

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 39  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES BROWN, B.Davis, Finkelstein**

**Introduced: 2/3/93**

**Referred: Labor & Commerce, Resources, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to prevention, abatement, and control of air pollution; and  
2 providing for an effective date."

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

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

12 \* **Sec. 2. AS 46.03.150 is repealed and reenacted to read:**

13 **Sec. 46.03.150. CLASSIFICATION OF FACILITIES OR SOURCES;**  
14 **REPORTING.** (a) The department, by regulation, may classify facilities or sources

1 that, in the department's determination, are likely to cause or contribute to air  
2 pollution, according to the levels and types of emissions and other characteristics that  
3 relate to air quality. The department may make a classification under this subsection  
4 applicable to the state as a whole or to a designated area of the state. The department  
5 shall base the classifications on consideration of health, economic, and social factors,  
6 sensitivity of the receiving environment, and physical effects on property.

7 (b) The department or a local air quality control program authorized under  
8 AS 46.03.212 may require an owner and operator of a facility or source classified  
9 under this section to report information to the department or the authorized local  
10 program concerning location, size, and height of contaminant outlets or area sources,  
11 processes employed, fuels used, the nature and time periods or duration of emissions,  
12 and other information relevant to air quality that is available or reasonably capable of  
13 being calculated and compiled.

14 \* Sec. 3. AS 46.03 is amended by adding new sections to read:

15 Sec. 46.03.152. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
16 OPERATION. (a) Before constructing, installing, modifying, reconstructing, or  
17 establishing a facility subject to AS 46.03.154(a), the owner and operator shall obtain  
18 a construction permit under AS 46.03.140 - 46.03.249.

19 (b) Except when considered to be in compliance with AS 46.03.140 -  
20 46.03.249 under a regulation adopted under AS 46.03.156(a)(11) or 46.03.167(c), the  
21 owner and operator shall obtain an operating permit under AS 46.03.140 - 46.03.249  
22 before operating a facility subject to AS 46.03.154(b).

23 (c) A permittee shall comply with the terms and conditions of a permit, a  
24 modifying compliance order, or other determination made by the department under  
25 AS 46.03.140 - 46.03.249.

26 (d) The department shall ensure that permits issued, modified, amended,  
27 renewed, or revoked and reissued under AS 46.03.140 - 46.03.249 comply with all  
28 applicable federal, state, and local requirements.

29 (e) If the federal administrator exempts a source from the requirements of  
30 42 U.S.C. 7661a(a) (Clean Air Act, sec.502(a)), the commissioner, by regulation, shall  
31 consider the factors used by the administrator in reaching that determination and shall

1 issue a similar determination unless public health or air quality effects provide a  
2 reasonable basis to regulate the source.

3 Sec. 46.03.154. FACILITIES REQUIRING PERMITS. (a) Before  
4 constructing, installing, modifying, reconstructing, or establishing a facility, the owner  
5 and operator shall obtain a construction permit from the department if the facility is  
6 any one of the following:

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

9 (2) a new facility of a type classified under AS 46.03.150 that emits  
10 or has the potential to emit 100 TPY or more of a regulated air contaminant;

11 (3) a new facility of a type classified under AS 46.03.150

12 (A) as having the potential to violate the ambient air quality  
13 standards; or

14 (B) under a finding by the department that public health or air  
15 quality effects provide a reasonable basis to regulate the source;

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

19 (5) an existing facility for which

20 (A) a modification is proposed that would increase actual  
21 emissions of an air contaminant by an amount equal to or greater than the  
22 emission quantity set out in regulations adopted under AS 46.03.140 or  
23 46.03.156; or

24 (B) reconstruction is proposed.

25 (b) The owner and operator of a facility shall obtain an operating permit from  
26 the department if the facility is a facility subject to (a) of this section or a facility that

27 (1) emits or has the potential to emit 100 TPY or more of a regulated  
28 contaminant;

29 (2) emits or has the potential to emit 10 TPY or more of a hazardous  
30 air contaminant or 25 TPY or more, in the aggregate, of two or more hazardous air  
31 contaminants;

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

5                   (4) contains another stationary source designated by  
6                   (A) the federal administrator by regulation; or  
7                   (B) the department under a finding that public health or air  
8 quality effects provide a reasonable basis to regulate the source.

9                   Sec. 46.03.156.       EMISSION CONTROL PERMIT PROGRAM  
10 REGULATIONS. (a) The department shall adopt regulations to address all  
11 substantive and procedural elements of the emission control permit program established  
12 under AS 46.03.140 - 46.03.249 that are not addressed in statute, except elements that  
13 relate only to the internal management of the department and do not affect the public  
14 or govern the way the department deals with the public. The regulations must be  
15 reasonable and adequate, and provide flexibility in the operation of a facility consistent  
16 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal  
17 regulations. The regulations must include

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

20                   (2) procedures for preparation and submission of a monitoring,  
21 reporting, and quality assurance plan and, if required, a compliance schedule describing  
22 how a permitted facility will comply with the applicable requirements of  
23 AS 46.03.140 - 46.03.249;

24                   (3) procedures for

25                   (A) specifying when permit applications and renewal requests  
26 are to be submitted;

27                   (B) specifying the time duration for department review of permit  
28 applications;

29                   (C) processing and reviewing an application;

30                   (D) providing public notice, including opportunity for public  
31 comment and hearing; and

- 1 (E) issuing permits, including procedures for issuing permits for  
2 temporary operations or open burn activities;
- 3 (4) reasonable standard permit conditions, including conditions for  
4 (A) emission standards and limitations;  
5 (B) monitoring, record keeping, and reporting for facilities  
6 subject to AS 46.03.154;  
7 (C) inspection and entry;  
8 (D) certification of corporate or other business organization  
9 reports;  
10 (E) annual certification of compliance;  
11 (F) excess emission or process deviation reporting; and  
12 (G) equipment malfunctions and emergencies;
- 13 (5) fees and procedures for collecting fees;  
14 (6) provisions addressing late payment or nonpayment of fees, which  
15 may include assessment of penalties and interest or refusal to issue, amend, modify,  
16 or renew an air quality control permit;  
17 (7) the duration of permits;  
18 (8) procedures for modifying or amending a permit that provide  
19 flexibility in the operation of the facility, including procedures to allow changes to a  
20 permitted facility without requiring a permit modification, consistent with the purposes  
21 of AS 46.03.140 - 46.03.249 and with 42 U.S.C. 7401 - 7671q (Clean Air Act);  
22 (9) reasonable provisions for renewing, reopening, revoking and  
23 reissuing, and terminating a permit consistent with the purposes of AS 46.03.140 -  
24 46.03.249 and 42 U.S.C. 7401 - 7671q (Clean Air Act);  
25 (10) provisions allowing for physical or operational limitations that will  
26 reduce a facility's emissions to levels below those that would make the facility subject  
27 to part or all of AS 46.03.152 and 46.03.154;  
28 (11) provisions authorizing facility operation while a permit application  
29 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));  
30 (12) provisions for ensuring that compliance with an operating permit  
31 issued under AS 46.03.140 - 46.03.249 will be considered to be compliance with 42

1 U.S.C. 7661a (Clean Air Act, sec. 502) and other provisions of state or federal law  
2 specifically provided for by the department consistent with 42 U.S.C. 7401 - 7671q  
3 (Clean Air Act) and regulations adopted under state and federal law; and

4 (13) provisions allowing for certification of inspectors who evaluate  
5 compliance with the terms and conditions of a permit, order, regulation, or other  
6 provision of law authorized under AS 46.03.140 - 46.03.249.

7 (b) The absence of, or the department's failure to adopt, a regulation under this  
8 section does not relieve a person from compliance with a permit issued under  
9 AS 46.03.140 - 46.03.249 and with other provisions of law, including emission control  
10 requirements.

11 Sec. 46.03.158. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a)  
12 Except as provided in AS 46.03.167 or in regulations adopted under  
13 AS 46.03.156(a)(6), after receipt of a complete application, and after notice and  
14 opportunity for public comment and hearing, the department shall issue or deny

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

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

20 (b) Notwithstanding (a) of this section, the department may establish a phased  
21 schedule for acting on operating permit applications submitted within 12 months  
22 following the date on which the federal administrator approves the state program under  
23 42 U.S.C. 7661a(d), or within 12 months after the date on which the facility becomes  
24 subject to AS 46.03.154(b). A phased schedule must ensure that at least one-third of  
25 the applications submitted during the first 12 months of the state's operation of its  
26 permit program after federal approval will be acted on by the department during each  
27 of the next three 12-month periods.

28 (c) Failure by the department to act within the time limits established in or  
29 under (a) or (b) of this section is considered to be a final agency action, but only for  
30 the purpose of judicial review to determine whether the court will require that action  
31 be taken by the department.

1 (d) The department shall give priority to the issuance of permits for new  
2 facilities and modifications of existing facilities.

3 \* Sec. 4. AS 46.03 is amended by adding new sections to read:

4 Sec. 46.03.161. AUTHORITY OF DEPARTMENT IN CASES OF  
5 EMERGENCY. (a) When the commissioner finds that facts and circumstances  
6 necessitate emergency use of an unpermitted source or emergency use of a permitted  
7 source in a manner not authorized by the permit, the commissioner may waive  
8 procedural requirements of AS 46.03.140 - 46.03.249 and may authorize emergency  
9 use of the source. When acting under this section, the commissioner shall impose  
10 conditions necessary to protect human health, welfare, and the environment and may  
11 impose other conditions the commissioner finds necessary and appropriate.

12 (b) An authorization issued under this section automatically terminates within  
13 a reasonable time after abatement of the emergency, subject to a maximum of 30 days  
14 from the date of issuance. However, the commissioner may reissue an authorization,  
15 if warranted, that may remain in effect for up to another 30 days. An authorization  
16 may be reissued more than once.

17 (c) The commissioner may delegate the commissioner's authority under this  
18 section to deputy commissioners and division directors in the department to increase  
19 the availability of persons authorized to act under this section.

20 Sec. 46.03.163. REVIEW OF PERMIT ACTION. If aggrieved by a permit  
21 action under AS 46.03.140 - 46.03.249, the owner and operator, a person who  
22 participated in the public comment process, or a person who has a private, substantive,  
23 legally protected interest under state law that may be adversely affected by the permit  
24 action may request an adjudicatory hearing under the department's adjudicatory hearing  
25 procedures. After the issuance of an adjudicatory hearing decision, a party to the  
26 hearing may obtain judicial review of that decision as provided in the Alaska Rules of  
27 Appellate Procedure.

28 Sec. 46.03.165. GENERAL OPERATING PERMITS. After notice and  
29 opportunity for public comment and hearing, the department may, unless the permit  
30 is disapproved by the federal administrator, establish a general operating permit that  
31 would be applicable to all facilities determined by the department to be similar in

1 source structure. A general operating permit must contain provisions that meet the  
2 requirements of AS 46.03.140 - 46.03.249 that are applicable to operating permits.  
3 After the department establishes a general operating permit, a person may apply to  
4 operate under it. A general operating permit issued to a particular person takes effect  
5 when the person's application is determined to be complete unless the department  
6 notifies the applicant that the general permit is not applicable to the person's facility.

7 Sec. 46.03.167. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An  
8 operating permit may not be issued under AS 46.03.140 - 46.03.249 until the federal  
9 administrator approves the permit, or until 45 days after a copy of the final draft  
10 permit has been provided by the department to the federal administrator, whichever is  
11 earlier. If, during the 45-day period, the federal administrator files an objection with  
12 the department, the department shall notify the applicant of the objection. The  
13 department may not issue the permit until the objection is resolved or the permit is  
14 revised to meet the objection of the federal administrator. Upon request of an  
15 applicant, the department shall assist the applicant in an effort to resolve promptly an  
16 objection by the federal administrator.

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

21 (c) Regulations adopted under AS 46.03.156(a)(11) may provide that while a  
22 petition under (b) of this section is pending, compliance with an operating permit  
23 issued under (a) of this section is considered to be compliance with AS 46.03.140 -  
24 46.03.249 insofar as those sections require an operating permit.

25 Sec. 46.03.169. RESPONSIBILITIES OF OWNER AND OPERATOR. (a)  
26 Notwithstanding use of the conjunctive or disjunctive in a provision of AS 46.03.140 -  
27 46.03.249, before issuance of a permit under AS 46.03.158 both the owner and  
28 operator of a facility are responsible for compliance with AS 46.03.140 - 46.03.249  
29 and regulations adopted under AS 46.03.140 - 46.03.249. If the owner and operator  
30 of the facility are separate persons, only one person is required to discharge a specific  
31 responsibility. Subsequent to issuance of a permit under AS 46.03.158, only the

1 permittee is responsible for permitted operations. The permittee shall have a  
2 designated agent for service of process in the state.

3 (b) The department shall send, by certified mail, a copy of AS 46.03.791 to  
4 a person who applies for a permit under AS 46.03.152 - 46.03.158.

5 (c) A person who is issued a permit under AS 46.03.158 shall, within 10  
6 business days after being issued the permit or beginning operations, whichever is later,  
7 post a copy of the notice received under (b) of this section at conspicuous locations  
8 in the facility. The permittee shall, within that same time period, send written  
9 certification to the department that the notice has been posted as required under this  
10 subsection.

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

12 Sec. 46.03.171. PERMIT ADMINISTRATION FEES. (a) The owner or  
13 operator of a facility who is required to apply for a permit under AS 46.03.154 shall  
14 pay to the department all assessed permit administration fees established under (b) of  
15 this section except that the person named in a permit issued under AS 46.03.158 shall  
16 pay assessed permit administration fees incurred after the date the permit is issued.

17 (b) The department shall establish by regulation a permit administration fee  
18 rate. The rate shall be set on the basis of dollars per hour of service provided for a  
19 specific permittee. The department may periodically modify a fee rate to reflect  
20 increases or decreases in the actual reasonable costs of providing the services. The  
21 department shall assess permit administration fees on a periodic basis after service is  
22 rendered, but the department may assess a retainer toward this fee at the time work  
23 commences on a permit application or at the time departmental services are requested  
24 for the development of a permit application.

25 (c) For purposes of this section, "permit administration fees" are fees assessed  
26 to recover costs incurred by the department for the following services to a specific  
27 facility that are performed in order to implement the permit program established under  
28 AS 46.03.140 - 46.03.249:

29 (1) providing preapplication consultation, assistance, and completeness  
30 review of applications for a permit, permit amendment, permit modification, or  
31 renewal;

1 (2) reviewing or assisting in preparation of facility specific permit  
2 support documents, including on-site evaluations;

3 (3) receiving, reviewing, preparing, processing, and issuing permits,  
4 permit amendments, modifications, reopenings, renewals and revocations, and  
5 reissuance;

6 (4) preparing general operating permits under AS 46.03.165; however,  
7 costs must be allocated on an equitable basis to each facility covered by the general  
8 operating permit;

9 (5) performing facility inspections and compliance evaluations;

10 (6) reviewing, compiling, and reporting facility specific emission,  
11 ambient monitoring, or process measurement data;

12 (7) preparing, evaluating, or processing plans or documents to obtain  
13 facility compliance or rectify noncompliance with permit terms and conditions, but not  
14 including any enforcement actions; and

15 (8) assessing and collecting delinquent permit administration fees and  
16 emission fees.

17 Sec. 46.03.172. EMISSION FEES. (a) A person named as permittee in a  
18 permit issued under AS 46.03.158 shall pay to the department all assessed emission  
19 fees established under this section.

20 (b) The department shall establish by regulation an emission fee rate. The rate  
21 shall be set on the basis of dollars per ton of air contaminant emitted. The department  
22 shall assess emission fees annually on or before July 1 based on a facility's estimated  
23 assessable emissions for the subsequent fiscal year. The department may allow  
24 installment payments of assessed emission fees.

25 (c) For a facility that begins operation during a fiscal year, the department  
26 shall prorate the first year's fee to cover the time period occurring before the next  
27 annual payment date. The owner or operator shall pay the initial emission fee upon  
28 commencement of lawful facility operation unless authorized to pay by installments  
29 under (b) of this section. The first year's emission fee may not duplicate a fee paid  
30 by a permittee under AS 44.46.025 for the same sources for the same time period. If  
31 the fees would otherwise be duplicative, the department shall provide a credit toward

1 the emission fee in the amount of the unused balance of the fee collected under  
2 AS 44.46.025. The unused balance to be credited shall be based on prorating the total  
3 original fee under AS 44.46.025 for the time period for which an emission fee applies.

4 (d) The department shall design the emission fee rate so that the department  
5 will recover an amount substantially equal to, but not exceeding, that part of the costs  
6 incurred by the department for execution of the permit program established under  
7 AS 46.03.140 - 46.03.249 that are generally not associated with service provided to a  
8 specific facility. The costs recovered under the emission fee rate may include rent,  
9 utilities, permit program management, administrative and accounting services, and  
10 other costs identified by the department in regulations. The department shall also  
11 design the rate so that it distributes the costs described in this subsection in a manner  
12 so that each permittee is assessed an annual emission fee that reflects an equitable  
13 apportionment of the fees paid by each facility type, size, or category. In making an  
14 apportionment under (f) of this section, the department shall consider factors such as  
15 exemptions or reduced rates for small amounts of emissions, limits upon assessable  
16 emissions, exempting small business facilities from the costs of the small business  
17 assistance program established under AS 46.03.176, air pollution prevention efforts,  
18 and other factors that may ensure fair distribution of the costs.

19 (e) The department shall set the initial fee rate for the first two years following  
20 approval of the permit program under AS 46.03.140 - 46.03.249 by the federal  
21 administrator on the basis of dollars per ton of assessable emissions. In calculating  
22 assessable emissions for the purpose of this subsection, the department may not include  
23 an amount in excess of 4,000 tons per year of an air contaminant not defined as a  
24 regulated air pollutant under 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502  
25 (b)(3)(B)(ii)).

26 (f) After the two years described in (e) of this section, the department shall set  
27 the emission fee rate in regulation to implement the policy established in (d) of this  
28 section. The department shall base the regulation on the findings of a report, which  
29 the department shall make available to the public with proper notice before adoption  
30 of the regulation, that examines

31 (1) fees assessed;

- 1 (2) alternative fee rates or formulas;  
2 (3) types, sizes, or categories of facilities, their respective emission  
3 quantities, and their previous or proposed fee burden;  
4 (4) apparent inequities encountered in the initial fee rate;  
5 (5) total costs incurred or anticipated to be incurred for execution of  
6 the program as described in (d) of this section; and  
7 (6) other factors that ensure fair distribution of the costs described in  
8 (d) of this section.

9 (g) The department shall periodically, and at least every three years, evaluate  
10 the fee rate set under this section to determine if it is responsive to the policy  
11 established in (d) of this section and shall provide its findings in a report.

12 (h) In this section, "assessable emission" means the quantity of each air  
13 contaminant for which emission fees are assessed and is the lesser of

14 (1) the annual rate of emissions, in tons per year, of each air  
15 contaminant authorized by the facility's operating permit; or

16 (2) the projected annual rate of emissions, in tons per year, of each air  
17 contaminant by the facility based upon previous actual annual emissions if the  
18 permittee can demonstrate its previous actual annual rate of emissions to the  
19 department through monitoring, modelling, calculations, or other method acceptable  
20 to the department.

21 Sec. 46.03.173. CLEAN AIR PROTECTION FUND. (a) The clean air  
22 protection fund is established. The fund consists of

23 (1) fees, penalties, and interest collected by the department under  
24 AS 46.03.171 and 46.03.172 and under regulations authorized by AS 46.03.156, as  
25 required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)) for  
26 state participation in the federal emission control permit program; and

27 (2) appropriations to the fund.

28 (b) The money deposited into the clean air protection fund under (a)(1) of this  
29 section may only be used to cover the reasonable direct and indirect costs required to  
30 support the permit program under AS 46.03.140 - 46.03.249 and the activities of the  
31 small business assistance program that are directed at facilities subject to

1 AS 46.03.140 - 46.03.249, not including court costs or other costs associated with an  
2 enforcement action.

3 Sec. 46.03.175. SPECIAL ACCOUNT. Civil or criminal penalties, fines,  
4 assessments, or damages, and interest, attorney fees, and costs collected as a result of  
5 a violation relating to AS 46.03.140 - 46.03.249 shall be deposited in the general fund  
6 and credited to a special account called the "clean air protection account."

7 Sec. 46.03.176. SMALL BUSINESS ASSISTANCE PROGRAM. (a) A small  
8 business assistance program is established in the department. The department shall  
9 include the program in the state air quality control plan developed under 42 U.S.C.  
10 7401 - 7671q (Clean Air Act).

11 (b) The small business assistance program shall, by regulation, meet the  
12 requirements of 42 U.S.C. 7661f(a) (Clean Air Act, sec. 507(a)), including the  
13 requirement that a small business advocate be designated.

14 (c) Except as provided in AS 46.03.178(b), the department shall provide  
15 assistance as described in (b) of this section to a requesting facility that is not a small  
16 business concern as defined in 15 U.S.C. 631 but that is subject to the requirements  
17 of AS 46.03.140 - 46.03.249 if the legislature appropriates money from the general  
18 fund for this purpose.

19 Sec. 46.03.178. POWER TO LIMIT SMALL BUSINESS ASSISTANCE  
20 PROGRAM. (a) After consultation with the federal administrator and the  
21 administrator of the United States Small Business Administration and after providing  
22 notice and opportunity for public hearing, the department may exclude from the scope  
23 of the small business assistance program established in AS 46.03.176 a category or  
24 subcategory of small business facilities that the department finds to have sufficient  
25 technical and financial capabilities to meet the requirements of AS 46.03.140 -  
26 46.03.249 and federal law without the assistance provided under AS 46.03.176 -  
27 46.03.179.

28 (b) Nothing in AS 46.03.176(c) precludes the department from excluding a  
29 business facility or category of business facilities that the department finds to have  
30 sufficient technical and financial capabilities to meet the requirements of  
31 AS 46.03.140 - 46.03.249 without assistance from the department.

1           Sec. 46.03.179. COMPLIANCE ADVISORY PANEL. (a) A compliance  
2 advisory panel is established in the department. The panel members shall serve  
3 without compensation, but are entitled to travel expenses and per diem as authorized  
4 for state boards under AS 39.20.180.

5           (b) The panel consists of

6                   (1) two members who are not owners or representatives of owners of  
7 small business facilities, selected by the governor to represent the general public;

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

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

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

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

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

24           (c) The compliance advisory panel shall

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

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

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

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

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

8 (6) have the small business advocate designated under  
9 AS 46.03.227(b)(12) assist the panel in the development and dissemination of panel  
10 reports and advisory opinions.

11 \* Sec. 6. AS 46.03 is amended by adding a new section to read:

12 Sec. 46.03.185. AIR POLLUTION FROM OUTER CONTINENTAL SHELF  
13 ACTIVITIES. (a) The department shall seek delegation of authority from the federal  
14 administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627  
15 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state.  
16 The department may adopt regulations that are necessary to acquire this delegated  
17 authority.

18 (b) In adopting regulations under this section, the department shall ensure that  
19 facilities located within 25 miles of the seaward boundary of the state are subject to  
20 the same air quality control requirements that would be applicable if the facility were  
21 located in the corresponding onshore area. For purposes of this subsection, facilities  
22 located within 25 miles of the seaward boundary of the state include a vessel servicing  
23 or associated with the facility while at the facility or en route to or from the facility  
24 and within 25 miles of the facility.

25 (c) In this section, "corresponding onshore area" means, with respect to a  
26 facility located within 25 miles of the seaward boundary of the state, the onshore  
27 attainment or nonattainment area that is closest to the facility, unless the commissioner  
28 determines that another area with more stringent requirements relating to control and  
29 abatement of air pollution may reasonably be expected to be affected by emissions  
30 from the offshore facility; this determination shall be based on the potential for air  
31 contaminants from the facility to reach the other onshore area and the potential of the

1 air contaminants to affect the efforts of the other onshore area to attain or maintain a  
2 federal or state ambient air quality standard or to comply with AS 46.03.140 -  
3 46.03.249 or a permit issued under AS 46.03.140 - 46.03.249.

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

5 Sec. 46.03.212. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With  
6 the approval of the department, a municipality may establish and administer within its  
7 jurisdiction a local air quality control program that operates in lieu of and is consistent  
8 with all or part of the department's air quality program as established under  
9 AS 46.03.140 - 46.03.249. A first or second class borough may administer an air  
10 quality control program approved by the department under this subsection on an  
11 areawide basis and is not subject to the restrictions for acquiring additional areawide  
12 powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
13 a local air quality control program approved by the department under this subsection  
14 only in a service area formed under AS 29.35.490(b) or (c).

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

18 (c) If the department finds that the location, character, or extent of particular  
19 concentrations of population, air contaminant sources, the geographic, topographic, or  
20 meteorological considerations, or a combination of these factors make impracticable  
21 the maintenance of appropriate levels of air quality without an areawide air pollution  
22 control program, the department may determine the boundaries within which a local  
23 air quality control program is necessary and direct that a local air quality control  
24 program spanning those boundaries is the only acceptable alternative to direct state  
25 administration.

26 (d) A municipality or a local air quality district seeking department approval  
27 for a local air quality control program shall enter into a cooperative agreement with  
28 the department that is designed to avoid unnecessary duplication of responsibilities.  
29 The cooperative agreement must include provisions specifying

30 (1) the respective duties and authority of the department and the  
31 municipality or local air quality district in the administration of the local air quality

1 control program;

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

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

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

7 (e) A local air quality control program shall provide for the exemption of a  
8 locally registered motor vehicle from motor vehicle emission requirements adopted  
9 under AS 46.03.190 if the motor vehicle is not used within the program's jurisdiction.

10 (f) A municipality or a local air quality district administering a program under  
11 this section shall administer its local air quality control program according to  
12 AS 46.03.140 - 46.03.249, regulations adopted under those sections, and its cooperative  
13 agreement under (d) of this section. A municipality or local air quality district's  
14 program may, upon a finding by the local agency and an affirmative agreement by the  
15 department, establish a more stringent requirement than the stationary source permit  
16 program authorized under AS 46.03.140 - 46.03.249 if public health or air quality  
17 effects warrant the additional or more stringent requirement. This subsection does not  
18 prohibit a municipality or local air quality control district from establishing a mobile  
19 source program more stringent than the state program without making findings of  
20 public health or air quality effects.

21 (g) A determination, order, permit, or permit action issued under a local air  
22 quality control program is considered to be a determination, order, permit, or permit  
23 action of the department.

24 (h) Notwithstanding any other law or rule of law, the department may not  
25 delegate or enable another department or government entity to establish fee rates or  
26 collect fees under AS 46.03.171 or 46.03.172.

27 Sec. 46.03.214. **INADEQUACY OF LOCAL PROGRAM.** (a) If a  
28 municipality or a local air quality district has an approved local air quality control  
29 program under AS 46.03.212 and the department determines that the program is being  
30 implemented in a manner that fails to meet the terms of the cooperative agreement or  
31 is otherwise being inappropriately administered, the department shall give written

1 notice setting out its determination to the municipality or local air quality district.  
2 Within 45 days after giving written notice, the department shall conduct a public  
3 hearing on the matter. The hearing shall be recorded by any means that ensures an  
4 accurate record.

5 (b) If, after the hearing, the department upholds the determination made in the  
6 written notice, the department shall provide the municipality or local air quality district  
7 with a written finding setting out the nature of the deficiencies and a description of the  
8 necessary action to be taken to ensure that the local air quality control program  
9 prevents or controls air pollution. The department shall provide its finding to the  
10 municipality or district within 45 days after closure of the public hearing record. The  
11 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  
14 within the time period set by the department under (b) of this section, the department  
15 shall terminate the cooperative agreement and resume management of air quality  
16 control in the affected jurisdiction. If the municipality or the local air quality district  
17 partially remedies, to the department's satisfaction, the deficiencies found in the  
18 determination, the department shall amend the cooperative agreement to reflect a  
19 modified allocation of responsibilities between the department and municipality or the  
20 local air quality district.

21 (d) A municipality or local air quality district that has had its cooperative  
22 agreement terminated may, with the department's approval, resume a local air quality  
23 control program if the municipality or district agrees to comply with AS 46.03.212 and  
24 with any corrective action plan required by the department.

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

1 department.

2 \* Sec. 8. AS 46.03.230 is repealed and reenacted to read:

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

11 (b) A municipality or local air quality district with a local air quality control  
12 program may apply for, receive, administer, and spend federal aid for the control of  
13 air emissions or the development and administration of the program.

14 \* Sec. 9. AS 46.03 is amended by adding a new section to read:

15 Sec. 46.03.249. DEFINITIONS. Notwithstanding AS 46.03.900, in  
16 AS 46.03.140 - 46.03.249,

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

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

21 (3) "ambient air quality standard" means a standard, other than an  
22 emission standard, adopted under AS 46.03.140, 46.03.212(f) or 42 U.S.C. 7409 (Clean  
23 Air Act, sec. 109);

24 (4) "construct" or "construction" means to fabricate, erect, or install, or  
25 to make a physical change, that would result in emissions;

26 (5) "construction permit" means a permit under AS 46.03.154(a);

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

29 (7) "emission" means a release of one or more air contaminants to the  
30 atmosphere;

31 (8) "emission limitation" and "emission standard" mean a requirement

1 established by the department or the federal administrator, other than an ambient air  
2 quality standard, that limits the quantity, rate, or concentration of emission of an air  
3 contaminant, including a requirement relating to the operation or maintenance of a  
4 source to ensure sustained emission reduction, and design, equipment, work practice,  
5 or operational standard adopted under AS 46.03.140 - 46.03.249 or 42 U.S.C. 7401 -  
6 7671q (Clean Air Act);

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

11 (10) "federal administrator" means the administrator of the United  
12 States Environmental Protection Agency;

13 (11) "fugitive emissions" means emissions of an air contaminant that  
14 could not reasonably be emitted from a contaminant outlet;

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

17 (13) "local air quality control program" means a program authorized  
18 under AS 46.03.212 to implement some or all of the provisions of AS 46.03.140 -  
19 46.03.249;

20 (14) "modification" or "modify" means to make a change or a series  
21 of changes in operation, or any physical change or addition to a facility or source, that  
22 increases the actual emissions of an air contaminant;

23 (15) "operating permit" means a permit under AS 46.03.154(b);

24 (16) "operator" means a person or persons who direct, control, or  
25 supervise a facility or source that has the potential to emit an air contaminant to the  
26 atmosphere;

27 (17) "owner" means a person or persons with a proprietary or  
28 possessory interest in a facility or source that has the potential to emit an air  
29 contaminant to the atmosphere;

30 (18) "person" has the meaning given in AS 01.10.060 and also includes  
31 an agency of the United States, a municipality, the University of Alaska, the Alaska

1 Railroad Corporation, and other departments, agencies, instrumentalities, units, and  
2 corporate authorities of the state;

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

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

12 (B) the fugitive emissions specifically exempted under the  
13 department's regulations;

14 (20) "reconstruct" means to replace components of a facility with new  
15 components to such an extent that the fixed capital cost of the new components  
16 exceeds 50 percent of the fixed capital cost that would be required to construct a  
17 comparable entirely new facility;

18 (21) "regulated air contaminant" means

19 (A) a material, compound, or element for which a national or  
20 state 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  
24 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

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

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

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

31 (23) "source" means a device, process, activity, or equipment that

1 causes, or could cause, a release of an air contaminant;

2 (24) "TPY" means tons per year.

3 \* Sec. 10. AS 46.03.760(a) is amended to read:

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

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

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

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

22 \* Sec. 11. AS 46.03.760(f) is amended to read:

23 (f) A person who violates or causes or permits to be violated a provision of  
24 AS 46.03.140 - 46.03.249, 46.03.250 - 46.03.314 [AS 46.03.250 - 46.03.314], or a  
25 regulation, a lawful order of the department, or a permit, approval, or acceptance, or  
26 term or condition of a permit, approval, or acceptance issued under AS 46.03.140 -  
27 46.03.249 or 46.03.250 - 46.03.314 [AS 46.03.250 - 46.03.314] is liable, in a civil  
28 action, to the state for a sum to be assessed by the court of not less than \$500 nor  
29 more than \$100,000 for the initial violation, nor more than \$10,000 for each day after  
30 that on which the violation continues, and that shall reflect, when applicable,

31 (1) reasonable compensation in the nature of liquidated damages for

1 any adverse environmental effects caused by the violation, that shall be determined by  
2 the court according to the toxicity, degradability and dispersal characteristics of the  
3 substance discharged, the sensitivity of the receiving environment, and the degree to  
4 which the discharge degrades existing environmental quality;

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

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

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

11 \* Sec. 12. AS 46.03.790(a) is amended to read:

12 (a) Except as provided in AS 46.03.791 or (d) of this section, a person is  
13 guilty of a class A misdemeanor if the person with criminal negligence

14 (1) violates a provision of this chapter, AS 46.04, or AS 46.09, a  
15 regulation or order of the department, or a permit, approval, or acceptance, or a term  
16 or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04,  
17 or AS 46.09;

18 (2) fails to provide information or provides false information required  
19 by AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the  
20 department under AS 46.03.755, AS 46.04, or AS 46.09; or

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

25 \* Sec. 13. AS 46.03 is amended by adding a new section to read:

26 Sec. 46.03.791. CRIMINAL PENALTIES FOR AIR POLLUTION. (a) A  
27 person is guilty of a class A misdemeanor if the person, with criminal negligence,

28 (1) fails to provide material information or provides false material  
29 information, or makes a false material statement or certification in an application,  
30 notice, record, report, permit, or other document filed, maintained, or used for purposes  
31 of compliance with AS 46.03.140 - 46.03.249 or a regulation adopted under those

1 sections;

2 (2) falsifies, disables, or fails to install a monitoring device required to  
3 be maintained under AS 46.03.140 - 46.03.249, a regulation adopted under those  
4 sections, or a permit issued by the department or a local air quality control program  
5 under those sections;

6 (3) violates a material condition of a permit issued under  
7 AS 46.03.140 - 46.03.249 and the violation is not otherwise described in (1) or (2) of  
8 this subsection.

9 (b) A person is guilty of a class A felony if the person knowingly releases, or  
10 causes to be released into the ambient air, an air contaminant without a permit issued  
11 under AS 46.03.140 - 46.03.249, or in excess of permitted levels, and knows at the  
12 time that the release places another person in imminent danger of death or serious  
13 bodily injury.

14 (c) A person is guilty of a class C felony if that person recklessly releases or  
15 causes to be released into the ambient air an air contaminant without a permit issued  
16 under AS 46.03.140 - 46.03.249 or in excess of permitted levels and thereby recklessly  
17 places another person in imminent danger of death or serious bodily injury.

18 (d) A person is guilty of a class A misdemeanor if that person with criminal  
19 negligence emits or causes to be emitted air contaminants without a permit required  
20 under AS 46.03.140 - 46.03.249 or without other authorization issued by the  
21 department unless the emission is otherwise authorized under AS 46.03.140 -  
22 46.03.249 or in 42 U.S.C. 7401 - 7671q (Clean Air Act).

23 (e) Each day on which a violation described in this section occurs is  
24 considered a separate violation.

25 (f) It is an affirmative defense to a prosecution that the conduct charged was  
26 freely consented to by the person endangered and that the danger and conduct charged  
27 were reasonably foreseeable hazards of

28 (1) an occupation, a business, or a profession; or

29 (2) medical treatment or medical or scientific experimentation  
30 conducted by professionally approved methods and the endangered person had been  
31 made aware of the risks involved before giving consent; the defendant may establish

1 an affirmative defense under this paragraph by a preponderance of the evidence.

2 (g) For purposes of (a) of this section, a person is considered to have received  
3 notice if the certified notice was signed by a responsible corporate official or other  
4 official who, with apparent or actual authority, represents the person. The certification  
5 must include a representation that the notice will be displayed and communicated by  
6 the official.

7 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense under (a)  
8 of this section, a defendant who is not an organization may be sentenced to pay a fine  
9 of not more than \$10,000 for each separate offense.

10 (i) In this section,

11 (1) "criminal negligence" has the meaning given in AS 11.81.900(a);

12 (2) "knowingly" has the meaning given in AS 11.81.900(a); however,  
13 in determining whether a person acted knowingly under this section,

14 (A) the person charged is responsible only for actual awareness  
15 or actual belief possessed; and

16 (B) knowledge possessed by a person other than the defendant,  
17 but not by the defendant, may not be attributed to the defendant; except that  
18 in proving a person's possession of actual knowledge, circumstantial evidence  
19 may be used, including evidence that a defendant took affirmative steps to be  
20 shielded from relevant information;

21 (3) "recklessly" has the meaning given in AS 11.81.900(a).

22 \* Sec. 14. AS 28.10.041(a) is amended to read:

23 (a) The department may refuse to register a vehicle if

24 (1) the application contains a false or fraudulent statement;

25 (2) the applicant fails to furnish information required by the  
26 department;

27 (3) the applicant is not entitled to the issuance of a certificate of title  
28 or registration under this chapter;

29 (4) the vehicle is determined to be mechanically unsafe to be driven or  
30 moved on a highway, vehicular way or area, or other public property in the state;

31 (5) the department has reasonable grounds to believe that the vehicle

1 was stolen or fraudulently acquired or that the granting of registration would be a fraud  
2 against the rightful owner or other person having a valid lien upon the vehicle;

3 (6) the registration of the vehicle has been suspended or revoked for  
4 any reason under the laws of the state;

5 (7) the required fees or taxes have not been paid;

6 (8) the vehicle or applicant fails to comply with this chapter or  
7 regulations implementing this section;

8 (9) the vehicle is without a certificate of inspection required under  
9 AS 28.32.010;

10 (10) the vehicle is subject to a state-approved [LOCAL] emission  
11 inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.03.190 or  
12 46.03.212 [AS 46.03.210], and the vehicle does not meet the standards of that  
13 program, unless the vehicle uses a fuel source that does not primarily emit carbon  
14 monoxide;

15 (11) the applicant fails to certify to the department the existence of a  
16 motor vehicle liability policy that complies with AS 28.22.101 for the vehicle being  
17 registered unless the owner of the vehicle qualifies as a self-insurer under  
18 AS 28.20.400 or is exempted from obtaining liability insurance under AS 28.22.011.

19 \* Sec. 15. AS 28.10.423 is amended to read:

20 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In  
21 addition to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed  
22 upon every vehicle required to be inspected under an emission control program  
23 established under AS 46.03.190 or 46.03.212 [AS 46.03.210]. This fee shall be  
24 collected at the same time and in the same manner as the registration fee.

25 \* Sec. 16. AS 29.10.200 is amended by adding a new paragraph to read:

26 (51) AS 29.35.055 (local air quality programs).

27 \* Sec. 17. AS 29.35 is amended by adding a new section to read:

28 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A  
29 municipality may establish a local air quality control program as provided in  
30 AS 46.03.212 only if the municipality has obtained the consent of its governing body  
31 through an ordinance authorizing the participation. This section applies to home rule

1 and general law municipalities.

2 \* Sec. 18. AS 29.35.200(b) is amended to read:

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

5 (1) provide transportation systems;

6 (2) provide water pollution control;

7 (3) provide air pollution control under AS 46.03.212 [IN  
8 ACCORDANCE WITH AS 46.03.140 - 46.03.230];

9 (4) license day care facilities;

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

11 \* Sec. 19. AS 29.35.210(a) is amended to read:

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

14 (1) provide transportation systems;

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

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

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

20 (5) provide air pollution control under AS 46.03.212 [IN  
21 ACCORDANCE WITH AS 46.03.140 - 46.03.230];

22 (6) provide water pollution control;

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

25 (8) provide for economic development;

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

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

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

1 (12) engage in activities authorized under AS 29.47.460;  
2 (13) contain, clean up, or prevent a release or threatened release of oil  
3 or a hazardous substance, and exercise a power granted to a municipality under  
4 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this  
5 paragraph in a manner that is consistent with a regional master plan prepared by the  
6 Department of Environmental Conservation under AS 46.04.210.

7 \* Sec. 20. AS 29.35.210(b) is amended to read:

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

- 10 (1) provide transportation systems;  
11 (2) license, impound, and dispose of animals;  
12 (3) provide air pollution control under AS 46.03.212 [IN  
13 ACCORDANCE WITH AS 46.03.140 - 46.03.230];  
14 (4) provide water pollution control;  
15 (5) license day care facilities.

16 \* Sec. 21. AS 37.05.146(4) is amended by adding a new subparagraph to read:

17 (R) clean air protection fund (AS 46.03.173).

18 \* Sec. 22. AS 44.46.025(a) is amended to read:

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

- 22 (1) inspections, permit administration, plan review and approval, and  
23 other related services provided under AS 03.05, AS 17.20, and AS 18.35;  
24 (2) certificates of inspection for motor vehicles under AS 46.03.190  
25 or 46.03.212 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND 46.03.160];  
26 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;  
27 (4) plan approvals and permits for sewerage system and treatment  
28 works and wastewater disposal systems, and plan approvals for drinking water systems,  
29 under AS 46.03.720;  
30 (5) oil discharge financial responsibility approvals under AS 46.04.040;  
31 (6) oil discharge contingency plan approvals under AS 46.04.030;

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

2 \* Sec. 23. AS 44.46.025 is amended by adding a new subsection to read:

3 (c) The department may adopt regulations that prescribe reasonable fees to

4 cover the direct and indirect costs of air quality permit programs under AS 46.03.140 -

5 46.03.249 and may establish procedures for the collection of those fees.

6 \* Sec. 24. AS 45.45.400(a) is amended to read:

7 (a) A person engaged in the business of selling used motor vehicles may not

8 transfer or assign the owner's title or interest in the used vehicle to a person who

9 resides in a municipality that has an air pollution control program established under

10 AS 46.03.212 [AS 46.03.210] and who intends to use the vehicle in that municipality,

11 unless the vehicle has a certificate of compliance or noncompliance as required under

12 the air pollution control requirements applicable in that municipality.

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

14 (A) emission control [AIR EMISSIONS] permit -

15 AS 46.03.152, [AS 46.03.150,] 18 AAC 50.120;

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

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

18 other agency of the state; for the purposes of this chapter, "state agency" also means

19 a local or regional air pollution control authority established under AS 46.03.212

20 [AS 46.03.210].

21 \* Sec. 27. AS 46.03.160, 46.03.170, 46.03.210, 46.03.220, and 46.03.225 are repealed.

22 \* Sec. 28. REGULATIONS. The Department of Environmental Conservation may adopt

23 regulations as authorized by this Act, and other statutory authority, to implement changes

24 made by this Act. Regulations adopted under this section may not take effect until

25 November 15, 1993.

26 \* Sec. 29. Section 28 of this Act takes effect immediately under AS 01.10.070(c).

27 \* Sec. 30. Except as provided in sec. 29 of this Act, this Act takes effect November 15,

28 1993.