

30 (d) A municipality or local air quality district that has had its cooperative agreement
31 terminated may resume, with the department's approval, a local air quality control program if the

1 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan
2 required by the department.

3 (e) If the department finds that control of a particular class of facility or source, because
4 of its complexity or magnitude is beyond the reasonable capability of the municipality or the
5 local air quality district or may be more efficiently and economically controlled at the state level,
6 the department may assume and retain jurisdiction over the class of facility or source.
7 Classifications under this subsection may be based on the nature of facilities or sources involved,
8 their size relative to the size of the communities in which they are located, or other basis
9 established by the department.

10 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality
11 district with a local air quality control program may apply for, receive, administer, and spend
12 state or federal aid for the control of air emissions or the development and administration of the
13 program if an application is first submitted to and approved by the department. Subject to
14 available money appropriated by the legislature, the department shall approve an application if
15 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
16 the requirements of this chapter.

17 ARTICLE 6. MISCELLANEOUS PROVISIONS.

18 Sec. 46.14.800. PUBLIC RECORDS. Except as provided in AS 46.14.810, permits,
19 permit applications, emissions and monitoring reports, compliance reports, certifications, and
20 monitoring, reporting, and quality assurance plans in the department's possession and control are
21 available to the public for inspection and copying.

22 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records and information, other
23 than emission data, in the department's possession and control are considered confidential records
24 if

25 (1) the owner and operator have certified to the department or authorized local
26 program that public disclosure would tend to adversely affect the owner's and operator's
27 competitive position; and

28 (2) the records

29 (A) relate to production figures, sales figures, processes, or production
30 techniques of the owner and operator; or

31 (B) consist of meteorological or ambient air quality data collected by the

1 owner or operator to support a permit application or amendment.

2 Sec. 46.14.820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
3 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted
4 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.
5 If the owner and operator of the facility are separate persons, only one person is required to
6 discharge a specific responsibility. Both persons are liable for noncompliance with the
7 requirements of this chapter or of regulations adopted under this chapter.

8 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The
9 department may assess an administrative penalty against a person who violates, or causes, or
10 allows to be violated a provision of this chapter, a regulation adopted under this chapter, or a
11 term or condition of an order, permit, or approval of the department under this chapter.

12 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day
13 for each offense. Each provision, regulation, term, or condition violated is a separate and distinct
14 offense. If a violation of a provision, regulation, term, or condition continues from day to day,
15 each day is a separate offense. In determining the amount of a penalty assessed under this
16 section, the department shall consider the effect of the offense on the public health or the
17 environment, prior history of compliance or noncompliance with this chapter, the need to deter
18 future offenses, the economic benefit of noncompliance realized by the offender, and other factors
19 that the department considers relevant. The department shall, by regulation, prepare, publish, and
20 make available to interested persons, a penalty policy describing the factors to be considered in
21 setting penalties, the methods for weighing the factors, and other aspects of penalty computation.

22 (c) If a penalty is assessed under this section, the department shall provide the assessment
23 notice to the person affected, by personal service or by certified mail, return receipt requested.
24 An administrative penalty assessed under this section becomes a final agency action 30 days after
25 service or mailing of the assessment notice unless an administrative hearing is requested by the
26 person against whom the penalty is assessed. Failure to request an administrative hearing within
27 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
28 right to an administrative hearing. The department may extend the time periods specified in this
29 subsection for good cause.

30 (d) If an administrative hearing is requested, the department shall grant a hearing and
31 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,

1 the department may modify, rescind, or affirm the administrative penalty. The modification,
2 rescission, or affirmation of a penalty under this subsection is a final agency action.

3 (e) A person against whom an administrative penalty is assessed may obtain judicial
4 review of the administrative penalty as provided in Alaska Rules of Appellate Procedure. The
5 court may set aside, or adjust the amount of, the administrative penalty only if the administrative
6 record, taken as a whole, does not contain a reasonable basis to support the finding of offense
7 or the amount of penalty assessed by the department.

8 (f) Action under this section by the department does not limit or otherwise affect the
9 authority of the department to enforce this chapter, or to recover damages, restoration expenses,
10 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall
11 reduce a judicial penalty subsequently imposed under AS 46.03.760 by any amount ordered to
12 be paid under this section by the same person for the same offense.

13 (g) The assessment of an administrative penalty under this section does not affect the
14 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
15 of the department under this chapter.

16 (h) If a person fails or refuses to pay an administrative penalty assessed under this
17 section after the penalty has become a final agency action, the department may request the
18 attorney general to commence a judicial action or take other appropriate steps to bring an action
19 to collect the penalty. If the department prevails in court, the court shall order the person to pay

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

21 (2) interest at the statutory rate under AS 45.45.010(a) from the date the penalty
22 became a final agency action; and

23 (3) reasonable attorney fees and costs incurred by the department in the collection
24 action before the court.

25 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund
26 is established. The fund consists of

27 (1) fees, penalties, and interest collected by the department under AS 46.14.250
28 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))
29 for state participation in the emission control permit program; and

30 (2) appropriations to the fund.

31 (b) The money deposited into the clean air protection fund under (a)(1) of this section

1 may be used solely to cover the reasonable direct and indirect costs, including court costs and
2 attorney fees, required to support the permit program under this chapter, and those activities of
3 the small business assistance program that are directed at facilities subject to this chapter.

4 Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,
5 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or
6 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this
7 chapter, shall be deposited in the general fund.

8 ARTICLE 7. GENERAL PROVISIONS.

9 Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

10 (1) grant jurisdiction or authority with respect to air contamination existing solely
11 within residential dwellings or commercial and industrial plants, works, or shops;

12 (2) affect the relations between employers and employees with respect to or
13 arising out of a condition of air contamination or air pollution; or

14 (3) supersede or limit the applicability of a law or an ordinance relating to
15 sanitation, industrial health, or safety.

16 Sec. 46.14.990. DEFINITIONS. In this chapter,

17 (1) "air contaminant" means a regulated air contaminant or a hazardous air
18 contaminant;

19 (2) "ambient air" means that portion of the atmosphere, external to buildings, to
20 which the general public has access;

21 (3) "ambient air quality standard" means a standard, other than an emission
22 limitation or standard, adopted under AS 46.14.010 or 42 U.S.C. 7409 (Clean Air Act, sec. 109);

23 (4) "area source" means a source of fugitive emissions;

24 (5) "certificate of inspection" means a form prepared or approved by the
25 department, signed by a qualified mechanic who attests that the mechanic has inspected a motor
26 vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and
27 bearing the statement above the mechanic's signature that false statements are punishable as a
28 crime under AS 11.56.210 and AS 46.03.790(a);

29 (6) "commissioner" means the commissioner of environmental conservation;

30 (7) "construct" or "construction" means to fabricate, erect, or install, or to make
31 a physical change, that would result in emissions;

1 (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings
2 in a facility from which an air contaminant could be emitted;

3 (9) "department" means the Department of Environmental Conservation;

4 (10) "emission" means a release of one or more air contaminants to the
5 atmosphere;

6 (11) "emission limitation" and "emission standard" mean a requirement established
7 by the department or the federal administrator, other than an ambient air quality standard, that
8 limits the quantity, rate, or concentration of emission of an air contaminant, including a
9 requirement relating to the operation or maintenance of a source to ensure continuous emission
10 reduction, and design, equipment, work practice, or operational standard adopted under this
11 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

12 (12) "equivalent emission limitation" means

13 (A) a limitation for hazardous air contaminants established by the federal
14 administrator or the commissioner on a case-by-case basis that is equivalent to the
15 limitation that would apply to a source or facility if an emission standard had been
16 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or

17 (B) if the criteria of the early reduction program established in 42 U.S.C.
18 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
19 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

20 (13) "facility" means one or more structures, buildings, installations, or properties
21 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
22 or operated by the same person or by persons under common control;

23 (14) "federal administrator" means the administrator of the United States
24 Environmental Protection Agency;

25 (15) "fugitive emissions" means emissions of an air contaminant that are not
26 emitted from a contaminant outlet;

27 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
28 7412(b) (Clean Air Act, sec. 112(b));

29 (17) "local air quality control program" means a program authorized under
30 AS 46.14.500 to implement some or all of the provisions of this chapter;

31 (18) "major facility" means a facility with the potential to emit at least

- 1 (A) 100 TPY of a regulated air contaminant;
2 (B) 10 TPY of a hazardous air contaminant; or
3 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;
4 (19) "modification" or "modify" means to make a change or a series of changes
5 in operation, or any physical change or addition to a facility or source that increases the actual
6 emissions of an air contaminant;
7 (20) "operator" means a person or persons who direct, control, or supervise a
8 facility or source that has the potential to emit an air contaminant to the atmosphere;
9 (21) "owner" means a person or persons with a proprietary or possessory interest
10 in a facility or source that has the potential to emit an air contaminant to the atmosphere;
11 (22) "person" has the meaning given in AS 01.10.060 and also includes a
12 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,
13 agencies, instrumentalities, units, and corporate authorities of the state;
14 (23) "potential to emit" means the maximum quantity of a release of an air
15 contaminant, considering a facility's physical or operational design, based on continual operation
16 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of
17 pollution control equipment and approved state or federal limitations on the capacity of the
18 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates
19 of operation and type or amount of material combusted, stored, or processed; "potential to emit"
20 does not include
21 (A) a one time, accidental release of an air contaminant; or
22 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);
23 (24) "register" or "registration" means vehicle registration under AS 28.10;
24 (25) "regulated air contaminant" means
25 (A) a material, compound, or element for which a national or state
26 ambient air quality standard has been adopted;
27 (B) oxides of nitrogen;
28 (C) a volatile organic compound; and
29 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
30 7411 - 7412 (Clean Air Act, sec. 111 - 112);
31 (26) "small business facility" means a facility that

1 (A) is owned or operated by a person who employs 100 or fewer persons;
2 (B) is a small business concern as defined in 15 U.S.C. 631 (Small
3 Business Act); and

4 (C) emits less than 100 TPY of regulated air contaminants;

5 (27) "source" means a device, process, activity, or equipment that causes, or could
6 cause, a release of an air contaminant;

7 (28) "TPY" means tons per year.

8 * Sec. 5. AS 28.10.041(a)(10) is amended to read:

9 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection
10 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.500
11 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle
12 uses a fuel source that does not primarily emit carbon monoxide;

13 * Sec. 6. AS 28.10.423 is amended to read:

14 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
15 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
16 required to be inspected under an emission control program established under AS 46.14.300 or
17 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
18 as the registration fee.

19 * Sec. 7. AS 29.35 is amended by adding a new section to read:

20 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may
21 establish a local air quality control program as provided in AS 46.14.500 only if the municipality
22 has obtained the consent of its governing body through an ordinance authorizing the participation.

23 * Sec. 8. AS 29.35.200(b) is amended to read:

24 (b) A first class borough may by ordinance exercise the following powers on an areawide
25 basis:

26 (1) provide transportation systems;

27 (2) provide water pollution control;

28 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -
29 46.03.230];

30 (4) license day care facilities;

31 (5) license, impound, and dispose of animals.



1 * **Sec. 9.** AS 29.35.210(a) is amended to read:

2 (a) A second class borough may by ordinance exercise the following powers on a
3 nonareawide basis:

- 4 (1) provide transportation systems;
- 5 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
6 fireworks;
- 7 (3) license, impound, and dispose of animals;
- 8 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
9 collection and disposal;
- 10 (5) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
11 AS 46.03.140 - 46.03.230];
- 12 (6) provide water pollution control;
- 13 (7) participate in federal or state loan programs for housing rehabilitation and
14 improvement for energy conservation;
- 15 (8) provide for economic development;
- 16 (9) provide for the acquisition and construction of local service roads and trails
17 under AS 19.30.111 - 19.30.251;
- 18 (10) establish an emergency services communication center under AS 29.35.130;
- 19 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
20 vehicles and operators;
- 21 (12) engage in activities authorized under AS 29.47.460;
- 22 (13) contain, clean up, or prevent a release or threatened release of oil or a
23 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
24 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
25 consistent with a regional master plan prepared by the Department of Environmental
26 Conservation under AS 46.04.210.

27 * **Sec. 10.** AS 29.35.210(b) is amended to read:

28 (b) A second class borough may by ordinance exercise the following powers on an
29 areawide basis:

- 30 (1) provide transportation systems;
- 31 (2) license, impound, and dispose of animals;

1 (3) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
2 AS 46.03.140 - 46.03.230];

3 (4) provide water pollution control;

4 (5) license day care facilities.

5 * **Sec. 11.** AS 37.05.146(4) is amended by adding a new subparagraph to read:

6 (P) clean air protection fund (AS 46.14.840).

7 * **Sec. 12.** AS 44.46.025(a) is amended to read:

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

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

13 (2) the emission control permitting program and the motor vehicle pollution
14 control program under AS 46.14; fees established under this paragraph shall also cover
15 indirect costs of the programs to the extent required by federal law [AIR QUALITY
16 PERMITS UNDER AS 46.03.140 AND 46.03.160];

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

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

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

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

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

23 * **Sec. 13.** AS 44.62.330(a)(44) is amended to read:

24 (44) Department of Environmental Conservation, except to the extent that
25 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated
26 under the provisions of AS 46.03 and AS 46.14;

27 * **Sec. 14.** AS 46.03.760(f) is amended to read:

28 (f) A person who violates or causes or permits to be violated a provision of
29 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a
30 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued
31 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum

1 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,
2 nor more than \$10,000 for each day after that on which the violation continues, and that shall
3 reflect, when applicable,

4 (1) reasonable compensation in the nature of liquidated damages for any adverse
5 environmental effects caused by the violation, that shall be determined by the court according
6 to the toxicity, degradability and dispersal characteristics of the substance discharged, the
7 sensitivity of the receiving environment, and the degree to which the discharge degrades existing
8 environmental quality;

9 (2) reasonable costs incurred by the state in detection, investigation, and attempted
10 correction of the violation;

11 (3) the economic savings realized by the person in not complying with the
12 requirement for which a violation is charged; and

13 (4) the need for an enhanced civil penalty to deter future noncompliance.

14 * Sec. 15. AS 46.03.765 is amended to read:

15 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation
16 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the
17 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or
18 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought
19 under this section, temporary or preliminary relief may be obtained upon a showing of an
20 imminent threat of continued violation, and probable success on the merits, without the necessity
21 of demonstrating physical irreparable harm. The balance of equities in actions under this section
22 may affect the timing of compliance, but not the necessity of compliance within a reasonable
23 period of time.

24 * Sec. 16. AS 46.03.780(a) is amended to read:

25 (a) A person who violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
26 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, [OR] AS 46.09, or
27 AS 46.14, or violates or disregards an order, permit, or other determination of the department
28 made under the provisions of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14, respectively,
29 and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the
30 environment of the state is liable to the state for damages.

31 * Sec. 17. AS 46.03.790(a) is amended to read:

1 (a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor
2 if the person with criminal negligence

3 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,
4 a regulation or order of the department, or a permit, approval, or acceptance, or a term or
5 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
6 AS 46.09, or AS 46.14.

7 (2) fails to provide information or provides false information required by
8 AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under
9 AS 46.03.755, AS 46.04, or AS 46.09; [OR]

10 (3) makes a false statement or representation in an application, label, manifest,
11 record, report, permit, or other document filed, maintained, or used for purposes of compliance
12 with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the
13 department under AS 46.03.250 - 46.03.314;

14 (4) makes a false statement, representation, or certification in an application,
15 notice, record, report, permit, or other document filed, maintained, or used for purposes
16 of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

17 (5) renders inaccurate a monitoring device or method required to be
18 maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the
19 department or a local air quality control program under AS 46.14.

20 * Sec. 18. AS 46.03.790 is amended by adding a new subsection to read:

21 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.14
22 and described in (a) of this section, a defendant who is not an organization may be sentenced to
23 pay a fine of not more than \$10,000 for each separate offense.

24 * Sec. 19. AS 46.03.850(a) is amended to read:

25 (a) When, in the opinion of the department, a person is violating or is about to violate
26 a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or lawful order of the
27 department, or a permit or certificate, or a term or condition of a permit or certificate issued by
28 the department under this chapter, [OR] AS 46.04, AS 46.14, the department may notify the
29 person of its determination by personal service or certified mail. The determination and notice
30 do not constitute an order under AS 46.03.820.

31 * Sec. 20. AS 46.03.875 is amended to read:

1 **Sec. 46.03.875. REMEDIES CUMULATIVE.** All remedies provided by this chapter,
2 [OR] AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil,
3 or criminal, under a section of this chapter, [OR] AS 46.04, or AS 46.14 does not stop the state
4 from obtaining relief under any other section of this chapter, [OR] AS 46.04, or AS 46.14.

5 * **Sec. 21.** AS 46.03.890(b) is amended to read:

6 (b) Inspection and enforcement employees of the department designated by the
7 commissioner are peace officers in the performance of their duties under this chapter, AS 46.04,
8 [AS 46.03, AND] AS 46.09, and AS 46.14.

9 * **Sec. 22.** AS 46.08.075(a) is amended to read:

10 (a) The state has a lien for expenditures by the state from the oil and hazardous substance
11 release response fund or from any other state fund, for the costs of response, containment,
12 removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,
13 with respect to response costs, the substantial threat of a release of oil or a hazardous substance
14 against all property owned by a person who is determined by the commissioner to be liable for
15 the expenditures under this chapter, AS 46.03, AS 46.04, AS 46.14, 42 U.S.C. 9607, or other
16 state or federal law. The lien includes interest, at the maximum rate allowable under
17 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of
18 competent jurisdiction in order to foreclose on the lien.

19 * **Sec. 23.** AS 46.08.900(6) is amended to read:

20 (6) "hazardous substance" means an element or compound that, when it enters into
21 the atmosphere or into or on the surface or subsurface land or water of the state, presents an
22 imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
23 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
24 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
25 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
26 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons
27 or less;

28 * **Sec. 24.** AS 46.09.900(4) is amended to read:

29 (4) "hazardous substance" means (A) an element or compound that, when it enters
30 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents
31 an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,

1 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
2 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
3 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
4 not include uncontaminated crude oil or uncontaminated refined oil;

5 * **Sec. 25.** AS 46.35.200(4)(A) is amended to read:

6 (A) emission control [AIR EMISSIONS] permit - AS 46.14
7 [AS 46.03.150], 18 AAC 50.120;

8 * **Sec. 26.** AS 46.35.200(8) is amended to read:

9 (8) "state agency" means a state department, commission, board or other agency
10 of the state; for the purposes of this chapter "state agency" also means a local or regional air
11 pollution control authority established under AS 46.14.500 [AS 46.03.210].

12 * **Sec. 27.** AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
13 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

14 * **Sec. 28.** REGULATIONS. The Department of Environmental Conservation may adopt regulations
15 as authorized under AS 46.14, enacted by sec. 4 of this Act, and other statutory authority, to implement
16 changes made by this Act. Regulations adopted under this section may not take effect until the enabling
17 statute takes effect under sec. 31 or sec. 32 of this Act.

18 * **Sec. 29.** COOPERATION. The Department of Transportation and Public Facilities and the
19 Department of Environmental Conservation shall cooperate with each other as necessary to achieve
20 implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

21 * **Sec. 30.** Sections 2 and 3 of this Act take effect July 1, 1994.

22 * **Sec. 31.** AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),
23 46.14.210, 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280,
24 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 -
25 46.14.850, 46.14.900, and 46.14.990, enacted by sec. 4 of this Act, and secs. 1 and 5 - 29 of this Act
26 take effect immediately under AS 01.10.070(c).

27 * **Sec. 32.** AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,
28 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,
29 1993.