

HOUSE BILL NO. 39
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BROWN, B.Davis

Introduced: 1/11/93

Referred: Labor & Commerce, Resources, Finance

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to prevention, abatement, and control of air pollution."

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

3 * Section 1. PURPOSE. The purpose of this Act is to bring the state into compliance with
4 the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q.
5 Changes in state law are necessary to allow the state to continue to have primary management
6 of air quality in the state and to retain federal approval of the state's air quality control
7 program in order to ensure the continued receipt of federal highway and air pollution control
8 money. The federal Environmental Protection Agency must prohibit the approval of highway
9 projects and highway grants, and may withhold air pollution control grants, if the state does
10 not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

12 (R) clean air protection fund (AS 46.03.177).

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

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

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

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

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

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

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

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

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

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

17 * Sec. 4. AS 46.03.160(a) is amended to read:

18 (a) The department shall, by regulation, implement a permit program that
19 meets the requirements of 42 U.S.C. 7661 - 7661q, as amended, and regulations
20 adopted under those laws. The department shall [MAY] require that notice be given
21 to it before the undertaking of the construction, installation, or establishment of
22 particular types or classes of new air contaminant sources specified in its regulations
23 or in applicable federal regulations. Within 15 days of its receipt of the notice, the
24 department shall require, as a condition precedent to the undertaking, the submission
25 of plans and other information it considers necessary in order to determine whether the
26 proposed undertaking will be in accord with applicable regulations [IN FORCE] under
27 AS 46.03.140 - 46.03.150 and applicable federal laws.

28 * Sec. 5. AS 46.03.160(b) is amended to read:

29 (b) Within 30 days of receipt of the plans and information for a proposed
30 undertaking, the department shall notify the applicant as to whether the plans and
31 information are sufficiently complete and whether it appears to the department

1 that the proposed undertaking requires a permit. Within the time requirements
2 of federal law, the department shall either approve the undertaking and issue a
3 permit, or if the department determines that the proposed undertaking will not meet the
4 requirements of AS 46.03.140 - 46.03.150 and applicable regulations, including
5 federal regulations, it shall issue a prohibition order against the undertaking.

6 * Sec. 6. AS 46.03 is amended by adding new sections to read:

7 Sec. 46.03.175. FEES RELATED TO PERMITS OR REVIEWS. The
8 department shall charge and collect an annual fee from a person who is issued a permit
9 under AS 46.03.160. The department shall by regulation adopt a fee structure that
10 meets the requirements of 42 U.S.C. 7661a(a)(3), as amended. Notwithstanding
11 AS 37.10.050, the department shall deposit fees collected under this section into the
12 clean air protection fund established under AS 46.03.177.

13 Sec. 46.03.177. CLEAN AIR PROTECTION FUND. (a) The clean air
14 protection fund is established in the department. The fund consists of money
15 appropriated to it and money deposited by the department under AS 46.03.175. Unless
16 otherwise specified in an appropriation to the fund, an appropriation to the fund does
17 not lapse. Money deposited to the fund under AS 46.03.175 does not lapse. Interest
18 earned on money in the fund shall be deposited by the commissioner in compliance
19 with AS 37.10.050.

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

- 23 (1) reviewing and acting upon permit applications;
24 (2) enforcing the terms and conditions of permits;
25 (3) emissions and ambient monitoring;
26 (4) preparing regulations and giving technical assistance;
27 (5) modeling, analyses, and demonstrations; and
28 (6) preparing inventories and tracking emissions.

29 (c) The commissioner shall administer the fund.

30 (d) In this section, "fund" means the clean air protection fund established under
31 this section.

1 * Sec. 7. AS 46.03.210(a) is amended to read:

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

8 (1) provide by ordinance for requirements compatible with those
9 imposed by the provisions of AS 46.03.140 - 46.03.245, 42 U.S.C. 7401 - 7671q, as
10 amended, [AS 46.03.140 AND 46.03.170] and applicable state and federal
11 regulations;

12 (2) provide for the enforcement of the requirements imposed through
13 appropriate administrative and judicial processes;

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

16 (4) be approved by the department as being satisfactory to meet the
17 requirements of AS 46.03.140 - 46.03.245, 42 U.S.C. 7401 - 7671q, as amended,
18 [AS 46.03.140 - 46.03.170] and the applicable state and federal regulations; and

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

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

24 Sec. 46.03.227. SMALL BUSINESS ASSISTANCE PROGRAM. (a) A small
25 business assistance program is established in the department.

26 (b) The small business assistance program shall

27 (1) collect, coordinate, and disseminate information on methods and
28 technologies that will assist small business facilities to comply with AS 46.03.140 -
29 46.03.245 and regulations adopted under those sections;

30 (2) encourage lawful cooperation among small business facilities and
31 other persons to facilitate compliance with AS 46.03.140 - 46.03.245 and regulations

- 1 adopted under those sections;
- 2 (3) provide small business facilities with information on pollution
3 prevention and accidental release detection and prevention, including information on
4 alternative technologies, process changes, products, and methods of operation that help
5 reduce air pollution;
- 6 (4) assist small business facilities in determining applicable
7 requirements and in receiving permits under AS 46.03.140 - 46.03.245 in a timely and
8 efficient manner;
- 9 (5) ensure that small business facilities receive notice of their rights
10 under AS 46.03.140 - 46.03.245 in a manner and form that ensures adequate time for
11 the facilities to evaluate compliance methods and to evaluate applicable proposed or
12 final regulations adopted or standards issued under AS 46.03.140 - 46.03.245 or 42
13 U.S.C. 7401 - 7671q (Clean Air Act), as amended;
- 14 (6) inform small business facilities of their obligations under
15 AS 46.03.140 - 46.03.245 and regulations adopted under those sections;
- 16 (7) provide small business facility operators with a list of auditors
17 available for auditing the operation of the facility or, if possible, and at the request of
18 a facility owner or operator, audit a facility to evaluate compliance with
19 AS 46.03.140 - 46.03.245 and regulations adopted under those sections; an audit under
20 this paragraph may not be regarded as an inspection or investigation;
- 21 (8) assist in developing and implementing modified work practices or
22 technical changes to processes to facilitate compliance with AS 46.03.140 - 46.03.245
23 and regulations adopted under those sections;
- 24 (9) coordinate with the federal small business stationary source
25 technical and environmental compliance assistance program established under 42
26 U.S.C. 7661f(b) (Clean Air Act, sec. 507(b)), as amended;
- 27 (10) collect and make available guidance prepared by the federal small
28 business stationary source technical and environmental compliance assistance program;
- 29 (11) at the request of a facility owner or operator, refer questions
30 concerning compliance with AS 46.03.140 - 46.03.245, or with a regulation adopted
31 or permit issued under those sections, to air quality management personnel of the

1 department; and

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

5 (c) If the legislature appropriates money from the general fund for purposes
6 of the small business assistance program, the department shall provide the services
7 listed in (b) of this section to a requesting facility that is not a small business concern
8 as defined in 15 U.S.C. 631, as amended, but that otherwise meets the definition of a
9 small business facility under AS 46.03.229 and is subject to the requirements of
10 AS 46.03.140 - 46.03.245.

11 (d) After consultation with the federal administrator and the administrator of
12 the United States Small Business Administration, and after providing notice and
13 opportunity for public hearing, the department may exclude from the scope of the
14 small business assistance program a category or subcategory of small business facilities
15 that the department finds to have sufficient technical and financial capabilities to meet
16 the requirements of AS 46.03.140 - 46.03.245 and federal law without the assistance
17 provided under AS 46.03.227 - 46.03.229.

18 Sec. 46.03.228. COMPLIANCE ADVISORY PANEL. (a) A compliance
19 advisory panel is established in the department. The panel members shall serve
20 without compensation, but are entitled to travel expenses and per diem as authorized
21 for state boards under AS 39.20.180.

22 (b) The panel consists of

23 (1) three members, who are not owners or representatives of owners
24 of small business facilities, two of whom are selected by the governor to represent the
25 general public and one of whom is selected by the governor to represent either
26 environmental or health interests;

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

29 (3) four members, who are owners or representatives of owners of
30 small business facilities, selected as follows:

31 (A) one shall be selected by the president of the senate and one

- 1 shall be selected by the speaker of the house;
- 2 (B) if there are members of the senate who are not part of the
3 majority caucus of the senate, the leader of the largest nonmajority group shall
4 select a panel member; if all members of the senate are in the majority caucus,
5 then the president of the senate shall select a second panel member in addition
6 to the selection authorized under (A) of this paragraph;
- 7 (C) if there are members of the house who are not part of the
8 majority caucus of the house, the leader of the largest nonmajority group shall
9 select a panel member; if all members of the house are in the majority caucus,
10 then the speaker of the house shall select a second panel member in addition
11 to the selection authorized under (A) of this paragraph.
- 12 (c) The compliance advisory panel shall
- 13 (1) elect a chair and agree upon procedures by which the panel will
14 function;
- 15 (2) meet semi-annually at the call of the chair and give public notice
16 of panel meetings as required under AS 44.62.310 - 44.62.312;
- 17 (3) prepare advisory opinions concerning the effectiveness of the small
18 business assistance program, difficulties encountered in making the program efficient
19 and effective, and degree of enforcement and severity of air pollution offenses;
- 20 (4) make periodic reports to the administrator concerning the
21 compliance of the small business assistance program with requirements of 44 U.S.C.
22 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5
23 U.S.C. 504 (Equal Access to Justice Act);
- 24 (5) review information designed to assist small business facilities in
25 complying with this chapter to ensure that the information is understandable by
26 laypersons; and
- 27 (6) have the small business advocate designated under
28 AS 46.03.227(b)(12) assist the panel in the development and dissemination of panel
29 reports and advisory opinions.
- 30 Sec. 46.03.229. DEFINITIONS. In AS 46.03.227 - 46.03.229,
- 31 (1) "person" has the meaning given in AS 01.10.060 and also includes

1 an agency of the United States, a municipality, the University of Alaska, the Alaska
2 Railroad Corporation, and other departments, agencies, instrumentalities, units, and
3 corporate authorities of the state;

4 (2) "small business facility" means a facility that

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

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

9 (C) emits less than 100 tons per year of regulated air
10 contaminants.

11 * Sec. 9. AS 46.03.760(a) is amended to read:

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

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

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

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

30 * Sec. 10. AS 46.03.760(f) is amended to read:

31 (f) A person who violates or causes or permits to be violated a provision of

1 AS 46.03.140 - 46.03.245, 46.03.250 - 46.03.314 [AS 46.03.250 - 46.03.314], or a
2 regulation, a lawful order of the department, or a permit, approval, or acceptance, or
3 term or condition of a permit, approval, or acceptance issued under AS 46.03.140 -
4 46.03.245 or 46.03.250 - 46.03.314 [AS 46.03.250 - 46.03.314] is liable, in a civil
5 action, to the state for a sum to be assessed by the court of not less than \$500 nor
6 more than \$100,000 for the initial violation, nor more than \$10,000 for each day after
7 that on which the violation continues, and that shall reflect, when applicable,

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

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

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

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

19 * Sec. 11. AS 46.03.790(a) is amended to read:

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

22 (1) violates a provision of this chapter, AS 46.04, or AS 46.09, a
23 regulation or order of the department, or a permit, approval, or acceptance, or a term
24 or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04,
25 or AS 46.09;

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

29 (3) makes a false statement or representation in an application, label,
30 manifest, record, report, permit, or other document filed, maintained, or used for
31 purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes

1 or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

2 (4) makes a false statement, representation, or certification in an
3 application, notice, record, report, permit, or other document filed, maintained,
4 or used for purposes of compliance with AS 46.03.140 - 46.03.245 or a regulation
5 adopted under AS 46.03.140 - 46.03.245; or

6 (5) renders inaccurate a monitoring device or method required to
7 be maintained under AS 46.03.140 - 46.03.245, a regulation adopted under
8 AS 46.03.140 - 46.03.245, or a permit issued by the department or a local air
9 quality control program under AS 46.03.140 - 46.03.245.

10 * Sec. 12. AS 46.03.790 is amended by adding a new subsection to read:

11 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related
12 to AS 46.03.140 - 46.03.245 and described in (a) of this section, a defendant who is
13 not an organization may be sentenced to pay a fine of not more than \$10,000 for each
14 separate offense.

15 * Sec. 13. AS 46.03.170 is repealed.