

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

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/14/92  
Referred: 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; clarifying the definition of 'hazardous substance' to include  
4 releases and threatened releases to the atmosphere; amending the lien provisions relating  
5 to the oil and hazardous substance release response fund; relating to inspection and  
6 enforcement powers of the Department of Environmental Conservation; and providing for  
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

1 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold  
2 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

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

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

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

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

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

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

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

29 CHAPTER 14. AIR QUALITY CONTROL.

30 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

31 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the

1 department may adopt regulations under this chapter as necessary to prevent, abate, control, or  
2 identify air pollution due to emissions, including regulations setting emission standards,  
3 performance standards, and limitations. The standards and limitations may be based on human  
4 health and welfare or on available technology and may be for the state as a whole or may vary  
5 from area to area in recognition of local conditions. The department may provide exemptions  
6 for fugitive emissions to the extent allowed under federal laws and regulations.

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

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

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

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

24 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

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

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

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

3 (d) The department shall ensure that permits issued, modified, amended, or renewed  
4 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.  
5 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control  
6 plan.

7 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
8 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
9 from some or all of the requirements of this chapter.

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

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

15 (2) a new facility of a type classified under AS 46.14.020 that emits or has the  
16 potential to emit greater than 100 TPY of a regulated air contaminant;

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

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

22 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this  
23 subsection, for which

24 (A) a modification is proposed that would increase actual emissions of an  
25 air contaminant by an amount equal to or greater than the emission quantity set out in  
26 regulations adopted under AS 46.14.010; or

27 (B) reconstruction is proposed that makes it technologically and  
28 economically feasible to meet the applicable standards of this chapter.

29 (b) The owner and operator of a facility shall obtain an operating permit from the  
30 department if the facility is a major facility, a facility subject to (a) of this section, or a facility  
31 that contains one or more of the following sources:

1 (1) a source subject to federal new source performance standards under 42 U.S.C.  
2 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued  
3 under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

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

6 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)  
7 The department shall adopt regulations to address all procedural and substantive elements of the  
8 emission control permit program, except procedural elements that relate only to the internal  
9 management of the department and do not affect the public or govern the way the department  
10 deals with the public. The regulations must include the following:

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

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

16 (3) procedures for

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

18 (B) processing and reviewing an application;

19 (C) providing public notice, including opportunity for public comment and  
20 hearing; and

21 (D) issuing permits;

22 (4) standard permit conditions, including conditions for

23 (A) emission standards and limitations;

24 (B) monitoring, recordkeeping, and reporting;

25 (C) inspection and entry;

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

27 (E) annual certification of compliance; and

28 (F) excess emission or process deviation reporting;

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

30 (6) procedures for renewing, modifying, or amending a permit that provide  
31 maximum flexibility in the operation of the facility consistent with the purposes of this chapter

1 and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

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

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

8 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy  
9 of the state to have a program to prevent, abate, control, and identify air pollution that complies  
10 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under  
11 those laws.

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

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

20 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except  
21 as provided in AS 46.14.245 and 46.14.255(b), after receipt of a complete application, and after  
22 notice and opportunity for public comment and hearing, the department shall issue or deny

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

25 (2) an operating permit, other than a general operating permit, within 12 months  
26 after receipt of the complete application by the department.

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

1 applications received on or before November 15, 1994.

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

5 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
6 this chapter, the owner and operator, a person who participated in the public comment process,  
7 or a person with standing under state or federal law to obtain administrative or judicial review  
8 of a permit action under this chapter may request an adjudicatory hearing under the department's  
9 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party  
10 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of  
11 Appellate Procedure.

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

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

23 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating  
24 permit may not be issued under this chapter until the federal administrator approves the permit,  
25 or until 45 days after a copy of the final draft permit has been provided by the department to the  
26 federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator  
27 files an objection with the department, the department shall notify the applicant of the objection.  
28 The permit may not be issued until the objection is resolved or the permit is revised to meet the  
29 objection of the federal administrator. Upon request of an applicant, the department shall assist  
30 the applicant in an effort to resolve promptly an objection by the federal administrator.

31 (b) Within 60 days after the close of the 45-day period under (a) of this section, and in

1 accordance with procedures established in federal regulations adopted under 42 U.S.C. 7661b(2)  
2 (Clean Air Act, sec. 505b(2)), a person may petition the federal administrator to file an objection  
3 to the permit.

4 (c) While a petition under (b) of this section is pending, compliance with an operating  
5 permit issued under (a) of this section is considered to be compliance with the operating permit  
6 program established under this chapter for purposes of AS 46.14.285.

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

12 (b) The department shall adopt, by regulation, a fee schedule based upon the type of  
13 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
14 classifications; and other factors reflecting the cost of administering the emission control permit  
15 program under this chapter. Fees must be sufficient to cover, but not generally exceed, the  
16 reasonable direct and indirect costs required to develop and implement the permit program and  
17 the federally mandated aspects of the small business assistance program established in this  
18 chapter. For purposes of this subsection, "costs" include expenditures for

- 19 (1) preparing and adopting regulations to implement the permit program;
- 20 (2) preparing guidance on the permit program;
- 21 (3) reviewing and acting upon a permit application;
- 22 (4) implementing and enforcing the terms and conditions of a permit, excluding  
23 court costs or other costs associated with an enforcement action;
- 24 (5) monitoring of emissions and ambient air quality;
- 25 (6) reviewing and executing models, analyses, and demonstrations to evaluate  
26 emissions;
- 27 (7) preparing inventories and tracking of facility emissions;
- 28 (8) performing data management, analysis, and report writing;
- 29 (9) conducting training, audits, or other services as provided under the small  
30 business assistance program under AS 46.14.400 - 46.14.430; and
- 31 (10) reviewing and acting upon plans and other information submitted under

1 AS 46.14.200 - 46.14.290.

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

7 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. (a) The  
8 department shall adopt regulations that provide for the assessment of a penalty of five percent  
9 per month of delinquency up to a maximum of 25 percent of the fee established under  
10 AS 46.14.250(b) against the owner and operator of a facility if the owner and operator fail to  
11 timely pay a fee lawfully imposed under this chapter. The department may also assess interest  
12 against the owner and operator, computed under AS 45.45.010(a), after a fee is due under this  
13 chapter and is unpaid.

14 (b) If a permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty or  
15 interest imposed under (a) of this section, the department may, after 30 days' written notice to  
16 the permittee

17 (1) terminate the permit for which the fee, penalty, or interest remains unpaid; or

18 (2) refuse to issue or renew permits requested by the permittee or refuse to amend  
19 or modify a permit when the amendment or modification is requested by the permittee.

20 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit  
21 under this chapter shall be issued for a fixed term established by the department that is no longer  
22 than five years and no shorter than three years after the date of issue, except as provided for  
23 temporary permits under AS 46.14.280.

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

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

31 (b) A permit issued under this chapter is subject to review and reopening by the

1 department if the permit is issued to a major facility and is valid for a term of three or more  
2 years. The department shall reopen a permit described in this subsection to incorporate changes  
3 in law, or to impose equivalent emission limitations, that became applicable after the permit was  
4 issued. The department shall make incorporations allowed under this subsection as soon as  
5 practicable, but, regarding a change in law, no later than 18 months after the change in law took  
6 effect. The department may not reopen a permit under this subsection if the change in law is not  
7 effective until after the date that the permit expires. Reopening of a permit under this subsection  
8 shall be treated as a permit renewal by the department if the procedural requirements for permit  
9 renewal have been met.

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

13 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR  
14 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the  
15 permittee, the department may

16 (1) terminate, modify, amend, or revoke and reissue a construction or operating  
17 permit if the department finds that

18 (A) the permit was obtained by misrepresentation of material fact or by  
19 failure of the owner and operator to disclose fully the facts relating to issuance of the  
20 permit;

21 (B) the permittee has violated this chapter, a regulation, a judicial or  
22 administrative order, or a material term or condition of a permit, approval, or acceptance  
23 issued under this chapter; or

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

26 (2) modify, amend, or revoke and reissue a construction or operating permit if the  
27 department finds that the permit contains a material mistake.

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

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

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

14           (b) Nothing in this section alters or affects

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

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

19           Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
20 and operator have submitted a timely and complete application for a permit or a permit renewal,  
21 as applicable, but final action has not been taken on the application, the owner's and operator's  
22 failure to have an operating permit is not a violation of this chapter unless the delay in final  
23 action was due to the failure of the owner and operator to timely submit information required or  
24 requested to process the application. An owner and operator required to have an operating permit  
25 under this chapter are not in violation of the operating permit program established under this  
26 chapter before the date on which the owner and operator are required to submit an application  
27 under AS 46.14.220.

28           ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

29           Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department determines  
30 that the state of knowledge and technology may allow or make appropriate the control of  
31 emissions from motor vehicles to further air quality control, the department may provide, by

1 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe  
2 requirements for the installation and use of equipment designed to reduce or eliminate emissions  
3 and for the proper maintenance of this equipment.

4 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any  
5 element of the air pollution control system or mechanism of a motor vehicle if the department  
6 adopts regulations requiring that an air pollution control system or mechanism be maintained in  
7 or on the motor vehicle. Failure to maintain a required system or mechanism in operating  
8 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle  
9 whose registration has been suspended or canceled under this subsection is not eligible for  
10 subsequent registration until the owner or operator obtains certification from the department,  
11 based on a demonstration that the air pollution control system or mechanism is restored to  
12 operating condition.

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

16 (d) If the department adopts regulations requiring the maintenance of air pollution control  
17 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle  
18 subject to those regulations may not be issued a certificate of inspection unless the required air  
19 pollution control system or mechanism has been inspected in accordance with the standards,  
20 testing techniques, and instructions furnished by the department and the motor vehicle has been  
21 found to meet those standards. A valid certificate of inspection for the emission control system,  
22 if required by the department, must be presented to the Department of Public Safety before that  
23 department may register a motor vehicle.

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

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

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

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



1 this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) The panel consists of

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

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

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

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

24 (B) if there are members of the senate who are not part of the majority  
25 caucus of the senate, the leader of the largest nonmajority group shall select a panel  
26 member; if all members of the senate are in the majority caucus, then the president of the  
27 senate shall select a second panel member in addition to the selection authorized under  
28 (A) of this paragraph;

29 (C) if there are members of the house who are not part of the majority  
30 caucus of the house, the leader of the largest nonmajority group shall select a panel  
31 member; if all members of the house are in the majority caucus, then the speaker of the

1 house shall select a second panel member in addition to the selection authorized under  
2 (A) of this paragraph.

3 (c) The compliance advisory panel shall

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

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

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

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

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

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

17 ARTICLE 5. LOCAL PROGRAMS.

18 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
19 approval of the department, a municipality with a population of 1,000 or more may establish and  
20 administer within its jurisdiction a local air quality control program that is consistent with all or  
21 part of the department's air quality program as established under this chapter. A first or second  
22 class borough may administer an air quality control program approved by the department under  
23 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional  
24 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
25 an air quality control program approved by the department under this subsection only in a service  
26 area formed under AS 29.35.490(b) or (c).

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

30 (c) The department may require expansion or contraction of the jurisdictional boundaries  
31 of a local air quality control program approved under (a) or (b) of this section to include an

1 adjacent municipality or contiguous area in the unorganized borough if the department determines  
2 that the expansion or contraction is necessary for the effectiveness and efficiency of the  
3 administration of a local program based upon an evaluation of

- 4 (1) the location, character, or extent of particular concentrations of population;
- 5 (2) local air contaminant sources; or
- 6 (3) relevant geographic, topographic, or meteorological factors.

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

- 10 (1) the respective duties and authority of the department and the municipality or  
11 local air quality district in the administration of the local air quality control program;
- 12 (2) the authority of the municipality or the local air quality district to employ staff  
13 to administer the local air quality control program;
- 14 (3) duties of staff employed under (2) of this subsection;
- 15 (4) respective enforcement responsibilities of the department and the municipality  
16 or the local air quality district.

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

20 (f) A municipality or a local air quality district administering a program under this  
21 section shall administer its local air quality control program according to this chapter, regulations  
22 adopted under this chapter, and its cooperative agreement under (d) of this section, except that  
23 a municipality's or local air quality district's program may be more stringent than the program  
24 administered by the department if the municipality or district has additional legal authority  
25 authorizing additional requirements.

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

29 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a  
30 local air quality district has an approved air quality control program under AS 46.14.500 and the  
31 department determines that the program is being implemented in a manner that fails to prevent

1 or control air pollution in the jurisdiction to which the program applies, the department shall give  
2 written notice, setting out its determination, to the municipality or local air quality district.  
3 Within 45 days after giving written notice, the department shall conduct a public hearing on the  
4 matter.

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

12 (c) If the municipality or local air quality district fails to take corrective action within  
13 the time period set by the department under (b) of this section, the department shall terminate  
14 the cooperative agreement and resume management of the program in the affected jurisdiction.  
15 If the municipality or the local air quality district partially remedies, to the department's  
16 satisfaction, the deficiencies found in the determination, the department shall amend the  
17 cooperative agreement to reflect a modified allocation of responsibilities between the department  
18 and municipality or the local air quality district.

19 (d) A municipality or local air quality district that has had its cooperative agreement  
20 terminated may resume, with the department's approval, a local air quality control program if the  
21 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan  
22 required by the department.

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

30 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality  
31 district with a local air quality control program may apply for, receive, administer, and spend

1 state or federal aid for the control of air emissions or the development and administration of the  
2 program if an application is first submitted to and approved by the department. Subject to  
3 available money appropriated by the legislature, the department shall approve an application if  
4 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
5 the requirements of this chapter.

6 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

14 (1) the owner and operator have certified under oath to the department or  
15 authorized local program that public disclosure would tend to adversely affect the owner's and  
16 operator's competitive position; and

17 (2) the records are entitled to protection as trade secrets.

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

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

28 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day  
29 for each offense. Each provision, regulation, term, or condition violated is a separate and distinct  
30 offense. If a violation of a provision, regulation, term, or condition continues from day to day,  
31 each day is a separate offense. In determining the amount of a penalty assessed under this

1 section, the department shall consider the effect of the offense on the public health or the  
2 environment, prior history of compliance or noncompliance with this chapter, the need to deter  
3 future offenses, the economic benefit of noncompliance realized by the offender, and other factors  
4 that the department considers relevant. The department shall, by regulation, prepare, publish, and  
5 make available to interested persons, a penalty policy describing the factors to be considered in  
6 setting penalties, the methods for weighing the factors, and other aspects of penalty computation.

7 (c) If a penalty is assessed under this section, the department shall provide the assessment  
8 notice to the person affected, by personal service or by certified mail, return receipt requested.  
9 An administrative penalty assessed under this section becomes a final agency action 30 days after  
10 service or mailing of the assessment notice unless an administrative hearing is requested by the  
11 person against whom the penalty is assessed. Failure to request an administrative hearing within  
12 30 days after service or mailing of the assessment notice constitutes a waiver of that person's  
13 right to an administrative hearing. The department may extend the time periods specified in this  
14 subsection for good cause.

15 (d) If an administrative hearing is requested, the department shall grant a hearing and  
16 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,  
17 the department may modify, rescind, or affirm the administrative penalty. The modification,  
18 rescission, or affirmation of a penalty under this subsection is a final agency action.

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

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

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

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

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

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

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

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

12 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
13 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))  
14 for state participation in the emission control permit program; and

15 (2) appropriations to the fund.

16 (b) The money deposited into the clean air protection fund under (a)(1) of this section  
17 may be used solely to cover the reasonable direct and indirect costs, including court costs and  
18 attorney fees, required to support the permit program under this chapter, and those activities of  
19 the small business assistance program that are directed at facilities subject to this chapter.

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

#### 24 ARTICLE 7. GENERAL PROVISIONS.

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

26 (1) grant jurisdiction or authority with respect to air contamination existing solely  
27 within a residential dwelling or a commercial or industrial plant, workplace, or shop;

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

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

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Sec. 46.14.990. DEFINITIONS. In this chapter,

- (1) "air contaminant" means a regulated air contaminant or a hazardous air contaminant;
- (2) "ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access;
- (3) "ambient air quality standard" means a standard, other than an emission limitation or standard, adopted under AS 46.14.010 or 42 U.S.C. 7409 (Clean Air Act, sec. 109);
- (4) "certificate of inspection" means a form prepared or approved by the department, signed by a qualified mechanic who attests that the mechanic has inspected a motor vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and bearing the statement above the mechanic's signature that false statements are punishable as a crime under AS 11.56.210 and AS 46.03.790(a);
- (5) "commissioner" means the commissioner of environmental conservation;
- (6) "construct" or "construction" means to fabricate, erect, or install, or to make a physical change, that would result in emissions;
- (7) "construction permit" means a permit under AS 46.14.205(a);
- (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings in a facility from which an air contaminant could be emitted;
- (9) "department" means the Department of Environmental Conservation;
- (10) "emission" means a release of one or more air contaminants to the atmosphere;
- (11) "emission limitation" and "emission standard" mean a requirement established by the department or the federal administrator, other than an ambient air quality standard, that limits the quantity, rate, or concentration of emission of an air contaminant, including a requirement relating to the operation or maintenance of a source to ensure continuous emission reduction, and design, equipment, work practice, or operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);
- (12) "equivalent emission limitation" means
  - (A) a limitation for hazardous air contaminants established by the federal administrator or the commissioner on a case-by-case basis that is equivalent to the limitation that would apply to a source or facility if an emission standard had been

1 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or  
2 (B) if the criteria of the early reduction program established in 42 U.S.C.  
3 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that  
4 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));  
5 (13) "facility" means one or more structures, buildings, installations, or properties  
6 upon which a source or sources are located, that are contiguous or adjacent, and that are owned  
7 or operated by the same person or by persons under common control;  
8 (14) "federal administrator" means the administrator of the United States  
9 Environmental Protection Agency;  
10 (15) "fugitive emissions" means emissions of an air contaminant that could not  
11 reasonably be emitted from a contaminant outlet;  
12 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
13 7412(b) (Clean Air Act, sec. 112(b));  
14 (17) "local air quality control program" means a program authorized under  
15 AS 46.14.500 to implement some or all of the provisions of this chapter;  
16 (18) "major facility" means a facility that emits or has the potential to emit at  
17 least  
18 (A) 100 TPY of a regulated air contaminant;  
19 (B) 10 TPY of a hazardous air contaminant; or  
20 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;  
21 (19) "modification" or "modify" means to make a change or a series of changes  
22 in operation, or any physical change or addition to a facility or source that increases the actual  
23 emissions of an air contaminant;  
24 (20) "operating permit" means a permit under AS 46.14.205(b);  
25 (21) "operator" means a person or persons who direct, control, or supervise a  
26 facility or source that has the potential to emit an air contaminant to the atmosphere;  
27 (22) "owner" means a person or persons with a proprietary or possessory interest  
28 in a facility or source that has the potential to emit an air contaminant to the atmosphere;  
29 (23) "person" has the meaning given in AS 01.10.060 and also includes an agency  
30 of the United States, a municipality, the University of Alaska, the Alaska Railroad Corporation,  
31 and other departments, agencies, instrumentalities, units, and corporate authorities of the state;

1 (24) "potential to emit" means the maximum quantity of a release of an air  
2 contaminant, considering a facility's physical or operational design, based on continual operation  
3 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of  
4 pollution control equipment and approved state or federal limitations on the capacity of the  
5 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates  
6 of operation and type or amount of material combusted, stored, or processed; "potential to emit"  
7 does not include

8 (A) a one-time, accidental release of an air contaminant; or

9 (B) the fugitive emissions specifically exempted under the department's  
10 regulations;

11 (25) "reconstruct" means to replace components of a facility with new components  
12 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the  
13 fixed capital cost that would be required to construct a comparable entirely new facility;

14 (26) "register" or "registration" means vehicle registration under AS 28.10;

15 (27) "regulated air contaminant" means

16 (A) a material, compound, or element for which a national or state  
17 ambient air quality standard has been adopted;

18 (B) oxides of nitrogen;

19 (C) a volatile organic compound; and

20 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
21 7411 - 7412 (Clean Air Act, sec. 111 - 112);

22 (28) "small business facility" means a facility that

23 (A) is owned or operated by a person who employs 100 or fewer persons;

24 (B) is a small business concern as defined in 15 U.S.C. 631 (Small  
25 Business Act); and

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

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

29 (30) "TPY" means tons per year.

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

31 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection

1 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.500  
2 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle  
3 uses a fuel source that does not primarily emit carbon monoxide;

4 \* Sec. 6. AS 28.10.423 is amended to read:

5 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
6 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
7 required to be inspected under an emission control program established under AS 46.14.300 or  
8 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
9 as the registration fee.

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

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

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

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

17 (1) provide transportation systems;

18 (2) provide water pollution control;

19 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -  
20 46.03.230];

21 (4) license day care facilities;

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

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

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

26 (1) provide transportation systems;

27 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of  
28 fireworks;

29 (3) license, impound, and dispose of animals;

30 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste  
31 collection and disposal;

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

3 (6) provide water pollution control;

4 (7) participate in federal or state loan programs for housing rehabilitation and  
5 improvement for energy conservation;

6 (8) provide for economic development;

7 (9) provide for the acquisition and construction of local service roads and trails  
8 under AS 19.30.111 - 19.30.251;

9 (10) establish an emergency services communication center under AS 29.35.130;

10 (11) subject to AS 28.01.010, regulate the licensing and operation of motor  
11 vehicles and operators;

12 (12) engage in activities authorized under AS 29.47.460;

13 (13) contain, clean up, or prevent a release or threatened release of oil or a  
14 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,  
15 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is  
16 consistent with a regional master plan prepared by the Department of Environmental  
17 Conservation under AS 46.04.210.

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

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

21 (1) provide transportation systems;

22 (2) license, impound, and dispose of animals;

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

25 (4) provide water pollution control;

26 (5) license day care facilities.

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

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

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

30 (a) The Department of Environmental Conservation may adopt regulations that prescribe  
31 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs

1 of the following services provided by the department:

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

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

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

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

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

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

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

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

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

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

19 (f) A person who violates or causes or permits to be violated a provision of  
20 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a  
21 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued  
22 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum  
23 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,  
24 nor more than \$10,000 for each day after that on which the violation continues, and that shall  
25 reflect, when applicable,

26 (1) reasonable compensation in the nature of liquidated damages for any adverse  
27 environmental effects caused by the violation, that 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; and

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

5 \* Sec. 15. AS 46.03.765 is amended to read:

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

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

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

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

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

25 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,  
26 a regulation or order of the department, or a permit, approval, or acceptance, or a term or  
27 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]  
28 AS 46.09, or AS 46.14;

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

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

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

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

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

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

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

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

22 \* Sec. 20. AS 46.03.875 is amended to read:

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

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

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

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

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

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

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

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

20 (4) "hazardous substance" means (A) an element or compound that, when it enters  
21 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents  
22 an 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;

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

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

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

31 (8) "state agency" means a state department, commission, board or other agency

1 of the state; for the purposes of this chapter "state agency" also means a local or regional air  
2 pollution control authority established under AS 46.14.500 [AS 46.03.210].

3 \* **Sec. 27.** AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
4 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

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

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

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

13 \* **Sec. 31.** AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),  
14 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,  
15 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 -  
16 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  
17 take effect immediately under AS 01.10.070(c).

18 \* **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,  
19 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,  
20 1993.