

CS FOR SENATE BILL NO. 103(RES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE RESOURCES COMMITTEE****Offered: 4/12/93**
Referred: JUD, FIN**Sponsor(s): SENATE RESOURCES COMMITTEE****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).

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) The department may require the payment of a reasonable fee for the review
2 of plans and information required to be submitted. A fee for a single review may not
3 exceed \$25.

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

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

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

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

20 (e) If the federal administrator exempts a source from the requirements of
21 42 U.S.C. 7661a(a) (Clean Air Act, sec.502(a)), the commissioner, by regulation, shall
22 consider the factors used by the administrator in reaching that determination and shall
23 issue a similar determination unless public health or air quality effects provide a
24 reasonable basis to regulate the source.

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

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

31 (2) a new facility of a type classified under AS 46.14.020 that emits

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

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

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

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

14 (3) procedures for

15 (A) specifying when permit applications and renewal requests
16 are to be submitted;

17 (B) specifying the time duration for department review of permit
18 applications;

19 (C) processing and reviewing an application;

20 (D) providing public notice, including opportunity for public
21 comment and hearing; and

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

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

25 (A) emission standards and limitations;

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

28 (C) inspection and entry;

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

31 (E) annual certification of compliance;

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

1 management and operation of a facility regulated under this chapter except to the
2 extent that the federal administrator has

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

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

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

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

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

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

28 (b) The department shall notify the applicant in writing whether the application
29 is complete. Unless the department notifies the applicant within 60 days of receipt of
30 an application that the application is incomplete, the application is considered to be
31 complete.

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

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

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

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

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

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

31 Sec. 46.14.180. MONITORING. Monitoring by the owner of

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

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

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

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

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

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

26 Sec. 46.14.210. GENERAL OPERATING PERMITS. After notice and
27 opportunity for public comment and hearing, the department may, unless the permit
28 is disapproved by the federal administrator, establish a general operating permit that
29 would be applicable to more than one facility determined by the department to be
30 similar in source structure. A general operating permit must contain provisions that
31 meet the requirements of this chapter that are applicable to operating permits. A

1 general operating permit issued to a particular person takes effect when the person's
2 application is determined to be complete unless the department notifies the applicant
3 that the general permit is not applicable to the person's facility.

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

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

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

29 (c) Regulations adopted under AS 46.14.140(a)(11) may provide that while a
30 petition under (b) of this section is pending, compliance with an operating permit
31 issued under (a) of this section is considered to be compliance with this chapter insofar

1 as those sections require an operating permit.

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

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

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

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

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

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

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

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

6 (3) receiving, reviewing, preparing, processing, and issuing permits,
7 permit amendments, modifications, reopenings, renewals and revocations, and
8 reissuance;

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

12 (5) performing facility inspections and compliance evaluations;

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

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

18 (8) assessing and collecting delinquent permit administration fees and
19 emission fees.

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

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

28 (c) For a facility that begins operation during a fiscal year, the department
29 shall prorate the first year's fee to cover the time period occurring before the next
30 annual payment date. The owner or operator shall pay the initial emission fee upon
31 commencement of lawful facility operation unless authorized to pay by installments

1 under (b) of this section. The first year's emission fee may not duplicate a fee paid
2 by a permittee under AS 44.46.025 for the same sources for the same time period. If
3 the fees would otherwise be duplicative, the department shall provide a credit toward
4 the emission fee in the amount of the unused balance of the fee collected under
5 AS 44.46.025. The unused balance to be credited shall be based on prorating the total
6 original fee under AS 44.46.025 for the time period for which an emission fee applies.

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

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

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

- 27 (1) fees assessed;
- 28 (2) alternative fee rates or formulas;
- 29 (3) types, sizes, or categories of facilities, their respective emission
30 quantities, and their previous or proposed fee burden;
- 31 (4) apparent inequities encountered in the initial fee rate;

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

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

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

8 (h) In this section,

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

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

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

18 (2) "emission fees" mean fees assessed to recover costs incurred by the
19 department for execution of the permit program established under this chapter that are
20 generally not associated with service provided to a specific facility; the costs may
21 include rent, utilities, permit program management, administrative and accounting
22 services, and other costs as identified by the department in regulations.

23 Sec. 46.14.255. INTEREST FOR NONPAYMENT. (a) The department may
24 assess interest against the owner and operator after a fee is due under this chapter and
25 is unpaid. Interest assessed under this subsection shall be computed at one percentage
26 point higher than the prime rate, as defined in AS 44.88.599, for the day the fee was
27 due.

28 (b) If a permittee has failed to pay a fee imposed under AS 46.14.240 -
29 46.14.250, a penalty, assessment, or damage award imposed under AS 46.03.760(f) or
30 46.03.790 for a violation of this chapter, or interest imposed under (a) of this section,
31 the department may, after 30 days' written notice to the permittee refuse to issue or

1 renew permits requested by the permittee or refuse to amend or modify a permit when
2 the amendment or modification is requested by the permittee.

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

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

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

18 Sec. 46.14.275. TIMELY AND COMPLETE APPLICATION AS SHIELD.
19 If an owner and operator have submitted a timely and complete application for a
20 permit or a permit renewal, as applicable, but final action has not been taken on the
21 application, the owner's and operator's failure to have an operating permit is not a
22 violation of this chapter unless the delay in final action was due to the failure of the
23 owner and operator to submit information required or requested to process the
24 application. An owner and operator required to have an operating permit under this
25 chapter are not in violation of the operating permit program established under this
26 chapter before the date on which the owner and operator are required to submit an
27 application under AS 46.14.150.

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

31 (1) may terminate, modify, or revoke and reissue a construction or

1 operating permit if the department finds that
2 (A) the permit was obtained by misrepresentation of material
3 fact or by failure of the owner and operator to disclose fully the facts relating
4 to issuance of the permit;
5 (B) the permittee has violated this chapter, a regulation, a
6 judicial or administrative order, or a material term or condition of a permit,
7 approval, or acceptance issued under this chapter; or
8 (C) the permittee has failed to construct or modify a facility
9 within the time period specified in a construction permit, if any, required under
10 AS 46.14.130(a);
11 (2) may modify, or revoke and reissue a construction or operating
12 permit if the department finds that
13 (A) the permit contains a material mistake; or
14 (B) there has been a material change in the quantity or type of
15 air contaminant emitted from the facility; or
16 (3) shall reopen a permit issued under this chapter
17 (A) based on a determination of the federal administrator that
18 the permit must be revised to comply with 42 U.S.C. 7401-7671q (Clean Air
19 Act); or
20 (B) to incorporate changes in law, or to impose equivalent
21 emission limitation, that become applicable after the permit is issued if the
22 permit is issued to a major facility and has a remaining duration of three or
23 more years; the department shall make revisions allowed under this
24 subparagraph as soon as practicable, but, regarding a change in law, no later
25 than 18 months after the change in law takes effect; the department may not
26 reopen the permit of a major facility under this subparagraph if the change in
27 law is not effective until after the date that the permit expires.
28 (b) Reopening of a permit under (a)(3) of this section shall be treated as a
29 permit renewal by the department if the procedural requirements for permit renewal
30 have been met.
31 (c) Proceedings to reopen a permit under this section shall follow the same

1 procedure as for initial permit issuance and shall affect only those parts of the permit
2 for which the department had cause to reopen under this section.

3 **Sec. 46.14.285. AMENDMENT AND MODIFICATION OF PERMIT UPON**
4 **REQUEST OF PERMITTEE. (a) A permittee may request**

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

9 (2) an expedited authorization for minor changes in permit terms and
10 conditions that provide for flexibility in the operation of a facility consistent with 42
11 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)), and regulations adopted under
12 that paragraph; or

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

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

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

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

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

30 (b) This section does not alter or affect

31 (1) the owner's and operator's obligation to comply with an emergency

1 order issued under AS 46.03.820 or 42.U.S.C. 7603 (Clean Air Act, sec. 303);

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

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

6 **ARTICLE 3. SMALL BUSINESS ASSISTANCE PROGRAM.**

7 **Sec. 46.14.300. SMALL BUSINESS ASSISTANCE PROGRAM.** (a) A small
8 business assistance program is established in the department. The department shall
9 include the program in the state air quality control plan developed under 42 U.S.C.
10 7401 - 7671q (Clean Air Act).

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

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

19 **Sec. 46.14.310. POWER TO LIMIT SMALL BUSINESS ASSISTANCE**
20 **PROGRAM.** (a) After consultation with the federal administrator and the
21 administrator of the United States Small Business Administration and after providing
22 notice and opportunity for public hearing, the department may exclude from the scope
23 of the small business assistance program established in AS 46.14.300 a category or
24 subcategory of small business facilities that the department finds to have sufficient
25 technical and financial capabilities to meet the requirements of this chapter and federal
26 law without the assistance provided under AS 46.14.300 - 46.14.320.

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

31 **Sec. 46.14.320. COMPLIANCE ADVISORY PANEL.** (a) There is

1 established in the department a compliance advisory panel whose members shall serve
2 staggered three-year terms. A member may not serve more than two three-year terms
3 consecutively.

4 (b) The panel consists of

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

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

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

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

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

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

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

26 (d) The compliance advisory panel shall

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

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

31 (3) prepare advisory opinions concerning the effectiveness of the small

1 business assistance program, difficulties encountered in making the program efficient
2 and effective, and degree of enforcement and severity of air pollution offenses;

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

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

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

13 ARTICLE 4. LOCAL PROGRAMS.

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

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

27 (c) If the department finds that the location, character, or extent of particular
28 concentrations of population, air contaminant sources, the geographic, topographic, or
29 meteorological considerations, or a combination of these factors make impracticable
30 the maintenance of appropriate levels of air quality without an areawide air pollution
31 control program, the department may determine the boundaries within which a local

1 air quality control program is necessary and direct that a local air quality control
2 program spanning those boundaries is the only acceptable alternative to direct state
3 administration.

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

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

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

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

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

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

19 (f) A municipality or a local air quality district administering a program under
20 this section shall administer its local air quality control program according to this
21 chapter, regulations adopted under those sections, and its cooperative agreement under
22 (d) of this section. A municipality or local air quality district's program may, upon
23 a finding by the local agency and an affirmative agreement by the department,
24 establish a more stringent requirement than the stationary source permit program
25 authorized under this chapter if public health or air quality effects warrant the
26 additional or more stringent requirement and the municipality or district has used
27 procedures substantially equivalent to those required under AS 46.14.010 - 46.14.015
28 before establishing the more stringent requirement. This subsection does not prohibit
29 a municipality or local air quality control district from establishing a mobile source
30 program more stringent than the state program without making findings of public
31 health or air quality effects or using procedures substantially equivalent to those

1 required under AS 46.14.010 - 46.14.015.

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

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

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

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

25 (c) If the municipality or local air quality district fails to take corrective action
26 within the time period set by the department under (b) of this section, the department
27 shall terminate the cooperative agreement and resume management of air quality
28 control in the affected jurisdiction. If the municipality or the local air quality district
29 partially remedies, to the department's satisfaction, the deficiencies found in the
30 determination, the department shall amend the cooperative agreement to reflect a
31 modified allocation of responsibilities between the department and municipality or the

1 local air quality district.

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

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

14 ARTICLE 5. MISCELLANEOUS PROVISIONS.

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

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

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

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

7 **Sec. 46.14.510. MOTOR VEHICLE POLLUTION.** (a) When the department
8 determines that the state of knowledge and technology may allow or make appropriate
9 the control of emissions from motor vehicles to further air quality control, the
10 department may provide, by regulation, for the control of the emissions from motor
11 vehicles. The regulations may prescribe requirements for the installation and use of
12 equipment designed to reduce or eliminate emissions and for the proper maintenance
13 of this equipment.

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

23 (c) The department shall consult with the Department of Public Safety
24 regarding implementation of the motor vehicle pollution control program. The
25 Department of Public Safety shall cooperate with the department in implementing the
26 program.

27 (d) If the department adopts regulations requiring the maintenance of air
28 pollution control systems or mechanisms in motor vehicles to control emissions from
29 the vehicle, a motor vehicle subject to those regulations may not be issued a certificate
30 of inspection unless the required air pollution control system or mechanism has been
31 inspected in accordance with the standards, testing techniques, and instructions

1 furnished by the department and the motor vehicle has been found to meet those
2 standards. A valid certificate of inspection for the emission control system, if required
3 by the department, must be presented to the Department of Public Safety before that
4 department may register a motor vehicle.

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

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

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

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

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

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

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

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

28 Sec. 46.14.525. PUBLIC RECORDS. Except as provided in AS 46.14.520,
29 permits, permit applications, emissions and monitoring reports, compliance reports,
30 certifications, and monitoring, reporting, and quality assurance plans in the
31 department's possession or control are available to the public for inspection and

1 copying.

2 **Sec. 46.14.530. STATE AND FEDERAL AID. (a)** A municipality or local
3 air quality district with a local air quality control program may apply for, receive,
4 administer, and spend state aid for the control of air emissions or the development and
5 administration of the program if an application is first submitted to and approved by
6 the department. Subject to available money appropriated by the legislature for the
7 purpose of this section, the department may approve an application if it is consistent
8 with the terms and conditions of the applicable cooperative agreement and meets the
9 requirements of this chapter.

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

13 **Sec. 46.14.540. AUTHORITY OF DEPARTMENT IN CASES OF**
14 **EMERGENCY. (a)** When the commissioner finds that an act of God, act of war, act
15 of terrorism, or similar catastrophe necessitates emergency use of an unpermitted
16 source or emergency use of a permitted source in a manner not authorized by the
17 permit, the commissioner may waive procedural requirements of this chapter and issue
18 an order to authorize emergency use of the source. When acting under this section,
19 the commissioner shall impose conditions necessary to protect life, human health,
20 welfare, property, and the environment and may impose other conditions the
21 commissioner finds necessary and appropriate.

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

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

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

- 1 (3) "ambient air quality standard" means a standard, other than an
2 emission standard, adopted under AS 46.14.010, 46.14.140, 46.14.400(f), or 42 U.S.C.
3 7409 (Clean Air Act, sec. 109);
- 4 (4) "construct" or "construction" means to fabricate, erect, or install, or
5 to make a physical change, that would result in emissions;
- 6 (5) "construction permit" means a permit under AS 46.14.130(a),
7 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
8 administrative orders, emergency orders, and court orders;
- 9 (6) "contaminant outlet" includes exhaust stacks, flares, vents, and other
10 openings in a facility from which an air contaminant could be emitted;
- 11 (7) "emission" means a release of one or more air contaminants to the
12 atmosphere;
- 13 (8) "emission limitation" and "emission standard" mean a requirement
14 established by the department or the federal administrator, other than an ambient air
15 quality standard, that limits the quantity, rate, or concentration of emission of an air
16 contaminant, including a requirement relating to the operation or maintenance of a
17 source to ensure sustained emission reduction, and design, equipment, work practice,
18 or operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671q (Clean
19 Air Act);
- 20 (9) "facility" means one or more structures, buildings, installations, or
21 properties upon which a source or sources are located, that are contiguous or adjacent,
22 and that are owned or operated by the same person or by persons under common
23 control;
- 24 (10) "federal administrator" means the administrator of the United
25 States Environmental Protection Agency;
- 26 (11) "fugitive emissions" means emissions of an air contaminant that
27 could not reasonably be emitted from a contaminant outlet;
- 28 (12) "hazardous air contaminant" means a pollutant listed in or under
29 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));
- 30 (13) "local air quality control program" means a program authorized
31 under AS 46.14.400 to implement some or all of the provisions of this chapter;

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

4 (15) "operating permit" means a permit under AS 46.14.130(b),
5 including all relevant exhibits, addendums, transmittal letters, compliance schedules,
6 administrative orders, emergency orders, and court orders;

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

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

13 (18) "person" has the meaning given in AS 01.10.060 and also includes
14 an agency of the United States, a municipality, the University of Alaska, the Alaska
15 Railroad Corporation, and other departments, agencies, instrumentalities, units, and
16 corporate authorities of the state;

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

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

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

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

- 1 (21) "regulated air contaminant" means
- 2 (A) a material, compound, or element for which a national or
- 3 state ambient air quality standard has been adopted;
- 4 (B) oxides of nitrogen;
- 5 (C) a volatile organic compound;
- 6 (D) a pollutant that is addressed by a standard adopted under
- 7 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112); and
- 8 (E) a substance regulated under 42 U.S.C. 7671a (Clean Air
- 9 Act, Sec. 602);
- 10 (22) "small business facility" means a facility that
- 11 (A) is owned or operated by a person who employs 100 or
- 12 fewer individuals;
- 13 (B) is a small business concern as defined in 15 U.S.C. 631
- 14 (Small Business Act); and
- 15 (C) emits less than 100 TPY of regulated air contaminants;
- 16 (23) "source" means a device, process, activity, or equipment that
- 17 causes, or could cause, a release of an air contaminant;
- 18 (24) "TPY" means tons per year.
- 19 * Sec. 3. AS 28.10.041(a)(10) is amended to read:
- 20 (10) the vehicle is subject to a state-approved [LOCAL] emission
- 21 inspection program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.400 or
- 22 46.14.510 [AS 46.03.210], and the vehicle does not meet the standards of that
- 23 program, unless the vehicle uses a fuel source that does not primarily emit carbon
- 24 monoxide;
- 25 * Sec. 4. AS 28.10.423 is amended to read:
- 26 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In
- 27 addition to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed
- 28 upon every vehicle required to be inspected under an emission control program
- 29 established under AS 46.14.400 or 46.14.510 [AS 46.03.210]. This fee shall be
- 30 collected at the same time and in the same manner as the registration fee.
- 31 * Sec. 5. AS 29.10.200 is amended by adding a new paragraph to read:

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

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

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

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

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

- 11 (1) provide transportation systems;
- 12 (2) provide water pollution control;
- 13 (3) provide air pollution control in accordance with AS 46.14.400
14 {AS 46.03.140 - 46.03.230};
- 15 (4) license day care facilities;
- 16 (5) license, impound, and dispose of animals.

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

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

- 20 (1) provide transportation systems;
- 21 (2) regulate the offering for sale, exposure for sale, sale, use, or
22 explosion of fireworks;
- 23 (3) license, impound, and dispose of animals;
- 24 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic
25 waste collection and disposal;
- 26 (5) provide air pollution control under AS 46.14.400 [IN
27 ACCORDANCE WITH AS 46.03.140 - 46.03.230];
- 28 (6) provide water pollution control;
- 29 (7) participate in federal or state loan programs for housing
30 rehabilitation and improvement for energy conservation;
- 31 (8) provide for economic development;

- 1 (9) provide for the acquisition and construction of local service roads
2 and trails under AS 19.30.111 - 19.30.251;
- 3 (10) establish an emergency services communication center under
4 AS 29.35.130;
- 5 (11) subject to AS 28.01.010, regulate the licensing and operation of
6 motor vehicles and operators;
- 7 (12) engage in activities authorized under AS 29.47.460;
- 8 (13) contain, clean up, or prevent a release or threatened release of oil
9 or a hazardous substance, and exercise a power granted to a municipality under
10 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
11 paragraph in a manner that is consistent with a regional master plan prepared by the
12 Department of Environmental Conservation under AS 46.04.210.

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

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

- 16 (1) provide transportation systems;
- 17 (2) license, impound, and dispose of animals;
- 18 (3) provide air pollution control under AS 46.14.400 [IN
19 ACCORDANCE WITH AS 46.03.140 - 46.03.230];
- 20 (4) provide water pollution control;
- 21 (5) license day care facilities.

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

23 (R) clean air protection fund (AS 46.14.260).

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

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

- 28 (1) inspections, permit administration, plan review and approval, and
29 other related services provided under AS 03.05, AS 17.20, and AS 18.35;
- 30 (2) certificates of inspection for motor vehicles under AS 46.14.400
31 or 46.14.510 [AIR QUALITY PERMITS UNDER AS 46.03.140 AND 46.03.160];

- 1 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;
2 (4) plan approvals and permits for sewerage system and treatment
3 works and wastewater disposal systems, and plan approvals for drinking water systems,
4 under AS 46.03.720;
5 (5) oil discharge financial responsibility approvals under AS 46.04.040;
6 (6) oil discharge contingency plan approvals under AS 46.04.030;
7 (7) water and wastewater operator training under AS 46.30.

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

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

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

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

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

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

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

26 (f) A person who violates or causes or permits to be violated a provision of
27 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department,
28 or a permit, approval, or acceptance, or term or condition of a permit, approval, or
29 acceptance issued under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil
30 action, to the state for a sum to be assessed by the court of not less than \$500 nor
31 more than \$100,000 for the initial violation, nor more than \$10,000 for each day after

1 that on which the violation continues, and that shall reflect, when applicable,

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

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

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

11 (4) the need for an enhanced civil penalty to deter future
12 noncompliance.

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

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

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

25 (a) A person who violates a provision of this chapter, AS 46.04, [OR]
26 AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter,
27 AS 46.04, [OR] AS 46.09, or AS 46.14, or violates or disregards an order, permit, or
28 other determination of the department made under the provisions of this chapter,
29 AS 46.04, [OR] AS 46.09, or AS 46.14, respectively, and thereby causes the death of
30 fish, animals, or vegetation or otherwise injures or degrades the environment of the
31 state is liable to the state for damages.

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

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

4 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
5 AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance,
6 or a term or condition of a permit, approval, or acceptance issued under this chapter,
7 AS 46.04, [OR] AS 46.09, or AS 46.14;

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

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

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

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

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

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

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

28 (a) When, in the opinion of the department, a person is violating or is about
29 to violate a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or
30 lawful order of the department, or a permit or certificate, or a term or condition of a
31 permit or certificate issued by the department under this chapter, [OR] AS 46.04,

1 AS 46.14, the department may notify the person of its determination by personal
2 service or certified mail. The determination and notice do not constitute an order under
3 AS 46.03.820.

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

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

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

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

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

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

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

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

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

23 (8) "state agency" means a state department, commission, board or
24 other agency of the state; for the purposes of this chapter "state agency" also means
25 a local or regional air pollution control authority established under AS 46.14.400
26 [AS 46.03.210].

27 * Sec. 26. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
28 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

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

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

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

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

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

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

14 * **Sec. 30.** Sections 1, 3 - 29, and AS 46.14.010, 46.14.015, 46.14.020, 46.14.030,
15 46.14.110, 46.14.120(a) and (c) - (e), 46.14.130(a)(1) - (3) and (5), 46.14.140, 46.14.170,
16 46.14.180, 46.14.190, 46.14.200, 46.14.215, 46.14.255, 46.14.280, 46.14.300, 46.14.310,
17 46.14.320, 46.14.400, 46.14.410, 46.14.500, 46.14.510, 46.14.515, 46.14.520, 46.14.525,
18 46.14.530, 46.14.540, 46.14.550, 46.14.560, 46.14.900, and 46.14.990, enacted by sec. 2 of
19 this Act, take effect immediately under AS 01.10.070(c).

20 * **Sec. 31.** AS 46.14.120(b), 46.14.130(a)(4) and (b), 46.14.150, 46.14.160, 46.14.210,
21 46.14.220, 46.14.230, 46.14.235, 46.14.240, 46.14.250, 46.14.260, 46.14.270, 46.14.275,
22 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect on the day after the day
23 the federal administrator approves the state program under 42 U.S.C. 7661a(d) (Clean Air Act,
24 sec. 502(d)). The commissioner shall immediately notify the lieutenant governor and the
25 revisor of statutes of the day of the federal administrator's approval.