

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

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/7/92
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to procurement of alternative-fueled vehicles and transition plans to
2 reduce emissions from vehicles; establishing a small business assistance program and a
3 compliance advisory panel in the Department of Environmental Conservation in a manner
4 that will enable the state to maintain primary management of air quality in the state by
5 meeting the requirements of federal law that the state have an assistance program and
6 advisory panel; requiring a report to the legislature concerning an air quality control
7 permit fee program; stating that the state's policy is to comply with the Clean Air Act;
8 relating to fees imposed for air pollution control permits; relating to the duration of air
9 pollution control permits, reopening of air pollution control permits, and termination,
10 modification, amendment, revocation, and reissuance of air pollution control permits;
11 allowing air pollution control permits for temporary operations; providing that a timely and
12 complete application for a permit is sufficient to bring an owner and operator into

1 compliance with state laws requiring an air pollution control permit unless delay was due
2 to the owner's and operator's fault; relating to records held by the Department of
3 Environmental Conservation; relating to motor vehicle pollution; relating to local air quality
4 control programs; clarifying that owners and operators are both subject to air pollution
5 control requirements; allowing the Department of Environmental Conservation to impose
6 administrative penalties in addition to allowing the department to seek criminal and civil
7 penalties and other remedies for violation of air pollution control laws; establishing a clean
8 air protection fund; providing for the deposit into the general fund of certain money
9 related to air pollution control; clarifying that air pollution control laws do not give the
10 Department of Environmental Conservation jurisdiction over certain areas; relating to studies
11 of haze and hydrocarbon pollution; relating to civil, administrative, and criminal penalties,
12 damages, and other remedies for air quality control violations; clarifying the definition of
13 'hazardous substance' to include releases and threatened releases to the atmosphere;
14 amending the lien provisions relating to the oil and hazardous substance release response
15 fund; providing that this Act does not authorize the Department of Environmental
16 Conservation to adopt regulations that establish ambient air quality standards, emission
17 standards, or classifications of facilities or sources according to characteristics relating to
18 air quality; repealing a provision relating to variances; and providing for an effective
19 date."

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

21 * Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance
22 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
23 in state law are necessary to allow the state to continue to have primary management of air quality in
24 the state and to retain federal approval of the state's air quality control program in order to ensure the
25 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. (a) The department shall develop
10 plans to encourage contractors that provide school bus transportation to

11 (1) procure alternative-fueled buses; and

12 (2) develop transition plans to reduce the emission of oxides of nitrogen, volatile
13 organic compounds, carbon monoxide, and particulates from existing vehicles through vehicle
14 modification or use of oxygenated fuels.

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

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

20 Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the
21 Department of Transportation and Public Facilities procures an automobile, light truck, or van,
22 other than for the Department of Public Safety, for addition to the state fleet that will be used
23 at a location in a carbon monoxide nonattainment area in which the Department of Transportation
24 and Public Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall
25 procure only an alternative fueled vehicle if

26 (1) an alternative fueled vehicle is available from an original equipment
27 manufacturing company; and

28 (2) at least one compatible alternative fuel fueling facility is located in the
29 nonattainment area.

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

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

5 * Sec. 4. AS 46.03.140 is amended by adding a new subsection to read:

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

9 * Sec. 5. AS 46.03 is amended by adding new sections to read:

10 Sec. 46.03.161. PAYMENT OF FEES. The owner and operator of a facility who is
11 required to apply for a permit under AS 46.03.140 - 46.03.160 shall pay the applicable fees
12 established by the department under AS 44.46.025(a)(2). The owner and operator shall pay the
13 fees to the department or to the public entity designated by the department.

14 Sec. 46.03.162. PENALTY AND INTEREST FOR NONPAYMENT. (a) The
15 department shall adopt regulations that provide for the assessment of a penalty of five percent
16 per month of delinquency up to a maximum of 25 percent of the fee established under
17 AS 44.46.025(a)(2) against the owner and operator of a facility if the owner and operator fail to
18 timely pay a fee lawfully imposed under AS 44.46.025(a)(2). The department may also assess
19 interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under
20 AS 46.03.161 and is unpaid.

21 (b) If a permittee has failed to pay a fee required under AS 46.03.161 or a penalty or
22 interest imposed under (a) of this section, the department may, after 30 days' written notice to
23 the permittee

24 (1) terminate the permit for which the fee, penalty, or interest remains unpaid; or
25 (2) refuse to issue or renew permits requested by the permittee or refuse to amend
26 or modify a permit when the amendment or modification is requested by the permittee.

27 Sec. 46.03.163. DURATION OF PERMITS. (a) A permit under AS 46.03.140 -
28 46.03.160 shall be issued for a fixed term established by the department that is no longer than
29 five years and no shorter than three years after the date of issue, except as provided for
30 temporary permits under AS 46.03.167.

31 (b) If a timely and complete application for renewal of a permit is submitted to the

1 department, the existing permit issued under AS 46.03.160 does not expire until the renewal
2 permit has been issued or denied.

3 Sec. 46.03.164. REOPENING OF PERMITS. (a) A permit issued under AS 46.03.140 -
4 46.03.160 is subject to review and reopening by the department based on the determination of
5 the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q
6 (Clean Air Act), as amended.

7 (b) A permit issued under AS 46.03.140 - 46.03.160 is subject to review and reopening
8 by the department if the permit is issued to a major facility and is valid for a term of three or
9 more years. The department shall reopen a permit described in this subsection to incorporate
10 changes in law, or to impose equivalent emission limitations, that became applicable after the
11 permit was issued. The department shall make incorporations allowed under this subsection as
12 soon as practicable, but, regarding a change in law, no later than 18 months after the change in
13 law took effect. The department may not reopen a permit under this subsection if the change in
14 law is not effective until after the date that the permit expires. Reopening of a permit under this
15 subsection shall be treated as a permit renewal by the department if the procedural requirements
16 for permit renewal have been met.

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

20 Sec. 46.03.165. TERMINATION, MODIFICATION, AMENDMENT, OR
21 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the
22 permittee, the department may

23 (1) terminate, modify, amend, or revoke and reissue a permit if the department
24 finds that

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

28 (B) the permittee has violated AS 46.03.140 - 46.03.249, a regulation, a
29 judicial or administrative order, or a material term or condition of a permit, approval, or
30 acceptance issued under AS 46.03.140 - 46.03.249; or

31 (C) there has been a material change in the quantity or type of air

1 contaminant emitted from the facility;

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

4 Sec. 46.03.166. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION
5 AND REISSUANCE OF PERMITS. The department shall take measures practicable and
6 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal
7 administrator of permits issued by the department under AS 46.03.140 - 46.03.160.

8 Sec. 46.03.167. TEMPORARY OPERATIONS. The department may issue a single
9 permit authorizing a facility to operate at specific multiple locations in the state for temporary
10 periods of time not to exceed one year at any one location. A permit described in this section
11 is valid only for the specific locations identified in the application and authorized by the
12 department. The department may not issue a permit under this section unless the permit contains
13 conditions that will ensure compliance with AS 46.03.140 - 46.03.249 at each authorized location,
14 including compliance with ambient air quality standards and applicable increment or visibility
15 requirements adopted under AS 46.03.140 - 46.03.150. A permit under this section must require
16 the owner and operator to notify the department at least 30 days before a change in location of
17 a facility permitted under this section.

18 Sec. 46.03.168. RELATION TO OTHER LAWS. Holding and complying with a permit
19 issued under AS 46.03.140 - 46.03.160 does not alter or affect

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

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

24 Sec. 46.03.169. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
25 and operator have submitted a timely and complete application for a permit or a permit renewal,
26 as applicable, but final action has not been taken on the application, the owner's and operator's
27 failure to have a permit is not a violation of AS 46.03.140 - 46.03.160 unless the delay in final
28 action was due to the failure of the owner and operator to timely submit information required or
29 requested to process the application.

30 * Sec. 6. AS 46.03.180 is repealed and reenacted to read:

31 Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. (a) Records and information,

1 other than emission data, in the department's possession and control are considered confidential
2 records if

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

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

7 (b) Except as provided in (a) of this section, permits, permit applications, emissions and
8 monitoring reports, compliance reports, certifications, and monitoring, reporting, and quality
9 assurance plans in the department's possession and control are available to the public for
10 inspection and copying.

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

12 Sec. 46.03.181. SMALL BUSINESS ASSISTANCE PROGRAM. A small business
13 assistance program is established in the department.

14 Sec. 46.03.182. SCOPE OF PROGRAM. (a) The small business assistance program
15 shall

16 (1) collect, coordinate, and disseminate information on methods and technologies
17 that will assist small business facilities to comply with AS 46.03.140 - 46.03.249 and regulations
18 adopted under AS 46.03.140 - 46.03.249;

19 (2) encourage lawful cooperation among small business facilities and other
20 persons to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations adopted under
21 AS 46.03.140 - 46.03.249;

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

25 (4) assist small business facilities in determining applicable requirements and in
26 receiving permits under AS 46.03.140 - 46.03.160 in a timely and efficient manner;

27 (5) ensure that small business facilities receive notice of their rights under
28 AS 46.03.140 - 46.03.249 in a manner and form that ensures adequate time for the facilities to
29 evaluate compliance methods and to evaluate applicable proposed or final regulations adopted
30 or standards issued under AS 46.03.140 - 46.03.249 or 42 U.S.C. 7401 - 7671q (Clean Air Act),
31 as amended;

1 (6) inform small business facilities of their obligations under AS 46.03.140 -
2 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

3 (7) provide small business facility operators with a list of auditors available for
4 auditing the operation of the facility or, if possible, and at the request of a facility owner or
5 operator, audit a facility to evaluate compliance with AS 46.03.140 - 46.03.249 and regulations
6 adopted under AS 46.03.140 - 46.03.249; an audit under this paragraph may not be regarded as
7 an inspection or investigation;

8 (8) assist in developing and implementing modified work practices or technical
9 changes to processes to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations
10 adopted under AS 46.03.140 - 46.03.249;

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

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

16 (11) at the request of a facility owner or operator, refer questions concerning
17 compliance with AS 46.03.140 - 46.03.249, or with a regulation adopted or permit issued under
18 AS 46.03.140 - 46.03.249, to air quality management personnel of the department; and

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

21 (b) If the legislature appropriates money from the general fund for purposes of the small
22 business assistance program, the department shall provide the services listed in (a) of this section
23 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631, as
24 amended, but that otherwise meets the definition of a small business facility under AS 46.03.249
25 and is subject to the requirements of AS 46.03.140 - 46.03.249.

26 Sec. 46.03.183. POWER TO LIMIT PROGRAM. After consultation with the federal
27 administrator and the administrator of the United States Small Business Administration, and after
28 providing notice and opportunity for public hearing, the department may exclude from the scope
29 of the small business assistance program established in AS 46.03.182 a category or subcategory
30 of small business facilities that the department finds to have sufficient technical and financial
31 capabilities to meet the requirements of state and federal law without the assistance provided

1 under AS 46.03.181 - 46.03.184.

2 Sec. 46.03.184. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel
3 is established in the department. The panel members shall serve without compensation, but are
4 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

5 (b) The panel consists of

6 (1) three members who are not owners or representatives of owners of small
7 business stationary sources, two of whom are selected by the governor to represent the general
8 public and one of whom is selected by the governor to represent either environmental or health
9 interests;

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

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

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

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

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

25 (c) The compliance advisory panel shall

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

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

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

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

5 (5) review information designed to assist small business facilities in complying
6 with AS 46.03.140 - 46.03.249 to ensure that the information is understandable by laypersons;
7 and

8 (6) have the small business advocate designated under AS 46.03.182(a)(12) assist
9 the panel in the development and dissemination of panel reports and advisory opinions.

10 Sec. 46.03.185. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
11 specifically indicated otherwise, the responsibilities of AS 46.03.140 - 46.03.249 and of
12 regulations adopted under AS 46.03.140 - 46.03.249 are imposed on the owner and the operator
13 of a facility subject to AS 46.03.140 - 46.03.249. If the owner and operator of the facility are
14 separate persons, only one person is required to discharge a specific responsibility. Both persons
15 are liable for noncompliance with the requirements of AS 46.03.140 - 46.03.249 or of regulations
16 adopted under AS 46.03.140 - 46.03.249.

17 Sec. 46.03.186. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The
18 department may assess an administrative penalty against a person who violates, or causes, or
19 allows to be violated a provision of AS 46.03.140 - 46.03.249, a regulation adopted under
20 AS 46.03.140 - 46.03.249, or a term or condition of an order, permit, or approval of the
21 department under AS 46.03.140 - 46.03.249.

22 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day
23 for each offense. Each provision, regulation, term, or condition violated is a separate and distinct
24 offense. If a violation of a provision, regulation, term, or condition continues from day to day,
25 each day is a separate offense. In determining the amount of a penalty assessed under this
26 section, the department shall consider the effect of the offense on the public health or the
27 environment, prior history of compliance or noncompliance with AS 46.03.140 - 46.03.249, the
28 need to deter future offenses, the economic benefit of noncompliance realized by the offender,
29 and other factors that the department considers relevant. The department shall, by regulation,
30 prepare, publish, and make available to interested persons, a penalty policy describing the factors
31 to be considered in setting penalties, the methods for weighing the factors, and other aspects of

1 penalty computation.

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

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

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

19 (f) Action under this section by the department does not limit or otherwise affect the
20 authority of the department to enforce AS 46.03.140 - 46.03.249, or to recover damages,
21 restoration expenses, investigation costs, court costs, attorney fees, and other necessary expenses.
22 The court shall reduce a judicial penalty subsequently imposed under AS 46.03.760 by any
23 amount ordered to be paid under this section by the same person for the same offense.

24 (g) The assessment of an administrative penalty under this section does not affect the
25 obligation of a person to comply with AS 46.03.140 - 46.03.249 or with a regulation, order,
26 permit, or approval of the department under AS 46.03.140 - 46.03.249.

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

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

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

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

5 Sec. 46.03.187. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund
6 is established. The fund consists of

7 (1) fees, penalties, and interest collected by the department under AS 46.03.161
8 and 46.03.162, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec.
9 502(b)(3)(C)(iii)), as amended, for state participation in the federal emission control permit
10 program; and

11 (2) appropriations to the fund.

12 (b) The money deposited into the clean air protection fund under (a)(1) of this section
13 may be used solely to cover the reasonable direct and indirect costs, including court costs and
14 attorney fees, required to support the permit program under AS 46.03.140 - 46.03.160, and those
15 activities of the small business assistance program that are directed at facilities subject to
16 AS 46.03.140 - 46.03.249.

17 Sec. 46.03.188. SPECIAL ACCOUNT. An administrative penalty, and any interest,
18 attorney fees, and costs collected under AS 46.03.186, and any civil penalties, assessments, or
19 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to
20 AS 46.03.140 - 46.03.249, shall be deposited in the general fund.

21 * Sec. 8. AS 46.03.190 is repealed and reenacted to read:

22 Sec. 46.03.190. MOTOR VEHICLE POLLUTION. (a) When the department determines
23 that the state of knowledge and technology may allow or make appropriate the control of
24 emissions from motor vehicles to further air quality control, the department may provide, by
25 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
26 requirements for the installation and use of equipment designed to reduce or eliminate emissions
27 and for the proper maintenance of this equipment.

28 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
29 element of the air pollution control system or mechanism of a motor vehicle if the department
30 adopts regulations requiring that an air pollution control system or mechanism be maintained in
31 or on the motor vehicle. Failure to maintain a required system or mechanism in operating

1 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle
2 whose registration has been suspended or canceled under this subsection is not eligible for
3 subsequent registration until the owner or operator obtains certification from the department,
4 based on a demonstration that the air pollution control system or mechanism is restored to
5 operating condition.

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

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

17 * Sec. 9. AS 46.03.210 is repealed and reenacted to read:

18 Sec. 46.03.210. 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 AS 46.03.140 - 46.03.249. A
22 first or second class borough may administer an air quality control program approved by the
23 department under this subsection on an areawide basis and is not subject to the restrictions for
24 acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A third class
25 borough may administer an air quality control program approved by the department under this
26 subsection only in a service 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 46.03.190
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 AS 46.03.140 - 46.03.249, and its cooperative agreement under (d) of this section,
23 except that a municipality's or local air quality district's program may be more stringent than the
24 program administered by the department if the municipality or district has additional legal
25 authority 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. 10. AS 46.03.220 is repealed and reenacted to read:

30 Sec. 46.03.220. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
31 local air quality district has an approved air quality control program under AS 46.03.210 and the

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

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

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

20 (d) A municipality or local air quality district that has had its cooperative agreement
21 terminated may resume, with the department's approval, a local air quality control program if the
22 municipality or district agrees to comply with AS 46.03.210 and with any corrective action plan
23 required by the department.

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

31 * Sec. 11. AS 46.03.230 is repealed and reenacted to read:

1 Sec. 46.03.230. STATE AND FEDERAL AID. A municipality or local air quality
2 district with a local air quality control program may apply for, receive, administer, and spend
3 state or federal aid for the control of air emissions or the development and administration of the
4 program if an application is first submitted to and approved by the department. Subject to
5 available money appropriated by the legislature, the department shall approve an application if
6 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
7 the requirements of AS 46.03.140 - 46.03.249.

8 * Sec. 12. AS 46.03.245 is repealed and reenacted to read:

9 Sec. 46.03.245. LIMITATIONS. AS 46.03.140 - 46.03.249 do not

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

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. 13. AS 46.03 is amended by adding a new section to article 4 to read:

17 Sec. 46.03.249. DEFINITIONS. Notwithstanding AS 46.03.900, in AS 46.03.140 -
18 46.03.249,

19 (1) "air contaminant" means a regulated air contaminant or a hazardous air
20 contaminant;

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

23 (3) "ambient air quality standard" means a standard, other than an emission
24 limitation or standard, adopted under AS 46.03.140 - 46.03.150 or 42 U.S.C. 7409 (Clean Air
25 Act, sec. 109), as amended;

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

31 (5) "commissioner" means the commissioner of environmental conservation;

- 1 (6) "construct" or "construction" means to fabricate, erect, or install, or to make
2 a physical change, that would result in emissions;
- 3 (7) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings
4 in a facility from which an air contaminant could be emitted;
- 5 (8) "department" means the Department of Environmental Conservation;
- 6 (9) "emission" means a release of one or more air contaminants to the atmosphere;
- 7 (10) "equivalent emission limitation" means
8 (A) a limitation for hazardous air contaminants established by the federal
9 administrator or the commissioner on a case-by-case basis that is equivalent to the
10 limitation that would apply to a source or facility if an emission standard had been
11 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)), as
12 amended; or
13 (B) if the criteria of the early reduction program established in 42 U.S.C.
14 7412(i)(5) (Clean Air Act, sec. 112(i)(5)), as amended, are met, a limitation established
15 under that subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5)), as
16 amended;
- 17 (11) "facility" means one or more structures, buildings, installations, or properties
18 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
19 or operated by the same person or by persons under common control;
- 20 (12) "federal administrator" means the administrator of the United States
21 Environmental Protection Agency;
- 22 (13) "fugitive emissions" means emissions of an air contaminant that could not
23 reasonably be emitted from a contaminant outlet;
- 24 (14) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
25 7412(b) (Clean Air Act, sec. 112(b)), as amended;
- 26 (15) "local air quality control program" means a program authorized under
27 AS 46.03.210 to implement some or all of the provisions of AS 46.03.140 - 46.03.249;
- 28 (16) "major facility" means a facility that emits or has the potential to emit at
29 least
30 (A) 100 TPY of a regulated air contaminant;
31 (B) 10 TPY of a hazardous air contaminant; or

- 1 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;
- 2 (17) "modification" or "modify" means to make a change or a series of changes
- 3 in operation, or any physical change or addition to a facility or source that increases the actual
- 4 emissions of an air contaminant;
- 5 (18) "operator" means a person or persons who direct, control, or supervise a
- 6 facility or source that has the potential to emit an air contaminant to the atmosphere;
- 7 (19) "owner" means a person or persons with a proprietary or possessory interest
- 8 in a facility or source that has the potential to emit an air contaminant to the atmosphere;
- 9 (20) "person" has the meaning given in AS 01.10.060 and also includes an agency
- 10 of the United States, a municipality, the University of Alaska, the Alaska Railroad Corporation,
- 11 and other departments, agencies, instrumentalities, units, and corporate authorities of the state;
- 12 (21) "reconstruct" means to replace components of a facility with new components
- 13 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the
- 14 fixed capital cost that would be required to construct a comparable entirely new facility;
- 15 (22) "register" or "registration" means vehicle registration under AS 28.10;
- 16 (23) "regulated air containment" means
- 17 (A) a material, compound, or element for which a national or state
- 18 ambient air quality standard has been adopted;
- 19 (B) oxides of nitrogen;
- 20 (C) a volatile organic compound; and
- 21 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
- 22 7411 - 7412 (Clean Air Act, sec. 111 - 112), as amended;
- 23 (24) "small business facility" means a facility that
- 24 (A) is owned or operated by a person who employs 100 or fewer persons;
- 25 (B) is a small business concern as defined in 15 U.S.C. 631 (Small
- 26 Business Act), as amended; and
- 27 (C) emits less than 100 TPY of regulated air contaminants;
- 28 (25) "source" means a device, process, activity, or equipment that causes, or could
- 29 cause, a release of an air contaminant;
- 30 (26) "TPY" means tons per year.
- 31 * Sec. 14. AS 29.35 is amended by adding a new section to read:

1 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may
2 establish a local air quality control program as provided in AS 46.03.210 only if the municipality
3 has obtained the consent of its governing body through an ordinance authorizing the participation.

4 * Sec. 15. AS 37.05.146(4) is amended by adding a new subparagraph to read:

5 (P) clean air protection fund (AS 46.03.187).

6 * Sec. 16. AS 46.03.790(a) is amended to read:

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

9 (1) violates a provision of this chapter, AS 46.04, or AS 46.09, a regulation or
10 order of the department, or a permit, approval, or acceptance, or a term or condition of a permit,
11 approval, or acceptance issued under this chapter, AS 46.04, or AS 46.09;

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

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

19 (4) makes a false statement, representation, or certification in an application,
20 notice, record, report, permit, or other document filed, maintained, or used for purposes
21 of compliance with AS 46.03.140 - 46.03.249 or a regulation adopted under AS 46.03.140 -
22 46.03.249; or

23 (5) renders inaccurate a monitoring device or method required to be
24 maintained under AS 46.03.140 - 46.03.249, a regulation adopted under AS 46.03.140 -
25 46.03.249, or a permit issued by the department or a local air quality control program
26 under AS 46.03.140 - 46.03.249.

27 * Sec. 17. AS 46.03.790 is amended by adding a new subsection to read:

28 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to
29 AS 46.03.140 - 46.03.249 and described in (a) of this section, a defendant who is not an
30 organization may be sentenced to pay a fine of not more than \$10,000 for each separate offense.

31 * Sec. 18. 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, 42 U.S.C. 9607, or other state or federal
7 law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the
8 date of the expenditures. The state may file an action in a court of competent jurisdiction in
9 order to foreclose on the lien.

10 * Sec. 19. 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. 20. 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. 21. AS 46.03.170 and 46.03.225 are repealed.

28 * Sec. 22. HAZE AND HYDROCARBON STUDIES; REPORT. (a) The Department of
29 Environmental Conservation shall contract with qualified experts to perform studies of haze and
30 hydrocarbon air pollution in areas of the state that are carbon monoxide nonattainment areas under
31 federal law. The studies must include

- 1 (1) monitoring in neighborhoods, industrial centers, and areas of high vehicular use;
2 (2) determination of the major components and sources of haze and hydrocarbon
3 pollution;
4 (3) assessment of the health, safety, and environmental effects of haze and hydrocarbon
5 pollution;
6 (4) identification of program alternatives designed to prevent, abate, and control haze and
7 hydrocarbon pollution.

8 (b) The Department of Environmental Conservation shall, by January 15, 1994, report to the
9 legislature concerning the studies performed under (a) of this section. The report must include the
10 department's legislative recommendations for program authorization to prevent, abate, and control haze
11 and hydrocarbon air pollution, including recommendations concerning whether the state should have
12 ambient or emission standards relating to these types of pollution that are more stringent than applicable
13 federal standards.

14 * Sec. 23. REPORT TO LEGISLATURE. (a) By January 31, 1993, the Department of
15 Environmental Conservation shall submit a report to the legislature that includes

16 (1) the department's recommendations for legislation to establish an air quality control
17 permit and permit fee program that will

18 (A) meet the requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act), as
19 amended; the department shall solicit the comments of appropriate officials in the federal
20 Environmental Protection Agency as to the legal adequacy under federal law of the recommended
21 legislation and submit to the legislature any comments received from the federal officials;

22 (B) equitably allocate direct and indirect costs of the program among owners and
23 operators of facilities that are required to have permits under AS 46.03.140 - 46.03.160; and

24 (C) ensure maximum efficiency and minimize total cost of all program elements
25 that will be financially supported by the permit fees, including staffing for permit applications
26 and meetings;

27 (2) the department's recommendations for a fee schedule for permits issued under
28 AS 46.03.140 - 46.03.160, including

29 (A) a detailed discussion of the facts and rationale for the proposed schedule;

30 (B) a detailed comparison between the cost and staffing data for the department's
31 air quality permit program and other similar regulatory programs administered by the department,

1 based on the number of permits issued or otherwise processed annually; and

2 (C) a comparison of the proposed fee schedule with the fee schedules of at least
3 five other states that have air quality permit programs that are operating in compliance with 42
4 U.S.C. 7401 - 7671q (Clean Air Act), as amended; and

5 (3) a summary of the public comments received under (b) of this section, including
6 alternative fee schedules suggested by the public, and the department's analysis of the public comments.

7 (b) In preparation for submitting the final report required under (a) of this section, the
8 Department of Environmental Conservation shall, by November 15, 1992, publish a draft report for
9 public review and comment. The draft report must contain the information required under (a)(1) and
10 (2) of this section.

11 * Sec. 24. COOPERATION. The Department of Transportation and Public Facilities and the
12 Department of Environmental Conservation shall cooperate with each other as necessary to achieve
13 implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

14 * Sec. 25. LIMITATION. This Act does not authorize the Department of Environmental
15 Conservation to adopt regulations that establish

16 (1) ambient air quality standards;

17 (2) emission standards; or

18 (3) classifications of facilities or sources according to characteristics relating to air
19 quality.

20 * Sec. 26. Sections 2 and 3 of this Act take effect July 1, 1994.

21 * Sec. 27. AS 46.03.161, 46.03.162, 46.03.165, and 46.03.167, enacted by sec. 5 of this Act; and
22 secs. 4 and 6 - 25 of this Act take effect immediately under AS 01.10.070(c).

23 * Sec. 28. AS 46.03.163, 46.03.164, 46.03.166, 46.03.168, and 46.03.169, enacted by sec. 5 of this
24 Act, take effect November 15, 1993.