

CS FOR HOUSE BILL NO. 167(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/7/93

Referred: Finance

Sponsor(s): REPRESENTATIVE HANLEY

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 inspection and enforcement powers of the
3 Department of Environmental Conservation; and providing for an effective date."

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

5 * **Section 1. POLICY AND PURPOSES.** (a) It is the policy of the state to have a
6 program to prevent, abate, control, and identify air pollution that complies with 42 U.S.C.
7 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under those laws.

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

14 (c) It is the intent of the legislature to comply with 42 U.S.C. 7401 - 7671q (Clean

1 Air Act) in a manner that meets the federal requirements, allows efficient and cost effective
2 processing of permits, requires accountability from the Department of Environmental
3 Conservation on matters relating to recovery of program costs, and ensures the productivity
4 of the state's businesses while protecting the health and welfare of the state's residents.

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

6 CHAPTER 14. AIR QUALITY CONTROL.

7 ARTICLE 1. GENERAL REGULATIONS AND CLASSIFICATIONS.

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

14 (b) The department may adopt the following types of regulations only after
15 public hearing and compliance with AS 46.14.015:

16 (1) a regulation that establishes an ambient air quality standard for an
17 air contaminant for which there is no corresponding federal standard;

18 (2) a regulation that establishes an ambient air quality standard or
19 emission standard that is more stringent than a corresponding federal standard;

20 (3) a regulation that establishes an equivalent emission limitation for
21 a hazardous air contaminant for which the federal administrator has not adopted a
22 corresponding maximum achievable control technology standard; or

23 (4) a regulation that regulates emissions from a source or facility under
24 the authority of AS 46.14.120(e), 46.14.130(a)(3)(B), or 46.14.130(b)(4)(B).

25 (c) Before adopting a regulation described under (b) of this section, the
26 department shall demonstrate that

27 (1) exposure profiles and either meteorological conditions or source
28 characteristics in the state or in an area of the state reasonably require the ambient air
29 quality standard, emission standard, or emission limitation to protect human health and
30 welfare or the environment; and

31 (2) the proposed standard or emission limitation is technologically and

1 economically feasible.

2 (d) Before adopting a regulation described in (b)(2) of this section, the
3 department shall also demonstrate that exposure profiles and either meteorological
4 conditions or source characteristics are significantly different in the state or in an area
5 of the state from those upon which the corresponding federal regulation is based.

6 (e) When incorporated into a permit, emission standards and limitations,
7 emissions monitoring and reporting requirements, and compliance verification
8 requirements that are generally applicable statewide or are generally applicable to
9 individual source or facility types shall be adopted in regulation unless they have been
10 requested by the owner and operator to whom the permit is issued.

11 (f) An emission standard adopted by the department may be applicable to
12 individual sources within a facility or to all sources within a facility. For purposes of
13 determining compliance with applicable regulations and with permit limitations, the
14 department may allow numerical averaging of the emissions of each air contaminant
15 from several sources within a facility if

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

17 (2) allowed under 42 U.S.C. 7401 - 7671q (Clean Air Act), as
18 amended, and regulations adopted under those sections.

19 Sec. 46.14.015. SPECIAL PROCEDURE FOR MORE STRINGENT
20 REGULATIONS. (a) Before adopting a regulation described under AS 46.14.010(b),
21 the department shall provide written findings that the factors required under
22 AS 46.14.010(c) and (d), as applicable, have been demonstrated. Written findings
23 under this subsection shall be made available by the department to the public at
24 convenient locations.

25 (b) The department shall submit its findings, the studies on which the findings
26 are based, and other related data for peer review to a minimum of three separate
27 parties who are not employees of the department and who are determined by the
28 commissioner to be technically qualified in the subject matter under review. The
29 commissioner shall ensure that the peer review includes an analysis of the factors
30 considered by the commissioner to support the standards proposed to be adopted and
31 recommendations, if any, for additional research or investigation considered

1 appropriate. Peer review reports shall be submitted to the commissioner within 45
2 days after the department submits a matter for peer review unless the commissioner
3 determines that additional time is required.

4 (c) The department shall make available to the public at least 30 days before
5 the public hearing required under AS 46.14.010(b), at convenient locations, copies of
6 the department's proposed regulation, the findings of the department describing the
7 basis for adoption of the regulation, and the peer review reports submitted under (b)
8 of this section.

9 (d) The department shall contract with persons to perform peer review under
10 this section. All persons selected shall be selected on the basis of competitive sealed
11 proposals under AS 36.30.200 - 36.30.270 (State Procurement Code). The department
12 may not select a person to perform peer review under this section for a regulation that,
13 if adopted, would set a requirement that must be complied with by a facility owned
14 or operated by the person or by the person's employer.

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

23 (b) The department or a local air quality control program authorized under
24 AS 46.14.400 may require an owner and operator of a facility or source classified
25 under this section to report information to the department or the authorized local
26 program concerning location, size, and height of contaminant outlets or area sources,
27 processes employed, fuels used, the nature and time periods or duration of emissions,
28 and other information relevant to air quality that is available or reasonably capable of
29 being calculated and compiled.

30 Sec. 46.14.030. STATE AIR QUALITY PLAN. The department shall act for
31 the state in any negotiations relative to the state air quality control plan developed

1 under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended. The department may
2 adopt regulations necessary to implement the state plan.

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

4 **Sec. 46.14.110. ADDITIONAL CONTAMINANT CONTROL MEASURES.**

5 (a) The department may require that notice be given to it before the undertaking of
6 the construction, installation, or establishment of particular types or classes of new air
7 contaminant sources specified in its regulations. Within 15 days of its receipt of the
8 notice, the department shall require, as a condition precedent to the undertaking, the
9 submission of plans and other information it considers necessary in order to determine
10 whether the proposed undertaking will be in accord with applicable regulations in force
11 under this chapter.

12 (b) Within 30 days of receipt of the plans and information for a proposed
13 undertaking, the department shall either approve the undertaking and issue a permit,
14 or if the department determines that the proposed undertaking will not meet the
15 requirements of this chapter and applicable regulations, it shall issue a prohibition
16 order against the undertaking.

17 (c) A person subject to a prohibition order as prescribed in (b) of this section,
18 upon written request in accordance with regulations of the department, is entitled to
19 a hearing on the order. Following the hearing the order may be affirmed, modified,
20 or withdrawn.

21 (d) For the purposes of this chapter, addition to or enlargement or replacement
22 of an air contaminant source, or a major alteration of one, shall be construed as an
23 undertaking for the construction, installation, or establishment of a new air contaminant
24 source.

25 (e) Features, machines, and devices constituting parts of or called for by plans
26 or other information submitted under (a) of this section shall be maintained in good
27 working order.

28 (f) This section does not authorize the department to require the use of
29 machinery, devices, or equipment from a particular supplier or produced by a particular
30 manufacturer if the required performance standards may be met by machinery, devices,
31 or equipment available from other sources.

1 (g) The absence of or the department's failure to adopt or issue a regulation
2 or order under this section does not relieve a person from compliance with emission
3 control requirements or other provisions of law.

4 (h) The department may require the payment of a reasonable fee for the review
5 of plans and information required to be submitted. A fee for a single review may not
6 exceed \$25.

7 Sec. 46.14.120. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
8 OPERATION. (a) Before constructing, installing, modifying, reconstructing, or
9 establishing a facility subject to AS 46.14.130(a), the owner and operator shall obtain
10 a construction permit under this chapter.

11 (b) Except when considered to be in compliance with this chapter under a
12 regulation adopted under AS 46.14.140(a)(11) or 46.14.220(c), the owner and operator
13 shall obtain an operating permit under this chapter before operating a facility subject
14 to AS 46.14.130(b).

15 (c) A permittee shall comply with the terms and conditions of a permit or a
16 modifying compliance order issued by the department under this chapter or a court
17 order. A person operating under the application shield available under
18 AS 46.14.140(a)(11), shall comply with the terms and conditions of the pending
19 application and applicable regulations.

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

23 (e) If the federal administrator exempts a source from the requirements of
24 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, shall
25 consider the factors used by the administrator in reaching that determination and shall
26 issue a similar determination unless public health or air quality effects provide a
27 reasonable basis to regulate the source.

28 Sec. 46.14.130. FACILITIES REQUIRING PERMITS. (a) Before
29 constructing, installing, modifying, reconstructing, or establishing a facility, the owner
30 and operator shall obtain a construction permit from the department if the facility is
31 any one of the following:

- 1 (1) a new facility that emits or has the potential to emit 250 tons per
- 2 year (TPY) or more of a regulated air contaminant;
- 3 (2) a new facility of a type classified under AS 46.14.020 that emits
- 4 or has the potential to emit 100 TPY or more of a regulated air contaminant;
- 5 (3) a new facility of a type classified under AS 46.14.020
- 6 (A) as having the potential to violate the ambient air quality
- 7 standards; or
- 8 (B) under a finding by the department that public health or air
- 9 quality effects provide a reasonable basis to regulate the source;
- 10 (4) a new facility that emits or has the potential to emit 10 TPY or
- 11 more of a hazardous air contaminant or 25 TPY or more, in the aggregate, of two or
- 12 more hazardous air contaminants;
- 13 (5) an existing facility for which
- 14 (A) a modification is proposed that would increase actual
- 15 emissions of an air contaminant by an amount equal to or greater than the
- 16 emission quantity set out in regulations adopted under AS 46.14.010,
- 17 46.14.020, or 46.14.140; or
- 18 (B) reconstruction is proposed.
- 19 (b) The owner and operator of a facility shall obtain an operating permit from
- 20 the department if the facility is a facility subject to (a) of this section or a facility that
- 21 (1) emits or has the potential to emit 100 TPY or more of a regulated
- 22 contaminant;
- 23 (2) emits or has the potential to emit 10 TPY or more of a hazardous
- 24 air contaminant or 25 TPY or more, in the aggregate, of two or more hazardous air
- 25 contaminants;
- 26 (3) contains a source subject to federal new source performance
- 27 standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission
- 28 standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec.
- 29 112); or
- 30 (4) contains another stationary source designated by
- 31 (A) the federal administrator by regulation; or

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

3 Sec. 46.14.140. EMISSION CONTROL PERMIT PROGRAM
4 REGULATIONS. (a) The department shall adopt regulations to address all
5 substantive and procedural elements of the emission control permit program established
6 under this chapter that are not addressed in statute, except elements that relate only to
7 the internal management of the department and do not affect the public or govern the
8 way the department deals with the public. The regulations must be reasonable and
9 adequate, and provide flexibility in the operation of a facility consistent with 42 U.S.C.
10 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations. The
11 regulations must include

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

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

17 (3) procedures for

18 (A) specifying when permit applications and renewal requests
19 are to be submitted;

20 (B) specifying the time duration for department review of permit
21 applications;

22 (C) processing and reviewing an application;

23 (D) providing public notice, including opportunity for public
24 comment and hearing; and

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

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

28 (A) emission standards and limitations;

29 (B) monitoring, record keeping, and reporting for facilities
30 subject to AS 46.14.130;

31 (C) inspection and entry;

- 1 (D) certification of corporate or other business organization
- 2 reports;
- 3 (E) annual certification of compliance;
- 4 (F) excess emission or process deviation reporting; and
- 5 (G) equipment malfunctions and emergencies;
- 6 (5) fees and procedures for collecting fees;
- 7 (6) provisions addressing late payment or nonpayment of fees, which
- 8 may include assessment of penalties and interest or refusal to issue, amend, modify,
- 9 or renew an air quality control permit;
- 10 (7) the duration of permits;
- 11 (8) procedures for modifying or amending a permit that provide
- 12 flexibility in the operation of the facility, including procedures to allow changes to a
- 13 permitted facility without requiring a permit modification, consistent with the purposes
- 14 of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 15 (9) reasonable provisions for renewing, reopening, revoking and
- 16 reissuing, and terminating a permit consistent with the purposes of this chapter and 42
- 17 U.S.C. 7401 - 7671q (Clean Air Act);
- 18 (10) provisions allowing for physical or operational limitations that will
- 19 reduce a facility's emissions to levels below those that would make the facility subject
- 20 to part or all of AS 46.14.120 and 46.14.130;
- 21 (11) provisions authorizing facility operation while a permit application
- 22 is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));
- 23 (12) provisions for ensuring that compliance with an operating permit
- 24 issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a
- 25 (Clean Air Act, sec. 502) and other provisions of state or federal law specifically
- 26 provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air
- 27 Act) and regulations adopted under state and federal law; and
- 28 (13) provisions allowing for certification of inspectors who evaluate
- 29 compliance with the terms and conditions of a permit, order, regulation, or other
- 30 provision of law authorized under this chapter.
- 31 (b) A permit issued under this chapter may not require a person to use

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

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

6 (A) adopted a design, equipment work practice, or operational
7 standard under 42 U.S.C. 7412(h), as amended, for the control of a hazardous
8 air pollutant; or

9 (B) approved an alternative hazardous air pollutant standard
10 under 42 U.S.C. 7412(h)(3), as amended.

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

14 **Sec. 46.14.150. TIME FOR SUBMISSION OF OPERATING PERMIT**
15 **APPLICATIONS.** (a) The owner and operator of a facility required to have an
16 operating permit under this chapter shall submit the required application and other
17 information required by the department by regulation no later than (1) 12 months after
18 the date on which the facility becomes subject to AS 46.14.120(b); or (2) 60 days
19 before beginning construction of a source if the facility containing the source is a new
20 facility that is not required to obtain a construction permit under AS 46.14.130(a),
21 whichever is earlier.

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

25 **Sec. 46.14.160. COMPLETENESS DETERMINATION.** (a) The department
26 shall review every application submitted under this chapter for completeness. To be
27 determined complete, an application must provide the information identified by the
28 department in regulations adopted under AS 46.14.140 and in standard application
29 forms provided by the department under AS 46.14.140(a)(1) and must be certified true
30 and correct by the owner and operator.

31 (b) The department shall notify the applicant in writing whether the application

1 is complete. Unless the department notifies the applicant within 60 days of receipt of
2 an application that the application is incomplete, the application is considered to be
3 complete.

4 (c) If, during the processing of an application after it has been determined or
5 considered to be complete, the department finds that additional information is
6 necessary to evaluate or take action on that application, the information may be
7 requested in writing from the owner and operator. A request for information under
8 this subsection does not render the application incomplete. However, notwithstanding
9 AS 46.14.275, an owner and operator may be found in violation of this chapter for
10 operating without a valid permit if their failure to provide timely additional
11 information causes a delay in permit processing.

12 Sec. 46.14.170. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a)
13 Except as provided in AS 46.14.220 or in regulations adopted under
14 AS 46.14.140(a)(6), after receipt of a complete application, and after notice and
15 opportunity for public comment and hearing, the department shall issue or deny

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

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

21 (b) Notwithstanding (a) of this section, the department may establish a phased
22 schedule for acting on operating permit applications submitted within 12 months
23 following the date on which the federal administrator approves the state program under
24 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the
25 applications submitted during the first 12 months of the state's operation of its permit
26 program after federal approval will be acted on by the department during each of the
27 first three 12-month periods following federal approval of the program. The
28 department shall give priority to the issuance of permits for new facilities and
29 modifications of existing facilities.

30 (c) Failure by the department to act within the time limits established in or
31 under (a) or (b) of this section is considered to be a final agency action, but only for

1 the purpose of judicial review to determine whether the court will require that action
2 be taken by the department.

3 Sec. 46.14.180. MONITORING. Monitoring by the owner and operator of
4 stack emissions or ambient air quality shall be required by the department only for
5 purposes of demonstrating compliance with applicable permit requirements.
6 Monitoring requirements must be reasonable and based on test methods, analytical
7 procedures, and statistical conventions approved by the federal administrator or the
8 department or otherwise generally accepted as scientifically competent. Unless
9 otherwise agreed to by the owner and operator and the department,

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

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

15 Sec. 46.14.190. SINGLE PERMIT. (a) Except as provided in (b) of this
16 section, the department shall issue only a single operating permit to a facility,
17 regardless of whether a facility contains a single source or multiple sources.

18 (b) The department may, upon request of a facility owner or operator, issue
19 more than one permit for a facility. Substantive and procedural requirements otherwise
20 applicable to a facility remain applicable regardless of whether the facility owner and
21 operator apply for one or more permits.

22 Sec. 46.14.200. REVIEW OF PERMIT ACTION. The owner and operator,
23 a person who participated in the public comment process, or a person who has a
24 private, substantive, legally protected interest under state law that may be adversely
25 affected by the permit action may request an adjudicatory hearing under the
26 department's adjudicatory hearing procedures. After the issuance of an adjudicatory
27 hearing decision, a party to the hearing may obtain judicial review of that decision as
28 provided in the Alaska Rules of Appellate Procedure.

29 Sec. 46.14.210. 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 that are applicable to operating permits. A
4 general 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. 46.14.215. TEMPORARY OPERATIONS. The department may issue a
8 single operating permit under AS 46.14.170, authorizing a facility to operate at specific
9 multiple locations in the state for temporary periods of time. A permit described in
10 this section is valid only for the specific locations identified in the application and
11 authorized by the department. The department may not issue a permit under this
12 section unless the permit contains conditions that will ensure compliance with this
13 chapter at each authorized location, including compliance with ambient air quality
14 standards and applicable increment or visibility requirements adopted under this
15 chapter. A permit under this section must require the owner and operator to notify the
16 department at least 30 days before a change in location of a facility permitted under
17 this section.

18 Sec. 46.14.220. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An
19 operating permit may not be issued under this chapter until the federal administrator
20 approves the permit, or until 45 days after a copy of the final draft permit has been
21 provided by the department to the federal administrator, whichever is earlier. If,
22 during the 45-day period, the federal administrator files an objection with the
23 department, the department shall notify the applicant of the objection. The department
24 may not issue the permit until the objection is resolved or the permit is revised to meet
25 the objection of the federal administrator. Upon request of an applicant, the
26 department shall assist the applicant in an effort to resolve promptly an objection by
27 the federal administrator.

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

1 (c) Regulations adopted under AS 46.14.140(a)(11) may provide that while a
2 petition under (b) of this section is pending, compliance with an operating permit
3 issued under (a) of this section is considered to be compliance with this chapter insofar
4 as those sections require an operating permit.

5 Sec. 46.14.230. DURATION OF OPERATING PERMITS. (a) An operating
6 permit under this chapter, including an operating permit that contains a compliance
7 schedule, shall be issued for a fixed term of five years after the date of issue, except
8 as provided for temporary operations under AS 46.14.215 or unless a shorter term is
9 requested by the permit applicant.

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

13 Sec. 46.14.235. FEDERAL TERMINATION, MODIFICATION, OR
14 REVOCATION AND REISSUANCE OF PERMITS. The department shall take
15 measures practicable and otherwise lawful to avoid termination, modification, or
16 revocation and reissuance by the federal administrator of permits issued by the
17 department under this chapter.

18 Sec. 46.14.240. PERMIT ADMINISTRATION FEES. (a) The owner or
19 operator of a facility who is required to apply for a permit under AS 46.14.130 shall
20 pay to the department all assessed permit administration fees established under (b) of
21 this section except that the person named in a permit issued under AS 46.14.170 shall
22 pay assessed permit administration fees incurred after the date the permit is issued.

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

31 (c) For purposes of this section, "permit administration fees" are fees assessed

1 to recover costs incurred by the department and other state or local governmental
2 agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal regulations
3 implementing that provision, for the following services to a specific facility that are
4 performed in order to implement the permit program established under this chapter:

5 (1) providing preapplication consultation, assistance, and completeness
6 review of applications for a permit, permit amendment, permit modification, or
7 renewal;

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

10 (3) receiving, reviewing, preparing, processing, and issuing permits,
11 permit amendments, modifications, reopenings, renewals and revocations, and
12 reissuance;

13 (4) preparing general operating permits under AS 46.14.210; however,
14 costs must be allocated on an equitable basis to each facility covered by the general
15 operating permit;

16 (5) performing facility inspections and compliance evaluations;

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

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

22 (8) assessing and collecting delinquent permit administration fees and
23 emission fees.

24 Sec. 46.14.250. EMISSION FEES. (a) A person named as permittee in a
25 permit issued under AS 46.14.170 shall pay to the department all assessed emission
26 fees established under this section.

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

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

11 (d) The department shall design the emission fee rate to distribute the total
12 annual incurred costs described under (h) of this section in a manner so that each
13 permittee is assessed an annual emission fee that reflects an equitable apportionment
14 of the fees paid by each facility type, size, or category. In making an apportionment
15 under (f)(6) of this section, the department shall consider factors such as exemptions
16 or reduced rates for small amounts of emissions, limits upon assessable emissions,
17 exempting small business facilities from the costs of the small business assistance
18 program established under AS 46.14.300, air pollution prevention efforts, and other
19 factors that may ensure fair distribution of the costs described under (h) of this section.

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

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

31 (1) fees assessed;

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

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

12 (h) In this section,

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

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

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

22 (2) "emission fees" mean fees assessed to recover costs incurred by the
23 department and other state or local governmental agencies, to the extent required under
24 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision, for
25 execution of the permit program established under this chapter that are generally not
26 associated with service provided to a specific facility; the costs may include rent,
27 utilities, permit program management, administrative and accounting services, and
28 other costs as identified by the department in regulations.

29 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may
30 assess interest against the owner and operator after a fee is due under this chapter and
31 is unpaid. Interest assessed under this subsection shall be computed at two percentage

1 points higher than the prime rate, as defined in AS 44.88.599, for the day the fee was
2 due.

3 (b) If a permittee has failed to pay a fee imposed under AS 46.14.240 -
4 46.14.250, a penalty, assessment, or damage award imposed under AS 46.03.760(f) or
5 46.03.790 for a violation of this chapter, or interest imposed under (a) of this section,
6 the department may, after 30 days' written notice to the permittee refuse to issue or
7 renew permits requested by the permittee or refuse to amend or modify a permit when
8 the amendment or modification is requested by the permittee.

9 Sec. 46.14.260. CLEAN AIR PROTECTION FUND. (a) The clean air
10 protection fund is established. The fund consists of fees collected by the department
11 under AS 46.14.240 and 46.14.250 and under regulations authorized by AS 46.14.140,
12 as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)) for
13 state participation in the federal emission control permit program.

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

19 Sec. 46.14.270. SPECIAL ACCOUNT. Civil or criminal penalties, fines,
20 assessments, or damages, and interest, attorney fees, and costs collected as a result of
21 a violation relating to this chapter and interest collected under AS 46.14.255 shall be
22 deposited in the general fund and credited to a special account called the "clean air
23 protection account."

24 Sec. 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD.
25 If an owner and operator have submitted a timely and complete application for a
26 permit or a permit renewal, as applicable, but final action has not been taken on the
27 application, the owner's and operator's failure to have an operating permit is not a
28 violation of this chapter unless the delay in final action was due to the failure of the
29 owner and operator to submit information required or requested to process the
30 application. An owner and operator required to have an operating permit under this
31 chapter are not in violation of the operating permit program established under this

1 chapter before the date on which the owner and operator are required to submit an
2 application under AS 46.14.150.

3 Sec. 46.14.280. TERMINATION, MODIFICATION, REOPENING, OR
4 REVOCATION AND REISSUANCE OF PERMITS BY THE DEPARTMENT. (a)
5 After 30 days' written notice to the permittee, the department

6 (1) may terminate, modify, or revoke and reissue a construction or
7 operating permit if the department finds that

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

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

14 (C) the permittee has failed to construct or modify a facility
15 within the time period specified in a construction permit, if any, required under
16 AS 46.14.130(a);

17 (2) may modify, or revoke and reissue a construction or operating
18 permit if the department finds that

19 (A) the permit contains a material mistake; or

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

22 (3) shall reopen a permit issued under this chapter

23 (A) based on a determination of the federal administrator that
24 the permit must be revised to comply with 42 U.S.C. 7401-7671q (Clean Air
25 Act); or

26 (B) to incorporate changes in law, or to impose equivalent
27 emission limitation, that become applicable after the permit is issued if the
28 permit is issued to a major facility and has a remaining duration of three or
29 more years; the department shall make revisions allowed under this
30 subparagraph as soon as practicable, but, regarding a change in law, no later
31 than 18 months after the change in law takes effect; the department may not

1 reopen the permit of a major facility under this subparagraph if the change in
2 law is not effective until after the date that the permit expires.

3 (b) Reopening of a permit under (a)(3) of this section shall be treated as a
4 permit renewal by the department if the procedural requirements for permit renewal
5 have been met.

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

9 Sec. 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON
10 REQUEST OF PERMITTEE. (a) A permittee may request

11 (1) a permit amendment that provides for administrative changes to a
12 permit that do not result in material changes in permit terms or conditions, such as
13 changes in the name of the owner or operator, mailing address, registered agent, or
14 assessable emissions;

15 (2) an expedited authorization for minor changes in permit terms and
16 conditions that provide for flexibility in the operation of a facility consistent with 42
17 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)), and regulations adopted under
18 that paragraph; the department may adopt regulations that include procedures under
19 which the public may participate when an amendment or modification is requested
20 under this paragraph; or

21 (3) a modification of a permit to authorize significant changes in permit
22 terms and conditions consistent with this chapter and regulations adopted under
23 AS 46.14.140.

24 (b) The department shall review all requests submitted under (a) of this section
25 and issue or deny the permit amendment or modification or otherwise authorize or
26 deny the request consistent with this chapter and regulations adopted under this
27 chapter.

28 Sec. 46.14.290. PERMIT AS SHIELD. (a) To the extent allowed under
29 42.U.S.C. 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in
30 compliance with applicable requirements of this chapter, regulations adopted under this
31 chapter and 42 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it,

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if

(1) the applicable requirements are included and specifically identified in the owner or operator's permit; or

(2) the requirements are determined in writing not to be applicable to the permitted facility; a determination made under this paragraph shall be included in the permit.

(b) This section does not alter or affect

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

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

(3) the ability of the department to obtain information from an owner or operator of a facility under AS 46.14.020(b).

ARTICLE 3. SMALL BUSINESS ASSISTANCE PROGRAM.

Sec. 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM. (a) A small business assistance program is established in the department. The department shall include the program in the state air quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

(c) Except as provided in AS 46.14.310(b), the department shall provide assistance as described in (b) of this section to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that is subject to the requirements of this chapter if the legislature appropriates money from the general fund for this purpose.

Sec. 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE PROGRAM. (a) After consultation with the federal administrator and the administrator of the United States Small Business Administration and after providing notice and opportunity for public hearing, the department may exclude from the scope of the small business assistance program established in AS 46.14.300 a category or

1 subcategory of small business facilities that the department finds to have sufficient
2 technical and financial capabilities to meet the requirements of this chapter and federal
3 law without the assistance provided under AS 46.14.300 - 46.14.320.

4 (b) Nothing in AS 46.14.300(c) precludes the department from excluding a
5 business facility or category of business facilities that the department finds to have
6 sufficient technical and financial capabilities to meet the requirements of this chapter
7 without assistance from the department.

8 Sec. 46.14.320. COMPLIANCE ADVISORY PANEL. (a) There is
9 established in the department a compliance advisory panel whose members shall serve
10 staggered three-year terms. A member may not serve more than two three-year terms
11 consecutively.

12 (b) The panel consists of

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

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

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

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

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

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

31 (c) The panel members shall serve without compensation but are entitled to

1 transportation expenses and per diem as authorized for members of boards and
2 commissions under AS 39.20.180.

3 (d) The compliance advisory panel shall

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

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

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

11 (4) make periodic reports to the administrator concerning the
12 compliance of the small business assistance program with requirements of 44 U.S.C.
13 3501 (Paperwork Reduction Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5
14 U.S.C. 504 (Equal Access to Justice Act);

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

18 (6) use the assistance of the small business advocate designated under
19 AS 46.14.300(b) in the development and dissemination of panel reports and advisory
20 opinions.

21 ARTICLE 4. LOCAL PROGRAMS.

22 Sec. 46.14.400. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With
23 the approval of the department, a municipality may establish and administer within its
24 jurisdiction a local air quality control program that operates in lieu of and is consistent
25 with all or part of the department's air quality program as established under this
26 chapter. A first or second class borough may administer an air quality control program
27 approved by the department under this subsection on an areawide basis and is not
28 subject to the restrictions for acquiring additional areawide powers specified in
29 AS 29.35.300 - 29.35.350. A third class borough may administer a local air quality
30 control program approved by the department under this subsection only in a service
31 area formed under AS 29.35.490(b) or (c).

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

4 (c) If the department finds that the location, character, or extent of particular
5 concentrations of population, air contaminant sources, the geographic, topographic, or
6 meteorological considerations, or a combination of these factors make impracticable
7 the maintenance of appropriate levels of air quality without an areawide air pollution
8 control program, the department may determine the boundaries within which a local
9 air quality control program is necessary and direct that a local air quality control
10 program spanning those boundaries is the only acceptable alternative to direct state
11 administration.

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

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

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

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

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

24 (e) A local air quality control program shall provide for the exemption of a
25 locally registered motor vehicle from motor vehicle emission requirements adopted
26 under AS 46.14.510 if the motor vehicle is not used within the program's jurisdiction.

27 (f) A municipality or a local air quality district administering a program under
28 this section shall administer its local air quality control program according to this
29 chapter, regulations adopted under those sections, and its cooperative agreement under
30 (d) of this section. A municipality or local air quality district's program may, upon
31 a finding by the local agency and an affirmative agreement by the department,

1 establish a more stringent requirement than the stationary source permit program
2 authorized under this chapter if public health or air quality effects warrant the
3 additional or more stringent requirement and the municipality or district has used
4 procedures substantially equivalent to those required under AS 46.14.010 - 46.14.015
5 before establishing the more stringent requirement. This subsection does not prohibit
6 a municipality or local air quality control district from establishing a mobile source
7 program more stringent than the state program without making findings of public
8 health or air quality effects or using procedures substantially equivalent to those
9 required under AS 46.14.010 - 46.14.015.

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

13 (h) Notwithstanding any other law or rule of law, the department may not
14 delegate or enable another department or government entity to establish fee rates or
15 collect fees under AS 46.14.240 or 46.14.250.

16 Sec. 46.14.410. INADEQUACY OF LOCAL PROGRAM. (a) If a
17 municipality or a local air quality district has an approved local air quality control
18 program under AS 46.14.400 and the department determines that the program is being
19 implemented in a manner that fails to meet the terms of the cooperative agreement or
20 is otherwise being inappropriately administered, the department shall give written
21 notice setting out its determination to the municipality or local air quality district.
22 Within 45 days after giving written notice, the department shall conduct a public
23 hearing on the matter. The hearing shall be recorded by any means that ensures an
24 accurate record.

25 (b) If, after the hearing, the department upholds the determination made in the
26 written notice, the department shall provide the municipality or local air quality district
27 with a written finding setting out the nature of the deficiencies and a description of the
28 necessary action to be taken to ensure that the local air quality control program
29 prevents or controls air pollution. The department shall provide its finding to the
30 municipality or district within 45 days after closure of the public hearing record. The
31 department shall set a reasonable period of time for the municipality or local air

1 quality district to take corrective action in response to the department's finding.

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

10 (d) A municipality or local air quality district that has had its cooperative
11 agreement terminated may, with the department's approval, resume a local air quality
12 control program if the municipality or district agrees to comply with AS 46.14.400 and
13 with any corrective action plan required by the department.

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

22 ARTICLE 5. MISCELLANEOUS PROVISIONS.

23 Sec. 46.14.500. AIR POLLUTION FROM OUTER CONTINENTAL SHELF
24 ACTIVITIES. (a) The department shall seek delegation of authority from the federal
25 administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627
26 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state.
27 The department may adopt regulations that are necessary to acquire this delegated
28 authority.

29 (b) In adopting regulations under this section, the department shall ensure that
30 facilities located within 25 miles of the seaward boundary of the state are subject to
31 the same air quality control requirements that would be applicable if the facility were

1 located in the corresponding onshore area. For purposes of this subsection, facilities
2 located within 25 miles of the seaward boundary of the state include a vessel servicing
3 or associated with the facility while at the facility or en route to or from the facility
4 and within 25 miles of the facility.

5 (c) In this section, "corresponding onshore area" means, with respect to a
6 facility located within 25 miles of the seaward boundary of the state, the onshore
7 attainment or nonattainment area that is closest to the facility, unless the commissioner
8 determines that another area with more stringent requirements relating to control and
9 abatement of air pollution may reasonably be expected to be affected by emissions
10 from the offshore facility; this determination shall be based on the potential for air
11 contaminants from the facility to reach the other onshore area and the potential of the
12 air contaminants to affect the efforts of the other onshore area to attain or maintain a
13 federal ambient air quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C,
14 Clean Air Act) or a state equivalent.

15 Sec. 46.14.510. MOTOR VEHICLE POLLUTION. (a) When the department
16 determines that the state of knowledge and technology may allow or make appropriate
17 the control of emissions from motor vehicles to further air quality control, the
18 department may provide, by regulation, for the control of the emissions from motor
19 vehicles. The regulations may prescribe requirements for the installation and use of
20 equipment designed to reduce or eliminate emissions and for the proper maintenance
21 of this equipment.

22 (b) Unless otherwise exempted by law, a person shall maintain in operating
23 condition any element of the air pollution control system or mechanism of a motor
24 vehicle that the department, by regulation, requires to be maintained in or on the motor
25 vehicle. Failure to maintain a required system or mechanism in operating condition
26 subjects the motor vehicle's registration to suspension or cancellation. A motor
27 vehicle whose registration has been suspended or canceled under this subsection is not
28 eligible for subsequent registration until the owner or operator obtains certification
29 from the department, based on a demonstration that the air pollution control system or
30 mechanism is restored to operating condition.

31 (c) The department shall consult with the Department of Public Safety

1 regarding implementation of the motor vehicle pollution control program. The
2 Department of Public Safety shall cooperate with the department in implementing the
3 program.

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

13 Sec. 46.14.515. INSPECTION. (a) An officer or employee of the department
14 designated by the commissioner or an inspector authorized by the commissioner and
15 certified under regulations adopted under AS 46.14.140(a)(13) may, upon presentation
16 of credentials and at reasonable times with the consent of the owner or operator, enter
17 upon or through any premises of a facility regulated under this chapter to

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

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

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

23 (b) During an inspection under this section, the inspector shall comply with
24 applicable health and safety standards.

25 Sec. 46.14.520. CONFIDENTIALITY OF RECORDS. Records, reports, and
26 information, and parts of records, reports, and information, other than emission data,
27 in the department's possession or control are considered confidential records and shall
28 be kept confidential and in separate files if the owner and operator have certified under
29 oath to the department or authorized local program that

30 (1) public disclosure would tend to affect adversely the owner's and
31 operator's competitive position; and

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

5 Sec. 46.14.525. PUBLIC RECORDS. Except as provided in AS 46.14.520,
6 permits, permit applications, emissions and monitoring reports, compliance reports,
7 certifications, and monitoring, reporting, and quality assurance plans in the
8 department's possession or control are available to the public for inspection and
9 copying.

10 Sec. 46.14.530. STATE AND FEDERAL AID. (a) A municipality or local
11 air quality district with a local air quality control program may apply for, receive,
12 administer, and spend state aid for the control of air emissions or the development and
13 administration of the program if an application is first submitted to and approved by
14 the department. Subject to available money appropriated by the legislature for the
15 purpose of this section, the department may approve an application if it is consistent
16 with the terms and conditions of the applicable cooperative agreement and meets the
17 requirements of this chapter.

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

21 Sec. 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF
22 EMERGENCY. (a) When the commissioner finds that an act of God, act of war, act
23 of terrorism, or similar catastrophe necessitates emergency use of an unpermitted
24 source or emergency use of a permitted source in a manner not authorized by the
25 permit, the commissioner may waive procedural requirements of this chapter and issue
26 an order to authorize emergency use of the source. When acting under this section,
27 the commissioner shall impose conditions necessary to protect life, human health,
28 welfare, property, and the environment and may impose other conditions the
29 commissioner finds necessary and appropriate.

30 (b) An authorization issued under this section automatically terminates within
31 a reasonable time after abatement of the emergency, subject to a maximum of 30 days

1 from the date of issuance. However, the commissioner may reissue an authorization,
2 if warranted, that may remain in effect for up to another 30 days. An authorization
3 may be reissued more than once.

4 (c) A person acting under an order issued under (a) of this section is
5 considered to be acting in compliance with the operating permit program established
6 in this chapter.

7 (d) The commissioner may delegate the commissioner's authority under this
8 section to deputy commissioners and division directors in the department.

9 Sec. 46.14.550. RESPONSIBILITIES OF OWNER AND OPERATOR.
10 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,
11 before issuance of a permit under AS 46.14.170 both the owner and operator of a
12 facility are responsible for compliance with this chapter and regulations adopted under
13 this chapter. If the owner and operator of the facility are separate persons, only one
14 person is required to discharge a specific responsibility. After issuance of a permit
15 under AS 46.14.170, only the permittee is responsible for permitted operations. The
16 permittee shall have a designated agent for service of process in the state.

17 Sec. 46.14.560. UNAVOIDABLE MALFUNCTIONS AND EMERGENCIES.
18 Excess emissions caused by an on-site emergency, malfunction, or unavoidable
19 nonroutine repairs of a source including pollution control equipment or process
20 equipment constitute an affirmative defense, when asserted under regulations adopted
21 under AS 46.14.140, to an action brought for noncompliance with a permit or an
22 emission limitation and may not count as an increase in emissions unless an ambient
23 air quality standard is exceeded. This section does not limit the department's power
24 to enjoin the emission or require corrective action. This provision is in addition to any
25 emergency or upset provision contained in an applicable requirement.

26 ARTICLE 6. GENERAL PROVISIONS.

27 Sec. 46.14.900. LIMITATIONS. This chapter does not

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

31 (2) affect the relations between employers and employees with respect

1 to or arising out of a condition of air contamination or air pollution; or

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

4 Sec. 46.14.990. DEFINITIONS. In this chapter,

5 (1) "air contaminant" means a regulated air contaminant or a hazardous
6 air contaminant;

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

9 (3) "ambient air quality standard" means a standard, other than an
10 emission standard, adopted under AS 46.14.010, 46.14.140, 46.14.400(f), or 42 U.S.C.
11 7409 (Clean Air Act, sec. 109);

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

14 (5) "construction permit" means a permit under AS 46.14.130(a),
15 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
16 administrative orders, emergency orders, and court orders;

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

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

21 (8) "emission limitation" and "emission standard" mean a requirement
22 established by the department or the federal administrator, other than an ambient air
23 quality standard, that limits the quantity, rate, or concentration of emission of an air
24 contaminant, including a requirement relating to the operation or maintenance of a
25 source to ensure sustained emission reduction, and design, equipment, work practice,
26 or operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671q (Clean
27 Air Act);

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

- 1 (10) "federal administrator" means the administrator of the United
2 States Environmental Protection Agency;
- 3 (11) "fugitive emissions" means emissions of an air contaminant that
4 could not reasonably be emitted from a contaminant outlet;
- 5 (12) "hazardous air contaminant" means a pollutant listed in or under
6 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));
- 7 (13) "local air quality control program" means a program authorized
8 under AS 46.14.400 to implement some or all of the provisions of this chapter;
- 9 (14) "modification" or "modify" means to make a change or a series
10 of changes in operation, or any physical change or addition to a facility or source, that
11 increases the actual emissions of an air contaminant;
- 12 (15) "operating permit" means a permit under AS 46.14.130(b),
13 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
14 administrative orders, emergency orders, and court orders;
- 15 (16) "operator" means a person or persons who direct, control, or
16 supervise a facility or source that has the potential to emit an air contaminant to the
17 atmosphere;
- 18 (17) "owner" means a person or persons with a proprietary or
19 possessory interest in a facility or source that has the potential to emit an air
20 contaminant to the atmosphere;
- 21 (18) "person" has the meaning given in AS 01.10.060 and also includes
22 an agency of the United States, a municipality, the University of Alaska, the Alaska
23 Railroad Corporation, and other departments, agencies, instrumentalities, units, and
24 corporate authorities of the state;
- 25 (19) "potential to emit" means the maximum quantity of a release of
26 an air contaminant, considering a facility's physical or operation and design, based on
27 continual operation of all sources within the facility for 24 hours a day, 365 days a
28 year, reduced by the effect of pollution control equipment and approved state or
29 federal limitations on the capacity of the facility's sources or the facility to emit an air
30 contaminant, including limitations such as restrictions on hours or rates of operation
31 and type or amount of material combusted, stored, or processed; "potential to emit"

1 does not include

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

3 (B) the fugitive emissions specifically exempted under 42
4 U.S.C. 7401 - 7671q (Clean Air Act);

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

9 (21) "regulated air contaminant" means

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

12 (B) oxides of nitrogen;

13 (C) a volatile organic compound;

14 (D) a pollutant that is addressed by a standard adopted under
15 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112); and

16 (E) a substance regulated under 42 U.S.C. 7671a (Clean Air
17 Act, Sec. 602);

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

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

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

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

24 (23) "source" means a device, process, activity, or equipment that
25 causes, or could cause, a release of an air contaminant;

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

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

28 (10) the vehicle is subject to a state-approved [LOCAL] emission
29 inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.400 or
30 46.14.510 [AS 46.03.210], and the vehicle does not meet the standards of that
31 program, unless the vehicle uses a fuel source that does not primarily emit carbon

1 monoxide;

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

3 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In
4 addition to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed
5 upon every vehicle required to be inspected under an emission control program
6 established under AS 46.14.400 or 46.14.510 [AS 46.03.210]. This fee shall be
7 collected at the same time and in the same manner as the registration fee.

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

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

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

11 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A
12 municipality may establish a local air quality control program as provided in
13 AS 46.14.400 only if the municipality has obtained the consent of its governing body
14 through an ordinance authorizing the participation. This section applies to home rule
15 and general law municipalities.

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

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

- 19 (1) provide transportation systems;
20 (2) provide water pollution control;
21 (3) provide air pollution control in accordance with AS 46.14.400
22 [AS 46.03.140 - 46.03.230];
23 (4) license day care facilities;
24 (5) license, impound, and dispose of animals.

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

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

- 28 (1) provide transportation systems;
29 (2) regulate the offering for sale, exposure for sale, sale, use, or
30 explosion of fireworks;
31 (3) license, impound, and dispose of animals;

- 1 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic
2 waste collection and disposal;
- 3 (5) provide air pollution control under AS 46.14.400 [IN
4 ACCORDANCE WITH AS 46.03.140 - 46.03.230];
- 5 (6) provide water pollution control;
- 6 (7) participate in federal or state loan programs for housing
7 rehabilitation and improvement for energy conservation;
- 8 (8) provide for economic development;
- 9 (9) provide for the acquisition and construction of local service roads
10 and trails under AS 19.30.111 - 19.30.251;
- 11 (10) establish an emergency services communication center under
12 AS 29.35.130;
- 13 (11) subject to AS 28.01.010, regulate the licensing and operation of
14 motor vehicles and operators;
- 15 (12) engage in activities authorized under AS 29.47.460;
- 16 (13) contain, clean up, or prevent a release or threatened release of oil
17 or a hazardous substance, and exercise a power granted to a municipality under
18 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
19 paragraph in a manner that is consistent with a regional master plan prepared by the
20 Department of Environmental Conservation under AS 46.04.210.

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

- 22 (b) A second class borough may by ordinance exercise the following powers
23 on an areawide basis:
- 24 (1) provide transportation systems;
- 25 (2) license, impound, and dispose of animals;
- 26 (3) provide air pollution control under AS 46.14.400 [IN
27 ACCORDANCE WITH AS 46.03.140 - 46.03.230];
- 28 (4) provide water pollution control;
- 29 (5) license day care facilities.

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

- 31 (R) clean air protection fund (AS 46.14.260).

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

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

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

7 (2) certificates of inspection for motor vehicles under AS 46.14.400
8 or 46.14.510 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND 46.03.160];

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

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

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

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

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

16 * Sec. 12. AS 44.46.025 is amended by adding a new subsection to read:

17 (c) The department may adopt regulations that prescribe reasonable fees to
18 cover the direct and indirect costs of air quality permit programs under AS 46.14 and
19 may establish procedures for the collection of those fees.

20 * Sec. 13. AS 44.62.330(a)(44) is amended to read:

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

24 * Sec. 14. AS 45.45.400(a) is amended to read:

25 (a) A person engaged in the business of selling used motor vehicles may not
26 transfer or assign the owner's title or interest in the used vehicle to a person who
27 resides in an area subject to a state-approved emission inspection [A
28 MUNICIPALITY THAT HAS AN AIR POLLUTION CONTROL] program
29 established under AS 46.14.400 or 46.14.510 [AS 46.03.210] and who intends to use
30 the vehicle in that area [MUNICIPALITY], unless the vehicle has a certificate of
31 compliance or noncompliance as required under the air pollution control requirements

1 applicable in that area [MUNICIPALITY].

2 * Sec. 15. AS 46.03.760(f) is amended to read:

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

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

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

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

19 (4) the need for an enhanced civil penalty to deter future
20 noncompliance.

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

22 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin
23 a violation of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a
24 lawful order of the department, or permit, approval, or acceptance, or term or condition
25 of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
26 AS 46.09, or AS 46.14. In actions brought under this section, temporary or
27 preliminary relief may be obtained upon a showing of an imminent threat of continued
28 violation, and probable success on the merits, without the necessity of demonstrating
29 physical irreparable harm. The balance of equities in actions under this section may
30 affect the timing of compliance, but not the necessity of compliance within a
31 reasonable period of time.

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

2 (a) A person who violates a provision of this chapter, AS 46.04, [OR]
3 AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter,
4 AS 46.04, [OR] AS 46.09, or AS 46.14, or violates or disregards an order, permit, or
5 other determination of the department made under the provisions of this chapter,
6 AS 46.04, [OR] AS 46.09, or AS 46.14, respectively, and thereby causes the death of
7 fish, animals, or vegetation or otherwise injures or degrades the environment of the
8 state is liable to the state for damages.

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

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

12 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
13 AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance,
14 or a term or condition of a permit, approval, or acceptance issued under this chapter,
15 AS 46.04, [OR] AS 46.09, or AS 46.14:

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

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

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

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

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

31 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related

1 to AS 46.14 and described in (a) of this section, a defendant who is not an
2 organization may be sentenced to pay a fine of not more than \$10,000 for each
3 separate offense.

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

5 (a) When, in the opinion of the department, a person is violating or is about
6 to violate a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or
7 lawful order of the department, or a permit or certificate, or a term or condition of a
8 permit or certificate issued by the department under this chapter, [OR] AS 46.04,
9 AS 46.14, the department may notify the person of its determination by personal
10 service or certified mail. The determination and notice do not constitute an order under
11 AS 46.03.820.

12 * Sec. 21. AS 46.03.860 is amended to read:

13 Sec. 46.03.860. INSPECTION WARRANT. The department may seek search
14 warrants for the purpose of investigating actual or suspected sources of pollution or
15 contamination or to ascertain compliance or noncompliance with AS 46.14 or this
16 chapter or a regulation adopted under AS 46.14 or this chapter.

17 * Sec. 22. AS 46.03.875 is amended to read:

18 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this
19 chapter, [OR] AS 46.04, or AS 46.14 are cumulative, and the securing of relief,
20 whether injunctive, civil, or criminal, under a section of this chapter, [OR] AS 46.04,
21 or AS 46.14 does not stop the state from obtaining relief under any other section of
22 this chapter, [OR] AS 46.04, or AS 46.14.

23 * Sec. 23. AS 46.03.890(b) is amended to read:

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

27 * Sec. 24. AS 46.35.200(4)(A) is amended to read:

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

30 * Sec. 25. AS 46.35.200(8) is amended to read:

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

1 other agency of the state; for the purposes of this chapter "state agency" also means
2 a local or regional air pollution control authority established under AS 46.14.400
3 [AS 46.03.210].

4 * Sec. 26. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
5 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

6 * Sec. 27. AS 46.14.110, enacted by sec. 2 of this Act, is repealed on the day after the day
7 the federal administrator approves the state's program under 42 U.S.C. 7661a(d) (Clean Air
8 Act, sec. 502(d)).

9 * Sec. 28. COMPLIANCE ADVISORY PANEL; INITIAL TERMS. Notwithstanding
10 AS 46.14.320, added by sec. 2 of this Act, the terms of the initial members of the compliance
11 advisory panel shall be as follows:

12 (1) the terms of the members appointed under AS 46.14.320(b)(1) shall be one
13 year;

14 (2) the terms of the members appointed under AS 46.14.320(b)(3)(A) shall be
15 three years;

16 (3) the terms of the members appointed under AS 46.14.320(b)(3)(B) and (C)
17 shall be two years.

18 * Sec. 29. REGULATIONS. The Department of Environmental Conservation may adopt
19 regulations as authorized by this Act, and other statutory authority, to implement changes
20 made by this Act. Regulations adopted under this section may not take effect until the
21 corresponding enabling statute takes effect under sec. 30 or sec. 31 of this Act.

22 * Sec. 30. Sections 1, 3 - 29, and AS 46.14.010, 46.14.015, 46.14.020, 46.14.030,
23 46.14.110, 46.14.120(a) and (c) - (e), 46.14.130(a)(1) - (3) and (5), 46.14.140, 46.14.170,
24 46.14.180, 46.14.190, 46.14.200, 46.14.215, 46.14.255, 46.14.280, 46.14.300, 46.14.310,
25 46.14.320, 46.14.400, 46.14.410, 46.14.500, 46.14.510, 46.14.515, 46.14.520, 46.14.525.
26 46.14.530, 46.14.540, 46.14.550, 46.14.560, 46.14.900, and 46.14.990, enacted by sec. 2 of
27 this Act, take effect immediately under AS 01.10.070(c).

28 * Sec. 31. AS 46.14.120(b), 46.14.130(a)(4) and (b), 46.14.150, 46.14.160, 46.14.210,
29 46.14.220, 46.14.230, 46.14.235, 46.14.240, 46.14.250, 46.14.260, 46.14.270, 46.14.275,
30 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect on the day after the day
31 the federal administrator approves the state program under 42 U.S.C. 7661a(d) (Clean Air Act,

- 1 sec. 502(d)). The commissioner shall immediately notify the lieutenant governor and the
- 2 revisor of statutes of the day of the federal administrator's approval.