

SENATE BILL NO. 383

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/3/92
Referred: Resources, Finance

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; relating to use of the oil and hazardous substance release
 4 response fund; and providing for an effective date."

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

6 * **Section 1. PURPOSE.** The purpose of this Act is to bring the state into compliance with 1990
 7 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671. Compliance is necessary
 8 to allow Alaska to continue to have primary management of air quality in Alaska and to retain federal
 9 approval of Alaska's air quality control program to ensure the receipt of federal highway money.

10 * **Sec. 2.** AS 46 is amended by adding a new chapter to read:

11 **CHAPTER 14. AIR QUALITY CONTROL.**

12 **ARTICLE 1. CLASSIFICATIONS AND STANDARDS**

13 **Sec. 46.14.010. REGULATION AUTHORITY; EMISSION CONTROL STANDARDS.**

14 (a) After public hearing, the department may adopt regulations under this chapter as necessary

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

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

9 Sec. 46.14.020. CLASSIFICATION AND REPORTING. (a) The department, by
10 regulation, may classify facilities or sources that, in the department's determination, are likely
11 to cause or contribute to air pollution, according to the levels and types of emissions and other
12 characteristics that relate to air quality. The department may make a classification under this
13 subsection applicable to the state as a whole or to a designated area of the state. The department
14 shall base the classifications on consideration of health, economic, and social factors; sensitivity
15 of the receiving environment; and physical effects on property.

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

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
24 OPERATION. (a) It is unlawful to construct, install, modify, reconstruct, or establish a facility
25 subject to AS 46.14.205(a), except in compliance with the construction permit, and any order or
26 other determination of the department under this chapter.

27 (b) It is unlawful for a person to operate a major facility or a facility that contains one
28 or more of the sources listed at AS 46.14.205(b) except in compliance with the operating permit,
29 and any order or other determination of the department under this chapter.

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

1 (d) If the administrator exempts a source from the requirements of 42 U.S.C. 7661a(a)
2 (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source from some
3 or all of the requirements of this chapter.

4 Sec. 46.14.205. PERMIT APPLICABILITY. (a) Before constructing, installing,
5 modifying, reconstructing, or establishing a facility, the owner and operator shall first obtain a
6 construction permit from the department if that facility meets any of the following criteria:

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

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

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

13 (4) an existing facility, otherwise meeting the criteria in (1), (2), or (3) of this
14 subsection, for which a modification is proposed that would increase actual emissions of a
15 regulated air contaminant to an amount equal to or greater than the annual emission quantity set
16 out in regulations adopted under AS 46.14.010;

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

20 (b) The owner and operator of a facility shall obtain an operating permit from the
21 department if the facility is defined as a major facility under this chapter or if the facility
22 contains one or more of the following sources:

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

26 (2) any other stationary source designated by the administrator or the department,
27 by regulation.

28 Sec. 46.14.210. EMISSION CONTROL PERMIT REGULATIONS. (a) The department,
29 at minimum, shall adopt regulations to address the following elements of the emission control
30 permit program:

31 (1) a standard permit application form that, at a minimum, complies with the

1 requirements of federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec.
2 502(b));

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

6 (3) procedures for

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

8 (B) processing and reviewing an application; and

9 (C) providing public notice, including opportunity for public comment and

10 hearing;

11 (4) standard permit conditions, including, at a minimum, conditions for

12 (A) emission standards and limitations;

13 (B) monitoring, recordkeeping, and reporting;

14 (C) inspection and entry;

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

16 (E) annual certification of compliance; and

17 (F) excess emission or process deviation reporting;

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

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

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

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

27 Sec. 46.14.215. STATE PLAN. (a) The department shall act for the state in any
28 negotiations relative to the state air quality control plan developed under 42 U.S.C. 7401 - 42
29 U.S.C. 7671. The department may adopt regulations necessary to implement the state plan.

30 (b) The department shall ensure that permits issued, modified, amended, or renewed
31 under this chapter comply with the emission limitations and other requirements of the state air

1 quality control plan.

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

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

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

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

14 (b) Notwithstanding (a) of this section, the department may establish a phased schedule
15 for acting on operating permit applications submitted on or before November 15, 1994. A phased
16 schedule must assure that at least one-third of the applications submitted on or before November
17 15, 1994 will be acted on by the department during each of the three years after November 15,
18 1994. On or before November 15, 1997, the department shall act on all applications received
19 on or before November 15, 1994.

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

23 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
24 this chapter, the owner and operator, any person who participated in the public comment process,
25 or a person with standing under state or federal law to obtain administrative or judicial review
26 of a permit action under this chapter, may request an adjudicatory hearing in accordance with the
27 department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing
28 decision, any party to the hearing may obtain judicial review of that decision as provided in
29 Alaska Supreme Court Rules of Civil Procedure.

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

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

10 **Sec. 46.14.245. OBJECTION BY ADMINISTRATOR.** (a) An operating permit may
11 not be issued under this chapter until the administrator approves the permit, or until 45 days after
12 a copy of the final draft permit has been provided by the department to the administrator,
13 whichever is sooner. If, during the 45-day period, the administrator files an objection with the
14 department, the department shall notify the applicant of the objection. The permit may not be
15 issued until the objection is resolved or the permit is revised to meet the objection of the
16 administrator.

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

21 **Sec. 46.14.250. PAYMENT OF FEES AND FEE STRUCTURE.** (a) The owner and
22 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the
23 applicable fees set out in the fee structure adopted by the department under (b) of this section.
24 The owner and operator shall pay the fees to the department or to the public entity designated
25 by the department.

26 (b) The department shall adopt, by regulation, a fee structure based upon the type of
27 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source
28 classifications; and other factors reflecting the cost of administering the emission control permit
29 program under this chapter. Fees must be sufficient to cover the reasonable, direct and indirect
30 costs required to develop and implement the permit program and the small business assistance
31 program established in this chapter. For purposes of this subsection, "costs" include expenditures

1 for

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

16 (c) The fee structure adopted under (b) of this section shall be amended as necessary to

17 assure that the fees cover the reasonable costs authorized by (b) of this section.

18 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department

19 shall adopt regulations as necessary to allow the assessment of a penalty of up to 50 percent of

20 the fee established under AS 46.14.250(b) against the owner and operator of a facility if the

21 owner and operator fail to timely pay a fee lawfully imposed under this chapter. The department

22 may also assess interest against the owner and operator, computed in accordance with

23 AS 45.45.010(a), after a fee is due under this chapter and is unpaid.

24 Sec. 46.14.260. CLEAN AIR PROTECTION FUND; SPECIAL ACCOUNT. (a) There

25 is established the clean air protection fund. The fund consists of

26 (1) all fees, penalties, and interest collected by the department under AS 46.14.250

27 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))

28 for state participation in the emission control permit program; and

29 (2) appropriations to the fund.

30 (b) The clean air protection fund may be used solely to cover the reasonable, direct and

31 indirect costs, including court costs and attorney fees, required to support the permit program

1 under this chapter, and those activities of the small business assistance program that are directed
2 at facilities subject to AS 46.14.205.

3 (c) An administrative penalty, and any interest, attorney fees, and costs collected under
4 AS 46.14.295, and any civil penalties, assessments, or damages collected under AS 46.03.760 or
5 46.03.790 as a result of a violation relating to this chapter, shall be deposited in the general fund.
6 The annual estimated balance in the account maintained by the commissioner of administration
7 under AS 37.05.142 may be used by the legislature to make appropriations to the department for
8 the purpose of carrying out activities under this chapter.

9 Sec. 46.14.265. DURATION OF OPERATING PERMITS. (a) An operating permit
10 under this chapter is issued for a fixed term established by the department, but in no case may
11 the term exceed five years after the date of issue.

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

15 Sec. 46.14.270. REOPENING OF PERMITS. (a) A permit issued under this chapter
16 is subject to review and reopening by the department based on the determination of the
17 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671 (Clean Air
18 Act).

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

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

1 Sec. 46.14.275. **TERMINATION, MODIFICATION, AMENDMENT, OR**
2 **REVOCAION AND REISSUANCE OF PERMITS.** After 30 days' written notice to the
3 permittee, the department may terminate, modify, amend, or revoke and reissue a construction
4 or operating permit if the department finds that

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

7 (2) the permit contains a material mistake;

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

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

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

15 Sec. 46.14.280. **FEDERAL TERMINATION, MODIFICATION, OR REVOCATION**
16 **AND REISSUANCE OF PERMITS.** The department shall take measures practicable to avoid
17 termination, modification, or revocation and reissuance by the administrator of permits issued by
18 the department under this chapter.

19 Sec. 46.14.285. **TEMPORARY OPERATIONS.** The department may issue a single
20 operating permit under AS 46.14.225, authorizing a facility to operate at multiple locations in the
21 state for temporary periods of time not to exceed one year at any one location. A permit
22 described in this section is valid only for the locations identified in the application and authorized
23 by the department. A permit described in this section may not be issued unless it contains
24 conditions that will assure compliance with the requirements of this chapter at each authorized
25 location, including compliance with ambient air quality standards and applicable increment or
26 visibility requirements adopted under this chapter. A permit described in this section must
27 require the owner and operator to notify the department at least 30 days before a change in
28 location of a facility permitted under this section.

29 Sec. 46.14.290. **PERMIT AS SHIELD.** (a) Compliance with an operating permit issued
30 under this chapter is considered to be compliance with the operating permit program established
31 under this chapter.

1 (b) Nothing in this section alters or affects

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

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

6 Sec. 46.14.292. **TIMELY AND COMPLETE APPLICATION AS SHIELD.** If an owner
7 and operator have submitted a timely and complete application for a permit, or a permit renewal,
8 as applicable, but final action has not been taken on the application, the owner's and operator's
9 failure to have an operating permit is not a violation of this chapter unless the delay in final
10 action was due to the failure of the owner and operator to timely submit information required or
11 requested to process the application. An owner and operator required to have an operating permit
12 under this chapter are not in violation of the operating permit program established under this
13 chapter before the date on which the owner and operator are required to submit an application
14 under AS 46.14.220.

15 Sec. 46.14.295. **ADMINISTRATIVE PENALTIES FOR AIR POLLUTION.** (a) The
16 department may assess an administrative penalty against a person who violates, or causes, or
17 allows to be violated a provision of this chapter; a regulation adopted under this chapter; or a
18 term or condition of an order, permit, or approval of the department under this chapter.

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

29 (d) If a penalty is assessed under this section, the department shall provide the assessment
30 notice to the person affected, by personal service or by certified mail, return receipt requested.
31 An administrative penalty assessed under this section becomes a final agency action 30 days after

1 service or mailing of the assessment notice unless an administrative hearing is requested by the
2 person against whom the penalty is assessed. Failure to request an administrative hearing within
3 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
4 right to an administrative hearing. The department may extend the time periods specified in this
5 subsection for good cause shown.

6 (e) If an administrative hearing is requested, the department shall grant a hearing and
7 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,
8 the department may modify, rescind, or affirm the administrative penalty; that action is a final
9 agency action.

10 (f) A person against whom an administrative penalty is assessed may obtain judicial
11 review of the administrative penalty as provided in Alaska Supreme Court Rules of Civil
12 Procedure. The court may set aside, or adjust the amount of, the administrative penalty only if
13 the administrative record, taken as a whole, does not contain a reasonable basis to support the
14 finding of offense or the amount of penalty assessed by the department.

15 (g) Action under this section by the department does not limit or otherwise affect the
16 authority of the department to enforce this chapter, or to recover damages, restoration expenses,
17 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall set
18 off against a judicial penalty subsequently awarded under AS 46.03.760, any amount ordered to
19 be paid under this section by the same person for the same offense.

20 (h) The assessment of an administrative penalty under this section does not affect the
21 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
22 of the department under this chapter.

23 (i) If a person fails or refuses to pay an administrative penalty assessed under this section
24 after the penalty has become a final agency action, the department may take appropriate steps
25 to bring an action to collect the penalty. If the department prevails in court, the court shall order
26 the person to pay

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

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

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

1 **ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.**

2 **Sec. 46.14.300. MOTOR VEHICLE POLLUTION.** (a) When the department determines
3 that the state of knowledge and technology may allow or make appropriate the control of
4 emissions from motor vehicles to further air quality control, the department may provide, by
5 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
6 requirements for the installation and use of equipment designed to reduce or eliminate emissions
7 and for the proper maintenance of this equipment.

8 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
9 element of the air pollution control system or mechanism of a motor vehicle if the department
10 adopts regulations requiring that such a system or mechanism be maintained in or on the motor
11 vehicle. Failure to maintain such a system or mechanism in operating condition subjects the
12 motor vehicle's registration to suspension or cancellation. That motor vehicle is not again
13 eligible for registration until the owner or operator obtains a certification from the department,
14 based on a demonstration that the air pollution control system or mechanism is restored to
15 operating condition.

16 (c) The department shall consult with the Department of Public Safety regarding
17 implementation of the motor vehicle pollution control program.

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

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

27 **Sec. 46.14.400. DEVELOPMENT OF PROGRAM.** There is established in the
28 department a small business assistance program. The program shall be made a part of the state
29 air quality control plan under AS 46.14.215.

30 **Sec. 46.14.410. SCOPE OF PROGRAM.** (a) The department shall implement the small
31 business assistance program as part of the program established under AS 46.06.031, by

1 (1) collecting, coordinating, and disseminating information on methods and
2 technologies that will assist small business facilities to comply with this chapter and regulations
3 adopted under this chapter;

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

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

9 (4) assisting small business facilities in determining applicable requirements and
10 in receiving permits under this chapter in a timely and efficient manner;

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

15 (6) informing small business facilities of their obligations under this chapter and
16 under regulations adopted under this chapter;

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

22 (8) assisting in the development and implementation of modified work practices
23 or technical changes to processes to facilitate compliance with this chapter and regulations
24 adopted under this chapter;

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

28 (10) collecting and making available guidance prepared by the federal small
29 business stationary source technical and environmental compliance assistance program;

30 (11) at the request of a facility owner or operator, referring questions concerning
31 compliance with this chapter, or with a regulation adopted or permit issued under this chapter,

1 to air quality management personnel of the department; and

2 (12) designating a person to serve as a small business ombudsman, to act as
3 liaison between small businesses and air quality management personnel of the department.

4 (b) If the legislature appropriates additional money from the general fund for purposes
5 of the small business assistance program, the department may provide the services listed in (a)
6 of this section to facilities that do not meet the definition of a small business facility under
7 AS 46.14.900, but are subject to the requirements of this chapter.

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

15 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) There is established in the
16 department a compliance advisory panel.

17 (b) The panel shall consist of seven persons appointed by the governor. The panel
18 members shall serve without compensation, but are entitled to travel expenses and per diem as
19 authorized for state employees. The members serve at the pleasure of the governor.

20 (c) The panel consists of

21 (1) two persons to represent the general public; these members may not be owners
22 or representatives of owners of small business facilities;

23 (2) one person who is an owner or a representative of an owner of a small
24 business facility covered under this chapter; this person shall be appointed from a list of three
25 names selected by the majority leadership of the state House of Representatives or, if no majority
26 exists, then the list shall be selected by the Speaker of the House;

27 (3) one person who is an owner or a representative of an owner of a small
28 business facility covered under this chapter; this person shall be appointed from a list of three
29 names selected by the minority leadership of the state House of Representatives or, if no minority
30 exists, then the list shall be selected by the Speaker of the House;

31 (4) one person who is an owner or a representative of an owner of a small

1 business facility covered under this chapter; this person shall be appointed from a list of three
2 names selected by the majority leadership of the state Senate or, if no majority exists, then the
3 list shall be selected by the President of the Senate;

4 (5) one person who is an owner or a representative of an owner of a small
5 business facility covered under this chapter; this person shall be appointed from a list of three
6 names selected by the minority leadership of the state Senate or, if no minority exists, the list
7 shall be selected by the President of the Senate;

8 (6) one person selected by the commissioner.

9 (d) The governor shall either appoint a person from a list submitted under (c)(2) - (5) of
10 this section, or reject all names on the list and request that a new list be submitted.

11 (e) The compliance advisory panel shall

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

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

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

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

21 (5) review information designed to assist small business facilities in complying
22 with this chapter to assure that the information is understandable by the layperson; and

23 (6) have the small business ombudsman assist the panel in the development and
24 dissemination of panel reports and advisory opinions.

25 ARTICLE 5. GENERAL PROVISIONS.

26 Sec. 46.14.500. PUBLIC RECORDS. Except as provided in AS 46.14.510, permits,
27 permit applications, emissions and monitoring reports, compliance reports, certifications, and
28 monitoring, reporting, and quality assurance plans in the department's possession and control are
29 available to the public for inspection and copying.

30 Sec. 46.14.510. CONFIDENTIALITY OF RECORDS. Records and information, other
31 than emission data, in the department's possession and control are considered confidential records

1 if

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

5 (2) the records

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

8 (B) consist of meteorological or ambient air quality data collected by the
9 owner or operator.

10 **Sec. 46.14.520. LOCAL AIR QUALITY CONTROL PROGRAMS.** (a) With the
11 approval of the department, a home rule or general law municipality with a population of 1,000
12 or more may establish and administer within its jurisdiction a local air quality control program
13 that is consistent with all or part of the department's air quality program as established under this
14 chapter. A first or second class borough may administer an air quality control program, approved
15 by the department under this subsection, on an areawide basis and is not subject to the
16 restrictions for acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A
17 third class borough may administer an air quality control program, approved by the department
18 under this subsection, only in a service area formed in accordance with AS 29.35.490(b) or (c).

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

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

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

28 (2) local air contaminant sources; or

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

30 (d) A municipality or a local air quality district seeking department approval for a local
31 air quality control program shall enter into a cooperative agreement with the department. The

1 cooperative agreement shall include provisions specifying

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

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

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

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

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

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

18 (g) A decision, order, permit, or other determination made or issued in accordance with
19 a local air quality control program is considered to be a decision, order, permit, or other
20 determination of the department.

21 Sec. 46.14.530. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
22 local air quality district has an approved air quality control program under AS 46.14.520, and if
23 the department determines that the program is being implemented in a manner that fails to
24 prevent or control air pollution in the jurisdiction to which the program applies, the department
25 shall give written notice, setting out its determination, to the municipality or local air quality
26 district. Within 45 days after giving written notice, the department shall conduct a public hearing
27 on the matter.

28 (b) If, after the hearing, the department upholds the determination made in the written
29 notice, the department shall provide the municipality or local air quality district with a written
30 finding setting out the nature of the deficiencies and a description of the necessary action to be
31 taken in order for the program to prevent or control air pollution. The department shall provide

1 its finding to the municipality or district within 45 days after the closure of the public hearing
2 record. The department shall set a reasonable period of time for the municipality or local air
3 quality district to take corrective action in response to the department's finding.

4 (c) If the municipality or local air quality district fails to take corrective action within
5 the time period set by the department under (b) of this section, the department shall terminate
6 the cooperative agreement and resume management of the program in the affected jurisdiction.
7 If the municipality or the local air quality district partially remedies, to the department's
8 satisfaction, the deficiencies found in the determination, the department shall amend the
9 cooperative agreement to reflect a modified allocation of responsibilities between the department
10 and municipality or the local air quality district.

11 (d) A municipality or local air quality district that has had its cooperative agreement
12 terminated may resume, with the department's approval, a local air quality control program if the
13 municipality or district agrees to comply with AS 46.14.520 and with any corrective action plan
14 required by the department.

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

22 Sec. 46.14.540. STATE AND FEDERAL AID. A municipality or local air quality
23 district with a local air quality control program may apply for, receive, administer, and spend
24 state or federal aid for the control of air emissions or the development and administration of the
25 program if an application is first submitted to and approved by the department. Subject to
26 available money appropriated by the legislature, the department shall approve an application if
27 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
28 the requirements of this chapter.

29 Sec. 46.14.550. LIMITATION OF POWERS. AS 46.14.010 - 46.14.540 do not

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

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

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

5 Sec. 46.14.560. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
6 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted
7 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.
8 If the owner and operator of the facility are separate persons, only one person is required to
9 discharge a specific responsibility. Both persons are liable for noncompliance with the
10 requirements of this chapter or of regulations adopted under this chapter.

11 Sec. 46.14.900. DEFINITIONS. In this chapter

12 (1) "administrator" means the administrator of the United States Environmental
13 Protection Agency;

14 (2) "air contaminant" means a regulated air contaminant or a hazardous air
15 contaminant;

16 (3) "ambient air" means that portion of the atmosphere, external to buildings, to
17 which the general public has access;

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

20 (5) "area source" means a source of fugitive emissions;

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

26 (7) "commissioner" means the commissioner of the Department of Environmental
27 Conservation;

28 (8) "construct" or "construction" means to fabricate, erect, or install, or to make
29 a physical change, that would result in emissions;

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

- 1 (10) "department" means the Department of Environmental Conservation.
- 2 (11) "emission" means a release of one or more air contaminants to the
3 atmosphere;
- 4 (12) "emission limitation" and "emission standard" mean a requirement established
5 by the department or the administrator that limits the quantity, rate, or concentration of emission
6 of an air contaminant, including any requirement relating to the operation or maintenance of a
7 source to assure continuous emission reduction, and any design, equipment, work practice, or
8 operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671 (Clean Air Act), but
9 does not include ambient air quality standards;
- 10 (13) "equivalent emission limitation" means
- 11 (A) a limitation for hazardous air contaminants established by the
12 administrator or the commissioner on a case-by-case basis, that is equivalent to the
13 limitation that would apply to a source or facility if an emission standard had been
14 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or
- 15 (B) if the criteria of the early reduction program established in 42 U.S.C.
16 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established in accordance
17 with that subsection and with 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));
- 18 (14) "facility" means one or more structures, buildings, installations, or properties
19 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
20 or operated by the same person or by persons under common control;
- 21 (15) "fugitive emissions" means those emissions of an air contaminant that are
22 not emitted from a contaminant outlet;
- 23 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
24 7412(b) (Clean Air Act, sec. 112(b));
- 25 (17) "local air quality control program" means a program authorized under
26 AS 46.14.520 to implement some or all of the provisions of this chapter,
- 27 (18) "major facility" means a facility with the potential to emit at least
- 28 (A) 100 TPY of a regulated air contaminant;
- 29 (B) 10 TPY of a hazardous air contaminant; or
- 30 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;
- 31 (19) "modification" or "modify" means to make a change or a series of changes

1 in operation, or any physical change or addition to a facility or source which increases the actual
2 emissions of an air contaminant;

3 (20) "operator" means a person or persons who direct, control, or supervise a
4 facility or source that has the potential to emit an air contaminant to the atmosphere;

5 (21) "owner" means a person or persons with a proprietary or possessory interest
6 in a facility or source that has the potential to emit an air contaminant to the atmosphere;

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

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

15 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);

16 (23) "register" or "registration" means vehicle registration in accordance with
17 AS 28.10;

18 (24) "regulated air contaminant" means

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

21 (B) oxides of nitrogen;

22 (C) a volatile organic compound; and

23 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
24 7411 - 7412 (Clean Air Act, sec. 111 - 112);

25 (25) "small business facility" means a facility that

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

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

29 (C) emits less than 100 tons per year of all regulated air contaminants;

30 (26) "source" means a device, process, activity, or equipment that causes, or could
31 cause, a release of an air contaminant;

1 (27) "TPY" means tons per year.

2 * Sec. 3. AS 28.10.041(a)(10) is amended to read:

3 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection
4 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.520
5 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle
6 uses a fuel source that does not primarily emit carbon monoxide;

7 * Sec. 4. AS 28.10.423 is amended to read:

8 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
9 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
10 required to be inspected under an emission control program established under AS 46.14.300 or
11 46.14.520 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
12 as the registration fee.

13 * Sec. 5. AS 29.35 is amended by adding a new section to read:

14 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may
15 establish a local air quality control program as provided in AS 46.14.520 only if the municipality
16 has obtained the consent of its governing body through an ordinance authorizing the participation.

17 * Sec. 6. AS 29.35.200(b) is amended to read:

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

- 20 (1) provide transportation systems;
21 (2) provide water pollution control;
22 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
23 - 46.03.230];
24 (4) license day care facilities;
25 (5) license, impound, and dispose of animals.

26 * Sec. 7. AS 29.35.210(a) is amended to read:

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

- 29 (1) provide transportation systems;
30 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
31 fireworks;

- 1 (3) license, impound, and dispose of animals;
- 2 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
- 3 collection and disposal;
- 4 (5) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 5 - 46.03.230];
- 6 (6) provide water pollution control;
- 7 (7) participate in federal or state loan programs for housing rehabilitation and
- 8 improvement for energy conservation;
- 9 (8) provide for economic development;
- 10 (9) provide for the acquisition and construction of local service roads and trails
- 11 under AS 19.30.111 - 19.30.251;
- 12 (10) establish an emergency services communication center under AS 29.35.130;
- 13 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
- 14 vehicles and operators;
- 15 (12) engage in activities authorized under AS 29.47.460;
- 16 (13) contain, clean up, or prevent a release or threatened release of oil or a
- 17 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
- 18 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
- 19 consistent with a regional master plan prepared by the Department of Environmental
- 20 Conservation under AS 46.04.210.

21 * Sec. 8. AS 29.35.210(b) is amended to read:

22 (b) A second class borough may by ordinance exercise the following powers on an

23 areawide basis:

- 24 (1) provide transportation systems;
- 25 (2) license, impound, and dispose of animals;
- 26 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 27 - 46.03.230];
- 28 (4) provide water pollution control;
- 29 (5) license day care facilities.

30 * Sec. 9. AS 44.46.025(a) is amended to read:

31 (a) The Department of Environmental Conservation may adopt regulations that prescribe

1 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs
2 of the following services provided by the department:

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

5 (2) the emission control permitting program and the motor vehicle pollution
6 control program under AS 46.14 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND
7 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. 10. 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. 11. 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 AS 46.03.250
20 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval,
21 or acceptance, or term or condition of a permit, approval, or acceptance issued under
22 AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be
23 assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor
24 more than \$10,000 for each day after that on which the violation continues, and that shall reflect,
25 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. 12.** 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, or 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. 13.** 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. 14.** 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 by the department under AS 46.14;

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. 15. 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. 16. 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, or 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. 17. 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 46.14.

27 * Sec. 18. 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 46.03,
30 AND] AS 46.04, AS 46.09, and AS 46.14.

31 * Sec. 19. 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. 20. AS 46.08.900(6) is amended to read:

11 (6) "hazardous substance" means

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

20 * Sec. 21. AS 46.09.900(4) is amended to read:

21 (4) "hazardous substance" means

22 (A) an element or compound that, when it enters into the atmosphere, or
23 into or on the surface or subsurface land or water of the state, presents an imminent and
24 substantial danger to the public health or welfare, or to fish, animals, vegetation, or any
25 part of the natural habitat in which fish, animals, or wildlife may be found; or

26 (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 -
27 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of
28 1980); "hazardous substance" does not include uncontaminated crude oil or
29 uncontaminated refined oil;

30 * Sec. 22. AS 46.35.200(4) is amended to read:

31 (4) "permit" means each of the following licenses, permits or authorizations

1 required to be obtained from a state agency before constructing or operating a project in the state,
2 or any other license, permit or authorization which may be designated by the commissioner:

- 3 (A) emission control [AIR EMISSIONS] permit - AS 46.14
4 [AS 46.03.150], 18 AAC 50.120;
- 5 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;
- 6 (C) burning permit during fire season - AS 41.15.050, 11 AAC 92.010;
- 7 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;
- 8 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;
- 9 (F) brine or other salt water waste disposal permit - AS 31.05.030, 11
10 AAC 22.250;
- 11 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;
- 12 (H) tidelands right-of-way or easement permit - AS 38.05.820, 11 AAC
13 62.810;
- 14 (I) authorization for tidelands transportation - AS 38.05.110, 11 AAC
15 76.205;
- 16 (J) tide and submerged lands prospecting permit - AS 38.05.250;
- 17 (K) mineral and geothermal prospecting permits - AS 38.05.145;
- 18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;
- 19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;
- 20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;
- 21 (O) permit to appropriate water - AS 46.15.040, 11 AAC 72.050;
- 22 (P) permit for use of timber or materials - AS 38.05.110, 11 AAC 76.185;
- 23 (Q) special material use permit - AS 38.05.115, 11 AAC 76.540;
- 24 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;
- 25 (S) limited personal use permit - AS 38.05.820, 11 AAC 62.820;
- 26 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;
- 27 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;
- 28 (V) miscellaneous state land use permit - AS 38.05.035, 11 AAC 96.010;
- 29 (W) anadromous fish protection permit - AS 16.05.870, 5 AAC 95.100;
- 30 (X) critical habitat area permit - AS 16.20.520 - 16.20.530;
- 31 (Y) state game refuge land permit - AS 16.20.050 - 16.20.060;

- 1 (Z) state park incompatible use permit - AS 41.21.020, 11 AAC 18.010;
2 (AA) pesticides permit - AS 46.03.320, 18 AAC 90;
3 (BB) surface oiling permit - AS 46.03.740, 18 AAC 75;
4 (CC) encroachment permit - AS 19.25.200;
5 (DD) utility permit - AS 19.25.010;
6 (EE) driveway permit - AS 19.05.020, 17 AAC 10.020;
7 (FF) access roads permit - AS 41.21.020, 11 AAC 18.020;
8 (GG) right-of-way and easement permits - AS 38.05.850, 11 AAC 58.200;
9 (HH) right-of-way permit - AS 38.05.850;

10 * Sec. 23. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
11 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

12 * Sec. 24. REGULATIONS. The Department of Environmental Conservation may adopt regulations
13 as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority, to implement
14 changes made by this Act. Regulations adopted under this section may not take effect until the enabling
15 statute takes effect under sec. 25 or sec. 26 of this Act.

16 * Sec. 25. AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210,
17 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.260, 46.14.275, 46.14.285,
18 46.14.295, 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520,
19 46.14.530, 46.14.540, 46.14.550, 46.14.560, and 46.14.900, created by sec. 2 of this Act, and secs. 1 and
20 3 - 24 of this Act take effect immediately under AS 01.10.070(c).

21 * Sec. 26. AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.265,
22 46.14.270, 46.14.280, 46.14.290, and 46.14.292, created by sec. 2 of this Act, take effect November 15,
23 1993.