



LAWS OF ALASKA

1986

Source

SCS CSHB 470(Fin)

Chapter No.

59

AN ACT

Relating to the release of oil and hazardous substances;
repealing the oil spill mitigation account; and providing
for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO
THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES
DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL
REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY
LINE OF EACH BILL SECTION.

Approved by the Governor: May 31, 1986
Actual Effective Date: June 1, 1986

AN ACT

Relating to the release of oil and hazardous substances;
repealing the oil spill mitigation account; and providing
for an effective date.

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

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1 Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may
2 appropriate from the following sources to the fund:

3 (1) money received from federal, state, or other sources or
4 from a private donor;

5 (2) money recovered or otherwise received from parties
6 responsible for the containment and cleanup of oil or a hazardous
7 substance at a specific site, but excluding funds from performance
8 bonds and other forms of financial responsibility held in escrow
9 pending satisfactory performance of a privately financed response
10 action;

11 (3) fines, penalties, or damages recovered under this
12 chapter or other law for costs incurred by the state as a result of
13 the release or threatened release of oil or a hazardous substance.

14 (b) Money received by the state under (a)(2) and (a)(3) of this
15 section shall be deposited in the general fund and credited to a
16 special account called the "oil and hazardous substance release miti-
17 gation account." The legislature may annually appropriate to the fund
18 from this account a sum equal to the amount received under (a)(2) and
19 (a)(3) of this section during the calendar year preceding the legisla-
20 tive session in which the appropriations are to be made.

21 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
22 SUBSTANCE RELEASES. It is the intent of the legislature and declared
23 to be the public policy of the state that funds for the abatement of a
24 release of oil or a hazardous substance will always be available.

25 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
26 money from the fund to

27 (1) contain, clean up, and take other necessary action,
28 such as monitoring, assessing, investigating, and evaluating the
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
5 hensive Environmental Response, Compensation, and Liability Act of
6 1980); and

7 (3) recover the cost to the state or to a municipality of a
8 containment and cleanup resulting from the release or the threatened
9 release of oil or a hazardous substance.

0 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
1 maintain accounting records showing the income and expenses of the
2 fund.

(b) The department shall develop procedures governing the expen-
3 diture of, and accounting for, money expended from the fund, and may
4 not delay implementation of this chapter pending the effective date of
5 the procedures.

6 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-
7 sioner shall submit a report to the legislature not later than the
8 10th day following the convening of each regular session of the legis-
9 lature. The report may include information considered significant by
0 the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during
1 the preceding fiscal year;

(2) the amount and source of money received and money
2 recovered during the preceding fiscal year as specified in AS 46.08.-
3 020;

(3) a summary of municipal participation in responses
4 funded by the fund;

(4) a detailed summary of department activities in

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1 responses funded by the fund during the preceding fiscal year, including
2 response descriptions and statements outlining the nature of the
3 threat; and

4 (5) the projected cost for the next fiscal year of monitoring,
5 operating, and maintaining sites where response has been completed
6 or is expected to be continued during the fiscal year.

7 (b) As part of the department's on-going identification efforts
8 associated with oil spill or hazardous waste sites, the commissioner
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,
14 and their estimated cost.

15 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
16 The commissioner shall seek reimbursement promptly under this section,
17 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
18 or containment of oil or a hazardous substance that has been released.

19 (b) The attorney general, at the request of the commissioner,
20 may seek to recover money expended by the department under this chapter
21 or other law to contain and clean up oil or a hazardous substance
22 that has been released or to control the threatened release of oil or
23 a hazardous substance.

24 (c) The department may reimburse a municipality for actual
25 expenses, other than normal operating expenses, incurred in the abatement
26 of a release or threatened release of oil or a hazardous substance if
27

28 (1) the municipality has entered into an agreement with the
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for
3 a necessary emergency first response to a release or threatened re-
4 lease that posed an imminent and substantial threat to the public
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner shall periodical-
7 ly review the minimum quantities of hazardous substances established
8 under federal law and may adopt regulations establishing minimum
9 quantities of substances for all or any portion of the substances to
0 which this chapter otherwise applies. The commissioner may otherwise
1 adopt only those regulations that are expressly required to implement
2 the specific purposes of this chapter.

3 Sec. 46.08.900. DEFINITIONS. In this chapter

4 (1) "capital improvement" includes construction, renova-
5 tion, repair of, and improvement to, a building, but does not include
6 other improvements to real property, such as construction of a dike or
7 retaining wall;

8 (2) "commissioner" means the commissioner of environmental
9 conservation;

0 (3) "containment and cleanup" includes the direct and
1 indirect efforts associated with the prevention, abatement, contain-
2 ment, or removal of oil or a hazardous substance, the restoration of
3 the environment, and incidental administrative costs;

4 (4) "department" means the Department of Environmental
5 Conservation;

6 (5) "fund" means the oil and hazardous substance release
7 response fund;

8 (6) "hazardous substance" means

9 (A) an element or compound that, when it enters into

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1 or on the surface or subsurface land or water of the state,
2 presents an imminent and substantial danger to the public health
3 or welfare, or to fish, animals, vegetation, or any part of the
4 natural habitat in which fish, animals, or wildlife may be found;
5 or

6 (B) a substance defined as a hazardous substance under
7 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
8 Compensation, and Liability Act of 1980);

9 (C) "hazardous substance" does not include uncontam-
10 inated crude oil or uncontaminated refined oil in an amount of 10
11 gallons or less;

12 (7) "oil" means petroleum products of any kind and in any
13 form, whether crude, refined, or a petroleum by-product, including
14 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
15 refuse, oil mixed with other wastes, liquified natural gas, propane,
16 butane, and other liquid hydrocarbons regardless of specific gravity;

17 (8) "permitted release" means a release occurring under the
18 authority of a valid permit issued by the department or by the En-
19 vironmental Protection Agency;

20 (9) "release" means any spilling, leaking, pumping, pour-
21 ing, emitting, emptying, discharging, injecting, escaping, leaching,
22 dumping, or disposing into the environment, except that "release" does
23 not include a permitted release or an act of nature;

24 (10) "threatened release" means an imminent danger that a
25 release will occur.

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

27 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

28 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

29 Except as provided in (b) of this section, a person in charge of a

1 vehicle, vessel or container from which, or a place at which, a haz-
2 arduous substance is released shall report the release to the depart-
3 ment and appropriate public safety agencies promptly after learning of
4 the release.

5 (b) The commissioner may enter into an agreement with a person
6 for the periodic reporting of a controlled release of a hazardous
7 substance if the release is not into water.

8 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
9 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
stance shall make reasonable efforts to contain and clean up the
1 hazardous substance promptly after learning of the release, unless the
2 commissioner determines

3 (1) after consulting the Environmental Protection Agency or
4 appropriate public safety agencies, that containment or cleanup is
5 technically infeasible;

6 (2) that containment or cleanup would cause greater en-
7 vironmental damage than if the release were not contained or cleaned
8 up; or

9 (3) that containment or cleanup would pose a greater threat
10 to human life or health than if the release were not contained or
11 cleaned up.

12 (b) The commissioner shall develop guidelines prescribing gen-
eral procedures and methods to be used in the containment and cleanup
of a hazardous substance. The guidelines shall be consistent with the
national contingency plan revised and republished under 42 U.S.C.
9605.

13 (c) If the commissioner determines that the containment or
14 cleanup of a hazardous substance undertaken is inadequate, the commis-
15 sioner may direct the person undertaking the containment or cleanup to

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1 cease and may undertake the containment or cleanup directly or by
2 contract.

3 (d) If it appears to the commissioner that the cause or respon-
4 sibility for the release of a hazardous substance is unclear or unex-
5 plained, the commissioner may immediately undertake the containment
6 and cleanup of the release unless the commissioner determines

7 (1) after consulting the Environmental Protection Agency or
8 appropriate public safety agencies, that containment or cleanup is
9 technically infeasible;

10 (2) that containment or cleanup would cause greater en-
11 vironmental damage than if the release were not contained or cleaned
12 up; or

13 (3) that containment or cleanup would pose a greater threat
14 to human life or health than if the release were not contained or
15 cleaned up.

16 (e) The commissioner shall enter into agreement with the En-
17 vironmental Protection Agency, and may enter into agreements with
18 other persons and municipalities, in order to

19 (1) facilitate a coordinated and effective hazardous sub-
20 stance release response in the state;

21 (2) provide for cooperative hazardous substance release
22 notification procedures; or

23 (3) provide for cooperative review of hazardous substance
24 release response contingency plans submitted to the department.

25 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
26 request the governor to determine that an actual or imminent release
27 of a hazardous substance constitutes a disaster emergency under
28 AS 26.23. If the governor declares a disaster emergency under AS 26.-
29 23, the commissioner may assist the adjutant general in the relief of

1 the emergency.

2 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
3 The commissioner may contract with a person or a municipality for
4 personnel, equipment, or services that may be useful to carry out the
5 requirements of this chapter. If the commissioner determines that it
6 is infeasible to contract with a person or a municipality, the commis-
7 sioner may establish and maintain containment and cleanup personnel,
8 equipment, and supplies necessary to carry out the requirements of
9 this chapter.

10 Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter
11 into supplementary agreements, reciprocal arrangements, and compacts
12 with another state or country for the implementation of this chapter
13 subject to the approval of the Congress of the United States, if
14 required, under the Constitution of the United States.

15 Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this
16 chapter or of a regulation adopted by the commissioner under this
17 chapter conflicts with the charter, ordinance, or regulation of a
18 municipality, the provision of this chapter or of the regulation
19 adopted by the commissioner under this chapter prevails.

20 (b) Authority to contain, clean up, or prevent a release or
21 threatened release of oil or of a hazardous substance, and to exercise
22 other powers necessary to implement this chapter and AS 46.08, are
23 granted to municipalities that do not otherwise have that authority.
24 Except as provided in (a) of this section, a municipality may exercise
25 its police power within the area of the municipality.

26 Sec. 46.09.070. REGULATIONS. The commissioner shall periodical-
27 ly review the minimum quantities of hazardous substances established
28 under federal law and may adopt regulations establishing minimum
29 quantities of substances for all or any portion of the substances to

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1 which this chapter otherwise applies. The commissioner shall adopt
2 only those regulations that are expressly required to implement the
3 specific purposes of this chapter.

4 Sec. 46.09.900. DEFINITIONS. In this chapter

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

7 (2) "containment and cleanup" includes the direct and
8 indirect efforts associated with the prevention, abatement, contain-
9 ment, or removal of a hazardous substance, the restoration of the
10 environment, and incidental administrative costs;

11 (3) "department" means the Department of Environmental
12 Conservation;

13 (4) "hazardous substance" means

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

20 (B) a substance defined as a hazardous substance under
21 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980);

23 (C) "hazardous substance" does not include uncontam-
24 inated crude oil or uncontaminated refined oil;

25 (5) "permitted release" means a release occurring under the
26 authority of a valid permit issued by the department or by the En-
27 vironmental Protection Agency;

28 (6) "release" means any spilling, leaking, pumping, pour-
29 ing, emitting, emptying, discharging, injecting, escaping, leaching,

1 dumping, or disposing into the environment, except that "release" does
2 not include a permitted release or an act of nature;

3 (7) "threatened release" means an imminent danger that a
4 release will occur.

5 * Sec. 3. AS 26.23.050(b) is amended to read:

6 (b) Whenever, and to the extent that, money is needed to cope
7 with a disaster, the first recourse shall be to funds regularly appro-
8 priated to state and local agencies. The second recourse shall be to
9 funds available in the disaster relief fund or the oil and hazardous
10 substance release response fund, as appropriate. If money available
11 from these sources is insufficient, and if the governor finds that
12 other sources of money to cope with the disaster are not available or
13 are insufficient, the governor may, notwithstanding any limitation
14 imposed by AS 37.07.080(e), transfer and spend money appropriated for
15 other purposes or, in situations involving natural disasters, borrow
16 from the United States government or other public or private sources
17 for a term not to exceed two years.

18 * Sec. 4. AS 26.23.230(1) is amended to read:

19 (1) "disaster" means the occurrence or imminent threat of
20 widespread or severe damage, injury, or loss of life or property
21 resulting from any natural or nonmilitary man-made cause including,
22 but not limited to, fire, flood, earthquake, landslide, mudslide,
23 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
24 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
25 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
26 blight, infestation, explosion, riot, equipment failure, or shortage
27 of food, water, fuel, or clothing, or the release of oil or a hazard-
28 ous substance requiring prompt action to avert environmental danger or
29 damage;

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1 * Sec. 5. AS 44.19.050 is amended to read:

2 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
3 "disaster" means the occurrence or imminent threat of widespread or
4 severe damage, injury, or loss of life or property resulting from any
5 natural or man-made cause including, but not limited to, fire, flood,
6 earthquake, landslide, avalanche, wind-driven water, weather condi-
7 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
9 contamination, blight, infestation, explosion, [OR] riot, or the
10 release of oil or a hazardous substance requiring prompt action to
11 avert environmental danger or damage.

12 * Sec. 6. AS 45.45.900 is amended to read:

13 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC
14 POLICY. A provision, clause, covenant, or agreement contained in,
15 collateral to, or affecting a [ANY] construction contract that [WHICH]
16 purports to indemnify the promisee against liability for damages for
17 (1) death or bodily injury to persons, (2) injury to property, (3)
18 design defects or (4) [ANY] other loss, damage or expense arising
19 under (1), (2), or (3) of this section from the sole negligence or
20 wilful misconduct of the promisee or the promisee's agents, servants
21 or independent contractors who are directly responsible to the prom-
22 isee, is against public policy and is void and unenforceable; however,
23 this provision does not affect the validity of an [ANY] insurance
24 contract, workers' compensation, or agreement issued by an insurer
25 subject to the provisions of AS 21, or a provision, clause, covenant,
26 or agreement of indemnification respecting the handling, containment
27 or cleanup of oil or hazardous substances as defined in AS 46.

28 * Sec. 7. AS 46.03.290(a) is amended to read:

29 (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive
2 materials to the air, water, land or subsurface land of the state
3 poses an immediate threat to the public health or welfare, or the
4 environment of the state, it may issue an order declaring an emergency
5 and directing a person or persons to take action the department be-
6 lieves necessary to meet the emergency, and protect the public health,
7 welfare, or environment.

8 * Sec. 8. AS 46.03 is amended by adding a new section to read:

9 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a
10 controlled release, the reporting of which is the subject of an agree-
11 ment with the commissioner under AS 46.09.010(b), a person may not
12 cause or permit the release of a hazardous substance as defined in
13 AS 46.09.900.

14 * Sec. 9. AS 46.03.760(a) is amended to read:

15 (a) A person who violates or causes or permits to be violated a
16 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
17 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
18 the department, or a permit, approval, or acceptance, or term or
19 condition of a permit, approval, or acceptance issued under this
20 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
21 state for a sum to be assessed by the court of not less than \$500 nor
22 more than \$100,000 for the initial violation, nor more than \$5,000 for
23 each day after that on which the violation continues, and that shall
24 reflect, when applicable,

25 (1) reasonable compensation in the nature of liquidated
damages for any adverse environmental effects caused by the violation,
that shall be determined by the court according to the toxicity,
degradability and dispersal characteristics of the substance dis-
charged, the sensitivity of the receiving environment, and the degree

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1 to which the discharge degrades existing environmental quality;

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

4 (3) the economic savings realized by the person in not
5 complying with the requirement for which a violation is charged.

6 * Sec. 10. AS 46.03.765 is amended to read:

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

18 * Sec. 11. AS 46.03.780(a) is amended to read:

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

27 * Sec. 12. AS 46.03.790(a) is amended to read:

28 (a) Except as provided in (d) - (f) of this section, a person
29 who negligently violates a provision of this chapter, [OR] AS 46.04,

1 or AS 46.09, or of a regulation, lawful order of the department, or
2 permit, approval, or acceptance, or term or condition of a permit,
3 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
4 AS 46.09 is guilty of a class B misdemeanor.

5 * Sec. 13. AS 46.03.790(b) is amended to read:

6 (b) Except as provided in (d) - (f) of this section, a person
7 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
8 AS 46.09, or of a regulation, lawful order of the department, or
9 permit, approval, or acceptance, or term or condition of a permit,
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
11 AS 46.09 is guilty of a class A misdemeanor.

12 * Sec. 14. AS 46.03.790(d) is amended to read:

13 (d) Notwithstanding (a) and (b) of this section, a person who
14 fails to provide or falsely states information required under AS 46.-
15 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
16 upon conviction, is punishable by a fine of not more than \$25,000, or
17 by imprisonment for not more than one year, or by both. Each unlawful
18 act constitutes a separate offense.

19 * Sec. 15. AS 46.04.010 is amended to read:

20 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
21 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
22 760(e), AS 46.08.070, or from an applicable federal fund, for the
23 expenses it incurs in cleaning up or containing a discharge of oil.
24 If the department obtains reimbursement for a portion of its expenses
25 from a federal fund, the remainder of the expenses incurred may be
26 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
27 the department under this section shall be deposited in the general
28 fund and credited to a special account called the "oil and hazardous
29 substance release mitigation account".

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1 * Sec. 16. AS 46.04.090(b) is amended to read:

2 (b) Inspection and enforcement employees of the department
3 designated by the commissioner are peace officers in the performance
4 of their duties under this chapter, AS 46.09, and AS 46.03.

5 * Sec. 17. Not later than January 1, 1987, the commissioner of environ-
6 mental conservation shall develop guidelines under AS 46.09.020, added by
7 sec. 2 of this Act.

8 * Sec. 18. Not later than October 1, 1987, the commissioner of environ-
9 mental conservation shall adopt regulations under AS 46.09.070, added by
10 sec. 2 of this Act.

11 * Sec. 19. AS 46.03.758(k) is repealed.

12 * Sec. 20. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).