

HOUSE BILL NO. 167
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HANLEY

Introduced: 2/19/93
Referred: Judiciary, Finance

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and
2 control of air pollution; relating to civil and criminal penalties, damages, and
3 other remedies for air quality control violations; clarifying the definition of
4 'hazardous substance' to include releases and threatened releases to the
5 atmosphere; amending the lien provisions relating to the oil and hazardous
6 substance release response fund; relating to inspection and enforcement powers of
7 the Department of Environmental Conservation; and providing for an effective
8 date."

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

10 * Section 1. POLICY AND PURPOSES. (a) It is the policy of the state to have a
11 program to prevent, abate, control, and identify air pollution that complies with 42 U.S.C.
12 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under those laws.

1 (b) Changes in state law are necessary to allow the state to continue to have primary
2 management of air quality in the state and to retain federal approval of the state's air quality
3 control program in order to ensure the continued receipt of federal highway and air pollution
4 control money. The federal Environmental Protection Agency must prohibit the approval of
5 highway projects and highway grants, and may withhold air pollution control grants, if the
6 state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

7 (c) It is the intent of the legislature to comply with 42 U.S.C. 7401 - 7671q (Clean
8 Air Act) in a manner that meets the federal requirements, allows efficient and cost effective
9 processing of permits, requires accountability from the Department of Environmental
10 Conservation on matters relating to recovery of program costs, and ensures the productivity
11 of the state's businesses while protecting the health and welfare of the state's residents.

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

13 CHAPTER 14. AIR QUALITY CONTROL.

14 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

15 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public
16 hearing, the department may adopt regulations under this chapter establishing ambient
17 air quality standards or emission standards that are necessary to implement a state air
18 quality control program under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended.
19 The standards established under this section may be for the state as a whole or may
20 vary in recognition of local conditions.

21 (b) Except as provided in (d) and (f) of this section, the department may adopt
22 the following types of regulations only after public hearing and compliance with
23 AS 46.14.015:

24 (1) a regulation that regulates air contaminants, sources, or categories
25 of sources, or facilities that are not required to be regulated under federal law;

26 (2) a regulation that establishes an emission standard or ambient air
27 quality standard for which there is no corresponding federal standard; or

28 (3) a regulation that establishes an emission standard or ambient air
29 quality standard that is more stringent than a corresponding federal standard.

30 (c) In addition to the requirements under (b) of this section, before adopting
31 a regulation under (b)(3) of this section, the department shall demonstrate that

1 meteorological conditions, source characteristics, and exposure profiles are significantly
2 different in the state from those upon which a federal regulation is based and the
3 conditions, characteristics, and exposure profiles reasonably require a more stringent
4 ambient air quality standard or emission standard to protect human health and welfare
5 in the state.

6 (d) Notwithstanding AS 46.14.015 and (b) of this section, the department may
7 revise emission standards for open burning without complying with AS 46.14.015 or
8 (c) of this section.

9 (e) Following issuance of a permit by the department containing an equivalent
10 emission limitation under 42 U.S.C. 7412(j), the department shall adopt the limitation
11 by regulation after public hearing and compliance with AS 46.14.015.

12 (f) The department shall include an emission standard in a permit that is more
13 stringent than the otherwise applicable federal or state emission standard, and is not
14 required to follow the procedures of AS 46.14.015 in order to do so, if the more
15 stringent standard is

16 (1) requested by the owner or operator to whom the permit is issued;
17 or

18 (2) determined to be necessary based on the source-specific or facility-
19 specific determination required under 42 U.S.C. 7401 - 7671q or federal regulations
20 adopted under those sections.

21 (g) For the purpose of determining if a permit is required under AS 46.14.205,
22 the department's regulations must provide for

23 (1) exemptions for fugitive emissions to the extent allowed under
24 federal laws and regulations; and

25 (2) other federally adopted exemptions.

26 (h) An emission standard adopted by the department may be applicable to
27 individual sources within a facility or to all sources within a facility. For purposes of
28 determining compliance with applicable regulations and with permit limitations, the
29 department may allow numerical averaging of the emissions of each air contaminant
30 from several sources within a facility if

31 (1) requested by the owner and operator; and

1 (2) allowed under 42 U.S.C. 7401 - 7671q, as amended, and regulations
2 adopted under those sections.

3 (i) In implementing this chapter, the department may not require a person to
4 use

5 (1) machinery, devices, or equipment of a particular type or from a
6 particular supplier or produced by a particular manufacturer; or

7 (2) specific methods, processes, procedures, or designs for the
8 management and operation of a facility regulated under this chapter except to the
9 extent that the federal administrator

10 (A) has adopted a design, equipment, work practice, or
11 operational standard under 42 U.S.C. 7412(h) for the control of a hazardous air
12 pollutant; and

13 (B) has approved an alternative hazardous air pollutant standard
14 under 42 U.S.C. 7412(h)(3).

15 Sec. 46.14.015. SPECIAL PROCEDURES FOR MORE STRINGENT
16 REGULATIONS; ADVISORY PANEL. (a) Before adopting a regulation governed
17 by AS 46.14.010(b), the department shall

18 (1) undertake or provide for competent scientific and technical studies
19 of the air contaminant, source, or category of sources; the studies shall be subjected
20 to peer review;

21 (2) submit its findings, the studies performed under (1) of this
22 subsection, and the related peer review comments to a science advisory panel
23 established under (b) of this section;

24 (3) make available to the public at convenient locations copies of the
25 department's proposed regulations, the studies performed under (1) of this subsection,
26 the related peer review comments, the written opinions and recommendations of the
27 science advisory panel, the findings of the department describing the basis for the
28 department's proposed adoption of regulations, and an analysis of the technological
29 and economic feasibility of the proposal.

30 (b) To assist the department under (a) of this section or at any other time when
31 the department needs assistance to investigate the effects of air contamination on

1 human health and welfare or on the environment, the department shall appoint a
2 science advisory panel consisting of three persons. The panel members may not be
3 employees of the department. The panel members must be knowledgeable in the fields
4 of science, health, or engineering, and at least one of the members must have specific
5 experience concerning the air contaminant or source the department intends to regulate
6 or investigate. Panel members are entitled to reimbursement for travel expenses and
7 per diem as authorized for boards and commissions under AS 39.20.180 and to
8 compensation of \$50 a day while performing duties required of the panel.
9 AS 09.25.110 - 09.25.120 (public records law) and AS 44.62.310 (open meetings law)
10 apply to a panel established under this subsection. A panel shall submit its opinions
11 and recommendations to the department within 90 days after being requested to do so
12 unless the department agrees to a longer period of review.

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

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

28 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for
29 the state in any negotiations relative to the state air quality control plan developed
30 under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended. The department may
31 adopt regulations necessary to implement the state plan.

1 **ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.**

2 **Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR**
3 **OPERATION.** (a) Before constructing, installing, modifying, reconstructing, or
4 establishing a facility subject to AS 46.14.205(a), the owner and operator shall obtain
5 a construction permit under this chapter.

6 (b) Except when considered to be in compliance with this chapter under a
7 regulation adopted under AS 46.14.210(a)(11) or 46.14.245(c), the owner or operator
8 shall obtain an operating permit under this chapter before operating a facility subject
9 to AS 46.14.205(b).

10 (c) A permittee shall comply with the terms and conditions of a permit and
11 any modifying compliance order issued by the department under this chapter.

12 (d) The department shall ensure that permits issued, modified, amended,
13 renewed, or revoked and reissued under this chapter comply with all applicable federal,
14 state, and local requirements.

15 (e) If the federal administrator exempts a source from the requirements of 42
16 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, shall
17 consider the factors used by the administrator in reaching that determination and shall
18 issue a similar determination unless public health or air quality effects provide a
19 reasonable basis to regulate the source.

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

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

26 (2) a new facility of a type classified under AS 46.14.020 that emits
27 or has the potential to emit 100 TPY or more of a regulated air contaminant;

28 (3) a new facility of a type classified under AS 46.14.020

29 (A) as having the potential to violate the ambient air quality
30 standards; or

31 (B) under a finding by the department that public health or air

1 quality effects provide a reasonable basis to regulate the source;

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

5 (5) an existing facility for which

6 (A) a modification is proposed that would increase actual
7 emissions of an air contaminant by an amount equal to or greater than the
8 emission quantity set out in regulations adopted under AS 46.14.010 or
9 46.14.210; or

10 (B) reconstruction is proposed.

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

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

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

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

22 (4) contains another stationary source designated by

23 (A) the federal administrator by regulation; or

24 (B) the department under a finding that public health or air
25 quality effects provide a reasonable basis to regulate the source.

26 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM
27 REGULATIONS. (a) The department shall adopt regulations to address all
28 substantive and procedural elements of the emission control permit program established
29 under this chapter that are not addressed in statute, except elements that relate only to
30 the internal management of the department and do not affect the public or govern the
31 way the department deals with the public. The regulations must be reasonable and

1 adequate, and provide flexibility in the operation of a facility consistent with 42 U.S.C.
2 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations. The
3 regulations must include

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

6 (2) procedures for preparation and submission of a monitoring,
7 reporting, and quality assurance plan and, if required, a compliance schedule describing
8 how a permitted facility will comply with the applicable requirements of this chapter;

9 (3) procedures for

10 (A) specifying when permit applications and renewal requests
11 are to be submitted;

12 (B) specifying the time duration for department review of permit
13 applications;

14 (C) processing and reviewing an application;

15 (D) providing public notice, including opportunity for public
16 comment and hearing; and

17 (E) issuing permits, including procedures for issuing permits for
18 temporary operations or open burn activities;

19 (4) reasonable standard permit conditions, including conditions for

20 (A) emission standards and limitations;

21 (B) monitoring, record keeping, and reporting for facilities
22 subject to AS 46.14.205;

23 (C) inspection and entry;

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

26 (E) annual certification of compliance;

27 (F) excess emission or process deviation reporting; and

28 (G) equipment malfunctions and emergencies;

29 (5) fees and procedures for collecting fees;

30 (6) provisions addressing late payment or nonpayment of fees, which
31 may include assessment of penalties and interest or refusal to issue, amend, modify,

1 or renew an air quality control permit;

2 (7) the duration of permits;

3 (8) procedures for modifying or amending a permit that provide
4 flexibility in the operation of the facility, including procedures to allow changes to a
5 permitted facility without requiring a permit modification, consistent with the purposes
6 of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);

7 (9) reasonable provisions for renewing, reopening, revoking and
8 reissuing, and terminating a permit consistent with the purposes of this chapter and 42
9 U.S.C. 7401 - 7671q (Clean Air Act);

10 (10) provisions allowing for physical or operational limitations that will
11 reduce a facility's emissions to levels below those that would make the facility subject
12 to part or all of AS 46.14.200 and 46.14.205;

13 (11) provisions authorizing facility operation while a permit application
14 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));

15 (12) provisions for ensuring that compliance with an operating permit
16 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
17 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
18 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
19 Act) and regulations adopted under state and federal law; and

20 (13) provisions allowing for certification of inspectors who evaluate
21 compliance with the terms and conditions of a permit, order, regulation, or other
22 provision of law authorized under this chapter.

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

26 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS.

27 (a) The owner and operator of a facility required to have an operating permit under
28 this chapter shall submit the required application and monitoring, reporting, and quality
29 assurance plan no later than (1) 12 months after the date on which the facility becomes
30 subject to AS 46.14.200(b); or (2) 12 months after the date on which the federal
31 administrator approves the state permit program under 42 U.S.C. 7661a(d), whichever

1 is later.

2 (b) The department may accept and begin processing applications filed earlier
3 than the submission date. Applications filed earlier may be given priority for permit
4 issuance.

5 Sec. 46.14.222. COMPLETENESS DETERMINATION. (a) The department
6 shall review every application submitted under this chapter for completeness. To be
7 determined complete, an application must provide the information identified by the
8 department in regulations adopted under AS 46.14.210 and in standard application
9 forms provided by the department under AS 46.14.210(a)(1) and must be certified true
10 and correct by the owner and operator.

11 (b) The department shall notify the applicant in writing whether the application
12 is complete. Unless the department notifies the applicant within 60 days of receipt of
13 an application that the application is incomplete, the application is considered to be
14 complete.

15 (c) If, during the processing of an application after it has been determined or
16 considered to be complete, the department finds that additional information is
17 necessary to evaluate or take action on that application, the information may be
18 requested in writing from the owner and operator.

19 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS.

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

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

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

27 (b) Notwithstanding (a) of this section, the department may establish a phased
28 schedule for acting on operating permit applications submitted within the time required
29 under AS 46.14.220. A phased schedule must ensure that at least one-third of the
30 applications submitted during the initial application period will be acted on by the
31 department during each of the three 12-month periods following the initial application

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

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

6 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit
7 action under this chapter, the owner and operator, a person who participated in the
8 public comment process, or a person who has a private, substantive, legally protected
9 interest under state law that may be adversely affected by the permit action may
10 request an adjudicatory hearing under the department's adjudicatory hearing
11 procedures. After the issuance of an adjudicatory hearing decision, a party to the
12 hearing may obtain judicial review of that decision as provided in Alaska Rules of
13 Appellate Procedure.

14 Sec. 46.14.232. MONITORING. Monitoring by the owner and operator of
15 stack emissions or ambient air quality shall be required by the department only for
16 purposes of demonstrating compliance with applicable permit requirements.
17 Monitoring requirements must be reasonable and based on test methods, analytical
18 procedures, and statistical conventions approved by the federal administrator or the
19 department or otherwise generally accepted as scientifically competent. Unless
20 otherwise agreed to by the owner and operator and the department,

21 (1) the department may not require an owner and operator of a source
22 to monitor emissions or ambient air quality solely for the purpose of scientific
23 investigation or research; and

24 (2) monitoring activities must be consistent with the applicable
25 emission standards and other permit or permit application requirements.

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

29 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and
30 opportunity for public comment and hearing, the department may, unless the permit
31 is disapproved by the federal administrator, establish a general operating permit that

1 would be applicable to more than one facility determined by the department to be
2 similar in source structure. A general operating permit must contain provisions that
3 meet the requirements of this chapter applicable to operating permits. A general
4 operating permit issued to a particular person takes effect when the person's
5 application is determined to be complete unless the department notifies the applicant
6 that the general permit is not applicable to the person's facility.

7 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An
8 operating permit may not be issued under this chapter until the federal administrator
9 approves the permit, or until 45 days after a copy of the final draft permit has been
10 provided by the department to the federal administrator, whichever is earlier. If,
11 during the 45-day period, the federal administrator files an objection with the
12 department, the department shall notify the applicant of the objection. The department
13 may not issue the permit until the objection is resolved or the permit is revised to meet
14 the objection of the federal administrator. Upon request of an applicant, the
15 department shall assist the applicant in an effort to resolve promptly an objection by
16 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. 7661b(2) (Clean Air Act, sec. 505b(2)), a person may petition the
20 federal administrator to file an objection to the permit.

21 (c) Regulations adopted under AS 46.14.210(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 this chapter insofar
24 as this chapter requires an operating permit.

25 Sec. 46.14.250. PERMIT ADMINISTRATION FEES. (a) The owner or
26 operator of a facility who is required to apply for a permit under AS 46.14.205 shall
27 pay to the department all assessed permit administration fees established under (b) of
28 this section except that the person named in a permit issued under AS 46.14.225 shall
29 pay assessed permit administration fees incurred after the date the permit is issued.

30 (b) The department shall establish by regulation a permit administration fee
31 rate. The rate shall be set on the basis of dollars per hour of service provided for a

1 specific permittee. The department may periodically modify a fee rate to reflect
2 increases or decreases in the actual reasonable costs of providing the services. The
3 department shall assess permit administration fees on a periodic basis after service is
4 rendered, but the department may assess a retainer toward this fee at the time work
5 commences on a permit application or at the time departmental services are requested
6 for the development of a permit application.

7 (c) For purposes of this section, "permit administration fees" are fees assessed
8 to recover costs incurred by the department for the following services to a specific
9 facility that are performed in order to implement the permit program established under
10 this chapter:

11 (1) providing preapplication consultation, assistance, and completeness
12 review of applications for a permit, permit amendment, permit modification, or
13 renewal;

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

16 (3) receiving, reviewing, preparing, processing, and issuing permits,
17 permit amendments, modifications, reopenings, renewals and revocations, and
18 reissuance;

19 (4) preparing general operating permits under AS 46.14.240; however,
20 costs must be allocated on an equitable basis to each facility covered by the general
21 operating permit;

22 (5) performing facility inspections and compliance evaluations;

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

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

28 (8) assessing and collecting delinquent permit administration fees and
29 emission fees.

30 Sec. 46.14.252. EMISSION FEES. (a) A person named as permittee in a
31 permit issued under AS 46.14.225 shall pay to the department all assessed emission

1 fees established under this section.

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

7 (c) For a facility that begins operation during a fiscal year, the department
8 shall prorate the first year's fee to cover the time period occurring before the next
9 annual payment date. The owner or operator shall pay the initial emission fee upon
10 commencement of lawful facility operation unless authorized to pay by installments
11 under (b) of this section. The first year's emission fee may not duplicate a fee paid
12 by a permittee under AS 44.46.025 for the same sources for the same time period. If
13 the fees would otherwise be duplicative, the department shall provide a credit toward
14 the emission fee in the amount of the unused balance of the fee collected under
15 AS 44.46.025. The unused balance to be credited shall be based on prorating the total
16 original fee under AS 44.46.025 for the time period for which an emission fee applies.

17 (d) The department shall design the emission fee rate to distribute the total
18 annual incurred costs described under (h) of this section in a manner so that each
19 permittee is assessed an annual emission fee that reflects an equitable apportionment
20 of the fees paid by each facility type, size, or category. In making an apportionment
21 under (f) of this section, the department shall consider factors such as exemptions or
22 reduced rates for small amounts of emissions, limits upon assessable emissions,
23 exempting small business facilities from the costs of the small business assistance
24 program established under AS 46.14.400, air pollution prevention efforts, and other
25 factors that may ensure fair distribution of the costs described under (h) of this section.

26 (e) The department shall set the initial fee rate for the first two years following
27 approval of the permit program under this chapter by the federal administrator on the
28 basis of dollars per ton of assessable emissions. In calculating assessable emissions
29 for the purpose of this subsection, the department may not include an amount in excess
30 of 4,000 tons per year of an air contaminant not defined as a regulated pollutant under
31 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502 (b)(3)(B)(ii)).

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

6 (1) fees assessed;

7 (2) alternative fee rates or formulas;

8 (3) types, sizes, or categories of facilities, their respective emission
9 quantities, and their previous or proposed fee burden;

10 (4) apparent inequities encountered in the initial fee rate;

11 (5) total costs incurred or anticipated to be incurred under (h) of this
12 section; and

13 (6) other factors that ensure fair distribution of the costs described in
14 (h) of this section.

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

18 (h) In this section,

19 (1) "assessable emission" means the quantity of each air contaminant
20 for which emission fees are assessed and is the lesser of

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

23 (B) the projected annual rate of emissions, in tons per year, of
24 each air contaminant by the facility based upon previous actual annual
25 emissions if the permittee can demonstrate to the department its previous actual
26 annual rate of emissions through monitoring, modelling, calculations, or other
27 method acceptable to the department;

28 (2) "emission fees" mean fees assessed to recover costs incurred by the
29 department for execution of the permit program established under this chapter that are
30 generally not associated with service provided to a specific facility; the costs may
31 include rent, utilities, permit program management, administrative and accounting

1 services, and other costs as identified by the department in regulations.

2 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may
3 assess interest against the owner and operator, computed under AS 45.45.010(a), after
4 a fee is due under this chapter and is unpaid.

5 (b) If a permittee has failed to pay a fee imposed under AS 46.14.250 -
6 46.14.252, a penalty imposed under AS 46.14.830, a penalty, assessment, or damage
7 award imposed under AS 46.03.760(f) or 46.03.790 for a violation of this chapter, or
8 interest imposed under (a) of this section, the department may, after 30 days' written
9 notice to the permittee refuse to issue or renew permits requested by the permittee or
10 refuse to amend or modify a permit when the amendment or modification is requested
11 by the permittee.

12 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating
13 permit under this chapter, including an operating permit that contains a compliance
14 schedule, shall be issued for a fixed term of five years after the date of issue, except
15 as provided for temporary operations under AS 46.14.280 or unless a shorter term is
16 requested by the permit applicant.

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

20 Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this
21 chapter is subject to reopening by the department based on the determination of the
22 federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 -
23 7671q (Clean Air Act).

24 (b) A permit issued under this chapter is subject to reopening by the
25 department if the permit is issued to a major facility and has a remaining duration of
26 three or more years. The department shall reopen a permit described in this subsection
27 to incorporate changes in law, or to impose equivalent emission limitations, that
28 become applicable after the permit is issued. The department shall make revisions
29 allowed under this subsection as soon as practicable, but, regarding a change in law,
30 no later than 18 months after the change in law takes effect. The department may not
31 reopen a permit under this subsection if the change in law is not effective until after

1 the date that the permit expires. Reopening of a permit under this subsection shall be
2 treated as a permit renewal by the department if the procedural requirements for permit
3 renewal have been met.

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

7 (d) The department shall provide written notice of intent to reopen and revise
8 a permit issued under this chapter to the owner and operator of a facility not less than
9 30 days before the date the permit is to be reopened, except that the department may
10 provide a shorter period in the event of an emergency.

11 Sec. 46.14.267. AMENDMENT OF PERMIT. (a) A permit may be amended
12 on application of an owner and operator if the proposed amendments relate to
13 operational changes that do not

14 (1) result in an exceedance of allowable emissions specified in the
15 permit;

16 (2) violate an express prohibition in the permit; or

17 (3) qualify as a modification.

18 (b) The application for an amendment under this section must contain

19 (1) a description of the change;

20 (2) schematic drawings, if appropriate, representing the change; and

21 (3) certification by the owner and operator that the proposed
22 amendment meets the criteria for amendment.

23 (c) The owner and operator shall file the proposed amendment with the
24 department personally or by certified mail. The department shall have seven work
25 days after receipt in which to object to the amendment. If the department fails to
26 object, the owner and operator may proceed in accordance with the amendment. If the
27 department objects to the amendment, the department shall notify the owner and
28 operator in person or by certified mail. The department shall state its objection in
29 writing with particularity. If the owner and operator agree with the objection, they
30 may file an amendment that complies with the objection. If the owner and operator
31 disagree with the objection, they shall, within seven days of receipt of the objection,

1 inform the department of their disagreement and provide additional information
2 necessary to explain the disagreement. The department shall accept or reject the
3 amendment within seven days after receiving the additional information.

4 (d) The owner and operator may request a hearing to review the rejection of
5 the amendment within 30 days after receipt of the notice of rejection. Failure to
6 request a hearing within 30 days after the receipt of the rejection constitutes a waiver
7 of the right of review.

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

11 (1) terminate, modify, or revoke and reissue a construction or operating
12 permit if the department finds that

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

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

19 (C) the permittee has failed to construct or modify a facility
20 within the time period specified in the construction permit, if any, required
21 under AS 46.14.205(a);

22 (2) modify, or revoke and reissue a construction or operating permit if

23 (A) the department finds that the permit contains a material
24 mistake;

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

27 (C) the owner and operator request the action.

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

1 department under this chapter.

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

13 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating
14 permit, order, or other determination issued under this chapter is considered to be
15 compliance with this chapter and corollary common law.

16 (b) Nothing in this section alters or affects

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

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

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

31 Sec. 46.14.293. AUTHORITY OF DEPARTMENT IN CASES OF

1 EMERGENCY. (a) When the commissioner finds that facts and circumstances
2 necessitate emergency use of an unpermitted source or emergency use of a permitted
3 source in a manner not authorized by the permit, the commissioner may waive
4 procedural requirements of this chapter and may authorize emergency use of the
5 source. When acting under this section, the commissioner shall impose conditions
6 necessary to protect human health, welfare, and the environment and may impose other
7 conditions the commissioner finds necessary and appropriate.

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

13 (c) The commissioner may delegate the commissioner's authority under this
14 section to deputy commissioners and division directors in the department.

15 Sec. 46.14.295. UNAVOIDABLE MALFUNCTIONS. Excess emissions
16 caused by startup, shutdown, malfunction, or nonroutine repairs of a source including
17 pollution control equipment or process equipment may not be considered a violation
18 of a permit or the emission limitation or counted as an increase in emissions unless an
19 ambient air quality standard is exceeded. Nothing in this section limits the
20 department's power to enjoin the emission or require corrective action.

21 Sec. 46.14.297. INSPECTION. An officer or employee of the department
22 designated by the commissioner may, upon presentation of credentials and at
23 reasonable times, enter upon or through any premises of a facility regulated under this
24 chapter to

25 (1) inspect and copy any records required to be maintained;

26 (2) inspect any source, monitoring equipment, or method required to
27 be used; or

28 (3) sample any emissions that the owner and operator of the facility is
29 required to sample.

30 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

31 Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department

1 determines that the state of knowledge and technology may allow or make appropriate
2 the control of emissions from motor vehicles to further air quality control, the
3 department may provide, by regulation, for the control of the emissions from motor
4 vehicles. The regulations may prescribe requirements for the installation and use of
5 equipment designed to reduce or eliminate emissions and for the proper maintenance
6 of this equipment.

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

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

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

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

30 **Sec. 46.14.400. SMALL BUSINESS ASSISTANCE PROGRAM.** (a) A small
31 business assistance program is established in the department. The department shall

1 include the program in the state air quality control plan developed under 42 U.S.C.
2 7401 - 7671q (Clean Air Act).

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

6 (c) Except as provided in AS 46.14.410(b), the department shall provide
7 assistance as described in (b) of this section to a requesting facility that is not a small
8 business concern as defined in 15 U.S.C. 631 but that is subject to the requirements
9 of this chapter if the legislature appropriates money from the general fund for this
10 purpose.

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

19 (b) Nothing in AS 46.14.400(c) precludes the department from excluding a
20 business facility or category of business facilities that the department finds to have
21 sufficient technical and financial capabilities to meet the requirements of this chapter
22 without assistance from the department.

23 Sec. 46.14.420. COMPLIANCE ADVISORY PANEL. (a) There is
24 established in the department a compliance advisory panel.

25 (b) The panel consists of

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

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

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

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

3 (B) if there are members of the senate who are not part of the
4 majority caucus of the senate, the leader of the largest nonmajority group shall
5 select a panel member; if all members of the senate are in the majority caucus,
6 then the president of the senate shall select a second panel member in addition
7 to the selection authorized under (A) of this paragraph;

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

13 (c) The panel members shall serve without compensation but are entitled to
14 transportation expenses and per diem as authorized for members of boards and
15 commissions under AS 39.20.180.

16 (d) The compliance advisory panel shall

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

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

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

24 (4) make periodic reports to the administrator concerning the
25 compliance of the small business assistance program with requirements of 44 U.S.C.
26 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5
27 U.S.C. 504 (Equal Access to Justice Act);

28 (5) review information designed to assist small business facilities in
29 complying with this chapter to ensure that the information is understandable by the
30 public; and

31 (6) use the assistance of the small business advocate designated under

1 AS 46.14.400(b) in the development and dissemination of panel reports and advisory
2 opinions.

3 ARTICLE 5. LOCAL PROGRAMS.

4 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With
5 the approval of the department, a municipality may establish and administer within its
6 jurisdiction a local air quality control program that operates in lieu of and is consistent
7 with all or part of the department's air quality program as established under this
8 chapter. A first or second class borough may administer an air quality control program
9 approved by the department under this subsection on an areawide basis and is not
10 subject to the restrictions for acquiring additional areawide powers specified in
11 AS 29.35.300 - 29.35.350. A third class borough may administer a local air quality
12 control program approved by the department under this subsection only in a service
13 area formed under AS 29.35.490(b) or (c).

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

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

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

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

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

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

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

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

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

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

23 (h) Notwithstanding any other law or rule of law, the department may not
24 delegate or enable another department or government entity to establish fee rates or
25 collect fees under AS 46.14.250 or 46.14.252.

26 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a
27 municipality or a local air quality district has an approved local air quality control
28 program under AS 46.14.500 and the department determines that the program is being
29 implemented in a manner that fails to meet the terms of the cooperative agreement or
30 is otherwise being inappropriately administered, the department shall give written
31 notice setting out its determination to the municipality or local air quality district.

1 Within 45 days after giving written notice, the department shall conduct a public
2 hearing on the matter. The hearing shall be recorded by any means that ensures an
3 accurate record.

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

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

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

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

1 Sec. 46.14.520. STATE AND FEDERAL AID. (a) A municipality or local air
2 quality district with a local air quality control program may apply for, receive,
3 administer, and spend state aid for the control of air emissions or the development and
4 administration of the program if an application is first submitted to and approved by
5 the department. Subject to available money appropriated by the legislature for the
6 purpose of this section, the department may approve an application if it is consistent
7 with the terms and conditions of the applicable cooperative agreement and meets the
8 requirements of this chapter.

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

12 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

18 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records, reports, and
19 information, and parts of records, reports, and information, other than emission data,
20 in the department's possession and control are considered confidential records and shall
21 be kept confidential and in separate files if

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

25 (2) the records, reports, or information, or parts of the records, reports,
26 or information, would divulge production figures, sales figures, processes, production
27 techniques, or financial data of the owner and operator that are entitled to protection
28 as trade secrets.

29 Sec. 46.14.820. RESPONSIBILITIES OF OWNER AND OPERATOR.
30 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,
31 before issuance of a permit under AS 46.14.225 both the owner and operator of a

1 facility are responsible for compliance with this chapter and regulations adopted under
2 this chapter. If the owner and operator of the facility are separate persons, only one
3 person is required to discharge a specific responsibility. Subsequent to issuance of a
4 permit under AS 46.14.225, only the permittee is responsible for permitted operations.
5 The permittee shall have a designated agent for service of process in the state.

6 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION.

7 (a) Based on credible evidence of a violation, an officer or employee of the
8 department designated by the commissioner may assess an administrative penalty
9 against a person who violates, or causes, or allows to be violated a provision of this
10 chapter, a regulation adopted under this chapter, or a material term or condition of an
11 order, permit, or approval of the department under this chapter.

12 (b) An administrative penalty assessed under this section may not exceed
13 \$1,000 a day per source for each offense, subject to a maximum of \$5,000 a day for
14 no more than 10 days, regardless of the number of sources and offenses during those
15 10 days. An assessment under this section may not be made more than one year after
16 the date of violation. If a violation of a provision, regulation, term, or condition
17 continues from day to day, each day is a separate offense. However, an assessment
18 may not be made for a day that occurred before the owner and operator received
19 written notice of the violation unless the violation was reasonably obvious. In
20 determining the amount of a penalty assessed under this section, the department may
21 consider the effect of the offense on the public health or the environment, the size of
22 the business, the economic effect of the penalty on the business, the violator's good
23 faith effort to comply, prior history of compliance or noncompliance with this chapter,
24 the need to deter future offenses, the economic benefit of noncompliance realized by
25 the offender, the duration of the violation as established by credible evidence other
26 than the applicable test method, payment by the violator of penalties previously
27 assessed for the same violation, the seriousness of the violation, and other factors that
28 the department considers relevant. The department shall, by regulation, prepare,
29 publish, and make available to interested persons, a penalty policy describing the
30 factors to be considered in setting penalties, the methods for weighing the factors, and
31 other aspects of penalty computation.

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

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

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

22 (f) In lieu of an administrative penalty under this section, the officer or
23 employee authorized under (a) of this section to assess the penalty may order a person
24 to take appropriate action to abate the violation within a reasonable period of time.
25 An order to take appropriate abatement action shall be issued for a first violation of
26 a permit requirement that is not a violation of an emission standard or limitation
27 contained in the permit. The person to whom the order is issued shall, within the time
28 specified in the order, certify in writing to the department that the violation has been
29 abated. A person may not be assessed an administrative penalty and given an order
30 under this subsection for the same violation.

31 (g) Action under this section by the department is an exclusive remedy and

1 prohibits the department from otherwise enforcing this chapter, obtaining an injunction
2 or recovering damages, civil and criminal penalties, restoration expenses, investigation
3 costs, court costs, attorney fees, or other necessary expenses for the same violation
4 unless

5 (1) the violator made an affirmative material misrepresentation to the
6 department about the cause of the violation, the scope of the violation, or the violator's
7 efforts to avoid or correct the violation; or

8 (2) the violation was due to an intentional act or an intentional
9 omission.

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

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

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

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

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

23 (j) Settlement of an action under this section is not considered to be an
24 admission of fact or law, does not preclude the person from raising an available
25 defense, and may not otherwise be used as evidence against the person in other
26 proceedings, including permit approvals or renewals, citizens' suits, or later
27 enforcement actions, except that in an enforcement action brought under AS 46.03.760
28 or 46.03.790, or in a proceeding to renew or issue a permit under this chapter,
29 evidence of more than three violations by a person for the same offense may be used
30 for the purpose of determining penalties, the terms and conditions of a permit, or
31 whether to issue or renew a permit.

1 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air
2 protection fund is established. The fund consists of fees collected by the department
3 under AS 46.14.250 and 46.14.252 and under regulations authorized by AS 46.14.210,
4 as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)) for
5 state participation in the federal emission control permit program.

6 (b) The money deposited into the clean air protection fund under (a) of this
7 section may only be used to cover the reasonable direct and indirect costs required to
8 support the permit program under this chapter and the activities of the small business
9 assistance program that are directed at facilities subject to this chapter, not including
10 court costs or other costs associated with an enforcement action.

11 Sec. 46.14.850. SPECIAL ACCOUNT. Administrative penalties, civil or
12 criminal penalties, fines, assessments, or damages, and interest, attorney fees, and costs
13 collected as a result of a violation relating to this chapter and interest collected under
14 AS 46.14.255 shall be deposited in the general fund and credited to a special account
15 called the "clean air protection account."

16 Sec. 46.14.860. AIR POLLUTION FROM OUTER CONTINENTAL SHELF
17 ACTIVITIES. (a) The department shall seek delegation of authority from the federal
18 administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627
19 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state.
20 The department may adopt regulations that are necessary to acquire this delegated
21 authority.

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

29 (c) In this section, "corresponding onshore area" means, with respect to a
30 facility located within 25 miles of the seaward boundary of the state, the onshore
31 attainment or nonattainment area that is closest to the facility, unless the commissioner

1 determines that another area with more stringent requirements relating to control and
2 abatement of air pollution may reasonably be expected to be affected by emissions
3 from the offshore facility; this determination shall be based on the potential for air
4 contaminants from the facility to reach the other onshore area and the potential of the
5 air contaminants to affect the efforts of the other onshore area to attain or maintain a
6 federal ambient air quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C,
7 Clean Air Act) or a state equivalent.

8 **ARTICLE 7. GENERAL PROVISIONS.**

9 **Sec. 46.14.900. LIMITATION OF POWERS.** This chapter does not

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

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

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

17 **Sec. 46.14.990. DEFINITIONS.** In this chapter,

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

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

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

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

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

1 conservation;

2 (6) "construct" or "construction" means to fabricate, erect, or install, or
3 to make a physical change, that would result in emissions;

4 (7) "construction permit" means a permit under AS 46.14.205(a);

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

7 (9) "department" means the Department of Environmental Conservation;

8 (10) "emission" means a release of one or more air contaminants to the
9 atmosphere;

10 (11) "emission standard" means a limit on the release of an air
11 contaminant from a facility, contaminant outlet, or fugitive emission source specified
12 as

13 (A) a performance standard requiring a minimum efficiency or
14 emission reduction rate achieved by a device or activity; or

15 (B) an emission limitation establishing a maximum allowable
16 quantity, rate, or concentration to be released from the source;

17 (12) "equivalent emission limitation" means

18 (A) a limitation for hazardous air contaminants established by
19 the federal administrator or the commissioner on a case-by-case basis that is
20 equivalent to the limitation that would apply to a source or facility if an
21 emission standard had been adopted in a timely manner under 42 U.S.C.
22 7412(d) (Clean Air Act, sec. 112(d)); or

23 (B) if the criteria of the early reduction program established in
24 42 U.S.C. 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation
25 established under that subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec.
26 112(j)(5));

27 (13) "excess emission" means the emission of an air contaminant in
28 excess of an applicable emission standard in a permit or other applicable regulation;

29 (14) "facility" means one or more structures, buildings, installations,
30 or properties upon which a source or sources are located, that are contiguous or
31 adjacent, and that are owned or operated by the same person or by persons under

- 1 common control;
- 2 (15) "federal administrator" means the administrator of the United
3 States Environmental Protection Agency;
- 4 (16) "fugitive emissions" means emissions of an air contaminant that
5 could not reasonably be emitted from a contaminant outlet;
- 6 (17) "hazardous air contaminant" means a pollutant listed in or under
7 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));
- 8 (18) "local air quality control program" means a program authorized
9 under AS 46.14.500 to implement some or all of the provisions of this chapter;
- 10 (19) "major facility" means a facility that emits or has the potential to
11 emit at least
- 12 (A) 100 TPY of a regulated air contaminant;
- 13 (B) 10 TPY of a hazardous air contaminant; or
- 14 (C) 25 TPY, in the aggregate, of two or more hazardous air
15 contaminants;
- 16 (20) "malfunction" means a sudden and unavoidable failure of a source,
17 including air pollution control equipment and process equipment, or of a process to
18 operate in a normal or usual manner; "malfunction" does not include a failure that is
19 caused entirely or in part by poor maintenance or careless operation or another
20 reasonably preventable upset condition or reasonably preventable equipment
21 breakdown;
- 22 (21) "modification" or "modify" means to make a change or a series
23 of changes in operation, or any physical change or addition to a facility or source that
24 increases the actual emissions of an air contaminant;
- 25 (22) "operating permit" means a permit under AS 46.14.205(b);
- 26 (23) "operator" means a person or persons who direct, control, or
27 supervise a facility or source that has the potential to emit an air contaminant to the
28 atmosphere;
- 29 (24) "owner" means a person or persons with a proprietary or
30 possessory interest in a facility or source that has the potential to emit an air
31 contaminant to the atmosphere;

1 (25) "person" has the meaning given in AS 01.10.060 and also includes
2 an agency of the United States, a municipality, the University of Alaska, the Alaska
3 Railroad Corporation, and other departments, agencies, instrumentalities, units, and
4 corporate authorities of the state;

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

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

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

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

19 (28) "register" or "registration" means vehicle registration under
20 AS 28.10;

21 (29) "regulated air contaminant" means

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

24 (B) oxides of nitrogen;

25 (C) a volatile organic compound; and

26 (D) a pollutant that is addressed by a standard adopted under
27 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112);

28 (30) "shutdown" means the cessation of operation of any source,
29 including pollution control equipment, process equipment or a process, for any
30 purpose;

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

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

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

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

6 (32) "source" means a device, process, activity, or equipment that
7 causes, or could cause, a release of an air contaminant;

8 (33) "startup" means the setting into operation of any source, including
9 associated pollution control equipment, process equipment or process, for any purpose;

10 (34) "TPY" means tons per year.

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

12 (10) the vehicle is subject to a state-approved [LOCAL] emission
13 inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or
14 46.14.500 [AS 46.03.210], and the vehicle does not meet the standards of that
15 program, unless the vehicle uses a fuel source that does not primarily emit carbon
16 monoxide;

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

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

23 * Sec. 5. AS 29.10.200 is amended by adding a new paragraph to read:

24 (51) AS 29.35.055 (local air quality control program).

25 * Sec. 6. AS 29.35 is amended by adding a new section to read:

26 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A
27 municipality may establish a local air quality control program as provided in
28 AS 46.14.500 only if the municipality has obtained the consent of its governing body
29 through an ordinance authorizing the participation. This section applies to home rule
30 and general law municipalities.

31 * Sec. 7. AS 29.35.200(b) is amended to read:

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

3 (1) provide transportation systems;

4 (2) provide water pollution control;

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

7 (4) license day care facilities;

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

9 * Sec. 8. AS 29.35.210(a) is amended to read:

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

12 (1) provide transportation systems;

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

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

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

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

20 (6) provide water pollution control;

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

23 (8) provide for economic development;

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

26 (10) establish an emergency services communication center under AS
27 29.35.130;

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

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

31 (13) contain, clean up, or prevent a release or threatened release of oil

1 or a hazardous substance, and exercise a power granted to a municipality under
2 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
3 paragraph in a manner that is consistent with a regional master plan prepared by the
4 Department of Environmental Conservation under AS 46.04.210.

5 * Sec. 9. AS 29.35.210(b) is amended to read:

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

8 (1) provide transportation systems;

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

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

12 (4) provide water pollution control;

13 (5) license day care facilities.

14 * Sec. 10. AS 37.05.146(4) is amended by adding a new subparagraph to read:

15 (R) clean air protection fund (AS 46.14.840).

16 * Sec. 11. AS 44.46.025(a) is amended to read:

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

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

22 (2) the emission control permitting program and the motor vehicle
23 pollution control program under AS 46.14 [AIR QUALITY PERMITS UNDER
24 AS 46.03.140 AND 46.03.160];

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

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

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

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

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

1 * Sec. 12. AS 44.62.330(a)(44) is amended to read:

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

5 * Sec. 13. AS 45.45.400(a) is amended to read:

6 (a) A person engaged in the business of selling used motor vehicles may not
7 transfer or assign the owner's title or interest in the used vehicle to a person who
8 resides in an area subject to a state-approved emission inspection [A
9 MUNICIPALITY THAT HAS AN AIR POLLUTION CONTROL] program
10 established under AS 46.14.300 or 46.14.500 [AS 46.03.210] and who intends to use
11 the vehicle in that area [MUNICIPALITY], unless the vehicle has a certificate of
12 compliance or noncompliance as required under the air pollution control requirements
13 applicable in that area [MUNICIPALITY].

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

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

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

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

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

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

1 noncompliance.

2 * Sec. 15. AS 46.03.760 is amended by adding a new subsection to read:

3 (g) When assessing a civil penalty under this section for a violation of
4 AS 46.14, the court shall reduce the civil penalty by an amount ordered to be paid
5 under AS 46.14.830 by the same person for the same offense.

6 * Sec. 16. AS 46.03.765 is amended to read:

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

17 * Sec. 17. AS 46.03.780(a) is amended to read:

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

25 * Sec. 18. AS 46.03.790(a) is amended to read:

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

28 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
29 AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance,
30 or a term or condition of a permit, approval, or acceptance issued under this chapter,
31 AS 46.04, [OR] AS 46.09, or AS 46.14:

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

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

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

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

15 * Sec. 19. AS 46.03.790 is amended by adding a new subsection to read:

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

20 * Sec. 20. AS 46.03.850(a) is amended to read:

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

28 * Sec. 21. AS 46.03.875 is amended to read:

29 Sec. 46.03.875. REMEDIES CUMULATIVE. Except as provided in
30 AS 46.14.830, [ALL] remedies provided by this chapter, [OR] AS 46.04, or AS 46.14
31 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under

1 a section of this chapter, [OR] AS 46.04, or AS 46.14 does not stop the state from
2 obtaining relief under any other section of this chapter, [OR] AS 46.04, or AS 46.14.

3 * **Sec. 22.** AS 46.03.890(b) is amended to read:

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

7 * **Sec. 23.** AS 46.08.075(a) is amended to read:

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

18 * **Sec. 24.** AS 46.08.900(6) is amended to read:

19 (6) "hazardous substance" means an element or compound that, when
20 it enters into the atmosphere or into or on the surface or subsurface land or water of
21 the state, presents an imminent and substantial danger to the public health or welfare,
22 or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals,
23 or wildlife may be found; or (B) a substance defined as a hazardous substance under
24 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and
25 Liability Act of 1980); "hazardous substance" does not include uncontaminated crude
26 oil or uncontaminated refined oil in an amount of 10 gallons or less;

27 * **Sec. 25.** AS 46.09.900(4) is amended to read:

28 (4) "hazardous substance" means (A) an element or compound that,
29 when it enters into the atmosphere, or into or on the surface or subsurface land or
30 water of the state, presents an imminent and substantial danger to the public health or
31 welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish,

1 animals, or wildlife may be found; or (B) a substance defined as a hazardous substance
2 under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation,
3 and Liability Act of 1980); "hazardous substance" does not include uncontaminated
4 crude oil or uncontaminated refined oil;

5 * Sec. 26. AS 46.35.200(4)(A) is amended to read:

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

8 * Sec. 27. AS 46.35.200(8) is amended to read:

9 (8) "state agency" means a state department, commission, board or
10 other agency of the state; for the purposes of this chapter "state agency" also means
11 a local or regional air pollution control authority established under AS 46.14.500 [AS
12 46.03.210].

13 * Sec. 28. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
14 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

15 * Sec. 29. REGULATIONS. (a) The Department of Environmental Conservation may
16 adopt regulations as authorized under AS 46.14, enacted by sec. 2 of this Act, and other
17 statutory authority, to implement changes made by this Act. Regulations adopted under this
18 section may not take effect until the enabling statute takes effect under sec. 31 or sec. 32 of
19 this Act.

20 (b) Notwithstanding the repeal of AS 46.03.140 - 46.03.245 by sec. 28 of this Act,
21 the regulations adopted under those sections that are in effect on the day immediately
22 preceding the effective date of sec. 1 of this Act remain in effect until amended or repealed
23 by regulations adopted under this Act.

24 * Sec. 30. Notwithstanding AS 46.14, enacted by sec. 2 of this Act, state air quality control
25 regulations in effect on April 1, 1992, and regulations in effect on the effective date of sec. 2
26 of this Act that set emission standards for benzene at the Port of Anchorage, may remain in
27 effect after the effective date of sec. 2 of this Act.

28 * Sec. 31. AS 46.14.010, 46.14.015, 46.14.020, 46.14.030, 46.14.200(a) and (c) - (e),
29 46.14.205(a)(1) - (3) and (5), 46.14.210, 46.14.225, 46.14.230, 46.14.232, 46.14.235,
30 46.14.250, 46.14.252, 46.14.255, 46.14.270, 46.14.280, 46.14.293, 46.14.295, 46.14.297,
31 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.500, 46.14.510, 46.14.520, 46.14.800 -

1 46.14.860, 46.14.900, and 46.14.990, enacted by sec. 2 of this Act, and secs. 1 and 3 - 30 of
2 this Act take effect immediately under AS 01.10.070(c).

3 * Sec. 32. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.222, 46.14.240,
4 46.14.245, 46.14.260, 46.14.265, 46.14.267, 46.14.275, 46.14.285, and 46.14.290, enacted by
5 sec. 2 of this Act, take effect on the day after the day the federal administrator approves the
6 state permit program under 42 U.S.C. 7661a(d). The commissioner of environmental
7 conservation shall immediately notify the lieutenant governor and the revisor of statutes of the
8 date of the federal administrator's approval.