

Article 01. 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.

(a) 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 adoption 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 actions that are necessary and proper to further the policy declared in AS 46.03.010 ;

(5) adopt regulations for

(A) the prevention and control of public health nuisances;

(B) the regulation of sanitation and sanitary practices in the interest of public health;

(C) standards of cleanliness and sanitation in connection with the construction, operation, and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barbershop, hairdressing, manicuring, esthetics, tattooing and permanent cosmetic coloring, body piercing, or ear piercing establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which lack of sanitation may create a condition that causes disease;

(D) the regulation of quality and purity of commercially compressed air sold for human respiration.

(b) The department's regulations for tattooing and permanent cosmetic coloring shops and for body piercing shops must include requirements that

(1) the shop be equipped with appropriate sterilizing equipment, with availability of hot and cold running water, and with an appropriate waste receptacle;

(2) the owner of the shop is responsible for ensuring that case history cards are kept for each client for a period of three years after the client's most recent tattooing and permanent cosmetic coloring or body piercing;

(3) a practitioner in the shop may use only instruments for tattooing and permanent cosmetic coloring or body piercing that have been sterilized in accordance with methods approved by the department.

Sec. 44.46.025. Fees for services.

(a) Except as otherwise provided in [AS 37.10.050](#) - 37.10.056, the Department of Environmental Conservation may adopt regulations that prescribe reasonable fees, and establish procedures for the collection of those fees, to cover the applicable direct costs, not including travel except in the case of a designated regulatory service, as that term is defined in [AS 37.10.058](#), of inspections, permit preparation and administration, plan review and approval, and other services provided by the department relating to

(1) animals and animal products under AS 03.05; food, drugs, and cosmetics under AS 17.20; and public accommodations and facilities under AS 18.35;

(2) certificates of inspection for motor vehicles under [AS 46.14.400](#) or 46.14.510;

(3) drinking water systems under [AS 46.03.720](#);

(4) water and wastewater operator training under AS 46.30;

(5) waste management and disposal authorizations under [AS 46.03.100](#);

(6) certification of laboratories conducting environmental analyses of public drinking water systems or of oil or hazardous substances, or conducting other analyses required by the department;

(7) certification of federal permits or authorizations under 33 U.S.C. 1341 (sec. 401, Clean Water Act);

(8) regulation of point source discharges of pollutants under the program authorized by [AS 46.03.020](#) (12);

(9) regulation of pesticides and broadcast chemicals registered under [AS 46.03.320](#) (a)(4), with a reasonable fee not to exceed \$120;

(10) licensing of pesticide applicators under [AS 46.03.320](#) (b), with a reasonable fee not to exceed \$25.

(b) The department may not charge a fee for a service that is provided by a municipality under a delegation by the department to the municipality.

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

(d) Notwithstanding (a) of this section, the department may not charge a fee for inspection, permit preparation and administration, plan review and approval, or other services provided by the department under AS 03.05 or AS 44.46.020(5) to a school. In this subsection, "school" means a public school or private school for children of school age, as defined in AS 14.03.070, or a head start center that receives federal financial assistance under 42 U.S.C. 9835.

(e) In (a)(9) and (10) of this section, "reasonable fee" means a fee that does not unduly interfere in the conduct of commerce in the state.

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Title 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION

Chapter 46.03. ENVIRONMENTAL CONSERVATION

Article 01. 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 02. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Sec. 46.03.020. Powers of the department.

The department may

(1) enter into contracts and compliance agreements 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 AS 46.03.010 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 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 that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is 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 carry out 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 establishing minimum drinking water standards, and 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 pesticides;

(G) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(H) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715;

(12) notwithstanding any other provision of law, take all actions necessary to receive authorization from the administrator of the United States Environmental Protection Agency to administer and enforce a National Pollutant Discharge Elimination System program in accordance with 33 U.S.C. 1342 (sec. 402, Clean Water Act), 33 U.S.C. 1345 (sec. 405, Clean Water Act), 40 C.F.R. Part 123, and 40 C.F.R. Part 403, as amended;

(13) require the owner or operator of a facility to undertake monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec. 308, Clean Water Act).

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Sec. 46.03.024. Consideration in adopting pollution regulations.

Notwithstanding another provision of law to the contrary, when adopting a regulation relating to the control, prevention, and abatement of air, water, or land or subsurface land pollution, the department shall give special attention to public comments concerning the cost of compliance with the regulation and to alternate practical methods of complying with the statute being interpreted or implemented by the regulation.

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Sec. 46.03.760. Civil action for pollution; damages.

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.313, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

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

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

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

(b) Except as determined by the court under (e)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) In addition to liability under (a) - (c) of this section, a person who violates or causes or permits to be violated a provision of [AS 46.03.740](#) - 46.03.750 is liable to the state, in a civil action brought under [AS 46.03.822](#), for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under [AS 29.60.510](#) - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(e) A person who violates or causes or permits to be violated a provision of [AS 46.03.250](#) - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under [AS 46.03.250](#) - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or under the program authorized by AS 46.03.020(12), is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(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 discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; for a violation of [AS 46.03.463](#), the court, in making its determination under this paragraph, shall also consider the volume of the graywater, sewage, or other wastewater discharged; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

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

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

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

(f) An owner, agent, employee, or operator of a commercial passenger vessel, as defined in [AS 43.52.295](#), who falsifies a registration or report required by [AS 46.03.460](#) or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under [AS 46.03.250](#) - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5,000 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(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 discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

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

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

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

(g) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

Sec. 46.03.761. Administrative penalties.

(a) The department may assess an administrative penalty against an entity that violates or causes or permits to be violated a provision of AS 46.03.720 (b) or a term or condition of a regulation, order, permit, approval, or certificate of the department issued or adopted under AS 46.03.720 (b).

(b) Before assessing an administrative penalty under this section, the department shall

(1) communicate about the alleged noncompliance with the entity and the governing body of the community or municipality whose residents are served by the public water system; communication under this paragraph must be in language designed to be easily understood by the entity and governing body and must clearly describe the nature of the alleged noncompliance;

(2) offer technical assistance to aid in correcting the alleged noncompliance when the department has reason to believe that the entity may lack the resources or expertise to get technical assistance from other sources; and

(3) unless the alleged noncompliance poses an immediate threat to the public health, give the entity a reasonable amount of time to correct the alleged noncompliance after the department has complied with (1) and (2) of this subsection.

(c) If, after complying with (b) of this section, the department determines that noncompliance still exists and the violation is subject to a penalty under this section, the department may make a preliminary determination to assess the penalty. The department shall provide notice to the entity of its preliminary determination. The entity may, within 10 days after receiving the notice, request the department to reconsider its decision. If a timely request for reconsideration is made, the department shall reconsider its preliminary determination and may affirm or modify the determination. The department shall notify the entity of the decision. If a timely request for reconsideration is not received or if, after reconsideration, the department determines that a penalty should be assessed, the department may assess the penalty. The department shall provide notice of the assessment and instructions for contesting and appealing the assessment to the entity by personal service or by certified mail, return receipt requested. The notice must inform the entity of the amount of the proposed penalty and that the entity has 45 days within which to file a notice with the department contesting the proposed penalty. If, within 45 days after receiving the notification issued by the department, the entity fails to file a notice contesting the proposed penalty, the proposed penalty is considered a final order. The department may extend the time periods specified in this subsection for good cause.

(d) If an entity sends notice to the department contesting a proposed penalty under (c) of this section, the department shall afford an opportunity for a hearing in accordance with its adjudicatory hearing procedures. After an opportunity for a hearing, the department shall issue

an order, based upon findings of fact, affirming, modifying, or rescinding the administrative penalty. The order must include notice that the entity may appeal the order to the superior court and the address of the appropriate superior court. The order is the final agency action on the penalty.

(e) An entity against whom an administrative penalty is assessed under this section may obtain judicial review of the administrative penalty by filing a notice of appeal in the superior court as provided by the Alaska Rules of Appellate Procedure. An order of the department under (d) of this section becomes final and is not subject to review by a court if a notice of appeal is not filed with the superior court within the period provided for by the Alaska Rules of Appellate Procedure.

(f) Unless the notice of appeal is incomplete or otherwise not in conformance with court rules, a notice of appeal under (e) of this section is considered to be filed with the superior court on the day the entity delivers the appropriate documents and fee to the appropriate superior court. Determining whether the notice of appeal is complete and otherwise in conformance with court rules is the responsibility of the superior court.

(g) An administrative penalty assessed under this section may not exceed (1) \$1,000 a day for each violation if the affected public water supply system serves a population of more than 10,000 persons; (2) \$250 a day for each violation if the affected public water supply system serves a population of 10,000 or fewer persons but more than 1,000 persons; and (3) \$100 a day for each violation if the public water supply system serves 1,000 or fewer persons. Each provision, term, or condition violated is a separate and distinct violation. If a violation of a provision, term, or condition continues from day to day, each day is a separate violation.

(h) In determining the amount of a penalty assessed under this section, the department shall consider

- (1) the effect of the violation on the public health or the environment;
- (2) reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation;
- (3) the economic savings realized by the entity by not complying with the requirement for which a violation is charged;
- (4) any previous history of compliance or noncompliance by the entity with this chapter, AS 46.04, AS 46.09, and AS 46.14;
- (5) the need to deter future violations;
- (6) the extent and seriousness of the violation, including the potential for the violation to threaten public health or the environment;

(7) whether the entity achieved compliance with the requirement violated within the shortest feasible time; and

(8) other factors considered relevant to the assessment that are adopted by the department in regulation.

(i) If an entity fails to pay an administrative penalty assessed under this section after the penalty becomes final, the department may bring an action to collect the penalty. The amount of the penalty is not subject to review by the court in such an action.

(j) In a collection action under (i) of this section, the court shall award the prevailing party full reasonable attorney fees and costs incurred in the collection action.

(k) Action under this section by the department does not limit or otherwise affect the authority of the department to otherwise enforce this chapter, AS 46.04, AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to recover damages, restoration expenses, investigation costs, court costs, attorney fees, or other necessary expenses. The court shall set off against a judicial civil assessment subsequently awarded under AS 46.03.760 an amount ordered to be paid under this section by the same entity for the same violation.

(l) In this section, "entity" means the owner or operator of a public water system.

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Sec. 46.03.765. Injunctions.

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

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Sec. 46.03.780. Liability for restoration.

(a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, AS 46.04, AS 46.09, or AS 46.14, respectively, 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. Criminal penalties.

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

(1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

(2) fails to provide information or provides false information required by AS 46.03.465, 46.03.475, 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.020 (12), 46.03.460, 46.03.755, AS 46.04, or AS 46.09;

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.313 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.313;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.460 - 46.03.475, AS 46.14, or a regulation adopted under AS 46.03.020 (12), 46.03.460, or AS 46.14; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.03.020 (12) or AS 46.14, a permit issued by the department or a local air quality control program under AS 46.14, or a permit issued by the department under the program authorized by AS 46.03.020 (12).

(b) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(c) Each day on which a violation described in this section occurs is considered a separate violation.

(d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of

(1) a class C felony if the oil discharge is 10,000 barrels or more;

(2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.

(e) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(f) *[Repealed, Sec. 5 ch 141 SLA 1990].*

(g) Notwithstanding [AS 12.55.035](#) (b), upon conviction of a violation of a regulation adopted under [AS 46.03.020](#) (12) or of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate violation.

(h) Notwithstanding (a) and (d) of this section, a person is guilty of a class A misdemeanor if the person negligently

(1) violates a regulation adopted by the department under AS 46.03.020(12);

(2) violates a permit issued under the program authorized by AS 46.03.020(12);

(3) fails to provide information or provides false information required by a regulation adopted under [AS 46.03.020](#) (12);

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with a permit issued under or a regulation adopted under [AS 46.03.020](#) (12); or

(5) renders inaccurate a monitoring device or method required to be maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

(i) In this section,

(1) "barrel" has the meaning given in [AS 46.04.900](#);

(2) "criminal negligence" has the meaning given in [AS 11.81.900](#).

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Sec. 46.03.850. Compliance order.

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

(b) The recipient of the determination shall file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in AS 46.03.010. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after 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 after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify, or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

Article 10. GENERAL PROVISIONS

Sec. 46.03.860. Inspection warrant.

The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter.

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Sec. 46.03.875. Remedies cumulative.

All remedies provided by this chapter, AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of this chapter, AS 46.04, or AS 46.14.

Sec. 46.03.880. Applicability of the Administrative Procedure Act.

(a) Except as otherwise specifically provided in this chapter, AS 44.62 (Administrative Procedure Act) governs the activities and the proceedings of the department.

(b) Notwithstanding AS 44.62.330 (a)(28), adjudicatory hearing procedures to review permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

Sec. 46.03.890. Enforcement authority.

(a) The following persons are authorized to enforce this chapter:

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

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

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) "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;

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

(5) "compliance agreement" means a mutual understanding and voluntary, enforceable agreement on a course of action for a specific set of circumstances entered into by the department and a person to control, prevent, or abate air, water, land, or subsurface land pollution;

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

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "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;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and

(C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.90.990;

(16) "municipal solid waste" means waste material

(A) generated by a household, including a single-family or multi-family residence, and collected and disposed of as part of municipal solid waste collection services; or

(B) generated by a commercial, industrial, or institutional entity, to the extent that the waste material

(i) is essentially the same as waste normally generated by a household;

(ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(iii) contains a relative quantity of hazardous substances not greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household;

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

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

(19) "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;

(20) "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;

(21) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other processes or purposes and includes the reuse of materials or products to conserve natural resources;

(22) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(23) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(24) "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";

(25) "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;

(26) "solid waste" means garbage, refuse, abandoned, or other discarded solid or semi-solid material, regardless of whether subject to decomposition, originating from any source;

(27) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(28) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(29) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(30) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(31) "subdivision" has the meaning given in [AS 40.15.900](#);

(32) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

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

(34) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and

Economic Development to determine and give official recognition of village entities under AS 44.33.755(b);

(35) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means (A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(36) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(37) "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.

...

Chapter 46.14. AIR QUALITY CONTROL

Article 01. GENERAL REGULATIONS AND CLASSIFICATIONS

Sec. 46.14.010. Emission control regulations.

(a) After public hearing, the department may adopt regulations under this chapter establishing ambient air quality standards, emission standards, or exemptions to implement a state air quality control program required under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and regulations adopted under those sections. The standards established under this section may be for the state as a whole or may vary in recognition of local conditions.

(b) Unless the governor has determined that an emergency exists that requires emergency regulations under [AS 44.62.250](#), the department may adopt the following types of regulations only after the procedures established in (a), (c), and (d) of this section and compliance with AS 46.14.015:

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

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

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

(4) a regulation that regulates emissions from an emissions unit or stationary source or establishes an emission standard under the authority of AS 46.14.120 (e) or 46.14.130(c)(2).

(c) In preparation for peer review under AS 46.14.015 and before adopting a regulation described under (b) of this section, the department shall

(1) find in writing that exposure profiles and either meteorological conditions or emissions unit characteristics in the state or in an area of the state reasonably require the ambient air quality standard, or emission standard to protect human health and welfare or the environment; this paragraph does not apply to a regulation under (b)(3) of this section;

(2) find in writing that the proposed standard or emission limitation is technologically feasible; and

(3) prepare a written analysis of the economic feasibility of the proposal.

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

(e) When incorporated into more than one permit, emission standards and limitations, emissions monitoring and reporting requirements, and compliance verification requirements that are generally applicable statewide or are generally applicable to individual emissions unit or stationary source types shall be adopted in regulation unless they have been requested by the owner and operator to whom the permit is issued. The department shall, by regulation, adopt a standard, limitation, or requirement described in this subsection as soon as its general applicability is reasonably foreseeable.

(f) An emission standard adopted by the department may be applicable to individual emissions units within a stationary source or to all emissions units within a stationary source. For purposes of determining compliance with applicable regulations and with permit limitations, the department may allow numerical averaging of the emissions of each air pollutant from several emissions units within a stationary source if

(1) requested by the owner and operator; and

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

Sec. 46.14.015. Special procedure for more stringent regulations.

(a) Before the department adopts a regulation described under AS 46.14.010(b), written findings under AS 46.14.010 (c) and (d) shall be made available by the department to the public at locations throughout the state that the department considers appropriate.

(b) Before the department adopts a regulation described in AS 46.14.010(b), the department shall submit the findings described under (a) of this section, the studies on which the findings are based, and other related data for peer review to a minimum of three separate parties who are not employees of the department and who are determined by the commissioner to be technically qualified in the subject matter under review. The commissioner shall ensure that the peer review includes an analysis of the factors considered by the commissioner to support the standards proposed to be adopted and recommendations, if any, for additional research or investigation considered appropriate. Peer review reports shall be submitted to the commissioner within 45 days after the department submits a matter for peer review unless the commissioner determines that additional time is required.

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

(d) The department shall contract with persons to perform peer review under (b) of this section. All persons selected shall be selected on the basis of competitive sealed proposals under AS 36.30.200 - 36.30.270 (State Procurement Code). The commissioner may not contract with a person to perform peer review under this section if the person has a significant financial interest or other significant interest that could bias evaluation of the proposed regulation. An interest is not considered significant under this subsection if it is an interest possessed generally by the public or a large class of persons or if the effect of the interest on the person's ability to be impartial is only conjectural.

Sec. 46.14.020. Classification of stationary sources or emissions units; reporting.

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

(b) The department or a local air quality control program authorized under AS 46.14.400 may require an owner and operator of a stationary source or emissions unit classified under this

section to report information to the department or the authorized local program concerning location, size, and height of stacks or area emissions units, processes employed, fuels used, the nature and time periods or duration of emissions, and other information relevant to air quality that is available or reasonably capable of being calculated and compiled.

Sec. 46.14.030. State air quality plan.

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

Article 02. EMISSION CONTROL PERMIT PROGRAM

Sec. 46.14.110. Additional contaminant control measures. [Repealed, Sec. 28 ch 74 SLA 1993].

Repealed or Renumbered

Sec. 46.14.120. Permits for construction, installation, modification, or operation.

(a) Before constructing, installing, modifying, or establishing a stationary source subject to AS 46.14.130 (a), the owner and operator shall obtain a construction permit under this chapter.

(b) Except when considered to be in compliance with this chapter under AS 46.14.275 or under a regulation adopted under AS 46.14.140(a)(12), the owner and operator shall obtain an operating permit under this chapter before operating a stationary source subject to AS 46.14.130 (b).

(c) A permittee shall comply with the terms and conditions of a permit or a modifying compliance order issued by the department under this chapter or a court order. A person operating under the application shield available under AS 46.14.140 (a)(12) and 46.14.275, shall comply with the terms and conditions of the pending application and applicable regulations.

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

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

(f) The department may exempt or defer a stationary source from the requirement of AS 46.14.130 (b) to the extent allowed under 40 C.F.R. 70.3(b).

(g) Before constructing, installing, modifying, operating, or establishing a stationary source subject to [AS 46.14.130](#)(c), the owner or operator shall obtain a minor permit under this chapter.

Sec. 46.14.130. Stationary sources requiring permits.

(a) The owner and operator shall obtain a construction permit from the department before beginning actual construction of any one of the following:

- (1) a new major stationary source;
- (2) a major modification;

(3) a project subject to the construction permitting requirements of 42 U.S.C. 7412(i) (Clean Air Act, sec. 112(i)).

(b) Except for the owner and operator of a stationary source exempted under [AS 46.14.120](#) (e) or (f), the owner and operator of a stationary source shall obtain an operating permit from the department for

- (1) a major source;

(2) a stationary source that contains an emissions unit subject to federal new source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

- (3) another stationary source designated by the federal administrator by regulation.

(c) Unless the owner and operator of a stationary source are required to obtain a construction permit under (a) of this section, before constructing, installing, modifying, operating, or establishing a stationary source, the owner and operator shall obtain a minor permit from the department if the stationary source is of a type classified under [AS 46.14.020](#)

- (1) as having the potential to violate the ambient air quality standards; or

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

- (d) In this section, "major source" has the meaning given in 42 U.S.C. 7661(2).

Sec. 46.14.140. Emission control permit program regulations.

(a) The department shall adopt regulations to address substantive and procedural elements of the emission control permit program established under this chapter that are not addressed in statute, except elements that relate only to the internal management of the department and do not affect the public or govern the way the department deals with the public. The regulations must be reasonable and adequate, and provide flexibility in the operation of a stationary source consistent

with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations. Except for regulations concerning minor permits required under AS 46.14.130 (c), the regulations must include

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

(2) monitoring, record keeping, and reporting requirements for facilities that are subject to AS 46.14.130 (b), which must comply with the requirements established for state operating permit programs in 40 C.F.R. 70.6, but which may be modified to take into account this state's unique conditions;

(3) procedures for preparation and submission of a monitoring, reporting, and quality assurance plan and, if required, a compliance schedule describing how a permitted stationary source will comply with the applicable requirements of this chapter;

(4) procedures for

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

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

(C) processing and reviewing an application;

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

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

(5) reasonable standard permit conditions, including conditions for

(A) emission standards and limitations;

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

(C) inspection and entry;

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

(E) annual certification of compliance;

(F) excess emission or process deviation reporting; and

(G) equipment malfunctions and emergencies;

(6) fees and procedures for collecting fees;

(7) provisions addressing late payment or nonpayment of fees, which may include assessment of penalties and interest or refusal to issue, amend, modify, or renew an air quality control permit;

(8) the duration of permits;

(9) procedures for modifying or amending a permit that provide flexibility in the operation of the stationary source, including procedures to allow changes to a permitted stationary source without requiring a permit modification, consistent with the purposes of this chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act);

(10) reasonable provisions for renewing, reopening, revoking and reissuing, and terminating a permit consistent with the purposes of this chapter and 42 U.S.C. 7401 - 7671q (Clean Air Act);

(11) provisions allowing for physical or operational limitations that will reduce a stationary source's emissions to levels below those that would make the stationary source subject to part or all of AS 46.14.120 and 46.14.130;

(12) provisions authorizing stationary source operation while a permit application is pending, consistent with 42 U.S.C. 7661b(d) (Clean Air Act, sec. 503(d));

(13) provisions for ensuring that compliance with an operating permit issued under this chapter will be considered to be compliance with 42 U.S.C. 7661a (Clean Air Act, sec. 502) and other provisions of state or federal law specifically provided for by the department consistent with 42 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under state and federal law;

(14) provisions allowing for certification of inspectors who evaluate compliance with the terms and conditions of a permit, order, regulation, or other provision of law authorized under this chapter; and

(15) definitions of terms incorporating applicable definitions in 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations, to the extent that those definitions are not inconsistent with this chapter.

(b) A permit issued under this chapter may not require a person to use

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

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

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

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

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

Sec. 46.14.150. Time for submission of operating permit applications.

(a) The owner and operator of a stationary source required to have an operating permit under this chapter shall submit the required application and other information required by the department by regulation no later than 12 months after the date on which the stationary source becomes subject to AS 46.14.120(b).

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

Sec. 46.14.160. Completeness determination.

(a) The department shall review every application submitted under this chapter for completeness. To be determined complete, an application must provide the information identified by the department in regulations adopted under AS 46.14.140 and in standard application forms provided by the department under AS 46.14.140 (a)(1) and must be certified true and correct by the owner and operator.

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

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

Sec. 46.14.170. Administrative actions regarding permits.

(a) Except as provided in AS 46.14.220 or in regulations adopted under AS 46.14.140 (a)(7), after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

- (1) a construction permit within 30 days after the close of the public comment period;
- (2) an operating permit, other than a general operating permit or temporary operating permit, within 12 months after receipt of the complete application by the department.

(b) *[Repealed, Sec. 82 ch 41 SLA 2009].*

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

(d) The department shall issue or deny a minor permit under AS 46.14.130(c) within 30 days after the close of the public comment period or within 30 days after receipt of the complete application by the department if a public comment period is not required under this chapter.

Sec. 46.14.180. Monitoring.

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

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

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

Sec. 46.14.190. Single permit.

(a) Except as provided in (b) of this section, the department shall issue only a single operating permit to a stationary source, regardless of whether the stationary source contains a single emissions unit or multiple emissions units.

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

Sec. 46.14.200. Review of permit action.

A person who has a private, substantive, legally protected interest under state law that may be adversely affected by the permit action, the owner and operator, or, if a public comment process is required or solicited, a person who participated in the public comment process may request an

adjudicatory hearing under the department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party to the hearing may obtain judicial review of that decision as provided in the Alaska Rules of Appellate Procedure.

Sec. 46.14.210. General operating permits.

After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to more than one stationary source determined by the department to be similar in emissions unit structure. A general operating permit must contain provisions that meet the requirements of this chapter that are applicable to operating permits. A general operating permit issued to a particular person takes effect when the person's application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the person's stationary source.

Sec. 46.14.211. General minor permits.

After notice and opportunity for public comment and hearing, the department may establish a general minor permit that would be applicable to more than one stationary source determined by the department to be similar in structure. If authorized by the department, a permit issued under this section may be valid for multiple locations in this state. A general minor permit must contain provisions that meet the requirements of this chapter that are applicable to a minor permit.

Sec. 46.14.215. Temporary operations.

For purposes of AS 46.14.130 (b), the department may issue a single operating permit under AS 46.14.170, authorizing a stationary source to operate at specific multiple locations in the state for temporary periods of time. A permit described in this section is valid only for the specific locations identified in the application and authorized by the department. The department may not issue a permit under this section unless the permit contains conditions that will ensure compliance with this chapter at each authorized location, including compliance with ambient air quality standards and applicable increment or visibility requirements adopted under this chapter. A permit under this section must require the owner and operator to notify the department at least 10 days before a change in location of a stationary source permitted under this section.

Sec. 46.14.220. Objection by federal administrator.

(a) An operating permit may not be issued under this chapter until the federal administrator approves the permit, or until 45 days after a copy of the final draft permit has been provided by the department to the federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator files an objection with the department, the department shall notify the applicant of the objection. The department may not issue the permit until the objection is resolved or the permit is revised to meet the objection of the federal administrator. Upon request of an applicant, the department shall assist the applicant in an effort to resolve promptly an objection by the federal administrator.

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

Sec. 46.14.230. Duration of operating permits.

(a) An operating permit under this chapter, including an operating permit that contains a compliance schedule, shall be issued for a fixed term of five years after the date of issue, except as provided for temporary operations under [AS 46.14.215](#) or unless a shorter term is requested by the permit applicant.

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

Sec. 46.14.235. Federal termination, modification, or revocation and reissuance of permits.

The department shall take measures practicable and otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal administrator of permits issued by the department under this chapter.

Sec. 46.14.240. Permit administration fees.

(a) The owner or operator of a stationary source who is required to apply for a permit under [AS 46.14.130](#) shall pay to the department all assessed permit administration fees established under (b) of this section except that the person named in a permit issued under AS 46.14.170 shall pay assessed permit administration fees incurred after the date the permit is issued.

(b) The department shall establish by regulation permit administration fees in accordance with [AS 37.10.050](#) - 37.10.058.

(c) *[Repealed, Sec. 60(b), 65 ch 46 SLA 2003].*

(d) Costs incurred by the department and other state or local governmental agencies that are assessed against small business facilities that qualify for assistance under [AS 46.14.300](#) - 46.14.310 shall be recovered from emission fees under [AS 46.14.250](#) (h)(2) for the following services:

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

(2) reviewing or assisting in the preparation of specific documents to support a permit for a stationary source; the documents described in this paragraph include on-site evaluations.

Sec. 46.14.250. Emission fees.

(a) A person named as permittee in a permit issued under this chapter shall pay to the department all assessed emission fees established under this section.

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

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

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

(e) *[Repealed, Sec. 88 ch 56 SLA 2005].*

(f) The department shall set the emission fee rate in regulation to implement the policy established in (d) of this section. The department shall base the regulation on the findings of a report, which the department shall make available to the public with proper notice before adoption of the regulation, that examines

- (1) fees assessed;
- (2) alternative fee rates or formulas;
- (3) types, sizes, or categories of stationary sources, their respective emission quantities, and their previous or proposed fee burden;
- (4) apparent inequities encountered in the initial fee rate;
- (5) total costs incurred or anticipated to be incurred under (h) of this section; and

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

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

(h) In this section,

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

(A) the stationary source's potential to emit, in tons per year, each air pollutant; or

(B) the projected annual rate of emissions, in tons per year, of each air pollutant by the stationary source based upon previous actual annual emissions if the permittee can demonstrate to the department its previous actual annual rate of emissions through monitoring, modeling, calculations, or other method acceptable to the department;

(2) "emission fees" mean fees assessed to recover costs incurred by the department and other state or local governmental agencies for the implementation of minor permits, for the implementation of construction permits, and for operating permits to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision, for execution of the permit program established under this chapter that are generally not associated with service provided to a specific facility, including the costs incurred by the department or a local air quality program to comply with AS 46.14.010 - 46.14.015; the costs may include rent, utilities, permit program management, administrative and accounting services, and other costs as identified by the department in regulations; the fees shall also be sufficient to recover the cost of the small business assistance program under AS 46.14.300 - 46.14.310.

Sec. 46.14.255. Interest and sanctions for nonpayment.

(a) The department may assess interest against the owner and operator after a fee is due under this chapter and is unpaid. Interest assessed under this subsection shall be computed at two percentage points higher than the prime rate, as defined in AS 44.88.599, for the day the fee was due.

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

Sec. 46.14.260. Clean air protection fund.

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

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

Sec. 46.14.265. Emission control permit receipts account.

(a) The emission control permit receipts account is established in the state treasury. Under AS 37.05.146 (c), money received by the department in payment of fees under AS 46.14.240 and 46.14.250 and under regulations adopted under AS 46.14.140, other than fees described in AS 46.14.260 (a), shall be deposited in the account. Appropriations from the account are not made from the unrestricted general fund.

(b) Nothing in this section creates a dedicated fund.

Sec. 46.14.270. Special account.

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

Sec. 46.14.275. Timely and complete application as shield.

If an owner and operator have submitted a timely and complete application for a permit or a permit renewal, as applicable, but final action has not been taken on the application, the owner's and operator's failure to have an operating permit is not a violation of this chapter unless the delay in final action was due to the failure of the owner and operator to submit, in a timely manner, additional information required or requested to process the application. An owner and operator required to have an operating permit under this chapter are not in violation of the operating permit program established under this chapter before the date on which the owner and operator are required to submit an application under AS 46.14.150.

Sec. 46.14.280. Termination, modification, reopening, or revocation and reissuance of permits by the department.

(a) After 30 days' written notice to the permittee, the department

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

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

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

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

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

(A) the permit contains a material mistake; or

(B) there has been a material change in the quantity or type of air pollutant emitted from the stationary source; or

(3) shall reopen a permit issued under this chapter

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

(B) to incorporate changes in law, or to impose equivalent emission limitations, that become applicable after the permit is issued if the permit is issued to a major source and has a remaining duration of three or more years; the department shall make revisions allowed under this subparagraph as soon as practicable, but, regarding a change in law, not later than 18 months after the change in law takes effect; the department may not reopen the permit of a major source under this subparagraph if the change in law is not effective until after the date that the permit expires.

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

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

Sec. 46.14.285. Amendment and modification of permit upon request of permittee.

(a) A permittee may request

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

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

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

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

Sec. 46.14.290. Permit as shield.

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

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

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

(b) This section does not alter or affect

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

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

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

Article 03. SMALL BUSINESS ASSISTANCE PROGRAM

Sec. 46.14.300. Small business assistance program.

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

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

(c) Except as provided in AS 46.14.310 (b), the department shall provide assistance as described in (b) of this section to a requesting stationary source that is not a small business concern as defined in 15 U.S.C. 632 but that is subject to the requirements of this chapter if the legislature appropriates money from the general fund for this purpose.

Sec. 46.14.310. Power to limit small business assistance program.

(a) After consultation with the federal administrator and the administrator of the United States Small Business Administration and after providing notice and opportunity for public hearing, the department may exclude from the scope of the small business assistance program established in AS 46.14.300 a category or subcategory of small business facilities that the department finds to have sufficient technical and financial capabilities to meet the requirements of this chapter and federal law without the assistance provided under AS 46.14.300 - 46.14.320.

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

Sec. 46.14.320. Compliance advisory panel.

(a) There is established in the department a compliance advisory panel whose members shall serve staggered three-year terms. A member may not serve more than two three-year terms consecutively.

(b) The panel consists of

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

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

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

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

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

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

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

(d) The compliance advisory panel shall

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

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

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

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

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

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

Article 04. LOCAL PROGRAMS

Sec. 46.14.400. Local air quality control programs.

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

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

(c) If the department finds that the location, character, or extent of particular concentrations of population, air pollutant emissions units, 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 local air quality control program is necessary and direct that a local air quality control program spanning those boundaries is the only acceptable alternative to direct state administration.

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

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

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

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

(4) the procedures that must be followed by the municipality or local air quality district when requesting money from the clean air protection fund to cover the costs of implementing the municipality's or district's air quality program;

(5) the procedures that will be used by the department in approving a request under (4) of this subsection and submitting it to the legislature for funding;

(6) respective enforcement responsibilities of the department and the municipality or the local air quality district;

(7) that if the municipality or local air quality control district seeks authority to take action under (f) of this section, the municipality or local air quality control district will use procedures that are substantially equivalent to those required under AS 46.14.010 and 46.14.015.

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

(f) A municipality or a local air quality district administering a program under this section shall administer its local air quality control program according to this chapter, regulations adopted under those sections, and its cooperative agreement under (d) of this section. A municipality or local air quality district's program may, upon a finding by the local agency and an affirmative agreement by the department, establish a more stringent requirement than the stationary emissions unit permit program authorized under this chapter if public health or air quality effects provide a reasonable basis to regulate the emissions unit with the additional or

more stringent requirement and the municipality or district has used procedures substantially equivalent to those required under AS 46.14.010 - 46.14.015 before establishing the more stringent requirement. This subsection does not prohibit a municipality or local air quality control district from establishing a mobile source emissions program more stringent than the state program without making findings of public health or air quality effects or using procedures substantially equivalent to those required under AS 46.14.010 - 46.14.015. In this subsection, "mobile source" does not include tank vessels or other watercraft.

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

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

(i) If a municipality or a local air quality district administering a program under this section requires emissions inspection for a motor vehicle, emission inspection may not be required more than once every two years.

(j) A person who operates a motor vehicle in violation of emissions requirements imposed under this section is guilty of a violation and, upon conviction, shall be fined an amount not to exceed \$500. It is the intent of the legislature that money collected under this subsection be appropriated to promote air quality control programs in municipalities.

Sec. 46.14.410. Inadequacy of local program.

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

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

(c) If the municipality or local air quality district fails to take corrective action within the time period set by the department under (b) of this section, the department shall terminate the cooperative agreement and resume management of air quality control in the affected jurisdiction.

If the municipality or the local air quality district partially remedies, to the department's satisfaction, the deficiencies found in the determination, the department shall amend the cooperative agreement to reflect a modified allocation of responsibilities between the department and municipality or the local air quality district.

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

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

Article 05. MISCELLANEOUS PROVISIONS

Sec. 46.14.500. Air pollution from outer continental shelf activities.

(a) The department shall seek delegation of authority from the federal administrator to implement and enforce the terms and provisions of 42 U.S.C. 7627 (Clean Air Act, sec. 328) for the Pacific and Arctic Ocean areas offshore of the state. The department may adopt regulations that are necessary to acquire this delegated authority.

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

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

Sec. 46.14.510. Motor vehicle pollution.

(a) When the department determines that the state of knowledge and technology may allow or make appropriate the control of emissions from motor vehicles to further air quality control, the department may provide, by regulation, for the control of the emissions from motor vehicles. 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) Unless otherwise exempted by law, a person shall maintain in operating condition any element of the air pollution control system or mechanism of a motor vehicle that the department, by regulation, requires to be maintained in or on the motor vehicle.

(c) The department shall consult with the Department of Administration regarding implementation of the motor vehicle pollution control program. The Department of Administration shall cooperate with the department in implementing the program. As a part of a motor vehicle pollution control program, the department or a municipality that enforces a motor vehicle pollution control program may determine if a vehicle is properly registered as required by law.

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

(e) If the department adopts regulations requiring emissions inspection for a motor vehicle, the department may not require the vehicle be inspected more than once every two years.

(f) A person who fails to display an emissions inspection decal as required by law is guilty of a violation and, upon conviction, shall be fined an amount not to exceed \$500. It is the intent of the legislature that money collected under this subsection be appropriated to control pollution from motor vehicle emissions.

(g) In addition to the emission control inspection program fee imposed under [AS 28.10.423](#), the department or a municipality may impose a fee upon a vehicle required to be inspected under a motor vehicle emission control program established under this chapter, but the fee may not exceed the actual costs of the department or the municipality in administering

(1) the motor vehicle emission control inspection program; and

(2) the related ambient air monitoring program.

Sec. 46.14.515. Inspection.

(a) An officer or employee of the department designated by the commissioner or an inspector authorized by the commissioner and certified under regulations adopted under [AS 46.14.140](#) (a)(14) may, upon presentation of credentials and at reasonable times with the consent of the owner or operator, enter upon or through any premises of a stationary source regulated under this chapter to

- (1) inspect and copy any records required to be maintained;
- (2) inspect any emissions unit, monitoring equipment, or method required to be used; or
- (3) sample any emissions that the owner and operator of the stationary source is required to sample.

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

Sec. 46.14.520. Confidentiality of trade secrets.

Records, reports, and information, and parts of records, reports, and information, other than emission data, in the department's possession or control are considered confidential records and shall be kept confidential and in separate files if the owner and operator have certified under oath to the department or authorized local program that

- (1) public disclosure would tend to affect adversely the owner's and operator's competitive position; and
- (2) the records, reports, or information, or parts of the records, reports, or information, would divulge production figures, sales figures, processes, production techniques, or financial data of the owner and operator that are entitled to protection as trade secrets under [AS 45.50.910 - 45.50.945](#) (Alaska Uniform Trade Secrets Act).

Sec. 46.14.525. Public records.

Except as provided in [AS 46.14.520](#), permits, permit applications, emissions and monitoring reports, compliance reports, certifications, and monitoring, reporting, and quality assurance plans in the department's possession or control are available to the public for inspection and copying.

Sec. 46.14.530. State and federal aid.

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

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

Sec. 46.14.535. Grants.

(a) Subject to appropriation, the department may award grants of federal or other funds received by the department for the control of air emissions or the development or administration of air quality control programs in the state.

(b) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the purposes of this section.

Sec. 46.14.540. Authority of department in cases of emergency.

(a) When the commissioner finds that an act of God, act of war, act of terrorism, or similar catastrophe necessitates emergency use of an unpermitted emissions unit or emergency use of a permitted emissions unit in a manner not authorized by the permit, the commissioner may waive procedural requirements of this chapter and issue an order to authorize emergency use of the emissions unit. When acting under this section, the commissioner shall impose conditions necessary to protect life, human health, welfare, property, and the environment and may impose other conditions the commissioner finds necessary and appropriate.

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

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

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

Sec. 46.14.550. Responsibilities of owner and operator; agent for service.

Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter, before issuance of a permit under this chapter both the owner and operator of a stationary source are responsible for compliance with this chapter and regulations adopted under this chapter. If the owner and operator of the stationary source are separate persons, only one person is required to discharge a specific responsibility. After issuance of a permit under this chapter, only the permittee is responsible for permitted operations. The permittee shall have a designated agent for service of process in the state.

Sec. 46.14.560. Unavoidable malfunctions and emergencies.

Excess emissions caused by an unavoidable emergency, a malfunction, or nonroutine repairs of an emissions unit including pollution control equipment or process equipment constitute an affirmative defense, when asserted under regulations adopted under AS 46.14.140, to an action brought for noncompliance with a technology-based emission standard. This section does not limit the department's power to enjoin the emission or require corrective action. This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Article 06. GENERAL PROVISIONS

Sec. 46.14.900. Limitations.

This chapter does not

- (1) grant jurisdiction or authority with respect to air contamination existing solely within a residential dwelling or a commercial or industrial plant, workplace, or shop;
- (2) affect the relations between employers and employees with respect to or arising out of a condition of air contamination or air pollution; or
- (3) supersede or limit the applicability of a law or ordinance relating to sanitation, industrial health, or safety.

Sec. 46.14.990. Definitions.

In this chapter,

- (1) "air pollutant" has the meaning given in 42 U.S.C. 7602 (Clean Air Act, sec. 302);
- (2) "ambient air" has the meaning given in 40 C.F.R. 50.1;
- (3) "ambient air quality standard" means a standard, other than an emission standard, adopted under AS 46.14.010, 46.14.140, 46.14.400(f), or 42 U.S.C. 7409 (Clean Air Act, sec. 109);
- (4) "building, structure, facility, or installation" has the meaning given in 40 C.F.R. 51.166(b) except that it includes a vessel
 - (A) that is anchored or otherwise permanently or temporarily stationed within a locale;
 - (B) upon which a stationary source or stationary sources are located; not including stationary sources engaged in propulsion of the vessel; and
 - (C) that is used for an industrial process, excluding a tank vessel in the trade of transporting cargo; in this subparagraph, "industrial process" means the extraction of raw material or the physical or chemical transformation of raw material in either composition or character;

- (5) "commissioner" means the commissioner of environmental conservation;
- (6) "construction" has the meaning given in 40 C.F.R. 51.166(b);
- (7) "construction permit" means a permit under AS 46.14.130 (a), including all relevant exhibits, addendums, transmittal letters, compliance schedules, administrative orders, emergency orders, and court orders;
- (8) "department" means the Department of Environmental Conservation;
- (9) "emission" means a release of one or more air pollutants to the atmosphere;
- (10) "emission limitation" and "emission standard" have the meanings given in 40 C.F.R. 51.100;
- (11) "emissions unit" has the meaning given in 40 C.F.R. 51.166(b)(7) or 40 C.F.R. 70.2, depending on the context in which the term is used;
- (12) "federal administrator" means the administrator of the United States Environmental Protection Agency;
- (13) *[Repealed, Sec. 82 ch 41 SLA 2009].*
- (14) "hazardous air pollutant" means a pollutant listed in or under 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));
- (15) "local air quality control program" means a program authorized under AS 46.14.400 to implement some or all of the provisions of this chapter;
- (16) "major modification" means a change that meets the definition of "major modification" under either 40 C.F.R. 51.165 or 40 C.F.R. 51.166;
- (17) "major stationary source" means a stationary source or physical change that meets the definition of "major stationary source" under either 40 C.F.R. 51.165 or 40 C.F.R. 51.166;
- (18) "operating permit" means a permit under AS 46.14.130 (b), including all relevant exhibits, addendums, transmittal letters, compliance schedules, administrative orders, emergency orders, and court orders;
- (19) "operator" means a person or persons who direct, control, or supervise a stationary source or emissions unit that has the potential to emit an air pollutant to the atmosphere;
- (20) "owner" means a person or persons with a proprietary or possessory interest in a stationary source or emissions unit that has the potential to emit an air pollutant to the atmosphere;

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

(22) "potential to emit" has the meaning given in 40 C.F.R. 51.166(b);

(23) "regulated air pollutant" means an air pollutant subject to regulation under 42 U.S.C. 7401 - 7671q (Clean Air Act);

(24) "small business facility" means a stationary source that

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

(B) is a small business concern as defined in 15 U.S.C. 632; and

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

(25) "stack" has the meaning given in 40 C.F.R. 51.100;

(26) "stationary source" has the meaning given in 40 C.F.R. 51.166(b) or 40 C.F.R. 70.2, depending on the context in which the term is used;

(27) "tank vessel" means a waterborne vessel, ship, or barge, whether or not self-propelled, that is constructed or converted to carry cargo; "tank vessel" includes a tanker, tank ship, or combination carrier, but does not include a vessel that is loading or unloading

(A) cargo in sealed drums, barrels, or other packages; or

(B) petroleum or petroleum products solely as fuel for use on that vessel;

(28) "TPY" means tons per year.