



LAWS OF ALASKA

1971

Source

SB 75 am H

Chapter No.

120

AN ACT

Creating a Department of Environmental Conservation; and providing for an effective date.

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

* Section 1. AS 44.15.010 is amended by adding a new paragraph to read:

(16) Department of Environmental Conservation

* Sec. 2. AS 44 is amended by adding a new chapter to read:

CHAPTER 46. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

ARTICLE 1. ORGANIZATION.

Sec. 44.46.010. COMMISSIONER OF ENVIRONMENTAL CONSERVATION. The principal executive officer of the Department of Environmental Conservation is the commissioner of environmental conservation.

Sec. 44.46.020. DUTIES OF DEPARTMENT. The Department of Environmental Conservation shall

(1) have primary responsibility for coordination and development of policies, programs and planning related to the environment of the state and of the various regions of the state;

(2) have primary responsibility for the promulgation and enforcement of regulations setting standards for the prevention and abatement of all water, land, subsurface land and air pollution, and other sources or potential sources of pollution of the environment, including by way of example only, petroleum and natural gas pipelines;

(3) promote and develop programs for the protection and control of the environment of the state;

(4) take such actions as shall be necessary and proper to further the policy declared in AS 46.03.-010.

ARTICLE 2. ENVIRONMENTAL ADVISORY BOARD.

Sec. 44.46.030. ENVIRONMENTAL ADVISORY BOARD. (a) There is created within the Department of Environmental Conservation an environmental advisory board, consisting of the commissioner of environmental conservation who shall serve as chairman and eight members appointed by the governor.

(b) No member of the board other than the chairman may be an officer or employee of a state department or agency.

(c) Of the members of the board first appointed by the governor, three shall be appointed for a term of one year; three for a term of two years; and two for a term of three years. The initial terms begin on July 1, 1971. Thereafter, all appointments shall be made for terms of three years beginning on July 1 of the year in which the appointment is made. Members of the board shall serve at the pleasure of the governor. In the case of a vacancy other than one arising by expiration of term an appointment to fill the vacancy shall be made for the remainder of the unexpired term.

Sec. 44.46.040. EXPENSES AND PER DIEM OF BOARD MEMBERS. Each member of the board is entitled to travel expenses and per diem allowed by law for each day going to and from and for each day in actual attendance at board meetings and other meetings or conferences authorized by the commissioner.

Sec. 44.46.050. FUNCTIONS OF BOARD. (a) The board shall

(1) advise the commissioner of environmental conservation in the review and appraisal of programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010;

(2) serve as a forum for the exchange of views, concerns, ideas, information and recommendations relating to the quality of the environment; and

(3) recommend to the commissioner the persons who by virtue of outstanding achievement in the field of environmental conservation merit a certificate of achievement from the commissioner of environmental conservation.

(b) The board shall exercise and perform such other functions as may be requested by the commissioner.

* Sec. 3. AS 46 is amended by adding a new chapter to read:

TITLE 46. WATER, AIR AND ENVIRONMENTAL CONSERVATION.

CHAPTER 3. ENVIRONMENTAL CONSERVATION.

ARTICLE 1. DECLARATION OF POLICY.

Sec. 46.03.010. DECLARATION OF POLICY. (a) It is the policy of the state to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and concerned individuals, and to develop and manage the basic resources of water, land and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

ARTICLE 2. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Sec. 46.03.020. POWERS OF THE DEPARTMENT. The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in sec. 10 of this chapter for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations and groups, public and private, using, served by, interested in or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic and research organizations, colleges, universities, institutes and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation which may be promulgated under secs. 30 - 40 of this chapter; information relating to secret processes or methods of manufacture discovered during investigation shall be confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification or alteration;

(C) protection of public water supplies by setting standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural and community activities or operations;

(F) control of radiation sources to prohibit and prevent unnecessary radiation;

(G) control of pesticides;

(H) such other purposes as may be required for the implementation of the policy declared in sec. 10 of this chapter.

Sec. 46.03.030. GRANTS AND LOANS FOR WATER SUPPLY AND SEWAGE SYSTEMS. (a) The department may pay, as funds are available, 25 per cent of the estimated reasonable cost, as determined by the Secretary of the Interior, of each waste treatment works project approved for a federal grant by the Federal Water Quality Administration or its predecessor, the Federal Water Pollution

Control Administration, and on which construction was initiated after June 30, 1967. As funds are available, the department may lend on an interest-free basis for a project approved after June 30, 1970, any part of an anticipated federal grant. Money received from the Federal Water Quality Administration for the project after the loan is given must be used to repay the loan, but the loan need be repaid only to the extent of this federal assistance.

(b) The department may pay to a municipality, as funds are available, up to the lesser of 25 per cent of the estimated cost or 50 per cent of the estimated cost not borne by the federal government, if there is federal assistance, of water systems, including collection and impounding facilities, and of those portions of sewerage systems not covered by (a) of this section. The estimated cost of any part of a system will be as determined by the federal agency which gives the most monetary assistance or, if none, by the department. Systems shall be constructed according to plans and specifications approved by the federal agency which gives the most monetary assistance or, if none, by the department.

(c) There is a water supply and sewerage systems fund created in the department to carry out the purposes of this section.

Sec. 46.03.040. ALASKA ENVIRONMENTAL PLAN. (a) The department shall formulate and annually review and revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state, in furtherance of the legislative policy and purposes expressed in this chapter.

(b) The department shall submit the first plan to the governor on or before January 1, 1972, and thereafter submit periodic revisions of the plan to the governor. The plan is effective upon approval by the governor and shall serve thereafter as a guide to the public, the state government and the political subdivisions of the state in the development of the environment and natural resources of the state.

(c) In formulating the plan and any revisions, the department may consult with persons, organizations and groups, public or private, interested in or concerned with the environment of the state, and with a department, division, board, commission or other agency of the state, with a political subdivision, or with any public authority as may be necessary to enable the department to carry out its responsibilities under this section.

ARTICLE 3. WATER POLLUTION CONTROL.

Sec. 46.03.050. AUTHORITY. The department has jurisdiction to prevent and abate the pollution of the waters of the state.

Sec. 46.03.060. WATER POLLUTION CONTROL PLAN. The department shall develop comprehensive plans for water pollution control in the state and conduct investigations

it considers advisable and necessary for the discharge of its duties.

Sec. 46.03.070. POLLUTION STANDARDS. After public hearing, the department may adopt standards and make them public and determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental or injurious to the public health, safety or welfare, to terrestrial and aquatic life or their growth and propagation, or to the use of waters for domestic, commercial, industrial, agricultural, recreational, or other reasonable purposes.

Sec. 46.03.080. QUALITY AND PURITY STANDARDS. After study and public hearings held upon due notice, the department may establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality and purity, or both. The department shall classify waters in accordance with considerations of best usage in the interest of the public. The department may alter and modify classifications after hearing.

Sec. 46.03.090. PLANS FOR POLLUTION DISPOSAL. The department may require the submission of plans for sewage and industrial waste disposal or treatment or both for a publicly or privately owned or operated industrial establishment, community, public or private property subdivision or development.

Sec. 46.03.100. WASTE DISPOSAL PERMIT. (a) A person who conducts a commercial or industrial operation which results in the disposal of solid or liquid waste material into the waters of the state must procure a permit from the department before disposing of the waste material. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) This section does not apply to a person discharging only domestic sewage into a sewerage system.

Sec. 46.03.110. WASTE DISPOSAL PERMIT PROCEDURE. (a) An application for a permit shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

(b) Upon receipt of a proper application the department shall publish notice of the application in two separate publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice may also be published in other appropriate information media. The notice shall include a statement that a person who wants to present his views to the department in regard to the application may do so in writing to the department within 30 days of the second publication of the notice. The written response entitles the writer to a copy of the application.

(c) When the department receives an application, the commissioner shall immediately send copies of the application to the commissioner of fish and game, the commissioner of natural resources, the commissioner of economic development and the commissioner of health and welfare.

(d) The department may specify in a permit the terms and conditions under which waste material may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. No permit may be effective for a period in excess of five years from the date of issuance.

Sec. 46.03.120. TERMINATION OR MODIFICATION OF WASTE DISPOSAL PERMIT. (a) The department may terminate a permit upon 30 days written notice if the department finds

(1) that the permit was procured by misrepresentation of material fact or by failure of the applicant to disclose fully the facts relating to its issuance;

(2) that there has been a violation of the conditions of the permit;

(3) that there has been a material change in the quantity or type of waste disposed of.

(b) The department may modify a permit if the department finds that a material change in the quality or classification of the waters of the state has occurred.

Sec. 46.03.130. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate regulations and standards established under the provisions of secs. 60 - 100 of this chapter or any other regulations concerning water pollution, the department shall notify the person of its determination by certified mail. The determination and notice do not constitute an order under sec. 820 of this chapter.

(b) Within 15 days from the receipt of the notice, the recipient of the determination must file with the department a report stating what measures have been and are being taken to control the conditions outlined in the notice from the department.

(c) Thereafter, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in sec. 10 of this chapter. A copy of the compliance order shall be sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days of receipt, a person affected may make application for a hearing to review the compliance order. Failure to make application for hearing within 30 days of the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20

days of receipt of the application. After hearing, the department may rescind, modify or affirm the compliance order.

ARTICLE 4. AIR POLLUTION CONTROL.

Sec. 46.03.140. EMISSION CONTROL REQUIREMENTS. The department may establish air pollution control regulations which in its judgment are necessary to prevent, abate or control air pollution. These regulations may be for the state as a whole or may vary from area to area as may be appropriate to facilitate accomplishment of the purposes of this chapter and in order to take account of varying local conditions.

Sec. 46.03.150. CLASSIFICATION AND REPORTING. (a) The department by regulation shall classify air contaminant sources, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for the classifications. Classifications made under this subsection may be for application to the state as a whole or a designated area of the state and shall be made with special reference to effects on health, economic and social factors and physical effects on property.

(b) A person operating or responsible for the operation of air contaminant sources of a class for which the regulations of the department require reporting shall make reports containing the information required by the department concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and other information relevant to air pollution and available or reasonably capable of being assembled.

Sec. 46.03.160. ADDITIONAL CONTAMINANT CONTROL MEASURES. (a) The department may require that notice be given to it before the undertaking of the construction, installation or establishment of particular types or classes of new air contaminant sources specified in its regulations. Within 15 days of its receipt of the notice, the department shall require, as a condition precedent to the undertaking, the submission of plans and other information it considers necessary in order to determine whether the proposed undertaking will be in accord with applicable regulations in force under secs. 140 - 150 of this chapter.

(b) Within 30 days of receipt of the plans and information for a proposed undertaking, the department shall either approve the undertaking and issue a permit, or if the department determines that the proposed undertaking will not meet the requirements of secs. 140 - 150 of this chapter and applicable regulations, it shall issue a prohibition order against the undertaking.

(c) A person subject to a prohibition order as prescribed in (b) of this section, upon written request in accordance with regulations of the department, is entitled to a hearing on the order. Following the hearing the

order may be affirmed, modified or withdrawn.

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

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

(f) Nothing in this section may be construed to authorize the department to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices or equipment available from other sources.

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

(h) The department may require the payment of a reasonable fee for the review of plans and information required to be submitted. No fee for a single review may exceed \$25.

Sec. 46.03.170. VARIANCES. (a) A person who owns or is in control of a plant, building, structure, establishment, process or equipment may apply to the department for a variance from applicable emission control regulations. The department may grant the variance, but only after public hearing following due notice, if it finds that

(1) the emissions occurring or proposed to occur do not endanger human health or safety; and

(2) compliance with the rules or regulations from which variance is sought would produce severe hardship without benefits to the public.

(b) No variance may be granted under this section until the department has considered the relative interests of the applicant, other owners of property likely to be affected by the emissions and the general public.

(c) A variance granted under (a) of this section, shall be for periods and under conditions consistent with the reasons for it and within the following limitations:

(1) if the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, subject to the taking of substitute or alternate measures that the department may prescribe;

(2) if the variance is granted on the ground that compliance with the particular requirement from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period, it shall be for a period not to exceed the reasonable time which in the opinion of the department is necessary. A variance granted on this ground shall contain a timetable for taking action in an expeditious manner and shall be conditioned on adherence to the timetable and shall be for not more than five years;

(3) if the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in (c)(1) and (2) of this section, it shall be for not more than one year.

(d) The department may upon application renew an existing variance on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department on account of the variance no renewal of it may be granted unless, after public hearing on the complaint following due notice, the department finds that renewal is justified. Application shall be made at least 60 days before the expiration of the variance. Immediately upon receipt of an application for renewal the department shall give public notice of it.

(e) A variance or renewal is not a right of the applicant but shall be in the discretion of the department.

(f) No variance or renewal granted under this section may be construed to prevent or limit the application of the emergency orders of the commissioner issued under sec. 820 of this chapter.

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source shall be considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

Sec. 46.03.190. MOTOR VEHICLE POLLUTION. (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this chapter, the department may provide by regulation for the control of these emissions. The regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of this equipment.

(b) Except as permitted by law, no person may fail to maintain in operation any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle if it is required by regulations of the department to be maintained in or on the vehicle. A failure to maintain this equipment in

operation subjects the owner or operator to suspension or cancellation of the registration of the vehicle, and it may not be again eligible for registration until this equipment is restored to operation.

(c) The department shall consult with the Department of Public Safety and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(d) When the department has issued regulations requiring the maintenance of features or equipment in or on motor vehicles for the purpose of controlling emission from the vehicles, no motor vehicle may be issued a certificate of inspection and approval if required, unless the required features or equipment have been inspected in accordance with the standards, testing techniques and instructions furnished by the department and have been found to meet those standards.

Sec. 46.03.200. LIMITATIONS. Secs. 140 - 240 of this chapter do not

(1) grant to the department jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

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

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

Sec. 46.03.210. LOCAL AIR POLLUTION CONTROL PROGRAMS.

(a) A municipality with a population in excess of 1,000 may, within five years from August 5, 1969, establish and administer within its jurisdiction an air pollution control program. Organized boroughs may establish an air pollution control program on an areawide basis, and the exercise of powers with respect to the program is not subject to the restrictions on acquiring additional areawide powers specified in AS 07.15.350. However, the weighted vote shall apply to the exercise of powers as provided in AS 07.20.070(d). Local programs shall

(1) provide by ordinance for requirements compatible with those imposed by the provisions of secs. 140 and 170 of this chapter and applicable regulations;

(2) provide for the enforcement of the requirements imposed through appropriate administrative and judicial processes;

(3) provide for a local administrative organization, staff, and other resources necessary to effectively carry out the purposes of the program; and

(4) be approved by the department as being satisfactory to meet the requirements of secs. 140 - 170 of this chapter and the applicable regulations.

(b) Municipalities other than those with a population of less than 1,000 may establish and administer local air pollution programs if the proposed programs meet the requirements of (a)(1) - (4) of this section.

(c) A municipality may administer all or a part of its air pollution control program in cooperation with one or more municipalities.

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

Sec. 46.03.220. ABSENCE OF LOCAL PROGRAM. (a) If a municipality authorized to establish or participate in an air pollution control program under sec. 210(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter the department shall, following 45 days notice, conduct a hearing on the matter.

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall require that necessary corrective action be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality or the district set up under sec. 210(a) or (d) of this chapter fails to take the necessary corrective action within the time specified the department shall administer in the municipality or district all of the regulatory provisions of this chapter. The department's air pollution control program shall then supersede municipal air pollution ordinances, regulations, and requirements in the affected jurisdiction.

(d) If the department finds that the control of a particular class of air contaminant source, because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of air contaminant source. Classifications under this subsection may be either on the basis of the nature of sources involved or on the basis of their relationship to the size of the communities in which they are located.

(e) A municipality in which the department administers the air pollution control program under this section may with the approval of the department establish or

resume a municipal program which meets the requirements of sec. 210(a) or (d).

(f) The provisions of secs. 210 - 220 do not nullify a local air pollution program in operation on August 5, 1969, if the program meets the requirements of sec. 210(a) or (d) of this chapter within two years from that date.

Sec. 46.03.230. STATE AND FEDERAL AID. (a) A local government unit with an air pollution program meeting the requirements of this chapter and the regulations issued under it may apply to the state for state aid equal to a maximum of 75 per cent of the locally funded annual operating cost of the program. For a joint or areawide program established under sec. 210(d) of this chapter application may be made for state aid equal to a maximum of 75 per cent of the locally funded operating cost. In the case of a joint or areawide program the state aid may be based on the cost of the entire program or, if the department finds that one or more elements of separately administered programs are being carried on jointly in a way that materially increases the efficiency of the programs, it may aid the element carried on under the interlocal agreement at the rate applied to joint and areawide programs generally.

(b) Municipalities of the state and interlocal air pollution control agencies established under secs. 140 - 240 of this chapter may apply for, receive, administer and expend federal aid for the control of air pollution or the development and administration of programs related to that control, if the application is first submitted to and approved by the department. The department shall approve an application if it is consistent with secs. 140 - 240 of this chapter and other applicable requirements of law.

Sec. 46.03.240. CONSTRUCTION AND IMPLEMENTATION OF SEC. 230. (a) Sec. 230 of this chapter may not be construed so as to create a debt of the state.

(b) The air pollution control support account is established. Funds to carry out the provisions for state aid under sec. 230 of this chapter may be appropriated annually by the legislature to the account. If amounts in the account are insufficient for the purpose of the state aid authorized under sec. 230 of this chapter, such funds as are available shall be distributed pro rata among eligible local governments or air pollution control districts.

(c) Money in the air pollution control support account which, at the end of the fiscal year for which the money is appropriated, exceeds the amount required for the allocations authorized in secs. 140 - 240 of this chapter reverts to the general fund.

ARTICLE 5. RADIATION PROTECTION.

Sec. 46.03.250. AUTHORITY. (a) The department shall

(1) develop comprehensive policies and programs

for the evaluation and determination of hazards associated with the use of radiation, radiation sources, and their amelioration;

(2) encourage, participate in and conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazard, the measurement of radiation, the effects on health of exposure to radiation and related problems it considers necessary or advisable for the discharge of its duties;

(3) collect and disseminate health education information relating to radiation protection;

(4) review plans and specifications for radiation sources submitted under its regulations;

(5) inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of possible radiation hazard.

(b) The department may keep confidential data obtained as a result of registration or investigation.

Sec. 46.03.260. USE OF ATOMIC RADIATION. Sources of radiation shall be shielded, transported, handled, used and kept to prevent users and persons within effective range from being exposed to unnecessary radiation in conformity with the department's regulations.

Sec. 46.03.270. ELECTRONIC PRODUCT RADIATION. All electronic products capable or likely to be capable of emitting radiation shall be shielded, handled, used, and kept to prevent users and persons within the range of radiation from dangerous concentration of radiation in conformity with the department's regulations.

Sec. 46.03.280. NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. When the department finds, after inspection and examination of a source of radiation as constructed, operated or maintained that there has been a violation of a provision of this chapter, it shall notify the person causing, allowing or permitting the violation, of the nature of the violation and order the person to cease and abate the violation.

Sec. 46.03.290. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY. When the department finds that an emergency exists requiring immediate action to protect the public health or welfare from radiation it may issue an order reciting the existence of an emergency and requiring that action be taken to meet the emergency. The order is effective immediately. A person to whom an order is directed shall comply with it immediately but on application to the department shall be given a hearing under the Administrative Procedure Act (AS 44.62). Thereafter the department may affirm, revoke or modify the order.

Sec. 46.03.300. EXCEPTIONS. Secs. 260 - 270 of this chapter do not limit the intentional exposure of patients to radiation for the purpose of diagnosis or

therapy, or medical research, as authorized by law.

Sec. 46.03.310. CONFLICTING LAWS. Secs. 250 - 300 of this chapter shall not be construed as repealing any laws of the state relating to radiation sources, exposures, radiation protection, and professional licensure, but shall be held and construed as auxiliary and supplementary to those laws, except to the extent that the same are in conflict with secs. 250 - 300 of this chapter. Ordinances or regulations of any governing body of a municipality which are consistent with secs. 250 - 300 of this chapter shall not be superseded by secs. 250 - 300 of this chapter.

ARTICLE 6. PESTICIDE CONTROL.

Sec. 46.03.320. AUTHORITY. (a) The department is authorized to

(1) regulate the transportation, testing, inspection, packaging, labeling, handling and advertising of pesticides and broadcast chemicals offered for sale, or placed in commerce for use in the state;

(2) regulate and supervise the distribution, application or use of pesticides and broadcast chemicals in any state project or program, or by a public agency under the jurisdiction of the state;

(3) regulate or prohibit the use of pesticides and broadcast chemicals.

(b) The department may provide by regulation for the licensing of persons engaged in the custom, commercial or contract spraying or application of pesticides and broadcast chemicals including the requirement of a surety bond and liability insurance for the licensee.

Sec. 46.03.330. PUBLIC PESTICIDE PROGRAMS. (a) No officer, agent or employee of the state, or of a borough or city of any class, may direct, carry out, or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials or equipment of the state, borough or city, except in accordance with regulations promulgated by the department under sec. 320 of this chapter.

(b) Before a public project that would affect lands owned separately by two or more persons is initiated, the person directing the program shall give public notice of the program in the manner required by regulations of the department. The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected borough or city, or by a petition signed by at least 50 residents. The requirement for public notice or public hearing may be waived if the commissioner determines that a public emergency exists.

(c) The provisions of this section apply to home rule municipalities.

ARTICLE 7. PROHIBITED ACTS AND PENALTIES.

Sec. 46.03.710. POLLUTION PROHIBITED. No person may pollute or add to the pollution of the air, land, sub-surface land or water of the state.

Sec. 46.03.720. CONSTRUCTION OF CERTAIN FACILITIES PROHIBITED. No person may construct, extend, install or operate a sewage system or treatment works, or any part of a sewage system or treatment works, or until plans for it are submitted to the department for review, and the department approves them in writing and issues a written permit. The department may waive the requirement that plans be submitted to it.

Sec. 46.03.730. PESTICIDES. No person may spray or apply, or cause to be sprayed or applied dichloro-diphenyl-trichloro-ethane (DDT), dieldrin or other pesticide or broadcast chemical in a manner which may cause damage to or endanger the health, welfare or property of another person, or in such a manner as to be likely to pollute the air, soil or water of the state without prior authorization of the department.

Sec. 46.03.740. OIL POLLUTION. No person may discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

Sec. 46.03.750. BALLAST WATER DISCHARGE. (a) No person may pollute or add to the pollution of waters of the state by discharging from any vessel ballast water, tank-cleaning waste water or other waste containing petroleum in excess of the maximum permitted by the water quality standards established under secs. 40 and 150 of this chapter and in no event may a vessel discharge ballast water, tank-cleaning waste water or other waste containing petroleum in excess of 50 parts per million of oil residue.

(b) Except as provided in (c) of this section, no vessel may take on petroleum or any petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast at sea during the period of time from departure of the vessel enroute to the state from a port outside the state to arrival at a port in the state or while in transit between ports in the state, and the master of the vessel certifies the fact on forms provided by the department.

(c) Vessels equipped with tanks used exclusively for ballast or capable of producing ballast with an oil content less than that provided for in (a) of this section may discharge that ballast at sea, including the waters of the state, if it meets the standards of (a) of this section and the master of the vessel certified that fact on forms provided by the department.

(d) A person in charge of a sea-going vessel or of

an onshore or offshore facility, as soon as he has knowledge of any discharge from the vessel or facility in violation of a provision of this chapter shall immediately notify the department of the discharge.

Sec. 46.03.760. POLLUTION PENALTIES. (a) A person who violates secs. 710, 730, 740, or 750 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

(b) In addition to the penalties provided in (a) of this section a person who violates secs. 740 - 750 of this chapter is liable, in a civil action, to the state for liquidated damages to be assessed by the court for an amount not less than \$5,000 nor more than \$100,000, depending on the severity of the violation.

(c) In addition to the penalties provided in (a) of this section, a person who violates a provision of sec. 750 of this chapter is liable to the state, in a civil action, in the case of a vessel, for damages in an amount not to exceed \$100 per gross ton of the violating vessel or \$14 million, whichever is less and in the case of an onshore or offshore facility \$100 for every \$500 evaluation of the violating facility or \$14 million whichever is less. However, if the state shows that a violation of sec. 750 of this chapter was the result of wilful negligence or wilful misconduct on the part of the person charged with the violation, the person is liable to the state for the full amount of damages caused. In the case of wilful negligence or wilful misconduct "damages", in this subsection, means costs associated with the abatement, containment or removal of a pollutant and reasonable restoration of the environment to its former state.

(d) A person who falsely certifies information required under sec. 750 of this chapter, upon conviction, is punishable by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

(e) Nothing in this section affects an individual's right to recover damages under other applicable statutes or the common law.

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel which is used in or in aid of a violation of secs. 740 - 750 of this chapter may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in or the cause of a violation of secs. 740 - 750 of this chapter with knowledge of its owner or under circumstances indicating that the owner should reasonably have had such knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under sec. 760(b) of this chapter, and if the damages so assessed

are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under sec. 760(b) of this chapter.

Sec. 46.03.780. LIABILITY FOR RESTORATION. (a) A person who violates a provision of this chapter, or who fails to perform a duty imposed by this chapter, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

(b) Liability for damages under (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or degraded resource, or to otherwise restore the environment of the state to its condition before the injury.

(c) Damages under (a) of this section shall be recovered by the attorney general on behalf of the state.

Sec. 46.03.790. WILFUL VIOLATION. (a) A person found guilty of wilfully violating a provision of this chapter, or a regulation, written order or directive of the department or of a court made under this chapter is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000 and costs of prosecution, or by imprisonment for not more than one year, or by both such fine, cost, and imprisonment at the discretion of the court.

(b) Each day upon which a wilful violation of the provisions of this chapter occurs may be considered a separate and additional violation.

Sec. 46.03.800. WATER NUISANCES. (a) A person is guilty of creating or maintaining a nuisance if he puts a dead animal carcass, or part of one, excrement, or a putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner befouls, pollutes, or impairs the quality of a spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes.

(b) A person who neglects or refuses to abate the nuisance upon order of the department is guilty of a misdemeanor and is punishable as provided in sec. 790 of this chapter. In addition to this punishment, the court shall assess damages against the defendant for the expenses of abating the nuisance.

Sec. 46.03.810. AIR AND LAND NUISANCES. (a) A

person is guilty of creating or maintaining a nuisance if he

(1) places or deposits upon a lot, street, beach, premises or upon, or within 200 feet of a public highway, unless the highway abuts upon tidal water, any garbage, offal, dead animals, or any other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal, dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

(b) A person who neglects or refuses to abate the nuisance upon order of an officer of the department of environmental conservation is guilty of a misdemeanor and is punishable as provided in sec. 790 of this chapter. In addition to this punishment, the court shall assess damages against the defendant for the expenses of abating the nuisance.

Sec. 46.03.820. EMERGENCY POWERS. (a) When the department finds, after investigation, that a person is causing, engaging in or maintaining a condition or activity which, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate or alleviate such condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected shall have the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing shall not stay the operation of the department's order made under (a) of this section.

(d) After a hearing the department may affirm, modify or set aside the order. An order affirmed, modified or set aside after hearing is subject to judicial

review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

Sec. 46.03.840. RADIATION PENALTIES. A person who violates secs. 260 - 280 of this chapter is, upon conviction, punishable by a fine of not more than \$100, or by imprisonment for not more than six months, or by both. Each day upon which a violation occurs constitutes a separate offense.

ARTICLE 8. GENERAL PROVISIONS.

Sec. 46.03.860. INSPECTION WARRANT. The department is authorized to seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with this chapter or a regulation promulgated under this chapter.

Sec. 46.03.870. ACTIONABLE RIGHTS. (a) The bases for proceedings or actions resulting from violations of this chapter or a regulation promulgated under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new, or enlarge existing rights of persons or groups of persons in the state.

(b) A determination or order of the department creates no presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter shall not be construed to estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

Sec. 46.03.880. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. Except as otherwise specifically provided in this chapter, the Administrative Procedure Act (AS 44.-62) governs the activities and the proceedings of the department.

Sec. 46.03.890. ENFORCEMENT AUTHORITY. The following persons are authorized to enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

Sec. 46.03.900. DEFINITIONS. In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous

substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

(5) "commissioner" means the commissioner of environmental conservation;

(6) "department" means the Department of Environmental Conservation;

(7) "electronic product" means a manufactured product which

(A) when in operation, contains or acts as part of an electronic circuit and emits, or in the absence of effective shielding or other controls would emit, electronic product radiation; or

(B) is intended for use as a component, part, or accessory of a product described in (A) of this paragraph and which when in operation emits, or in the absence of effective shielding or other controls would emit, electronic product radiation;

(8) "electronic product radiation" means an atomic radiation or nonionizing, electro-magnetic or particulate radiation, or a sonic, infrasonic, or ultrasonic wave which is emitted from an electronic product as the result of the operation of an electronic circuit in the product;

(9) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(10) "motor vehicle" has the same meaning as in AS 28.20.630;

(11) "municipality" means an organized borough or an incorporated city outside an organized borough, and includes all classes of boroughs and cities whether home

rule or otherwise;

(12) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(13) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(14) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides and biocides;

(15) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(16) "radiation" means all atomic and electronic product radiation;

(17) "radiation source" means any substance, machine, or electronic product which emits radiation;

(18) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(19) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(20) "standard" means the measure of purity or quality for waters in relation to their reasonable and necessary use as established by the department;

(21) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste, or other wastes;

(22) "waters" includes lakes, bays, sounds,

ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

* Sec. 4. The following laws are repealed: AS 18.05.040(11), (12) and (16); AS 18.30; AS 18.33; AS 18.60.470 - 18.60.570; AS 44.62.330(a)(26) and (29); AS 46.05; AS 46.10; AS 41.03.

* Sec. 5. All litigation, hearings, investigations and other proceedings pending under any law amended or functions which may be transferred by this Act, continue in effect and may be continued and completed notwithstanding any such transfer or amendment provided for in this Act. Certificates, orders, rules or regulations issued or filed under authority of a law amended by this Act or functions which may be transferred by this Act, remain in effect for the term issued, unless or until revoked, vacated, or otherwise modified under the provisions of this Act. All contracts or other obligations created by any law amended by this Act or by virtue of functions which may be transferred by this Act, and in effect on the effective date of this Act, remain in effect unless or until revoked, or modified under the provisions of this Act.

* Sec. 6. This Act takes effect July 1, 1971.