

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7168 HOUSE RESOURCES**

Position Title ENVIRONMENTAL ENGINEER II		No. of Positions 4	Range / Step 17A	Org. Unit GG
Time Status Full-time	Staff Months 24	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>		
Salary		78.6		
Benefits		33.6		
Premium Pay				
Other				
Total Personal Services		114.2		
Travel		15		
Contractual		10		
Commodities		4		
Equipment		20		
Other				
Total Cost		163.2		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
LA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	163.2		
		<b>Justification</b>  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineer IIs will assist senior staff to: <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants,</li> <li>and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol>		

## Request For New Position

AGENCY Environmental Conservation  
BRU Environmental Quality  
COMPONENT Air Quality Management

FY 93

Page 2 of 9

Revised Date: \_\_\_\_\_

Position Title ENVIRONMENTAL ENGINEER I		No. of Positions 1	Range / Step 15A	Org. Unit GG
Time Status Full-Time	Staff Months 3	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>	<b>Justification</b>  The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.  The Environmental Engineer I will assist senior staff to: <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants, and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol>	
Salary		6.2		
Benefits		2.6		
Premium Pay				
Other				
Total Personal Services		9.5		
Travel		3		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		20.5		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	20.5		

## Request For New Position

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

FY 93

Page 3 of 9

Revised Date: \_\_\_\_\_

Position Title ENVIRONMENTAL SPECIALIST II		No. of Positions 2	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 6	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>		
Salary		25.7		
Benefits		7.2		
Premium Pay				
Other				
Total Personal Services		32.9		
Travel		6		
Contractual		4		
Commodities		1		
Equipment		10		
Other				
Total Cost		54.9		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	54.9		
		<p><b>Justification</b></p> <p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The Environmental Specialist IIs will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants, and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol>		

**Request For  
New Position**

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

**FY** 93

Page 4 of 9

Revised Date: \_\_\_\_\_

Position Title CLERK TYPIST III		No. of Positions 2.5	Range / Step 08A	Barg. Unit GG
Time Status *	Staff Months 15	Location Various		Election District Various
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>		
Salary		27.9		
Benefits		13.2		
Premium Pay				
Other				
Total Personal Services		41.1		
Travel		0		
Contractual		5		
Commodities		2.5		
Equipment		15		
Other				
Total Cost		63.6		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	63.6		
<p>* Full-time (2) Part-time (.5)</p>				
		<p><b>Justification</b></p> <p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.</p> <p>The two full-time and one part-time Clerk Typist IIIs will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop procedures to track permit applications</li> <li>2. prepare information packets for potential permittees</li> <li>3. issue and receive standardized permit applications</li> <li>4. prepare permit documentation and correspondence</li> <li>5. provide assistance and information to permit applicants</li> <li>6. operate small business and pollution prevention hotlines</li> <li>7. develop correspondence tracking systems, and</li> <li>8. develop and maintain permit and permit application files.</li> </ol>		

## Request For New Position

AGENCY Environmental Conservation

DRU Environmental Quality

COMPONENT Air Quality Management

FY 93

Page 5 of 9

Revised Date: \_\_\_\_\_

Position Title ACCOUNTING CLERK II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full-Time	Staff Months 3	Location Juneau		Election District Juneau
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>		
Salary		6.3		
Benefits		2.4		
Premium Pay				
Other				
Total Personal Services		8.7		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		16.7		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	16.7		
Justification				
<p>The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program.</p> <p>The Accounting Clerk II will assist senior staff by:</p> <ol style="list-style-type: none"> <li>1. developing procedures for permit fees and assessments</li> <li>2. preparing information packets for potential permittees</li> <li>3. developing uniform accounting procedures for permit fees</li> <li>4. preparing permit documentation and correspondence</li> <li>5. providing assistance and information to permit applicants</li> <li>6. tracking small business and pollution prevention funds</li> <li>7. implementing report and audit procedures, and</li> <li>8. developing standardized managerial summaries of fund activity.</li> </ol>				

## Request For New Position

AGENCY Environmental Conservation

ORU Environmental Quality

COMPONENT Air Quality Management

FY 93

Page 6 of 9

Revised Date: \_\_\_\_\_







AMENDMENTS  
OFFERED BY ATTORNEY GENERAL'S OFFICE  
AS READ INTO RECORD  
AT HEARING OF FEBRUARY 18, 1992

CS FOR HOUSE BILL NO. 377  
7-LS1624\G Lauterbach 2/12/92  
AS ADOPTED IN HOUSE RESOURCES COMMITTEE  
ON FEBRUARY 19, 1992

FIRST PROPOSED AMENDMENT

Sec. 46.14.200 Page 3, lines 6-7

Take what is now subsection 46.14.215(c) (Page 5, lines 10 - 12), make it 46.14.200(d), and reword the subsection as follows:

(d)[(c)] The department shall ensure that permits issued, modified, amended, or renewed under this chapter comply with the emission limitations and other requirements of the Clean Air Act, applicable federal regulations and the state air quality control plan.

Reletter what was 46.14.200(d) (Page 3, line 7) as 46.14.200(e).

SECOND PROPOSED AMENDMENT

Sec. 46.14.205 Page 3, lines 10.

Delete "AND SOURCES" from the title of this section.

THIRD PROPOSED AMENDMENT

Sec. 46.14.205(a)(4) Page 3, lines 20 - 23.

Reword as follows:

(4) an existing facility, otherwise described in (1), (2), [OR] (3) , or (5) of this subsection for which a modification is proposed that would increase actual emissions of an [REGULATED] air contaminant to an amount equal to or greater than the annual emission quantity set out in regulations adopted under AS 46.14.010.

FOURTH PROPOSED AMENDMENT

Sec. 46.14.830 Page 17, lines 22 - 23

Add the word "regulation" as shown:

(b) An administrative penalty assessed under this section may not exceed \$10,000 a day for each offense. Each provision, regulation, term, or condition violated is a separate and distinct offense. If a violation of a provision, regulation, term or condition continues from day to day, each day is a separate offense.

**FIFTH PROPOSED AMENDMENT**

**Sec. 46.14.830(h) Page 18, line 26.**

Insert the words as shown:

(h) If a person fails or refuses to pay an administrative penalty assessed under this section after the penalty has become a final agency action, the department may request the attorney general to commence a judicial action or take other appropriate steps to bring an action to collect the penalty. \*

**SIXTH PROPOSED AMENDMENT**

**Sec. 46.14.840(b) Page 19, line 12.**

Substitute the words "this chapter" for "AS 46.14.205" as shown:

(b)...the small business assistance program that are directed at facilities subject to [AS 46.14.205] this chapter.

same clause

CLEAN AIR FOR ALASKA  
Proposed Amendments to HB 377  
from the Clean Air Coalition  
February 19, 1992

Contact: Cheryl Richardson TEL (907) 258-0071 FAX (907) 279-1858

The Clean Air Act Amendments of 1990 require the State of Alaska to revise our statutes to meet new Federal requirements, and H.B. 377 begins that process. The Clean Air Coalition offers three programs as amendments to H.B. 377 in order to tailor the bill to Alaska's unique northern climate, shorter daylight hours, and calm wintertime air that traps pollution around communities of all sizes.

#### THE NEED FOR ADDITIONAL PROTECTION

Unfortunately, our air is used as a free dump site. We allow substances into the air we no longer consider spilling on the ground or into the water.

Known air pollution in Anchorage and Fairbanks comes mostly from transportation. 90 percent of carbon monoxide comes from autos and monitored particle pollution comes from road dust. In smaller communities, sources are likely to include woodstoves, diesel generators, boats, and an occasional industrial facility.

Visibility is diminishing in Anchorage and Fairbanks, as urban haze increases, obscuring views of water and mountains, creating noxious odors, and causing respiratory problems in sensitive individuals. Visible air pollution damages Alaska's image as a clean wilderness destination for tourists.

Neighborhoods are concerned about hydrocarbon pollution from industrial sources which may increase cancer risk and cause headaches, dizziness and difficulties in breathing.

#### STATE LAW NEEDS TO BE CHANGED

At this time, Alaska has an unwritten policy to allow increases in numerous air pollutants so long as the pollutant does not violate a federal ambient (outdoor air) standard. There are ambient standards for only a few substances, and none for hydrocarbons or visibility. Evidence is growing that existing standards are not protecting the public's health.

Energy conservation could help reduce air pollution with incentives to burn less fuel, but Alaska has no comprehensive policy of conserving energy through direct programs or by increasing its cost.

Only a few pollutants are routinely measured in Alaska's cities; we can only guess about the levels of hazardous substances in our air.

The Clean Air Coalition proposes adding the following three programs to H.B. 377 to improve Alaska's air quality.

#### I. REDUCE AIR POLLUTION THROUGH ENERGY CONSERVATION

A. The State is committed to reducing air pollution in Alaska and will assist communities in maintaining clear visibility and clean air.

B. To reduce total emissions in the air, communities now violating a federal air quality standard will develop energy conservation plans and programs consistent with their comprehensive development plans. Cities will make concerted efforts to reduce travel by single occupant autos, will encourage shared travel by transit, trail, rail, and carpool, and will consider land use policies and trip reduction programs. Cities will also consider methods of reducing total emissions from woodstoves, home furnaces and municipal power plants.

C. All air pollution reduction programs shall have a public education component to inform citizens of the hazards of the pollution and measures they can take to clear the air.

#### II. CLEAR SKIES FOR ALASKAN CITIES

##### A. ESTABLISH STANDARDS FOR VISIBILITY

The State is committed to and supports development of visibility standards in both rural and urban areas. The State will work with communities to define citizen based visibility standards where requested by the local government.

##### B. MEASURE HAZE IN THE AIR

In order to reduce haze and demonstrate progress towards clean air, the State must continually measure haze.

##### C. IDENTIFY POLLUTANTS IN HAZE AND THEIR SOURCES

In order to solve the problems of haze and pollution, the State must identify the pollutants which make up the haze. The State shall study nitrogen oxides and nitrates, sulfur oxides and sulfates, soots from woodsmoke and diesel exhaust, automobile emissions and geological dust in addition to any other pollutants likely to contribute to the haze.

The State will determine the sources of haze, and the relative contribution each source makes to the haze.

#### D. DEVELOP PROGRAMS TO PREVENT HAZE POLLUTION

After determining the sources of haze pollution, the State must develop programs to reduce pollution and improve visibility.

The State will use air pollution models to predict increases in air pollution. Programs will be implemented to offset the impact of new sources and not allow emission increases. These sources may be stationary (power plants or factories) or mobile (cars, trucks, ships, or airplanes). Emission increases will not be allowed.

The haze prevention program will include a public education and public evaluation component.

### III. MAKE AIR SAFE FROM HYDROCARBON POLLUTION

#### A. HEALTH BASED STANDARDS

While the State moves forward with Maximum Available Control Technology standards to control hydrocarbon pollution it will also develop health based standards for hydrocarbon levels in ambient (outdoor) air.

#### B. MONITOR HYDROCARBON LEVELS

The State shall determine the health hazards from hydrocarbons, both in neighborhoods near industrial sites, and at intersections with high traffic levels. A comprehensive monitoring system shall be implemented.

#### C. DEVELOP PROGRAMS TO REDUCE HYDROCARBONS

After determining the sources of hydrocarbon pollution, the State shall develop programs to reduce hydrocarbon levels.

The State shall model potential increases in hydrocarbon pollution. If a new source is likely to increase emissions, a program will be implemented to offset the impact of the new source and not allow emission increases. These sources may be stationary (tank farms, or factories) or mobile (cars, trucks, ships, or airplanes).

The hydrocarbon reduction program will have a public education and

evaluation component.

D. CONTINUED MONITORING FOR COMPLIANCE

To demonstrate progress in cleaning our air, the State shall maintain the hydrocarbon monitoring system, develop target pollution reductions, and make monitoring results available to the public.

file copy

7-LS1624G  
Lauterbach  
2/12/92

CS FOR HOUSE BILL NO. 377 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen

A BILL

FOR AN ACT ENTITLED

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

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. PURPOSE. The purpose of this Act is to bring the state into compliance with the 1990  
9 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes in state law are  
10 necessary to allow the state to continue to have primary management of air quality in the state and to  
11 retain federal approval of the state's air quality control program in order to ensure the continued receipt  
12 of federal highway and air pollution control money. The federal Environmental Protection Agency must  
13 prohibit the approval of highway projects and highway grants, and may withhold air pollution control

1 grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

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

3 CHAPTER 14. AIR QUALITY CONTROL.

4 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

5 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the  
6 department may adopt regulations under this chapter as necessary to prevent, abate, control, or  
7 identify air pollution due to emissions, including regulations setting emission standards,  
8 performance standards, and limitations. The standards and limitations may be based on risk  
9 assessments or on available technology and may be for the state as a whole or may vary from  
10 area to area in recognition of local conditions.

11 (b) In implementing this chapter, the department may not require a person to use  
12 machinery, devices, or equipment from a particular supplier or produced by a particular  
13 manufacturer if the required emission limitations or performance standards may be met by  
14 machinery, devices, or equipment available from another manufacturer.

15 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING.

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

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

28 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

29 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
30 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a  
31 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an

1 order or other determination of the department under this chapter.

2 (b) A person may not operate a major facility or a facility that contains one or more of  
3 the sources listed in AS 46.14.205(b) except in compliance with the operating permit and an  
4 order or other determination of the department under this chapter.

5 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply  
6 with the terms and conditions of that permit.

7 (d) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
8 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
9 from some or all of the requirements of this chapter.

10 Sec. 46.14.205. FACILITIES AND SOURCES REQUIRING PERMITS. (a) Before  
11 constructing, installing, modifying, reconstructing, or establishing a facility, the owner and  
12 operator shall obtain a construction permit from the department if the facility is any one of the  
13 following:

14 (1) a new facility that has the potential to emit greater than 250 tons per year  
15 (TPY) of a regulated air contaminant;

16 (2) a new facility of a type classified under AS 46.14.020 that has the potential  
17 to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions;

18 (3) a new facility of a type classified under AS 46.14.020 that has the potential  
19 to violate the ambient air quality standards or otherwise pose a threat to public health;

20 (4) an existing facility, otherwise described in (1), (2), or (3) of this subsection,  
21 for which a modification is proposed that would increase actual emissions of a regulated air  
22 contaminant to an amount equal to or greater than the annual emission quantity set out in  
23 regulations adopted under AS 46.14.010;

24 (5) a new facility that has the potential to emit greater than 10 TPY of a  
25 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air  
26 contaminants.

27 (b) The owner and operator of a facility shall obtain an operating permit from the  
28 department if the facility is a major facility or if the facility contains one or more of the  
29 following sources:

30 (1) a stationary source, including an area source, subject to federal new source  
31 performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission

1 standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or  
2 (2) another stationary source designated by the federal administrator or the  
3 department, by regulation.

4 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)  
5 The department may adopt regulations to implement AS 46.14.200 - 46.14.290. The department  
6 shall adopt regulations to address the following elements of the emission control permit program:

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

9 (2) procedures for preparation and submission of a monitoring, reporting, and  
10 quality assurance plan and, if required, a compliance schedule describing how a permitted facility  
11 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

12 (3) procedures for

13 (A) expeditiously determining when a permit application is complete;

14 (B) processing and reviewing an application; and

15 (C) providing public notice, including opportunity for public comment and

16 hearing;

17 (4) standard permit conditions, including conditions for

18 (A) emission standards and limitations;

19 (B) monitoring, recordkeeping, and reporting;

20 (C) inspection and entry;

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

22 (E) annual certification of compliance; and

23 (F) excess emission or process deviation reporting;

24 (5) fees, and procedures for collecting fees;

25 (6) procedures for renewing, modifying, amending, or revising a permit that  
26 provide maximum flexibility in the operation of the facility consistent with the purposes of this  
27 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

28 (7) procedures for approving physical or operational limitations that will reduce  
29 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200  
30 and 46.14.205.

31 (b) The absence of, or the department's failure to adopt, a regulation under this section

1 does not relieve a person from compliance with a permit issued under this chapter and with other  
2 provisions of law, including emission control requirements.

3 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy  
4 of the state to have a program to prevent, abate, control, and identify air pollution that complies  
5 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under  
6 those laws.

7 (b) The department shall act for the state in any negotiations relative to the state air  
8 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department  
9 may adopt regulations necessary to implement the state plan.

10 (c) The department shall ensure that permits issued, modified, amended, or renewed  
11 under this chapter comply with the emission limitations and other requirements of the state air  
12 quality control plan.

13 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
14 and operator of a facility required to have an operating permit under this chapter shall submit the  
15 required application and monitoring, reporting, and quality assurance plan no later than 12  
16 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time  
17 if required by the department.

18 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except  
19 as provided in AS 46.14.245, after receipt of a complete application, and after notice and  
20 opportunity for public comment and hearing, the department shall issue or deny

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

23 (2) an operating permit, other than a general operating permit, within 18 months  
24 after receipt of the complete application by the department.

25 (b) Notwithstanding (a) of this section, the department may establish a phased schedule  
26 for acting on operating permit applications submitted on or before November 15, 1994. A phased  
27 schedule must ensure that at least one-third of the applications submitted on or before  
28 November 15, 1994, will be acted on by the department during each of the three years after  
29 November 15, 1994. On or before November 15, 1997, the department shall act on all  
30 applications received on or before November 15, 1994.

31 (c) Failure by the department to act within the time limits established in or under (a) or

1 (b) of this section shall be treated as a final agency action, but only for purposes of judicial  
2 review to require that action be taken by the department.

3 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
4 this chapter, the owner and operator, a person who participated in the public comment process,  
5 or a person with standing under state or federal law to obtain administrative or judicial review  
6 of a permit action under this chapter may request an adjudicatory hearing under the department's  
7 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party  
8 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of  
9 Appellate Procedure.

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

12 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for  
13 public comment and hearing, and after approval by the federal administrator, the department may  
14 establish a general operating permit that would be applicable to more than one facility determined  
15 by the department to be similar in source structure. A general operating permit must contain  
16 provisions that meet the requirements of this chapter applicable to operating permits. A general  
17 operating permit is not effective for a specific facility until the owner and operator of the facility  
18 has submitted an application under AS 46.14.220 and the department has issued the general  
19 operating permit. The department shall issue or deny a general operating permit within 30 days  
20 after receipt of a complete application.

21 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating  
22 permit may not be issued under this chapter until the federal administrator approves the permit,  
23 or until 45 days after a copy of the final draft permit has been provided by the department to the  
24 federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator  
25 files an objection with the department, the department shall notify the applicant of the objection.  
26 The permit may not be issued until the objection is resolved or the permit is revised to meet the  
27 objection of the federal administrator.

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

1           Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and  
2 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the  
3 applicable fees set out in the fee schedule adopted by the department under (b) of this section.  
4 The owner and operator shall pay the fees to the department or to the public entity designated  
5 by the department.

6           (b) The department shall adopt, by regulation, a fee schedule based upon the type of  
7 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
8 classifications; and other factors reflecting the cost of administering the emission control permit  
9 program under this chapter. Fees must be sufficient to cover, but not significantly exceed, the  
10 reasonable direct and indirect costs required to develop and implement the permit program and  
11 the federally mandated aspects of the small business assistance program established in this  
12 chapter. For purposes of this subsection, "costs" include expenditures for

- 13                   (1) preparing and adopting regulations to implement the permit program;
- 14                   (2) preparing guidance on the permit program;
- 15                   (3) reviewing and acting upon a permit application;
- 16                   (4) implementing and enforcing the terms and conditions of a permit, excluding  
17 court costs and attorney fees;
- 18                   (5) monitoring of emissions and ambient air quality;
- 19                   (6) reviewing and executing models, analyses, and demonstrations to evaluate  
20 emissions;
- 21                   (7) preparing inventories and tracking of facility emissions;
- 22                   (8) performing data management, analysis, and report writing;
- 23                   (9) conducting training, audits, or other services as provided under the small  
24 business assistance program under AS 46.14.400 - 46.14.430; and
- 25                   (10) reviewing and acting upon plans and other information submitted under  
26 AS 46.14.200 - 46.14.290.

27           (c) The department shall review the fee structure adopted under (b) of this section at least  
28 every five years and when there are changes in state or federal laws that affect the costs of  
29 operating the permit program or the federally mandated aspects of the small business assistance  
30 program. Upon review, the department shall amend the fee structure as necessary to ensure that  
31 the fees cover, but do not significantly exceed, the reasonable costs authorized by (b) of this

1 section.

2 (d) The department shall charge and collect a processing fee of \$100 from a person who  
3 applies for a permit under this chapter if the department determines that the permit applied for  
4 is not required.

5 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department  
6 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee  
7 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and  
8 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also  
9 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is  
10 due under this chapter and is unpaid.

11 • Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit  
12 under this chapter shall be issued for a fixed term established by the department, but in no case  
13 may the term exceed five years after the date of issue.

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

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

21 (b) A permit issued under this chapter is subject to review and reopening by the  
22 department if the permit is issued to a major facility and is valid for a term of three or more  
23 years. The department shall reopen a permit described in this subsection to incorporate changes  
24 in law, or to impose equivalent emission limitations, that became applicable after the permit was  
25 issued. The department shall make incorporations allowed under this subsection as soon as  
26 practicable, but, regarding a change in law, no later than 18 months after the change in law took  
27 effect. The department is not required to reopen a permit under this subsection if the change in  
28 law is not effective until after the date that the permit expires. Reopening of a permit under this  
29 subsection may be treated as a permit renewal by the department if the procedural requirements  
30 for permit renewal have been met.

31 (c) Proceedings to reopen a permit shall follow the same procedure as for initial permit

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

3 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR  
4 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the  
5 permittee, the department may terminate, modify, amend, or revoke and reissue a construction  
6 or operating permit if the department finds that

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

9 (2) the permit contains a material mistake;

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

13 (4) there has been a material change in the quantity or type of air contaminant  
14 emitted from the facility; or

15 (5) the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty  
16 or interest imposed under AS 46.14.255.

17 Sec. 46.14.275. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION  
18 AND REISSUANCE OF PERMITS. The department shall take measures practicable and  
19 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal  
20 administrator of permits issued by the department under this chapter.

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

31 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued

1 under this chapter is considered to be compliance with the operating permit program established  
2 under this chapter.

3 (b) Nothing in this section alters or affects

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

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

8 Sec. 46.14.290. **TIMELY AND COMPLETE APPLICATION AS SHIELD.** If an owner  
9 and operator have submitted a timely and complete application for a permit or a permit renewal,  
10 as applicable, but final action has not been taken on the application, the owner's and operator's  
11 failure to have an operating permit is not a violation of this chapter unless the delay in final  
12 action was due to the failure of the owner and operator to timely submit information required or  
13 requested to process the application. An owner and operator required to have an operating permit  
14 under this chapter are not in violation of the operating permit program established under this  
15 chapter before the date on which the owner and operator are required to submit an application  
16 under AS 46.14.220.

17 **ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.**

18 Sec. 46.14.300. **MOTOR VEHICLE POLLUTION.** (a) When the department determines  
19 that the state of knowledge and technology may allow or make appropriate the control of  
20 emissions from motor vehicles to further air quality control, the department may provide, by  
21 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe  
22 requirements for the installation and use of equipment designed to reduce or eliminate emissions  
23 and for the proper maintenance of this equipment.

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

1 operating condition.

2 (c) The department shall consult with the Department of Public Safety regarding  
3 implementation of the motor vehicle pollution control program. The Department of Public Safety  
4 shall cooperate with the department in implementing the program.

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

13 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

14 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. A small business assistance program  
15 is established in the department. The program shall be included in the state air quality control  
16 plan under AS 46.14.215.

17 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program  
18 shall

19 (1) collect, coordinate, and disseminate information on methods and technologies  
20 that will assist small business facilities to comply with this chapter and regulations adopted under  
21 this chapter;

22 (2) encourage lawful cooperation among small business facilities and other  
23 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

24 (3) provide small business facilities with information on pollution prevention and  
25 accidental release detection and prevention, including information on alternative technologies,  
26 process changes, products, and methods of operation that help reduce air pollution;

27 (4) assist small business facilities in determining applicable requirements and in  
28 receiving permits under this chapter in a timely and efficient manner;

29 (5) ensure that small business facilities receive notice of their rights under this  
30 chapter in a manner and form that ensures adequate time for the facilities to evaluate compliance  
31 methods and to evaluate applicable proposed or final regulations adopted or standards issued

1 under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

2 (6) inform small business facilities of their obligations under this chapter and  
3 regulations adopted under this chapter;

4 (7) provide small business facility operators with a list of auditors available for  
5 auditing the operation of the facility or, if possible, and at the request of a facility owner or  
6 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under  
7 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

8 (8) assist in developing and implementing modified work practices or technical  
9 changes to processes to facilitate compliance with this chapter and regulations adopted under this  
10 chapter;

11 (9) coordinate with the federal small business stationary source technical and  
12 environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air  
13 Act, sec. 507(b));

14 (10) collect and make available guidance prepared by the federal small business  
15 stationary source technical and environmental compliance assistance program;

16 (11) at the request of a facility owner or operator, refer questions concerning  
17 compliance with this chapter, or with a regulation adopted or permit issued under this chapter,  
18 to air quality management personnel of the department; and

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

21 (b) If the legislature appropriates money from the general fund for purposes of the small  
22 business assistance program, the department shall provide the services listed in (a) of this section  
23 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that  
24 otherwise meets the definition of a small business facility under AS 46.14.990 and is subject to  
25 the requirements of this chapter.

26 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal  
27 administrator and the administrator of the United States Small Business Administration, and after  
28 providing notice and opportunity for public hearing, the department may exclude from the scope  
29 of the small business assistance program established in AS 46.14.410 a category or subcategory  
30 of small business facilities that the department finds to have sufficient technical and financial  
31 capabilities to meet the requirements of this chapter and federal law without the assistance

1 provided under AS 46.14.400 - 46.14.430.

2 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel  
3 is established in the department. The panel members shall serve without compensation, but are  
4 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

5 (b) The panel consists of

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

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

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

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

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

17 (A) of this paragraph;

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

22 (A) of this paragraph.

23 (c) The compliance advisory panel shall

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

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

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

30 (4) make periodic reports to the administrator concerning the compliance of the  
31 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction

1 Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);

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

4 (6) have the small business advocate designated under AS 46.14.410(a)(12) assist  
5 the panel in the development and dissemination of panel reports and advisory opinions.

6 ARTICLE 5. LOCAL PROGRAMS.

7 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
8 approval of the department, a municipality with a population of 1,000 or more may establish and  
9 administer within its jurisdiction a local air quality control program that is consistent with all or  
10 part of the department's air quality program as established under this chapter. A first or second  
11 class borough may administer an air quality control program approved by the department under  
12 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional  
13 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
14 an air quality control program approved by the department under this subsection only in a service  
15 area formed under AS 29.35.490(b) or (c).

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

19 (c) The department may require expansion or contraction of the jurisdictional boundaries  
20 of a local air quality control program approved under (a) or (b) of this section to include an  
21 adjacent municipality or contiguous area in the unorganized borough if the department determines  
22 that the expansion or contraction is necessary for the effectiveness and efficiency of the  
23 administration of a local program based upon an evaluation of

24 (1) the location, character, or extent of concentrations of population;

25 (2) local air contaminant sources; or

26 (3) relevant geographic, topographic, or meteorological factors.

27 (d) A municipality or a local air quality district seeking department approval for a local  
28 air quality control program shall enter into a cooperative agreement with the department. The  
29 cooperative agreement must include provisions specifying

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

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

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

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

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

9 (f) A municipality or a local air quality district administering a program under this  
10 section shall administer its local air quality control program according to this chapter, regulations  
11 adopted under this chapter, and its cooperative agreement under (d) of this section, except that  
12 a municipality's or local air quality district's program may be more stringent than the program  
13 administered by the department if the municipality or district has additional legal authority  
14 authorizing additional requirements.

15 (g) A decision, order, permit, or other determination made or issued under a local air  
16 quality control program is considered to be a decision, order, permit, or other determination of  
17 the department.

18 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a  
19 local air quality district has an approved air quality control program under AS 46.14.500 and the  
20 department determines that the program is being implemented in a manner that fails to prevent  
21 or control air pollution in the jurisdiction to which the program applies, the department shall give  
22 written notice, setting out its determination, to the municipality or local air quality district.  
23 Within 45 days after giving written notice, the department shall conduct a public hearing on the  
24 matter.

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

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

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

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

19 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality  
20 district with a local air quality control program may apply for, receive, administer, and spend  
21 state or federal aid for the control of air emissions or the development and administration of the  
22 program if an application is first submitted to and approved by the department. Subject to  
23 available money appropriated by the legislature, the department shall approve an application if  
24 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
25 the requirements of this chapter.

26 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

31 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records and information, other

1 than emission data, in the department's possession and control are considered confidential records  
2 if

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

6 (2) the records

7 (A) relate to production figures, sales figures, processes, or production  
8 techniques of the owner and operator; or

9 (B) consist of meteorological or ambient air quality data collected by the  
10 owner or operator to support a permit application or amendment.

11 Sec. 46.14.820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless  
12 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted  
13 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.  
14 If the owner and operator of the facility are separate persons, only one person is required to  
15 discharge a specific responsibility. Both persons are liable for noncompliance with the  
16 requirements of this chapter or of regulations adopted under this chapter.

17 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The  
18 department may assess an administrative penalty against a person who violates, or causes, or  
19 allows to be violated a provision of this chapter, a regulation adopted under this chapter, or a  
20 term or condition of an order, permit, or approval of the department under this chapter.

21 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day  
22 for each offense. Each provision, term, or condition violated is a separate and distinct offense.  
23 If a violation of a provision, term, or condition continues from day to day, each day is a separate  
24 offense. In determining the amount of a penalty assessed under this section, the department shall  
25 consider the effect of the offense on the public health or the environment, prior history of  
26 compliance or noncompliance with this chapter, the need to deter future offenses, the economic  
27 benefit of noncompliance realized by the offender, and other factors that the department considers  
28 relevant. The department shall, by regulation, prepare, publish, and make available to interested  
29 persons, a penalty policy describing the factors to be considered in setting penalties, the methods  
30 for weighing the factors, and other aspects of penalty computation.

31 (c) If a penalty is assessed under this section, the department shall provide the assessment

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

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

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

17 (f) Action under this section by the department does not limit or otherwise affect the  
18 authority of the department to enforce this chapter, or to recover damages, restoration expenses,  
19 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall  
20 reduce a judicial penalty subsequently imposed under AS 46.03.760 by any amount ordered to  
21 be paid under this section by the same person for the same offense.

22 (g) The assessment of an administrative penalty under this section does not affect the  
23 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval  
24 of the department under this chapter.

25 (h) If a person fails or refuses to pay an administrative penalty assessed under this  
26 section after the penalty has become a final agency action, the department may take appropriate  
27 steps to bring an action to collect the penalty. If the department prevails in court, the court shall  
28 order the person to pay

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

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

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

3 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund  
4 is established. The fund consists of

5 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
6 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))  
7 for state participation in the emission control permit program; and

8 (2) appropriations to the fund.

9 (b) The money deposited into the clean air protection fund under (a)(1) of this section  
10 may be used solely to cover the reasonable direct and indirect costs, including court costs and  
11 attorney fees, required to support the permit program under this chapter, and those activities of  
12 the small business assistance program that are directed at facilities subject to AS 46.14.205.

13 Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,  
14 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or  
15 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this  
16 chapter, shall be deposited in the general fund.

#### 17 ARTICLE 7. GENERAL PROVISIONS.

18 Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

19 (1) grant jurisdiction or authority with respect to air contamination existing solely  
20 within residential dwellings or commercial and industrial plants, works, or shops;

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

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

25 Sec. 46.14.990. DEFINITIONS. In this chapter,

26 (1) "air contaminant" means a regulated air contaminant or a hazardous air  
27 contaminant;

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

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

- 1 (4) "area source" means a source of fugitive emissions;
- 2 (5) "certificate of inspection" means a form prepared or approved by the  
3 department, signed by a qualified mechanic who attests that the mechanic has inspected a motor  
4 vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and  
5 bearing the statement above the mechanic's signature that false statements are punishable as a  
6 crime under AS 11.56.210 and AS 46.03.790(a);
- 7 (6) "commissioner" means the commissioner of environmental conservation;
- 8 (7) "construct" or "construction" means to fabricate, erect, or install, or to make  
9 a physical change, that would result in emissions;
- 10 (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings  
11 in a facility from which an air contaminant could be emitted;
- 12 (9) "department" means the Department of Environmental Conservation;
- 13 (10) "emission" means a release of one or more air contaminants to the  
14 atmosphere;
- 15 (11) "emission limitation" and "emission standard" mean a requirement established  
16 by the department or the federal administrator, other than an ambient air quality standard, that  
17 limits the quantity, rate, or concentration of emission of an air contaminant, including a  
18 requirement relating to the operation or maintenance of a source to ensure continuous emission  
19 reduction, and design, equipment, work practice, or operational standard adopted under this  
20 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 21 (12) "equivalent emission limitation" means
- 22 (A) a limitation for hazardous air contaminants established by the federal  
23 administrator or the commissioner on a case-by-case basis that is equivalent to the  
24 limitation that would apply to a source or facility if an emission standard had been  
25 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or
- 26 (B) if the criteria of the early reduction program established in 42 U.S.C.  
27 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that  
28 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));
- 29 (13) "facility" means one or more structures, buildings, installations, or properties  
30 upon which a source or sources are located, that are contiguous or adjacent, and that are owned  
31 or operated by the same person or by persons under common control;

1 (14) "federal administrator" means the administrator of the United States  
2 Environmental Protection Agency;

3 (15) "fugitive emissions" means emissions of an air contaminant that are not  
4 emitted from a contaminant outlet;

5 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
6 7412(b) (Clean Air Act, sec. 112(b));

7 (17) "local air quality control program" means a program authorized under  
8 AS 46.14.500 to implement some or all of the provisions of this chapter;

9 (18) "major facility" means a facility with the potential to emit at least

10 (A) 100 TPY of a regulated air contaminant;

11 (B) 10 TPY of a hazardous air contaminant; or

12 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;

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

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

18 (21) "owner" means a person or persons with a proprietary or possessory interest  
19 in a facility or source that has the potential to emit an air contaminant to the atmosphere;

20 (22) "person" has the meaning given in AS 01.10.060 and also includes a  
21 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,  
22 agencies, instrumentalities, units, and corporate authorities of the state;

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

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

31 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);

1 (24) "register" or "registration" means vehicle registration under AS 28.10;

2 (25) "regulated air contaminant" means

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

5 (B) oxides of nitrogen;

6 (C) a volatile organic compound; and

7 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
8 7411 - 7412 (Clean Air Act, sec. 111 - 112);

9 (26) "small business facility" means a facility that

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

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

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

14 (27) "source" means a device, process, activity, or equipment that causes, or could  
15 cause, a release of an air contaminant;

16 (28) "TPY" means tons per year.

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

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

22 \* Sec. 4. AS 28.10.423 is amended to read:

23 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
24 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
25 required to be inspected under an emission control program established under AS 46.14.300 or  
26 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
27 as the registration fee.

28 \* Sec. 5. AS 29.35 is amended by adding a new section to read:

29 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may  
30 establish a local air quality control program as provided in AS 46.14.500 only if the municipality  
31 has obtained the consent of its governing body through an ordinance authorizing the participation.

1 \* Sec. 6. AS 29.35.200(b) is amended to read:

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

4 (1) provide transportation systems;

5 (2) provide water pollution control;

6 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -  
7 46.03.230];

8 (4) license day care facilities;

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

10 \* Sec. 7. AS 29.35.210(a) is amended to read:

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

13 (1) provide transportation systems;

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

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

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

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

21 (6) provide water pollution control;

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

24 (8) provide for economic development;

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

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

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

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

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

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

5 \* Sec. 8. AS 29.35.210(b) is amended to read:

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

8 (1) provide transportation systems;

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

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

12 (4) provide water pollution control;

13 (5) license day care facilities.

14 \* Sec. 9. AS 37.05.146(4) is amended by adding a new subparagraph to read:

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

16 \* Sec. 10. AS 44.46.025(a) is amended to read:

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

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

22 (2) the emission control permitting program and the motor vehicle pollution  
 23 control program under AS 46.14; fees established under this paragraph shall also cover  
 24 indirect costs of the programs to the extent required by federal law [AIR QUALITY  
 25 PERMITS UNDER AS 46.03.140 AND 46.03.160];

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

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

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

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

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

1 \* Sec. 11. AS 44.62.330(a)(44) is amended to read:

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

5 \* Sec. 12. AS 46.03.760(f) is amended to read:

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

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

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

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

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

23 \* Sec. 13. AS 46.03.765 is amended to read:

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

1 period of time.

2 \* Sec. 14. AS 46.03.780(a) is amended to read:

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

9 \* Sec. 15. 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 misdemeanor  
11 if the person with criminal negligence

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

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

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

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

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

29 \* Sec. 16. AS 46.03.790 is amended by adding a new subsection to read:

30 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.14  
31 and described in (a) of this section, a defendant who is not an organization may be sentenced to

1 pay a fine of not more than \$10,000 for each separate offense.

2 \* Sec. 17. AS 46.03.850(a) is amended to read:

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

9 \* Sec. 18. AS 46.03.875 is amended to read:

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

14 \* Sec. 19. AS 46.03.890(b) is amended to read:

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

18 \* Sec. 20. AS 46.08.075(a) is amended to read:

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

28 \* Sec. 21. AS 46.08.900(6) is amended to read:

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

1 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a  
2 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive  
3 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does  
4 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons  
5 or less;

6 \* Sec. 22. AS 46.09.900(4) is amended to read:

7 (4) "hazardous substance" means (A) an element or compound that, when it enters  
8 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents  
9 an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,  
10 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a  
11 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive  
12 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does  
13 not include uncontaminated crude oil or uncontaminated refined oil;

14 \* Sec. 23. AS 46.35.200(4)(A) is amended to read:

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

17 \* Sec. 24. AS 46.35.200(8) is amended to read:

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

21 \* Sec. 25. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
22 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

23 \* Sec. 26. REGULATIONS. The Department of Environmental Conservation may adopt regulations  
24 as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority, to implement  
25 changes made by this Act. Regulations adopted under this section may not take effect until the enabling  
26 statute takes effect under sec. 27 or sec. 28 of this Act.

27 \* Sec. 27. AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210,  
28 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280, 46.14.300,  
29 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 - 46.14.850,  
30 46.14.900, and 46.14.990, enacted by sec. 2 of this Act, and secs. 1 and 3 - 26 of this Act take effect  
31 immediately under AS 01.10.070(c).

1 \* Sec. 28. AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,  
2 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect November 15,  
3 1993.

Red indicates changes reflected in CS HB 3771

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7-GS2001.A

SENATE BILL NO. 383

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/3/92  
Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and control of air  
2 pollution; relating to civil and criminal penalties, damages, and other remedies for air  
3 quality control violations; relating to use of the oil and hazardous substance release  
+ additions to title to reflect amendments to AS 46.03.890(b), AS 46.08.90c  
4 response fund; and providing for an effective date." and AS 46.09.900(4)

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. PURPOSE. The purpose of this Act is to bring the state into compliance with 1990  
7 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671. <sup>Changes in state law a</sup> ~~Compliance~~ necessary  
8 to allow Alaska to continue to have primary management of air quality in Alaska and to retain federal  
9 approval of Alaska's air quality control program to ensure the receipt of federal highway <sup>and air pollution con</sup> money.

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

11 CHAPTER 14. AIR QUALITY CONTROL.

12 ARTICLE 1. CLASSIFICATIONS AND STANDARDS

13 Sec. 46.14.010. REGULATION AUTHORITY; EMISSION CONTROL STANDARDS.

14 (a) After public hearing, the department may adopt regulations under this chapter as necessary

1 to prevent, abate, control, or identify air pollution due to emissions, including regulations setting  
2 emission standards, performance standards, and limitations. The standards and limitations may  
3 be based on risk assessments or on available technology, and may be for the state as a whole or  
4 may vary from area to area in recognition of local conditions.

5 (b) In implementing this chapter, the department may not require a person to use  
6 machinery, devices, or equipment from a particular supplier or produced by a particular  
7 manufacturer if the required emission limitations or performance standards may be met by  
8 machinery, devices, or equipment available from another manufacturer.

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

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

## 22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
24 OPERATION. (a) It is unlawful to construct, install, modify, reconstruct, or establish a facility  
25 subject to AS 46.14.205(a), except in compliance with the construction permit, and any order or  
26 other determination of the department under this chapter.

27 (b) It is unlawful for a person to operate a major facility or a facility that contains one  
28 or more of the sources listed at AS 46.14.205(b) except in compliance with the operating permit,  
29 and any order or other determination of the department under this chapter.

30 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply  
31 with the terms and conditions of that permit.

1 (d) If the administrator exempts a source from the requirements of 42 U.S.C. 7661(a)  
2 (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source from some  
3 or all of the requirements of this chapter.

4 Sec. 46.14.205. PERMIT APPLICABILITY. (a) Before constructing, installing,  
5 modifying, reconstructing, or establishing a facility, the owner and operator shall first obtain a  
6 construction permit from the department if that facility meets any of the following criteria:

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

9 (2) a new facility of a type classified under AS 46.14.020 that has the potential  
10 to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions:

11 (3) a new facility of a type classified under AS 46.14.020 that has the potential  
12 to violate the ambient air quality standards or otherwise pose a threat to public health;

13 (4) an existing facility, otherwise meeting the criteria in (1), (2), or (3) of this  
14 subsection, for which a modification is proposed that would increase actual emissions of a  
15 regulated air contaminant to an amount equal to or greater than the annual emission quantity set  
16 out in regulations adopted under AS 46.14.010;

17 (5) a new facility that has the potential to emit greater than 10 TPY of a  
18 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air  
19 contaminants.

20 (b) The owner and operator of a facility shall obtain an operating permit from the  
21 department if the facility is defined as a major facility under this chapter or if the facility  
22 contains one or more of the following sources:

23 (1) a stationary source, including an area source, subject to federal new source  
24 performance 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. 112); or

26 (2) any other stationary source designated by the administrator or the department,  
27 by regulation.

28 Sec. 46.14.210. EMISSION CONTROL PERMIT REGULATIONS. (a) The department,  
29 at minimum, shall adopt regulations to address the following elements of the emission control  
30 permit program:

31 (1) a standard permit application form that, at a minimum, complies with the

1 requirements of federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec.  
2 502(b));

3 (2) procedures for preparation and submission of a monitoring, reporting, and  
4 quality assurance plan and, if required, a compliance schedule describing how a permitted facility  
5 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

6 (3) procedures for

7 (A) expeditiously determining when a permit application is complete;

8 (B) processing and reviewing an application; and

9 (C) providing public notice, including opportunity for public comment and

10 hearing;

11 (4) standard permit conditions, including, at a minimum, conditions for

12 (A) emission standards and limitations;

13 (B) monitoring, recordkeeping, and reporting;

14 (C) inspection and entry;

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

16 (E) annual certification of compliance; and

17 (F) excess emission or process deviation reporting;

18 (5) fees, and procedures for collecting fees;

19 (6) procedures for renewing, modifying, amending, or revising a permit that  
20 provide maximum flexibility in the operation of the facility consistent with the purposes of this  
21 chapter and with 42 U.S.C. 7401 - 7671 (Clean Air Act); and

22 (7) procedures for approving physical or operational limitations that will reduce  
23 a facility's emissions to levels below those that would make the facility subject to AS 46.14.205.

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

27 Sec. 46.14.215. STATE PLAN. <sup>(a) Policy statement added.</sup>  
28 ~~(b)~~ The department shall act for the state in any  
29 negotiations relative to the state air quality control plan developed under 42 U.S.C. 7401 - 42  
30 U.S.C. 7671. The department may adopt regulations necessary to implement the state plan.

31 ~~(c)~~ The department shall ensure that permits issued, modified, amended, or renewed  
under this chapter comply with the emission limitations and other requirements of the state air

1 quality control plan.

2 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
3 and operator of a facility required to have an operating permit under this chapter shall submit the  
4 required application and monitoring, reporting, and quality assurance plan no later than 12  
5 months after the date on which the facility becomes subject to the requirements of AS 46.14.200,  
6 or at an earlier time if required by the department.

7 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except  
8 as provided in AS 46.14.245, after receipt of a complete application, and after notice and  
9 opportunity for public comment and hearing, the department shall issue or deny

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

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

14 (b) Notwithstanding (a) of this section, the department may establish a phased schedule  
15 for acting on operating permit applications submitted on or before November 15, 1994. A phased  
16 schedule must assure that at least one-third of the applications submitted on or before November  
17 15, 1994 will be acted on by the department during each of the three years after November 15,  
18 1994. On or before November 15, 1997, the department shall act on all applications received  
19 on or before November 15, 1994.

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

23 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
24 this chapter, the owner and operator, any person who participated in the public comment process,  
25 or a person with standing under state or federal law to obtain administrative or judicial review  
26 of a permit action under this chapter, may request an adjudicatory hearing in accordance with the  
27 department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing  
28 decision, any party to the hearing may obtain judicial review of that decision as provided in  
29 Alaska Supreme Court Rules of Civil Procedure.

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

1           Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for  
2 public comment and hearing, and after approval by the administrator, the department may  
3 establish a general operating permit that would be applicable to more than one facility determined  
4 by the department to be similar in source structure. A general operating permit shall contain  
5 provisions that meet the requirements of this chapter applicable to operating permits. A general  
6 operating permit is not effective for a specific facility until the owner or operator of the facility  
7 has submitted an application under AS 46.14.220 and the department has issued the general  
8 operating permit. The department shall issue or deny a general operating permit within 30 days  
9 after receipt of a complete application.

10           Sec. 46.14.245. OBJECTION BY ADMINISTRATOR. (a) An operating permit may  
11 not be issued under this chapter until the administrator approves the permit, or until 45 days after  
12 a copy of the final draft permit has been provided by the department to the administrator,  
13 whichever is sooner. If, during the 45-day period, the administrator files an objection with the  
14 department, the department shall notify the applicant of the objection. The permit may not be  
15 issued until the objection is resolved or the permit is revised to meet the objection of the  
16 administrator.

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

21           Sec. 46.14.250. PAYMENT OF FEES AND FEE STRUCTURE. (a) The owner and  
22 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the  
23 applicable fees set out in the fee structure adopted by the department under (b) of this section.  
24 The owner and operator shall pay the fees to the department or to the public entity designated  
25 by the department.

26           (b) The department shall adopt, by regulation, a fee structure based upon the type of  
27 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
28 classifications; and other factors reflecting the cost of administering the emission control permit  
29 program under this chapter. Fees must be sufficient to cover the reasonable, direct and indirect  
30 costs required to develop and implement the permit program and the small business assistance  
31 program established in this chapter. For purposes of this subsection, "costs" include expenditures

1 for

- 2 (1) preparing and adopting regulations to implement the permit program;
- 3 (2) preparing guidance on the permit program;
- 4 (3) reviewing and acting upon a permit application;
- 5 (4) implementing and enforcing the terms and conditions of a permit, excluding  
6 court costs and attorney fees;
- 7 (5) monitoring of emissions and ambient air quality;
- 8 (6) reviewing and executing models, analyses, and demonstrations to evaluate  
9 emissions;
- 10 (7) preparing inventories and tracking of facility emissions;
- 11 (8) performing data management, analysis, and report writing;
- 12 (9) conducting training, audits, or other services as provided under the small  
13 business assistance program under AS 46.14.400 - 46.14.430; and
- 14 (10) reviewing and acting upon plans and other information submitted under  
15 AS 46.14.200.

16 (c) The fee structure adopted under (b) of this section shall be amended as necessary to  
17 assure that the fees cover the reasonable costs authorized by (b) of this section.

18 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department  
19 shall adopt regulations as necessary to allow the assessment of a penalty of up to 50 percent of  
20 the fee established under AS 46.14.250(b) against the owner and operator of a facility if the  
21 owner and operator fail to timely pay a fee lawfully imposed under this chapter. The department  
22 may also assess interest against the owner and operator, computed in accordance with  
23 AS 45.45.010(a), after a fee is due under this chapter and is unpaid.

24 Sec. 46.14.<sup>840</sup>~~250~~ CLEAN AIR PROTECTION FUND, ~~SPECIAL ACCOUNT~~. (a) There  
25 is established the clean air protection fund. The fund consists of

26 (1) all fees, penalties, and interest collected by the department under AS 46.14.250  
27 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))  
28 for state participation in the emission control permit program; and

29 (2) appropriations to the fund.

30 money deposited into the (b) The clean air protection fund under (a)(1) of this section may be used solely to cover the reasonable, direct and  
31 indirect costs, including court costs and attorney fees, required to support the permit program

1 under this chapter, and those activities of the small business assistance program that are directed  
2 at facilities subject to AS 46.14.205.

3 ~~Sec. 46.14.850. SPECIAL ACCOUNT.~~

4 ~~An administrative penalty, and any interest, attorney fees, and costs collected under~~  
5 ~~AS 46.14.295, and any civil penalties, assessments, or damages collected under AS 46.03.760 or~~  
6 ~~46.03.790 as a result of a violation relating to this chapter, shall be deposited in the general fund.~~

7 ~~The annual estimated balance in the account maintained by the commissioner of administration~~  
8 ~~under AS 37.05.142 may be used by the legislature to make appropriations to the department for~~  
9 ~~the purpose of carrying out activities under this chapter.~~

unnecessary

10 <sup>260</sup> Sec. 46.14.265. DURATION OF OPERATING PERMITS. (a) An operating permit  
11 under this chapter is issued for a fixed term established by the department, but in no case may  
12 the term exceed five years after the date of issue.

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

16 <sup>265</sup> Sec. 46.14.270. REOPENING OF PERMITS. (a) A permit issued under this chapter  
17 is subject to review and reopening by the department based on the determination of the  
18 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671 (Clean Air  
19 Act).

20 (b) A permit issued under this chapter is subject to review and reopening by the  
21 department if the permit is issued to a major facility and is valid for a term of three or more  
22 years. The department shall reopen a permit described in this subsection to incorporate changes  
23 in law, or to impose equivalent emission limitations, that became applicable after the permit was  
24 issued. The department shall make incorporations allowed under this subsection as soon as  
25 practicable, but, regarding a change in law, no later than 18 months after the change in law took  
26 effect. The department is not required to reopen a permit under this subsection if the change in  
27 law is not effective until after the date that the permit expires. Any reopening of a permit under  
28 this subsection may be treated as a permit renewal by the department if all procedural  
29 requirements for permit renewal have been met.

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



1 (b) Nothing in this section alters or affects

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

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

6 Sec. 46.14.<sup>290</sup>~~292~~ TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
7 and operator have submitted a timely and complete application for a permit, or a permit renewal,  
8 as applicable, but final action has not been taken on the application, the owner's and operator's  
9 failure to have an operating permit is not a violation of this chapter unless the delay in final  
10 action was due to the failure of the owner and operator to timely submit information required or  
11 requested to process the application. An owner and operator required to have an operating permit  
12 under this chapter are not in violation of the operating permit program established under this  
13 chapter before the date on which the owner and operator are required to submit an application  
14 under AS 46.14.220.

15 Sec. 46.14.<sup>830</sup>~~295~~ ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The  
16 department may assess an administrative penalty against a person who violates, or causes, or  
17 allows to be violated a provision of this chapter; a regulation adopted under this chapter; or a  
18 term or condition of an order, permit, or approval of the department under this chapter.

19 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day  
20 for each offense. Each provision, term, or condition violated is a separate and distinct offense.  
21 If a violation of a provision, term, or condition continues from day to day, each day is a separate  
22 offense. In determining the amount of a penalty assessed under this section, the department  
23 ~~shall consider the effect of the offense on the public health or the~~  
24 environment, prior history of compliance or noncompliance with this chapter, deterrence of  
25 future offenses, the economic benefit of noncompliance realized by the offender, and other factors  
26 that the department considers relevant. The department shall, by regulation, prepare, publish, and  
27 make available to interested persons, a penalty policy describing the factors to be considered in  
28 setting penalties, the methods for weighing the factors, and other aspects of penalty computation.

29 (c) ~~(d)~~ If a penalty is assessed under this section, the department shall provide the assessment  
30 notice to the person affected, by personal service or by certified mail, return receipt requested.  
31 An administrative penalty assessed under this section becomes a final agency action 30 days after

1 service or mailing of the assessment notice unless an administrative hearing is requested by the  
2 person against whom the penalty is assessed. Failure to request an administrative hearing within  
3 30 days after service or mailing of the assessment notice constitutes a waiver of that person's  
4 right to an administrative hearing. The department may extend the time periods specified in this  
5 subsection for good cause shown.

6 (d) ~~(d)~~ If an administrative hearing is requested, the department shall grant a hearing and  
7 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,  
8 the department may modify, rescind, or affirm the administrative penalty; that action is a final  
9 agency action.

10 (e) ~~(e)~~ A person against whom an administrative penalty is assessed may obtain judicial  
11 review of the administrative penalty as provided in Alaska Supreme Court Rules of Civil  
12 Procedure. The court may set aside, or adjust the amount of, the administrative penalty only if  
13 the administrative record, taken as a whole, does not contain a reasonable basis to support the  
14 finding of offense or the amount of penalty assessed by the department.

15 (f) ~~(f)~~ Action under this section by the department does not limit or otherwise affect the  
16 authority of the department to enforce this chapter, or to recover damages, restoration expenses,  
17 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall set  
18 off against a judicial penalty subsequently awarded under AS 46.03.760, any amount ordered to  
19 be paid under this section by the same person for the same offense.

20 (g) ~~(g)~~ The assessment of an administrative penalty under this section does not affect the  
21 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval  
22 of the department under this chapter.

23 (h) ~~(h)~~ If a person fails or refuses to pay an administrative penalty assessed under this section  
24 after the penalty has become a final agency action, the department may take appropriate steps  
25 to bring an action to collect the penalty. If the department prevails in court, the court shall order  
26 the person to pay

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

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

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

1 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

2 Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department determines  
3 that the state of knowledge and technology may allow or make appropriate the control of  
4 emissions from motor vehicles to further air quality control, the department may provide, by  
5 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe  
6 requirements for the installation and use of equipment designed to reduce or eliminate emissions  
7 and for the proper maintenance of this equipment.

8 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any  
9 element of the air pollution control system or mechanism of a motor vehicle if the department  
10 adopts regulations requiring that such a system or mechanism be maintained in or on the motor  
11 vehicle. Failure to maintain such a system or mechanism in operating condition subjects the  
12 motor vehicle's registration to suspension or cancellation. That motor vehicle is not again  
13 eligible for registration until the owner or operator obtains a certification from the department,  
14 based on a demonstration that the air pollution control system or mechanism is restored to  
15 operating condition.

16 (c) The department shall consult with the Department of Public Safety regarding  
17 implementation of the motor vehicle pollution control program. *DPS to cooperate.*

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

26 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

27 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. There is established in the  
28 department a small business assistance program. The program shall be made a part of the state  
29 air quality control plan under AS 46.14.215.

30 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The ~~department shall implement the small~~  
31 business assistance program ~~as part of the program established under AS 46.06.021 by~~

*shall*

1 (1) collecting, coordinating, and disseminating information on methods and  
2 technologies that will assist small business facilities to comply with this chapter and regulations  
3 adopted under this chapter;

4 (2) encouraging lawful cooperation among small business facilities and other  
5 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

6 (3) providing small business facilities with information on pollution prevention  
7 and accidental release detection and prevention, including information on alternative technologies,  
8 process changes, products, and methods of operation that help reduce air pollution;

9 (4) assisting small business facilities in determining applicable requirements and  
10 in receiving permits under this chapter in a timely and efficient manner;

11 (5) assuring that small business facilities receive notice of their rights under this  
12 chapter in a manner and form as to assure adequate time for the facilities to evaluate compliance  
13 methods and to evaluate applicable proposed or final regulations adopted or standards issued  
14 under this chapter or 42 U.S.C. 7671(Clean Air Act);

15 (6) informing small business facilities of their obligations under this chapter and  
16 under regulations adopted under this chapter;

17 (7) providing small business facility operators with a list of auditors available for  
18 auditing the operation of the facility or, if possible, and at the request of a facility owner or  
19 operator, auditing a facility to evaluate compliance with this chapter and regulations adopted  
20 under this chapter; an audit under this paragraph may not be regarded as an inspection or  
21 investigation;

22 (8) assisting in the development and implementation of modified work practices  
23 or technical changes to processes to facilitate compliance with this chapter and regulations  
24 adopted under this chapter;

25 (9) coordinating with the federal small business stationary source technical and  
26 environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air  
27 Act, sec. 507(b));

28 (10) collecting and making available guidance prepared by the federal small  
29 business stationary source technical and environmental compliance assistance program;

30 (11) at the request of a facility owner or operator, referring questions concerning  
31 compliance with this chapter, or with a regulation adopted or permit issued under this chapter.

1 to air quality management personnel of the department; and

2 (12) designating a person to serve as a ~~small business ombudsman, to act as~~  
3 liaison between small businesses and air quality management personnel of the department.

4 (b) If the legislature appropriates additional money from the general fund for purposes  
5 of the small business assistance program, the department may provide the services listed in (a)  
6 of this section to facilities that do not meet the definition of a small business facility under  
7 AS 46.14.900, but are subject to the requirements of this chapter.

8 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the  
9 administrator and the administrator of the United States Small Business Administration, and after  
10 providing notice and opportunity for public hearing, the department may exclude from the scope  
11 of the small business assistance program established in AS 46.14.410 a category or subcategory  
12 of small business facilities that the department finds to have sufficient technical and financial  
13 capabilities to meet the requirements of this chapter and federal law without the assistance  
14 provided by AS 46.14.400 - 46.14.430.

15 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) There is established in the  
16 department a compliance advisory panel.

17 (b) ~~The panel shall consist of seven persons appointed by the governor.~~ The panel  
18 members shall serve without compensation, but are entitled to travel expenses and per diem as  
19 authorized for state employees. ~~The members serve at the pleasure of the governor.~~

20 ~~(c) The panel consists of~~

21 ~~(1) two persons to represent the general public; these members may not be owners~~  
22 ~~or representatives of owners of small business facilities;~~

23 ~~(2) one person who is an owner or a representative of an owner of a small~~  
24 ~~business facility covered under this chapter; this person shall be appointed from a list of three~~  
25 ~~names selected by the majority leadership of the state House of Representatives or, if no majority~~  
26 ~~exists, then the list shall be selected by the Speaker of the House;~~

27 ~~(3) one person who is an owner or a representative of an owner of a small~~  
28 ~~business facility covered under this chapter; this person shall be appointed from a list of three~~  
29 ~~names selected by the minority leadership of the state House of Representatives or, if no minority~~  
30 ~~exists, then the list shall be selected by the Speaker of the House;~~

31 ~~(4) one person who is an owner or a representative of an owner of a small~~

1 business facility covered under this chapter; this person shall be appointed from a list of three  
2 names selected by the majority leadership of the state Senate or, if no majority exists, then the  
3 list shall be selected by the President of the Senate;

4 (5) one person who is an owner or a representative of an owner of a small  
5 business facility covered under this chapter; this person shall be appointed from a list of three  
6 names selected by the minority leadership of the state Senate or, if no minority exists, the list  
7 shall be selected by the President of the Senate;

8 ~~(6) one person selected by the commission~~

9 (d) The governor shall either appoint a person from a list submitted under (c)(2) - (5) of  
10 this section, or reject all names on the list and request that a new list be submitted.

11 (e) The compliance advisory panel shall

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

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

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

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

21 (5) review information designed to assist small business facilities in complying  
22 with this chapter to assure that the information is understandable by the layperson; and

23 (6) have the small business <sup>liaison</sup> ~~ombudsman~~ assist the panel in the development and  
24 dissemination of panel reports and advisory opinions.

25 *NEW ARTICLES. = LOCAL PROGRAMS.*  
*ARTICLE 1. GENERAL PROVISIONS.*

26 <sup>800</sup> ~~500~~ Sec. 46.14.510. PUBLIC RECORDS. Except as provided in AS 46.14.510, permits,  
27 permit applications, emissions and monitoring reports, compliance reports, certifications, and  
28 monitoring, reporting, and quality assurance plans in the department's possession and control are  
29 available to the public for inspection and copying.

30 <sup>810</sup> ~~510~~ Sec. 46.14.510. CONFIDENTIALITY OF RECORDS. Records and information, other  
31 than emission data, in the department's possession and control are considered confidential records

1 if

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

5 (2) the records

6 (A) relate to production figures, sales figures, processes, or production  
7 techniques of the owner and operator; or

8 (B) consist of meteorological or ambient air quality data collected by the  
9 owner or operator. *to support a permit application or amendment*

10 <sup>Suo</sup> Sec. 46.14.520. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
11 approval of the department, a home rule or general law municipality with a population of 1,000  
12 or more may establish and administer within its jurisdiction a local air quality control program  
13 that is consistent with all or part of the department's air quality program as established under this  
14 chapter. A first or second class borough may administer an air quality control program, approved  
15 by the department under this subsection, on an areawide basis and is not subject to the  
16 restrictions for acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A  
17 third class borough may administer an air quality control program, approved by the department  
18 under this subsection, only in a service area formed in accordance with AS 29.35.490(b) or (c).

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

22 (c) The department may require expansion or contraction of the jurisdictional boundaries  
23 of a local air quality control program approved under (a) or (b) of this section to include an  
24 adjacent municipality or contiguous area in the unorganized borough if the department determines  
25 that the expansion or contraction is necessary for the effectiveness and efficiency of the  
26 administration of a local program, based upon an evaluation of

27 (1) the location, character, or extent of particular concentrations of population;

28 (2) local air contaminant sources; or

29 (3) relevant geographic, topographic, or meteorological factors.

30 (d) A municipality or a local air quality district seeking department approval for a local  
31 air quality control program shall enter into a cooperative agreement with the department. The

1 cooperative agreement shall include provisions specifying

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

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

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

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

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

12 (f) A municipality or a local air quality district administering a program under this  
13 section shall administer its local air quality control program according to this chapter and  
14 regulations adopted under it, and its cooperative agreement under (d) of this section, except that  
15 a municipality's or local air quality district's program may be more stringent than the program  
16 administered by the department if the municipality or district has additional legal authority  
17 authorizing additional requirements.

18 (g) A decision, order, permit, or other determination made or issued in accordance with  
19 a local air quality control program is considered to be a decision, order, permit, or other  
20 determination of the department.

21 ~~Sec. 46.14.520~~<sup>510</sup> INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a  
22 local air quality district has an approved air quality control program under AS 46.14.520, and if  
23 the department determines that the program is being implemented in a manner that fails to  
24 prevent or control air pollution in the jurisdiction to which the program applies, the department  
25 shall give written notice, setting out its determination, to the municipality or local air quality  
26 district. Within 45 days after giving written notice, the department shall conduct a public hearing  
27 on the matter.

28 (b) If, after the hearing, the department upholds the determination made in the written  
29 notice, the department shall provide the municipality or local air quality district with a written  
30 finding setting out the nature of the deficiencies and a description of the necessary action to be  
31 taken in order for the program to prevent or control air pollution. The department shall provide

1 its finding to the municipality or district within 45 days after the closure of the public hearing  
2 record. The department shall set a reasonable period of time for the municipality or local air  
3 quality district to take corrective action in response to the department's finding.

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

11 (d) A municipality or local air quality district that has had its cooperative agreement  
12 terminated may resume, with the department's approval, a local air quality control program if the  
13 municipality or district agrees to comply with AS 46.14.520 and with any corrective action plan  
14 required by the department.

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

22 Sec. 46.14.<sup>520</sup>~~540~~ STATE AND FEDERAL AID. A municipality or local air quality  
23 district with a local air quality control program may apply for, receive, administer, and spend  
24 state or federal aid for the control of air emissions or the development and administration of the  
25 program if an application is first submitted to and approved by the department. Subject to  
26 available money appropriated by the legislature, the department shall approve an application if  
27 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
28 the requirements of this chapter.

29 Sec. 46.14.<sup>900</sup>~~550~~ LIMITATION OF POWERS. *This chapter does* ~~AS 46.14.010 - 46.14.540~~ do not

30 (1) grant jurisdiction or authority with respect to air contamination existing solely  
31 within residential dwellings or commercial and industrial plants, works, or shops;

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

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

5 Sec. 46.14.<sup>320</sup>~~500~~. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless  
6 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted  
7 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.  
8 If the owner and operator of the facility are separate persons, only one person is required to  
9 discharge a specific responsibility. Both persons are liable for noncompliance with the  
10 requirements of this chapter or of regulations adopted under this chapter.

11 Sec. 46.14.<sup>390</sup>~~500~~. DEFINITIONS. In this chapter

12 (1) "administrator" means the administrator of the United States Environmental  
13 Protection Agency;

14 (2) "air contaminant" means a regulated air contaminant or a hazardous air  
15 contaminant;

16 (3) "ambient air" means that portion of the atmosphere, external to buildings, to  
17 which the general public has access;

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

20 (5) "area source" means a source of fugitive emissions;

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

26 (7) "commissioner" means the commissioner of the Department of Environmental  
27 Conservation;

28 (8) "construct" or "construction" means to fabricate, erect, or install, or to make  
29 a physical change, that would result in emissions;

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

1 (10) "department" means the Department of Environmental Conservation.

2 (11) "emission" means a release of one or more air contaminants to the  
3 atmosphere;

4 (12) "emission limitation" and "emission standard" mean a requirement established  
5 by the department or the administrator that limits the quantity, rate, or concentration of emission  
6 of an air contaminant, including any requirement relating to the operation or maintenance of a  
7 source to assure continuous emission reduction, and any design, equipment, work practice, or  
8 operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671 (Clean Air Act), but  
9 does not include ambient air quality standards;

10 (13) "equivalent emission limitation" means

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

15 (B) if the criteria of the early reduction program established in 42 U.S.C.  
16 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established in accordance  
17 with that subsection and with 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

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

21 (15) "fugitive emissions" means those emissions of an air contaminant that are  
22 not emitted from a contaminant outlet;

23 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
24 7412(b) (Clean Air Act, sec. 112(b));

25 (17) "local air quality control program" means a program authorized under  
26 AS 46.14.520 to implement some or all of the provisions of this chapter,

27 (18) "major facility" means a facility with the potential to emit at least

28 (A) 100 TPY of a regulated air contaminant;

29 (B) 10 TPY of a hazardous air contaminant; or

30 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;

31 (19) "modification" or "modify" means to make a change or a series of changes

1 in operation, or any physical change or addition to a facility or source which increases the actual  
2 emissions of an air contaminant;

3 (20) "operator" means a person or persons who direct, control, or supervise a  
4 facility or source that has the potential to emit an air contaminant to the atmosphere;

5 (21) "owner" means a person or persons with a proprietary or possessory interest  
6 in a facility or source that has the potential to emit an air contaminant to the atmosphere;

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

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

15 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);

16 (23) "register" or "registration" means vehicle registration in accordance with  
17 AS 28.10;

18 (24) "regulated air contaminant" means

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

21 (B) oxides of nitrogen;

22 (C) a volatile organic compound; and

23 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
24 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

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

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

29 (C) emits less than 100 tons per year of all regulated air contaminants;

30 (26) "source" means a device, process, activity, or equipment that causes, or could  
31 cause, a release of an air contaminant;

1 (27) "TPY" means tons per year.

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

3 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection  
4 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.520  
5 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle  
6 uses a fuel source that does not primarily emit carbon monoxide;

7 \* Sec. 4. AS 28.10.423 is amended to read:

8 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
9 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
10 required to be inspected under an emission control program established under AS 46.14.300 or  
11 46.14.520 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
12 as the registration fee.

13 \* Sec. 5. AS 29.35 is amended by adding a new section to read:

14 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may  
15 establish a local air quality control program as provided in AS 46.14.520 only if the municipality  
16 has obtained the consent of its governing body through an ordinance authorizing the participation.

17 \* Sec. 6. AS 29.35.200(b) is amended to read:

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

20 (1) provide transportation systems;

21 (2) provide water pollution control;

22 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140  
23 - 46.03.230];

24 (4) license day care facilities;

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

26 \* Sec. 7. AS 29.35.210(a) is amended to read:

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

29 (1) provide transportation systems;

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

- 1 (3) license, impound, and dispose of animals;
- 2 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
- 3 collection and disposal;
- 4 (5) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 5 - 46.03.230];
- 6 (6) provide water pollution control;
- 7 (7) participate in federal or state loan programs for housing rehabilitation and
- 8 improvement for energy conservation;
- 9 (8) provide for economic development;
- 10 (9) provide for the acquisition and construction of local service roads and trails
- 11 under AS 19.30.111 - 19.30.251;
- 12 (10) establish an emergency services communication center under AS 29.35.130;
- 13 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
- 14 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 or a
- 17 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
- 18 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
- 19 consistent with a regional master plan prepared by the Department of Environmental
- 20 Conservation under AS 46.04.21 `.

21 \* Sec. 8. AS 29.35.210(b) is amended to read:

22 (b) A second class borough may by ordinance exercise the following powers on an

23 areawide basis:

- 24 (1) provide transportation systems;
- 25 (2) license, impound, and dispose of animals;
- 26 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 27 - 46.03.230];
- 28 (4) provide water pollution control;
- 29 (5) license day care facilities.

30 \* Sec. 9. *amends AS 37.05.146(4) to add clean air protection fund.*

30 \* Sec. 9. AS 44.46.025(a) is amended to read:

31 <sup>10</sup> (a) The Department of Environmental Conservation may adopt regulations that prescribe

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

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

5 (2) the emission control permitting program and the motor vehicle pollution  
6 control program under AS 46.14, [AIR QUALITY PERMITS UNDER AS 46.03.140 AND  
7 46.03.160]; *add indirect costs reference*

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

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

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

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

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

14 \* Sec. <sup>11</sup> ~~N.~~ AS 44.62.330(a)(44) is amended to read:

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

18 \* Sec. <sup>12</sup> ~~N.~~ AS 46.03.760(f) is amended to read:

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

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

31 (2) reasonable costs incurred by the state in detection, investigation, and attempted

1 correction of the violation:

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

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

5 \* Sec. ~~N.~~<sup>13</sup> AS 46.03.765 is amended to read:

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

15 \* Sec. ~~N.~~<sup>14</sup> AS 46.03.780(a) is amended to read:

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

22 \* Sec. ~~N.~~<sup>15</sup> AS 46.03.790(a) is amended to read:

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

25 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,  
26 a regulation or order of the department, or a permit, approval, or acceptance, or a term or  
27 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]  
28 AS 46.09, or AS 46.14;

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

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

5 (4) makes a false statement, representation, or certification in an application,  
6 notice, record, report, permit, or other document filed, maintained, or used for purposes  
7 of compliance with AS 46.14 or a regulation adopted by the department under AS 46.14;

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

11 \* Sec. ~~15~~<sup>16</sup> AS 46.03.790 is amended by adding a new subsection to read:

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

15 \* Sec. ~~16~~<sup>17</sup> AS 46.03.850(a) is amended to read:

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

22 \* Sec. ~~17~~<sup>18</sup> AS 46.03.875 is amended to read:

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

27 \* Sec. ~~18~~<sup>19</sup> AS 46.03.890(b) is amended to read:

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

31 \* Sec. ~~19~~<sup>20</sup> AS 46.08.075(a) is amended to read:

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

10 \* Sec. ~~20~~<sup>21</sup> AS 46.08.900(6) is amended to read:

11 (6) "hazardous substance" means

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

20 \* Sec. ~~21~~<sup>22</sup> AS 46.09.900(4) is amended to read:

21 (4) "hazardous substance" means

22 (A) an element or compound that, when it enters into the atmosphere, or  
23 into or on the surface or subsurface land or water of the state, presents an imminent and  
24 substantial danger to the public health or welfare, or to fish, animals, vegetation, or any  
25 part of the natural habitat in which fish, animals, or wildlife may be found; or

26 (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 -  
27 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of  
28 1980); "hazardous substance" does not include uncontaminated crude oil or  
29 uncontaminated refined oil;

30 \* Sec. ~~22~~<sup>23</sup> AS 46.35.200(4) is amended to read:

31 (4) "permit" means each of the following licenses, permits or authorizations

1 required to be obtained from a state agency before constructing or operating a project in the state,  
2 or any other license, permit or authorization which may be designated by the commissioner:

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

5 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;

6 (C) burning permit during fire season - AS 41.15.050, 11 AAC 92.010;

7 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;

8 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;

9 (F) brine or other salt water waste disposal permit - AS 31.05.030, 11  
10 AAC 22.250;

11 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;

12 (H) tidelands right-of-way or easement permit - AS 38.05.820, 11 AAC  
13 62.810;

14 (I) authorization for tidelands transportation - AS 38.05.110, 11 AAC  
15 76.205;

16 (J) tide and submerged lands prospecting permit - AS 38.05.250;

17 (K) mineral and geothermal prospecting permits - AS 38.05.145;

18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;

19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;

20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;

21 (O) permit to appropriate water - AS 46.15.040, 11 AAC 72.050;

22 (P) permit for use of timber or materials - AS 38.05.110, 11 AAC 76.185;

23 (Q) special material use permit - AS 38.05.115, 11 AAC 76.540;

24 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;

25 (S) limited personal use permit - AS 38.05.820, 11 AAC 62.820;

26 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;

27 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;

28 (V) miscellaneous state land use permit - AS 38.05.035, 11 AAC 96.010;

29 (W) anadromous fish protection permit - AS 16.05.870, 5 AAC 95.100.

30 (X) critical habitat area permit - AS 16.20.520 - 16.20.530;

31 (Y) state game refuge land permit - AS 16.20.050 - 16.20.060;

1 (Z) state park incompatible use permit - AS 41.21.020, 11 AAC 18.010;  
2 (AA) pesticides permit - AS 46.03.320, 18 AAC 90;  
3 (BB) surface oiling permit - AS 46.03.740, 18 AAC 75;  
4 (CC) encroachment permit - AS 19.25.200;  
5 (DD) utility permit - AS 19.25.010;  
6 (EE) driveway permit - AS 19.05.020, 17 AAC 10.020;  
7 (FF) access roads permit - AS 41.21.020, 11 AAC 18.020;  
8 (GG) right-of-way and easement permits - AS 38.05.850, 11 AAC 58.200;  
9 \* Sec. 24. ~~amends~~ <sup>repeals</sup> (HH) right-of-way permit - AS 38.05.850;  
10 \* Sec. ~~23.25~~ <sup>25</sup> AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
11 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.  
12 \* Sec. ~~24~~ <sup>26</sup> REGULATIONS. The Department of Environmental Conservation may adopt regulations  
13 as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority, to implement  
14 changes made by this Act. Regulations adopted under this section may not take effect until the enabling  
15 statute takes effect under sec. ~~25~~ <sup>27</sup> or sec. ~~26~~ <sup>28</sup> of this Act.  
16 \* Sec. ~~26~~ <sup>27</sup> AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210,  
17 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.260, 46.14.275, 46.14.285,  
18 46.14.295, 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520,  
19 46.14.530, 46.14.540, 46.14.550, 46.14.560, and 46.14.900, created by sec. 2 of this Act, and secs. 1 and  
20 3 - 24 of this Act take effect immediately under AS 01.10.070(c).  
21 \* Sec. ~~26~~ <sup>28</sup> AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.265,  
22 46.14.270, 46.14.280, 46.14.290, and 46.14.292, created by sec. 2 of this Act, take effect November 15,  
23 1993.

*References all  
changed to reflect  
CS's renumbering and  
reorganization of sections*

DRAFT CSHB 377, BY REPRESENTATIVE TOM MOYER

ALASKA AIR QUALITY STATUTES

SECTION-BY-SECTION ANALYSIS

2/11/92

SECTION 1. PURPOSE

This section is self explanatory

SECTION 2. AMENDS AS 46 TO CREATE A NEW CHAPTER 14

AS 46.14.010 REGULATION AUTHORITY; EMISSION CONTROL STANDARDS

OBJECTIVE:

This section provides basic powers to the department to control air pollution sources and activities by establishing "out-of-stack" emission limits and ground level ambient standards for health protection. The first portion of sub-section (a) incorporates the language from the existing AS 46.03.140 proposed for repeal. The last sentence of (a) is new language

FEDERAL REQUIREMENT:

CAA Section 502(b)(5)(C) provides authority to impose emission limits in permits that are issued

CAA Section 112(j) specifies that state permit programs must incorporate federal emission limits or impose equivalent emission limits if EPA does not promulgate an emission limit for a type of source for which EPA is

STATE INTENT & EXPLANATION:

Retain existing authority and satisfy minimum requirements of the amended Clean Air Act.

to clarify authorities of the department to establish emission standards based upon either the need to prevent excessive ground level concentrations of an air contaminant, or the use of a pollution control technology that is reasonably available and economically justifiable for a particular source or class of air pollution sources to use.

scheduled to do so under the Clean Air Act.

CAA section 112(1) specifies minimum criteria for state programs executing the section 112 provisions of the Clean Air Act. Section 112(1)(5)(A) addresses emission limits.

CAA Section 165(a)(4) requires technology-based emission limits upon sources at a subject facility via a permit review evaluation which determines the "Best Available Control Technology" on a case-by-case basis.

#### AS 46.14.020 CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING

##### OBJECTIVE:

This section incorporates the existing language from AS 46.03.150 (proposed for repeal) to provide authority to classify facilities and sources causing emissions of air contaminants as needed to ensure responsible and efficient management of air pollution. Subsection (b) provides authority to require reporting of information from those who emit air contaminants.

##### FEDERAL REQUIREMENT:

CAA Section 504 presents the minimum contents of a permit which includes reporting of information to assess compliance by the facility with the terms of the permit. CAA Section 503 discusses when permit applications are required to be submitted to the permitting agency.

##### STATE INTENT AND EXPLANATION :

Retain existing authorities and meet new minimum federal requirement. Existing authorities enable to department to require the submittal of information regarding air emissions and processes that cause air emissions. This authority exists regardless of the need for an entity to obtain an air permit. The authority needs to be retained to enable the department to perform its most basic function of protecting air

resources by having knowledge concerning activities that result in emissions of air contaminants.

#### AS 46.14.200 PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION

##### OBJECTIVE:

This section prohibits undertaking certain actions that cause air pollution without first obtaining a permit from the department. If a permit is required, activities must be performed in compliance with the terms of an authorized permit, order or other determination of the department. The section incorporates the authority that currently exists in AS 46.03.160(a) & (d)(proposed for repeal).

##### FEDERAL REQUIREMENT:

Permits to construct or modify are required under CAA Sections 165(a) and 112(g)(2).

Permits to operate are required under CAA Section 502(a).

##### STATE INTENT & EXPLANATION:

The state intends to execute a permit program that meets the minimum requirements of the Clean Air Act. Such a program must greatly expand the number of permits issued by the state because of the reduced minimum facility size that is now subject to permit requirements. The state generally intends to exempt any facility from permit requirements if a federal exemption is authorized unless there is strong basis of need, from the state's perspective, to retain the permit as a mechanism to contain or minimize an air pollution problem.

#### AS 46.14.205 FACILITIES AND SOURCES REQUIRING PERMITS

##### OBJECTIVE:

This section specifies which facilities are required to obtain a permit to construct and which

##### FEDERAL REQUIREMENTS:

Identical references as noted for 46.14.200

##### STATE INTENT & EXPLANATION:

The intent is to implement a permit program that satisfies the minimum federal requirements but

are required to obtain a permit to operate. Facilities that are required to obtain a permit to construct will be a sub-set of the facilities that must obtain a permit to operate.

Currently, the department's permit to operate is also used as authorization to construct. To be as timely as possible to permittees, while also complying with the new federal requirements, it is advantageous to issue a permit to construct separate from a permit to operate when the construction permit is necessary under federal law.

Please note the importance and special meaning of the term "major facility" used in subsection (b) and defined in section 46.14.990.

Permits to construct are issued for those facilities required by federal law and others that "have the potential to violate the ambient air quality standards or otherwise pose a threat to public health". The purpose of this clause within AS 46.14.205(a)(3) is to prevent the construction of a facility designed in such a manner that its emissions of air contaminants will immediately threaten public health and thereby require remediation

is also tailored as much as possible to meet Alaska's unique needs.

Implementing a "permit to construct" separate from a "permit to operate" will enable the department to issue a construction authorization in the amount of time currently taken, while the additional mandatory review steps for the permit to operate will be ongoing. In practice, the applicant will submit one permit application. The permit to construct, if required, would be issued within 30 days after completion of a public comment period and the permit to operate would be issued approximately 60-90 days, later after the draft permit undergoes the required federal review.

following construction. These facilities will be classified and listed in the department's regulations.

#### AS 46.14.210 EMISSION CONTROL PERMIT PROGRAM REGULATIONS

##### OBJECTIVE:

This section directs the department to adopt regulations which include all elements of the permit program expressly required by the Clean Air Act. Sub-section (b) incorporates the authority from the existing AS 46.03.160(g) (proposed for repeal).

##### FEDERAL REQUIREMENTS:

CAA Section 502(b). The proposed language addresses the federal requirements as shown below:

AS 46.14.210(a)(1): see  
CAA Section 502(b), (b)(1);

AS 46.14.210(a)(2): see  
CAA Section 502(b)(2),  
503(b)(1);

AS 46.14.210(a)(3): see  
CAA Section 502(b)(6);

AS 46.14.210(a)(4): see  
CAA Section 504(a), (b), and  
(c), 503(b)(2), 40 CFR  
70.6(a)(iv)(A), (B)(Proposed);

AS 46.14.210(a)(5): see  
CAA Section 502(b)(3)(A);

AS 46.14.210(a)(6): see  
CAA Section 502(b)(5)-(10);

AS 46.14.210(a)(7): no federal  
requirement. This is a state  
initiative.

##### STATE INTENT & EXPLANATION:

The intent is to meet the minimum federal requirements and to create a mechanism to avoid the issuance of permits to those facilities which can contain their emissions below the applicable levels through voluntary process or operational restrictions.

AS 46.14.215 STATE POLICY; STATE AIR QUALITY PLAN

OBJECTIVE:

This section identifies the State Air Quality Control Plan and designates that the department will act in the Governor's behalf, with respect to the plans. All actions taken by the department must conform with the plan.

FEDERAL REQUIREMENTS:

CAA Sections 110, 502(b)(5)(C), 502(d), 40 CFR 52.70

STATE INTENT & EXPLANATION:

The State Air Quality Control Plan is the resource management document that identifies the specific methods to be employed by the department for reducing air pollution in areas that currently exceed public health standards. The plan establishes methods for maintaining acceptable air quality in the remaining portions of the state, and provides detailed guidance concerning the air permit program. The Plan is the official document reviewed by EPA in determining if the state program adequately implements the Clean Air Act. As such it becomes adopted into federal law at the time of approval and is then enforceable by EPA.

AS 46.14.220 TIME FOR SUBMISSION OF PERMIT APPLICATIONS

OBJECTIVE:

The section identifies when permit applications are due under the new permit program that takes effect November 15, 1993.

FEDERAL REQUIREMENTS:

CAA Section 503(a), and (c)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements and to insure that the state maintains primacy over the federal government in this program.

AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS

OBJECTIVE:

Identify the time schedule under which the department will take actions on permit applications. Sub-section (a) (1) adopts the concept that currently exist in AS 46.03.160(b) (proposed for repeal).

FEDERAL REQUIREMENTS:

AS 46.14.215(a)(1) ---- no applicable federal requirement

AS 46.14.215(a)(2) ---- see CAA Section 503(c)

AS 46.14.215(b) ---- see CAA Section 503(c)

STATE INTENT & EXPLANATION:

The intent is to comply with minimum federal requirements and to be as responsive as possible to the needs of Alaska industries for construction permits.

It is anticipated that the number of permits issued will triple or quadruple in comparison to 1991. This will place a tremendous burden upon the agency to issue permits during the years of 1993 to 1997. Thus phased scheduling is allowed for that start-up period.

AS 46.14.230 REVIEW OF PERMIT ACTION

OBJECTIVE:

This section identifies the remedies that are open to those who are aggrieved by a permit action.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(6)

STATE INTENT & EXPLANATION:

Under the Clean Air Act, the state must provide an opportunity for an aggrieved party to obtain judicial review of a permit action. The state desires to retain the currently existing administration adjudication process as a first step for an aggrieved party. The administrative adjudication process is less costly and more

responsive for a party and therefore a more efficient first step remedy. The opportunity for judicial review is available after adjudatory review.

#### AS 46.14.235 SINGLE PERMIT

##### OBJECTIVE:

The section presents the concept that a facility, regardless of the number of air contaminant sources it contains, will secure only one air permit which will identify all applicable state and federal laws pertaining to the facility's air contaminant emissions. Although language from the existing AS 46.03.225 (proposed for repeal) is not used, the concept of one permit is retained.

##### FEDERAL REQUIREMENTS:

CAA Section 502(c)

##### STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements. This provision is also in the best interest of Alaskans because all federal and state requirements will be consolidated within a single document; the permit.

#### AS 46.14.240 GENERAL OPERATING PERMITS

##### OBJECTIVE:

Incorporation of this elective provision within federal law should be extremely beneficial in accomplishing timely issuance of

##### FEDERAL REQUIREMENTS:

CAA Section 504(d) specifies that states may elect to issue general permits.

##### STATE INTENT & EXPLANATION:

General permits will be a method of quickly issuing individual permits for facilities that have

air permits for selected facility categories.

similar source configurations, do not pose a threat to air quality standards, or a facility in which the potential threat can be uniformly managed by specific permit conditions. Several general permits would be created; one for each group of similar facility configurations. Before the permit is issued to any subject facility, the draft general permit would undergo public and EPA review. It would then serve as a model that could be issued to a qualifying facility upon filing of a permit application.

AS 46.14.245 OBJECTION BY THE ADMINISTRATOR

OBJECTIVE:

This section delineates the role of the EPA Administrator in the permit review process.

FEDERAL REQUIREMENTS:

CAA Section 505(b)

STATE INTENT & EXPLANATION:

This is a required provision of any state approved air permit program. The intent is to comply with the federal requirement regarding permit review by EPA.