_Chapter 03. Environmental Conservation.

Article 1. Declaration of Policy.

_Sec. 46.03.010. Declaration of policy.

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

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

Article 2. Department of Environmental Conservation.

_Sec. 46.03.020. Powers of the department.

The department may

(1) enter into contracts 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 regulations providing for

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

(B) safeguard standards for carbon dioxide, 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);

(14) notwithstanding any other provision of law, take all actions necessary to receive federal authorization of a state program for the department and the Department of Natural Resources to administer and enforce a dredge and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean Water Act) and to implement the program, if

authorized.

_Sec. 46.03.022. Dental radiological equipment. This title does not authorize the department to register, inspect, test, or otherwise regulate dental radiological equipment or records relating to dental radiological equipment regulated by the Department of Health under AS 44.29.020(d).

_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.

_Sec. 46.03.025. Accounting and disposition of fees. [Repealed, § 92 ch 36 SLA 1990. For current provisions, see AS 37.05.142 — 37.05.146.]

_Sec. 46.03.030. Water quality enhancement, water supply, sewage, and solid waste facilities grants.

(a) [Repealed, § 19 ch 220 SLA 1976.]

(b) The department may grant to a municipality, as funds are available, a grant for any of the following:

(1) a water quality enhancement project;

(2) a public water supply, treatment, or distribution system;

(3) a wastewater collection, treatment, or discharge system;

(4) a solid waste processing, disposal, or resource recovery system.

(c) There is a water quality enhancement and water supply, wastewater, and solid waste systems program created in the department to carry out the purposes of this section.

(d) The department shall, by regulation, identify those costs that are eligible costs for the purposes of this section. Eligible costs do not include interest and financing and right-of-way acquisition, or costs that are related to the operation, maintenance, or repair of a system.

(e) A grant under this section to a municipality for a project funded by an appropriation made by the legislature

(1) before July 1, 1994, may not exceed 50 percent of the eligible costs of the project;

(2) after July 1, 1994, may not exceed

(A) 85 percent of the eligible costs for a municipality with a population of 1,000 persons or less;

(B) 70 percent of the eligible costs for a municipality with a population of 1,001 to 10,000 persons; and

(C) 60 percent of the eligible costs for a municipality with a population greater than 10,000 persons.

(f) [Repealed, § 14 ch 106 SLA 1994.]

(g) The match required for grants made under this section may include

(1) federal funds; or

(2) state funds, other than those funds received under this section or AS 37.06.

(h) Construction of a project for which a grant is made under this section may commence only after the department has approved in writing the plans and specifications for the project.

_Sec. 46.03.032. Alaska clean water fund.

(a) There is established as a separate fund the Alaska clean water fund, which is distinct from any other money or fund in the treasury, and which consists of money appropriated by the legislature to meet federal matching requirements, federal capitalization grants, loan repayments, interest received from loan repayments, interest received from investment of money in the Alaska clean water fund, and the proceeds and accrued interest received from the sale of revenue bonds issued under AS 37.15.560 — 37.15.605 and secured by the Alaska clean water fund. Separate accounts may be created in the Alaska clean water fund. The accounts may be combined for purposes of investment.

(b) The provisions of this section shall be liberally construed in order to carry out the purposes for which they were enacted. The department shall administer the Alaska clean water fund consistent with the requirements of this section and AS 37.15.560 — 37.15.605.

(c) The department may accept and make use of all capitalization grants provided by the federal government under 33 U.S.C. 1251 — 1387 (the federal Clean Water Act), as amended.

(d) Except as otherwise limited by federal law, the Alaska clean water fund may be used

(1) for the following categories of projects:

(A) planning, designing, building, constructing, and rehabilitating a public wastewater collection, treatment, or discharge system;

(B) implementing a management program for controlling water pollution from nonpoint sources under 33 U.S.C. 1329, including planning, designing, building, constructing, and rehabilitating a solid waste management system; and

(C) developing and implementing an estuary conservation and management program under 33 U.S.C. 1330;

(2) to provide the following types of financial assistance for the categories of projects listed in (1) of this subsection:

(A) making loans to municipalities and other qualified entities;

(B) buying or refinancing the debt obligations of a municipality or other qualified entity;

(C) providing collateral security for or purchasing insurance for a municipal, state agency, or other qualified entity debt obligation; and

(3) to pay and secure the payment of the principal of and interest on revenue bonds issued by the state and to pay the costs of issuance and administration of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska clean water fund.

(e) Repayment of loans shall be secured in a manner that the department determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower.

(f) The department

(1) may spend money from the Alaska clean water fund to pay the costs of

(A) administering the fund; and

(B) the department in conducting activities under this section and AS 37.15.560 — 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605;

(2) shall spend money from the Alaska clean water fund to pay

(A) into the bond redemption fund (AS 37.15.565), and into any other bond redemption fund or account created by a relevant bond resolution, the amount certified by the state bond committee under AS 37.15.585; and

(B) the costs of the state bond committee in conducting activities under this section and AS 37.15.560 — 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605.

(g) A municipality or other qualified entity wishing to borrow money from the Alaska clean water fund shall demonstrate to the satisfaction of the department that it

(1) has sufficient legal authority to incur the debt for which it is applying; and

(2) will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan and sufficient reserves for the loan as may be necessary.

(h) Allocation of Alaska clean water fund loans shall be made in accordance with the priority list developed by the department, using criteria specified in regulations adopted by the department.

(i) Before making a loan from the Alaska clean water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant criteria, standards, or procedures.

(j) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards, criteria, and procedures established by regulations under this section. A loan made from the Alaska clean water fund may be subject to the state aid intercept provisions of AS 37.15.575. Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, in making a loan from the Alaska clean water fund for a solid waste management system, the department shall give priority to a project that will alleviate severe health or environmental concerns in the community or region proposing the system. In addition, the department may consider

(1) the extent of local or regional support for the proposed system; and

(2) the extent to which the applicant can demonstrate that the full range of solid waste management options has been reasonably considered and that the proposed system is consistent with the promotion of the solid and hazardous waste management practices established in AS 46.06.021.

(k) The department shall prepare reports required by the federal government in conjunction with federal capitalization grant award conditions. The department shall also prepare reports and notices, including notices of default, required by the state bond committee in conjunction with bonds issued under AS 37.15.560 — 37.15.605. The department shall also prepare a biennial report on the Alaska clean water fund and notify the legislature that it is available on or before the first day of each first regular session of the legislature.

(l) Loan repayments and interest earned by loans from the Alaska clean water fund shall be deposited in the Alaska clean water fund.

(m) Annual principal payments shall commence within one year after project completion.

(n) [Repealed, § 14 ch 106 SLA 1994.]

(o) Regulations adopted by the department under this section that would affect issuance or repayment of revenue bonds under AS 37.15.560 — 37.15.605 may not be inconsistent with those statutes or with regulations adopted by the state bond committee under those statutes. To the extent that regulations adopted by the department are inconsistent with AS 37.15.560 — 37.15.605, with regulations adopted by the state bond committee under those statutes, or with the covenants of a bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 — 37.15.605, the regulations adopted under those statutes, and the covenants of the bond resolution govern.

(p) In this section,

(1) "other qualified entity" means

(A) an intermunicipal or interstate agency as those terms are used in 33 U.S.C. 1383, and may include an authority, corporation, instrumentality, enterprise, or other entity formed through an agreement between a municipality and one or more other governmental entities under AS 29.35.010(13) or under art. X, sec. 13, Constitution of the State of Alaska, or between a municipality and a regional housing authority under AS 18.55.996(b); or

(B) an organization that is eligible for assistance under 33 U.S.C. 1383, that is not exempted from regulation under AS 42.05.711(d), that provides wastewater service under a certificate of convenience and necessity from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska, and that is economically regulated by the Regulatory Commission of Alaska;

(2) "solid waste management system" includes capital improvements and equipment used for the purpose of solid and hazardous waste source reduction, recycling, treatment, or disposal.

_Sec. 46.03.034. Alaska clean water administrative fund.

(a) The Alaska clean water administrative fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund is composed of two accounts, the

(1) Alaska clean water administrative operating account; and

(2) Alaska clean water administrative income account.

(b) The legislature may appropriate to the Alaska clean water administrative operating account the annual balance of the Alaska clean water administrative income account.

(c) The department shall administer the Alaska clean water administrative fund.

(d) The Alaska clean water administrative operating account may be used to pay for the department's operational and administrative costs necessary to manage the Alaska clean water fund and the Alaska clean water administrative fund and for such other purposes permitted by federal law.

(e) Money received in payment of fees charged by the department under the authority of AS 46.03.035 and earnings on the Alaska clean water administrative fund shall be deposited in the Alaska clean water administrative income account.

_Sec. 46.03.035. Fees charged for loans made from the Alaska clean water fund.

The department may charge and collect reasonable fees in connection with making and servicing loans made by the department under the authority of AS 46.03.032. The department shall by regulation specify the rates and amounts of the fees.

_Sec. 46.03.036. Alaska drinking water fund.

(a) The Alaska drinking water fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund shall be administered by the department. The Alaska drinking water fund consists of the following items, all of which shall be deposited into the fund upon receipt:

(1) the proceeds and accrued interest received from the sale of revenue bonds issued under AS 37.15.560 — 37.15.605 and secured by the Alaska drinking water fund;

(2) money appropriated by the legislature, including federal capitalization grants;

(3) loan repayments; and

(4) interest received from loan repayments and interest received from investment of money in the Alaska drinking water fund.

(b) Except as otherwise limited by federal law, the department may use money in the Alaska drinking water fund to

(1) provide financial assistance for drinking water system projects, including projects to plan, design, build, construct, or rehabilitate a public drinking water collection, storage, treatment, or distribution system, to

(A) municipalities;

(B) organizations that are not exempted from regulation under AS 42.05.711(d), that provide water service under a certificate of convenience and necessity from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska, and that are economically regulated by the Regulatory Commission of Alaska;

(2) earn interest on the amounts deposited in the fund;

(3) pay the costs of administering the fund and conducting activities under this section and AS 37.15.560 — 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605;

(4) pay and secure the payment of the principal of and interest on revenue bonds issued by the state and to pay the costs of issuance and administration of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska drinking water fund;

(5) pay

(A) into the bond redemption fund (AS 37.15.565), and into any other bond redemption fund or account created by a relevant bond resolution, the amount certified by the state bond committee under AS 37.15.585; and

(B) the costs of the state bond committee in conducting activities under this section and AS 37.15.560 — 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605.

(c) Repayment of loans shall be secured in a manner that the department determines is feasible to ensure prompt repayment under a loan agreement entered into with the borrower.

(d) Separate accounts may be created in the Alaska drinking water fund. The accounts may be combined for purposes of investment.

(e) The department may adopt regulations necessary to implement the Alaska drinking water fund in a manner consistent with federal law. The regulations adopted by the department under (h) of this section may establish different loan terms, charges, rates, and standards for different classes of borrowers to accommodate the different levels of risk and costs that the different classes may present.

(f) An organization that qualifies for financial assistance under (b)(1)(B) of this section or a municipality wishing to borrow money from the Alaska drinking water fund shall demonstrate to the satisfaction of the department that it

(1) has sufficient legal authority to incur the debt for which it is applying; and

(2) will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan and sufficient reserves for the loan as may be necessary.

(g) Allocation of Alaska drinking water fund loans shall be made in accordance with a priority list developed by the department, using criteria specified in regulations adopted by the department. A loan may not be made to an organization that is not a municipality to refinance debt of that organization.

(h) Before making a loan from the Alaska drinking water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue of self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant standards or procedures.

(i) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards and procedures established by regulations under this section. A loan made from the Alaska drinking water fund may be subject to the state aid intercept provisions of AS 37.15.575.

(j) The department shall also prepare reports and notices, including notices of default, required by the state bond committee in conjunction with bonds issued under AS 37.15.560 — 37.15.605.

(k) Regulations adopted by the department under this section that would affect issuance or repayment of revenue bonds under AS 37.15.560 — 37.15.605 may not be inconsistent with those statutes or with regulations adopted by the state bond committee under those statutes. To the extent that regulations adopted by the department are inconsistent with AS 37.15.560 — 37.15.605, with regulations adopted by the state bond committee under those statutes, or with the covenants of a bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 — 37.15.605, the regulations adopted under those statutes, and the covenants of the bond resolution govern.

_Sec. 46.03.038. Alaska drinking water administrative fund.

(a) The Alaska drinking water administrative fund is established as a

separate fund that is distinct from other money or funds in the state treasury. The fund is composed of two accounts, the

(1) Alaska drinking water administrative operating account; and

(2) Alaska drinking water administrative income account.

(b) The legislature may appropriate to the Alaska drinking water administrative operating account the annual balance of the Alaska drinking water administrative income account.

(c) The department shall administer the Alaska drinking water administrative fund.

(d) The Alaska drinking water administrative operating account may be used to pay for the department's operational and administrative costs necessary to manage the Alaska drinking water fund and the Alaska drinking water administrative fund and for such other purposes permitted by federal law.

(e) Money received in payment of fees charged by the department under the authority of AS 46.03.039 and earnings on the Alaska drinking water administrative fund shall be deposited in the Alaska drinking water administrative income account.

_Sec. 46.03.039. Fees charged for loans made from the Alaska drinking water fund.

The department may charge and collect reasonable fees in connection with making and servicing loans made by the department under the authority of AS 46.03.036. The department shall by regulation specify the rates and amounts of such fees.

_Sec. 46.03.040. Alaska environmental plan.

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

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

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

_Sec. 46.03.045. Public recognition of pollution prevention efforts. In addition to the school awards program under AS 46.11.070, the department may identify, document, and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses, or government agencies in the state.

Article 3. Water Pollution Control and Waste Disposal.

_Sec. 46.03.050. Authority.
The department has jurisdiction to prevent and abate the pollution of the waters of the state.

_Sec. 46.03.060. Water pollution control plan.
The department shall develop comprehensive plans for water pollution control in the state and conduct investigations it considers advisable and necessary for the discharge of its duties.

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

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

_Sec. 46.03.090. Plans for pollution disposal. [Repealed, § 12 ch 136 SLA 2004.]

_Sec. 46.03.100. Waste management, disposal, and discharge authorization.
(a) A person may not construct, modify, or operate a sewerage system

or treatment works or take any action that results in the disposal or discharge of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state without prior authorization from the department.

(b) Prior authorization may be provided by the department, in its discretion, through one or a combination of the following:

(1) an individual permit issued for a specific facility or disposal activity;

(2) a general permit issued on a statewide, regional, or other geographical basis for a category of disposal activities that the commissioner, using information available when the permit is developed, determines are similar in nature and will comply with applicable environmental quality standards established under this title;

(3) regulations adopted by the department authorizing a category of disposal without requiring a permit and establishing specific siting or operational requirements, discharge limits, or best management practices for the disposal category;

(4) designation and approval of a plan as described under (c) of this section;

(5) an integrated waste management and disposal authorization as described in (d) of this section.

(c) The department may require the submission of plans for review and written approval before construction, extension, installation, modification, or operation of a publicly or privately owned or operated sewerage system or treatment works. If the sewerage system or treatment works is designed to prevent disposal from the system or works outside of containment under normal operating conditions, the department may designate that the plan approval constitutes the authorization required under (a) of this section.

(d) The department may issue an integrated waste management and disposal authorization covering multiple related or unrelated waste management or disposal activities to be conducted at a facility, including generation, treatment, storage, and disposal of solid or liquid waste. An integrated waste management and disposal authorization may include the authorizations in (b) and (c) of this section and a water-quality-related certification required by 33 U.S.C. 1341 for the discharge of dredged or fill materials or of pollutants to surface waters from point sources.

(e) This section does not apply to

(1) a person discharging only domestic sewage into a publicly owned treatment works;

(2) disposals subject to regulation under AS 31.05.030(e)(2);

(3) injection projects permitted under AS 31.05.030(h);

(4) discharges of solid or liquid waste material or water discharges from the following activities if the discharge is incidental to the activity and the activity does not produce a discharge from a point source, as that term is defined in regulations adopted under this chapter, into any waters of the United States:

(A) mineral drilling, trenching, ditching, and similar activities;

(B) landscaping;

(C) water well drilling and geophysical drilling; or

(D) drilling, ditching, trenching, and similar activities associated with facility construction and maintenance or with road or other transportation facility construction and maintenance; however, the exemption provided by this subparagraph does not relieve a person from obtaining a prior authorization under this section if the drilling, ditching, trenching, or similar activity will involve the removal of the groundwater, stormwater, or wastewater runoff that has accumulated and is present at an excavation site for facility, road, or other transportation construction or maintenance and a prior authorization is otherwise required by this section;

(5) bilge pumping, unless the bilge product pumped may be expected to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

(6) cooling water discharges from a boat or vessel into any surface water of the state; or

(7) the firing or other use of munitions in training activities conducted on active ranges, including active ranges operated by the United States Department of Defense or a United States military agency or service, unless otherwise regulated under 33 U.S.C. 1251 — 1376 (Federal Water Pollution Control Act), as amended.

(f) A person who applies for an authorization to operate a solid waste disposal facility that accepts hazardous waste or a mining waste disposal facility for an operation that chemically processes ores or has the potential to generate acid shall furnish to the department proof of financial responsibility to manage and close the facility in a manner that the department finds will control or minimize the risk of the release of unauthorized levels of pollutants from the facility to waters. The department may require that a municipal solid waste disposal facility furnish proof of financial responsibility. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety bond, corporate guarantee, letter of credit, certificate of deposit, or other proof of financial responsibility approved by the department, under regulations adopted by the department. Regulations adopted under this subsection must set financial tests for the acceptance of corporate guarantees and other forms of financial responsibility that the department determines would be required for an independent showing of financial capability. For a mining waste disposal facility, the department may accept as adequate to satisfy the requirement of this subsection financial assurance for reclamation provided to a state or federal land management agency if it otherwise meets the requirements of this subsection. The department's acceptance of proof of financial responsibility under this subsection expires

(1) one year after its issuance for self-insurance, unless the department accepts a renewal of the same self-insurance demonstration after a financial review under regulations adopted by the department;

(2) on the effective date of a change in the insurance agreement, surety bond, corporate guarantee, letter of credit, or certificate of deposit;

(3) on the expiration or cancellation of the insurance agreement,

surety bond, corporate guarantee, letter of credit, or certificate of deposit.

(g) A person who applies for a solid waste disposal authorization under this section, except for an authorization under (b)(2) of this section or an authorization to dispose of municipal solid waste, shall demonstrate to the satisfaction of the department that the applicant has reasonably considered all solid waste management options and that the authorization would be consistent with the practices and priorities established under AS 46.06.021.

(h) The program developed to issue permits by the department to authorize discharge of pollutants into surface waters and submitted to the United States Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean Water Act) shall include the monitoring and reporting requirements included in the permits, limited to those requirements authorized by law, including 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those necessary to ascertain compliance with the effluent limitations contained in the permit and with state water quality standards.

(i) A person who applies for a permit under the program may review and provide comments and amendments to a draft permit and discuss the draft permit with the staff of the department before that draft permit undergoes public notice and comment under AS 46.03.110.

(j) A person who applies for a permit under the program has the opportunity to review a proposed final permit and discuss it with the staff of the department before the department issues the permit.

(k) A permit issued under the program is not automatically stayed by the filing of a request for an adjudicatory hearing on the permit; a request to stay a permit issued under the program shall be decided by the commissioner or the commissioner's designee.

(l) Permits issued under this section shall be issued as expeditiously as possible.

(m) For purposes of the permit program authorized by the United States Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402, Clean Water Act), "waste material" includes pollutants, as defined in 33 U.S.C. 1362(6) (sec. 502(6), Clean Water Act).

_Sec. 46.03.110. Waste disposal permit procedure.

(a) An application for a permit under AS 46.03.100(b)(1) or (2) or an authorization under AS 46.03.100(d) shall be made on forms prescribed by the department. Forms must contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. The applicant may request that a general permit be issued, or the department may, on its own initiative, propose that an applicant be authorized under a general permit.

(b) After receipt of a proper application for an individual or general permit or a determination by the department that a general permit should be proposed, the department shall publish notice of the application or proposal, or of the availability of a draft permit for

comment, as applicable, in at least two publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice shall also be posted on the Alaska Online Public Notice System maintained under AS 44.62.175 and may also be published in other appropriate information media. The notice must include a statement that a person who wants to present views to the department with regard to the application or proposal may do so in writing to the department within 30 days after the first publication of the notice. The written response entitles the writer to a copy of the application or draft permit, and, in the case of an application or proposal to issue a general permit, the application or proposal shall also be posted by the department on the Internet at the same time that notice is published under this subsection.

(c) When the department receives an application or makes a proposal that a general permit be issued, the commissioner shall immediately send copies of the application or proposal to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce, community, and economic development, and the commissioner of health.

(d) The department may specify in a permit or other authorization the terms and conditions under which waste material or water may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. The commissioner may provide, as a term of a general permit, that a person intending to dispose of waste material or water under the general permit shall first obtain specific authorization from the department. A general permit shall be posted on the Internet by the department; the posting must include the names of persons authorized to make disposals under the permit and the locations at which disposals may be made if those locations are specifically authorized under this subsection. A permit may not be issued for a term in excess of five years from the date of issuance. The department may prescribe in regulations the circumstances under which an expiring permit may be administratively continued.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under 33 U.S.C. 1341 (sec. 401, Federal Water Pollution Control Act Amendments of 1972), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under AS 46.03.100.

(f) The standards for determining waste material in AS 46.03.100(m) apply to this section.

_Sec. 46.03.120. Termination or modification of waste management and disposal authorization.

(a) The department may terminate a permit or other authorization issued under AS 46.03.100 or may rescind a person's authority to dispose of waste in accordance with regulations adopted under AS 46.03.100(b)(3) upon 30 days' written notice if the department finds

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

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

permit or other authorization;

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

(4) for a permit issued under a federally approved program under 33 U.S.C. 1342 (sec. 402, Clean Water Act), that

(A) a change in any condition of the receiving environment or the quality of discharge requires either a temporary or permanent reduction of the authorization or elimination of the authorized discharge; or

(B) the permittee had made a material misrepresentation of fact to the department relevant to the authorized activity at any time.

(b) The department may modify a permit or other authorization issued under AS 46.03.100, or may rescind a person's authority to dispose of waste in accordance with regulations adopted under AS 46.03.100(b)(3),

(1) for any of the causes for termination listed in (a) of this section;

(2) if the department finds that a material change in the quality or classification of the waters of the state has occurred; or

(3) in the case of a permit issued under a federally approved program under 33 U.S.C. 1342 (sec. 402, Clean Water Act), as provided in regulations adopted under AS 46.03.020(12).

(c) Nothing in this section limits the authority of the department to terminate or modify a permit or plan approval under other circumstances if requested to do so by the permittee or plan holder.

_Sec. 46.03.130. Compliance order. [Repealed, § 19 ch 220 SLA 1976. For current law, see AS 46.03.850.]

_Sec. 46.03.135. Firefighting substances disposal reimbursements.

(a) A firefighting substances disposal reimbursement program is established in the department.

(b) The department shall accept an application for disposal reimbursement on a form provided by the department from a person domiciled in

(1) a community in the state with a population of less than 2,000 that is off the road system who received a firefighting substance that contains a perfluoroalkyl substance or polyfluoroalkyl substance; or

(2) the state who received a firefighting substance that contains a perfluoroalkyl substance or polyfluoroalkyl substance from a partially state-funded fire safety project.

(c) The department may accept a reimbursement application only if the application provides proper disposal documentation showing compliance with regulations adopted by the department and any other applicable law.

(d) The department shall prioritize reimbursements as follows:

(1) activities related to the proper disposal of a firefighting substance that contains a perfluoroalkyl substance or polyfluoroalkyl substance, including disposal of the equipment containing the

substance;

(2) activities related to the proper disposal of firefighting equipment residually contaminated by a perfluoroalkyl substance or polyfluoroalkyl substance;

(3) replacement of equipmen containing or residually contaminated by a perfluoroalkyl substance or polyfluoroalkyl substance.

Article 5. Radiation and Hazardous Waste Protection.

_Secs. 46.03.140 — 46.03.230. Air pollution control. [Repealed, § 27 ch 74 SLA 1993. For current provisions, see AS 46.14.]

_Sec. 46.03.240. Construction and implementation of AS 46.03.230. [Repealed, § 19 ch 220 SLA 1976.]

_Sec. 46.03.245. Air pollution control. [Repealed, § 27 ch 74 SLA 1993.]

Article 4. Firefighting Substances Disposal Reimbursements.

_Sec. 46.03.250. Authority.

The department shall adopt regulations

(1) establishing standards governing the discharge of low level radioactive materials to the air, water, land, and subsurface land of the state;

(2) establishing safeguards for radioactive waste materials that do not constitute a threat to public health or safety and that may be stored or disposed of in the state; and

(3) establishing procedures for the storage and disposal of radioactive materials used in medicine, education, instruments, industrial testing, or scientific research.

_Sec. 46.03.260. Use of radioactive materials.

A person who conducts an operation that results in the discharge of low level radioactive materials to the air, water, land, or subsurface land of the state shall obtain a permit from the department before commencing the discharge.

_Secs. 46.03.270 — 46.03.280. Electronic product radiation; notification of violation and order of abatement. [Repealed, § 12 ch 172 SLA 1978. For radiation protection, see AS 18.60.475 — 18.60.545.]

_Sec. 46.03.290. [Renumbered as AS 46.03.865.]

_Sec. 46.03.296. Disposal of hazardous wastes.

(a) It is unlawful to dispose of hazardous wastes in the state unless

(1) the waste has been treated and disposed of in a manner that uses the maximum degree of reduction of the harmful qualities of a hazardous waste that is subject to this chapter and that the department, on a case-by-case basis, determines is achievable for the hazardous waste by application of production processes and available methods, systems, and techniques, taking into account energy, environmental, and economic impacts and other costs; and

(2) the waste is disposed of in a manner that will ensure the protection of human health, livestock, wildlife, property, and the environment.

(b) The department shall adopt regulations in accordance with AS 44.62 (Administrative Procedure Act) for the treatment, storage, and disposal of hazardous wastes to ensure the protection of human health, livestock, wildlife, property, and the environment.

_Sec. 46.03.299. Hazardous waste regulations.

(a) The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) for the identification and management of hazardous waste as defined by the United States Environmental Protection Agency and hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity.

(b) Regulations adopted under (a) of this section must exempt from their coverage mining waste and waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy until studies required under 42 U.S.C. 6982(f) and (m) are completed. The department, after considering the findings in the reports of these studies, may terminate or amend the exemptions.

(c) The department shall take all actions necessary to receive authorization from the administrator of the United States Environmental Protection Agency to administer and enforce a hazardous waste program in accordance with 42 U.S.C. 6901 — 6987 (Resource Conservation and Recovery Act of 1976).

(d) Regulations adopted under (a) of this section shall cover (1) hazardous waste, not otherwise exempted by law, that is generated in any month by a single generator in an amount of 220 pounds or more, and (2) acute hazardous wastes identified in 40 C.F.R. 261.33(e), not otherwise exempted by law, that are generated in any month by a single generator in an amount of 2.2 pounds or more. The department shall extend the regulations to manage smaller quantities of hazardous waste if the quantities specified in this subsection exceed the quantities regulated under the authority of 42 U.S.C. 6921 — 6934, as amended. The department may at any time extend coverage of regulations adopted under (a) of this section to small quantities of hazardous waste and acute hazardous waste.

(e) [Repealed, § 61 ch 50 SLA 1989.]
(f) [Repealed, § 4 ch 88 SLA 1990.]

_Sec. 46.03.300. Exceptions. [Repealed, § 12 ch 172 SLA 1978.]

_Sec. 46.03.302. Hazardous waste permit.

(a) A person may not treat, transport, store, or dispose of a hazardous waste as defined by the department by regulation unless that person first secures a permit from the department and submits to the department any reports or manifests that the department may require for handling the hazardous wastes.

(b) A person who generates hazardous waste is not required to obtain a

permit under (a) of this section unless the person also treats, transports, stores, or disposes of the hazardous waste.

_Sec. 46.03.305. Hazardous waste reports and manifests.
A person who generates hazardous wastes shall submit to the department reports or manifests that the department may require for handling the hazardous wastes.

_Sec. 46.03.308. Transportation of hazardous waste.
(a) Hazardous waste may not be transported in the state unless the waste is accompanied by the uniform hazardous waste manifest required under 42 U.S.C. 6922 — 6923 or other applicable federal law.

(b) [Repealed, § 15 ch 71 SLA 1997.]

_Sec. 46.03.309. Temporary collection of hazardous waste.
The department shall provide for the temporary collection of hazardous waste to be prepared for shipment to a federally approved hazardous waste disposal site. The department shall establish four periods in each calendar year during which it shall collect hazardous waste. A collection point may accept hazardous waste only from small quantity generators and household generators as defined by the United States Environmental Protection Agency.

_Sec. 46.03.310. Conflicting laws. [Repealed, § 12 ch 172 SLA 1978.]
_Sec. 46.03.311. Public records.
(a) Permits, permit applications, records, reports, and information and documentation obtained under AS 46.03.302 — 46.03.308 are available to the public for inspection and copying. However, upon a showing satisfactory to the commissioner that a record, report, permit, application, or information would, if made public, divulge methods or processes entitled to protection as trade secrets, the commissioner shall treat the record, report, permit, application, or information as confidential.

(b) Information that is confidential may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of the state or of the United States if

(1) the person responsible for furnishing the record, report, permit, application, or information to which the information pertains is informed at least two weeks before the transmittal; and

(2) the information has been acquired by the department under the provisions of AS 46.03.296 — 46.03.311.

(c) This section does not limit the department's authority to release confidential information during emergency situations.

_Sec. 46.03.313. Hazardous waste management facilities and sites. (a) The department shall evaluate and select potential sites for hazardous waste management facilities in the state. In evaluating and selecting sites for management facilities, the department shall consider at least the following factors:

(1) economic feasibility, including proximity to concentrations of generators of the types of hazardous waste likely to be proposed and permitted for management;

(2) intrinsic suitability of the sites;

(3) federal and state pollution control and environmental protection regulations;

(4) the risk and effect for local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of waste during transportation to a facility or at a facility, water, air, and land pollution, and fire or explosion;

(5) the consistency of a facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services; and

(6) the adverse effects of a facility at the site on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by stipulations, conditions, and requirements relating to the design and operation of a management facility at the proposed site.

(b) The department shall adopt regulations that

(1) interpret and clarify the factors listed in (a) of this section; and

(2) establish procedures for processing, reviewing, and approving or disapproving applications for the siting and operation of privately owned hazardous waste management facilities.

(c) The department may authorize the siting and operation of privately owned hazardous waste management facilities in accordance with factors and requirements established under this section.

(d) The department shall hold public hearings in each house district in which a hazardous waste management facility site is proposed to be located. The department shall give reasonable public notice of the time, date, and place of each public hearing at least 30 days before the hearing. The public shall be afforded an opportunity at each hearing to submit written and oral testimony concerning a potential site.

(e) In this section, "intrinsic suitability" of a site means that, based on existing data on the inherent and natural attributes, physical features, and location of the site, there is no known reason why a waste management facility that may be located in the site could not reasonably be expected to qualify for a permit under AS 46.03.302.

_Sec. 46.03.314. Reports on management sites and facilities. [Repealed, § 62 ch 21 SLA 1991.]

_Sec. 46.03.316. Hazardous waste reduction and recycling program. [Repealed, § 4 ch 88 SLA 1990.]

_Sec. 46.03.317. Hazardous waste reduction matching grants.

(a) A hazardous waste reduction grant account is established in the general fund. It consists of appropriations made to it.

(b) The department may issue matching grants from money in the account to businesses, local governments, industry trade associations, labor organizations, or nonprofit organizations for the purpose of feasibility analysis and evaluation of ways to implement hazardous waste reduction.

(c) Grants under this section

(1) must be matched on a dollar-for-dollar basis by the grantee in cash or in kind;

(2) may not exceed $10,000 for any single proposal or project.

(d) The department shall establish an advisory committee, consisting of five members, to assist the department in reviewing and evaluating grant applications under this section. The advisory committee must include

(1) an officer or employee of the department;

(2) a representative of the University of Alaska;

(3) a professional civil or chemical engineer with experience in environmental engineering;

(4) an owner or representative of a small business; and

(5) a public member.

Article 6. Pesticide Control.

_Sec. 46.03.320. Regulation of pesticides and broadcast chemicals.

(a) The department may

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

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

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

(4) register pesticides and broadcast chemicals for sale or distribution.

(b) The department may provide by regulation for the licensing of or temporary license waiver for private applicators of restricted-use pesticides, for persons engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals, and for

other persons engaged in the spraying or application of pesticides and broadcast chemicals in public places. A person engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance.

(c) A person may not apply a pesticide or broadcast chemical in a public place unless licensed by the department or otherwise authorized under a regulation of the department. The department shall by regulation provide for reasonable public notification, including written notice posted on the application site, when pesticides and broadcast chemicals are applied in a public place. In this subsection, "public place" means (1) common areas of an apartment building or other multi-family dwelling; (2) that portion of a government office or facility to which access is not ordinarily restricted to employees; and (3) plazas, parks, and public sports fields.

(d) In this section, "multi-family dwelling" means a building that includes more than four single-family dwellings.

_Sec. 46.03.330. Public pesticide programs.

(a) An officer, agent, or employee of the state, or of a borough or city of any class, may not direct, carry out, or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials, or equipment of the state, borough, or city, except in accordance with regulations adopted by the department under AS 46.03.320.

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

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

_Sec. 46.03.340. Use of firefighting foam.

(a) Notwithstanding AS 46.03.320, a person may not use a firefighting foam that contains a perfluoroalkyl substance or polyfluoroalkyl substance in the state unless the use is permitted under (b) of this section or required by federal law.

(b) Unless the state fire marshal adopts regulations under (c) of this section requiring use of an alternative firefighting foam, a person may use a firefighting foam that contains a perfluoroalkyl substance or polyfluoroalkyl substance to respond to a fire that originates in relation to oil or gas production, transmission, transportation, or refining in the state.

(c) If the state fire marshal determines an alternative firefighting foam listed by an organization recognized by the federal Occupational

Safety and Health Administration's Nationally Recognized Testing Laboratory Program is safe and effective, the state fire marshal shall adopt regulations requiring use of the alternative firefighting foam. The regulations must state the proposed effective date of the regulations.

Article 7. Underground Storage Tank Systems.

_Secs. 46.03.360 , 46.03.363 Board of storage tank assistance; Reports. [Repealed, § 2 ch 102 SLA 2006.]

_Sec. 46.03.365. Regulation of underground petroleum storage tank systems.

(a) The department shall develop a program to abate and prevent pollution from underground petroleum storage tank systems through the adoption of regulations under AS 44.62 (Administrative Procedure Act). Consistent with other provisions in AS 46.03.365 — 46.03.450, the regulations may govern

(1) notification and registration;

(2) inspection and record keeping;

(3) construction, installation, and performance;

(4) maintenance, operation, and repair;

(5) technical standards, including standards for spill and overfill control, corrosion prevention, and release detection and reporting;

(6) financial responsibility;

(7) certification of underground petroleum storage tank system workers;

(8) corrective action and cost recovery;

(9) closure and abandonment;

(10) enforcement of regulations; and

(11) prevention of releases to protect the public health and environment.

(b) In the regulations adopted under (a) of this section, the department may

(1) distinguish among the sizes, types, classes, locations, and ages of underground petroleum storage tank systems;

(2) provide for exemptions and deferrals determined to be necessary by the department; exemptions and deferrals under this paragraph must be consistent with those granted under federal laws and regulations.

(c) When the regulations adopted under this section address areas governed by federal laws or regulations, the state regulations must be consistent with federal laws and regulations and may not be more stringent than the federal laws and regulations.

(d) [Repealed, § 2 ch 102 SLA 2006.]

_Sec. 46.03.370. Educational assistance.
The department shall provide

(1) educational assistance to owners and operators of underground petroleum storage tank systems to help them comply with federal and state laws and regulations applicable to the tank systems, including the registration and notification requirements under AS 46.03.380 — 46.03.400;

(2) the public with information to help the public understand the effects associated with the release of petroleum and chemical products into the environment, including releases from petroleum and chemical storage tank systems.

_Sec. 46.03.375. Certification of storage tank workers.
(a) The department shall adopt regulations governing the certification of persons who install, test, close, repair, or significantly change the configuration of underground petroleum storage tanks and tank systems. The certification program shall be administered by the Department of Commerce, Community, and Economic Development. In consultation with the Department of Environmental Conservation, the Department of Commerce, Community, and Economic Development shall make every reasonable attempt to ensure that opportunities for obtaining certification under this section are available throughout the state. The Department of Commerce, Community, and Economic Development shall organize presentation of national training courses that are available in the state and assist residents of isolated communities who request assistance in becoming certified. The Department of Commerce, Community, and Economic Development may contract with the University of Alaska, a vocational technical school, or a regional nonprofit organization to provide the education and testing necessary for certification.

(b) The Department of Commerce, Community, and Economic Development shall establish fees applicable to certification under this section in an amount necessary to cover the costs of the certification program. The fees shall be collected by the Department of Commerce, Community, and Economic Development.

(c) Except as provided in (d) of this section, a person may not install, test, close, repair, or significantly change the configuration of an underground petroleum storage tank or tank system unless that person is certified for the appropriate activity under (a) of this section. A person who violates this subsection is guilty of a class B misdemeanor.

(d) A person may install, test, close, repair, or significantly change the configuration of an underground petroleum storage tank or tank system without being certified under this section if

(1) the person performs the work under the direct supervision of another who is certified for that work under this section;

(2) the supervisor inspects the work performed; and

(3) after inspection, the supervisor approves the work in

writing.

(e) AS 44.62 (Administrative Procedure Act) applies to regulations and certifications under this section.

(f) The department shall develop and maintain lists of persons certified under this section to perform the various activities related to underground petroleum storage tanks and tank systems. The department shall provide the lists on request to interested persons.

(g) In this section, "close" means to remove petroleum and sludges from the tanks in the tank system and either fill the tanks with inert solid material or remove, dismantle, and dispose of the tanks.

_Sec. 46.03.380. Registration of tanks and tank systems.

(a) A person, including a governmental entity or institution, or a public corporation, who intends to install, have installed, return to operation, or acquire ownership of an underground petroleum storage tank or tank system shall, before the installation or return to operation, or 30 days after acquisition, register the tank or tank system with the department on a form provided by the department and pay the tank registration fee required under AS 46.03.385.

(b) The owner or operator of an underground petroleum storage tank or tank system that was installed before and is still in use on September 5, 1990, shall register the tank or tank system with the department on a form provided by the department and pay the tank registration fee required under AS 46.03.385. For each tank or tank system registered under this subsection that was installed before December 22, 1988, the owner or operator shall provide to the department at the time of registration

(1) proof of plans for prompt site assessment or testing for tank tightness;

(2) proof of tank tightness testing or site assessment that occurred within the previous 12 months and

(A) satisfactory performance of the tank or tank system during the test, proof of noncontamination if a site assessment was performed, and proof of compliance with applicable state financial responsibility requirements; or

(B) if the tank or tank system did not perform satisfactorily during the test, or the site assessment showed evidence of contamination, a summary of the upgrading, repair, containment, or cleanup efforts that have been or will be used for the tank, tank system, or site.

_Sec. 46.03.385. Registration fee.

(a) At the time of registration under AS 46.03.380, and annually thereafter, the owner or operator shall pay to the department a registration fee for each tank registered unless the owner or operator has notified the department under AS 46.03.395 that the tank has been taken out of service. An underground storage tank that has leak detection, spill and overflow protection, and corrosion protection that meet requirements of the department is subject to a $50 annual

registration fee, regardless of tank capacity. An underground storage tank system that lacks any or all of these features is subject to an annual registration fee of

(1) $150 if the underground storage tank capacity is less than 1,000 gallons;

(2) $300 if the underground storage tank capacity is 1,000 — 5,000 gallons;

(3) $500 if the underground storage tank capacity is over 5,000 gallons.

(b) An underground petroleum storage tank or tank system owned or operated by the federal or state government is exempt from the registration fee in (a) of this section.

(c) A registration fee that is not paid within 30 days of when it is due shall be increased by a late payment fee equal to $10 per day until the day of payment.

(d) The first annual fee under this section must be accompanied by the information required under AS 46.03.400. Subsequent annual fees must be accompanied by the names and addresses of the owner and operator of the tank system, and the location and capacity of, and substance being stored in, the tanks for which the fee is being submitted.

(e) [Repealed, § 2 ch 102 SLA 2006.]

_Sec. 46.03.390. Notification of changes in tank systems.
An owner or operator who intends to significantly change the configuration of an underground petroleum storage tank system shall notify the department before beginning work on the change by completing and returning to the department a notification form obtained from the department.

_Sec. 46.03.395. Notification of tank system closure.
If an underground petroleum tank or storage tank system is taken out of operation, the owner or operator of the tank or tank system, or an agent on the owner's or operator's behalf, shall provide on forms obtained from the department

(1) notification of that fact to the department at least 15 days, but not more than 60 days, before the date the tank or tank system will be taken out of operation unless the tank or tank system is taken out of operation because of an emergency; in emergency situations, the owner or operator shall provide notification as promptly as possible under the circumstances; and

(2) evidence satisfactory to the department within 30 days after the tank or tank system is taken out of operation that the owner or operator has complied with applicable state and federal laws and regulations governing temporary or permanent tank closure.

_Sec. 46.03.400. Registration forms.
The registration forms required under AS 46.03.380 — 46.03.395 must require information about the geographical location of a tank or tank system, the estimated age of the tanks and tank system, the total capacity, type of construction, internal and external protection, and piping of the tanks and tank system, and the substance currently or proposed to be stored in the tank system. If the tank or tank system is newly installed, the owner or operator shall certify that the owner or operator has complied with installation, release detection, corrosion protection, and financial responsibility requirements of state and federal law.

_Sec. 46.03.405. Prohibitions.
A person, including a governmental entity or institution or a public corporation, may not operate an underground petroleum storage tank or tank system unless

(1) the tank and tank system are registered with the department as provided in AS 46.03.365 — 46.03.450 or other law; and

(2) the person has provided to the department proof of financial responsibility to the extent required under regulations adopted under AS 46.03.365 or proof of application for arrangements that would satisfy state financial responsibility requirements.

_Sec. 46.03.410. Underground storage tank revolving loan fund. [Repealed, § 2 ch 102 SLA 2006.]
_Sec. 46.03.415. Tank tightness and site assessment incentive program. [Repealed, § 14 ch 70 SLA 1999.]
_Sec. 46.03.420. Tank cleanup program. [Repealed, § 21 ch 41 SLA 2002.]
_Sec. 46.03.422. Tank cleanup loan program. [Repealed, § 2 ch 102 SLA 2006.]
_Sec. 46.03.430. Tank upgrading and closure program. [Repealed, § 20 ch 41 SLA 2002.]
_Sec. 46.03.440. Confidentiality of financial records.
(a) Financial records submitted to the department or to the former Board of Storage Tank Assistance by the owner or operator of an underground petroleum storage tank system are confidential and not subject to inspection or copying under AS 40.25.110 — 40.25.120. The department, in consultation with the affected owner or operator, shall determine which information is confidential under this subsection.

(b) The confidentiality conferred by (a) of this section does not apply to statistical information compiled by the department about the number, capacity, and location of underground petroleum storage tank systems in the state.

_Sec. 46.03.450. Definitions.
In AS 46.03.365 — 46.03.450,

(1) "chemical" means any substance defined in 42 U.S.C. 9601(14)

(sec. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980), as amended, and any substance having the characteristics identified or listed under 42 U.S.C. 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of whether the substance is a solid waste;

(2) "corrective action" means action necessary to stop the migration, determine the extent, and undertake recovery of petroleum after its unpermitted release; clean up affected soil and groundwater; and stabilize the site of the release to prevent or remove hazards to public health or the environment;

(3) "farm" means a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements; "farm" includes fish hatcheries, rangelands, and nurseries with growing operations;

(4) "petroleum" means crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; "petroleum" includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils;

(5) "release" has the meaning given in AS 46.08.900;

(6) "site assessment" means investigation of suspected underground petroleum storage tank system leaks and source identification;

(7) "tank system" means an underground petroleum storage tank system;

(8) "underground petroleum storage tank system" means an underground storage tank containing petroleum together with its underground ancillary equipment and related containment system, if any; in this paragraph, "ancillary equipment" means devices used to distribute, meter, or control the flow of petroleum to and from the system, including piping, fittings, flanges, valves, and pumps;

(9) "underground storage tank" means one or a combination of stationary devices, including underground pipes connected to the devices, that is designed to contain an accumulation of petroleum, the volume of which, including the volume of underground pipes, is 10 percent or more beneath the surface of the ground, except that the term does not include a

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(B) tank used for storing heating oil for consumptive use on the premises where stored;

(C) septic tank;

(D) pipeline facility, including gathering lines, regulated under 49 U.S.C. 60101 et seq. or that is an intrastate pipeline facility regulated under state laws comparable to the provisions of 49 U.S.C. 60101 et seq.;

(E) surface impoundment, pit, pond, or lagoon;

(F) storm water or waste water collection system;

(G) flow-through process tank;

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(I) storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(J) tank with a capacity of 110 gallons or less;

(K) tank containing hazardous wastes regulated under 42 U.S.C. 6921 — 6939b; or

(L) tank system that the department has exempted by regulations adopted under AS 46.03.365.

Article 8. Commercial Passenger Vessel Environmental Compliance Program.

_Sec. 46.03.460. Program established.

(a) There is established the commercial passenger vessel environmental compliance program providing for

(1) terms and conditions of vessel discharges;

(2) independent verification of environmental compliance; and

(3) allowing the department to monitor and supervise discharges from commercial passenger vessels through a registration system.

(b) The department may adopt regulations to carry out the purposes of AS 46.03.460 — 46.03.490. The department shall use negotiated regulation making under AS 44.62.710 — 44.62.800, when appropriate, to develop those regulations.

_Sec. 46.03.461. Registration requirements.

(a) Except as provided in AS 46.03.487, each calendar year in which the owner or operator of a commercial passenger vessel intends to operate, or cause or allow to be operated, the vessel in the marine waters of the state, the owner or operator of the vessel shall register with the department. The registration shall be completed before the time any commercial passenger vessel of the owner or operator enters the marine waters of the state in that calendar year. The registration must include the following information:

(1) the vessel owner's business name and, if different, the vessel operator's business name for each commercial passenger vessel of the owner or operator that is scheduled to be in the marine waters of the state during the calendar year;

(2) the postal address, electronic mail address, telephone number, and facsimile number for the principal place of each business identified under (1) of this subsection;

(3) the name and address of an agent for service of process for each business identified under (1) of this subsection; the owner and operator shall continuously maintain a designated agent for service of process whenever a commercial passenger vessel of the owner or operator is in the marine waters of the state, and the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state;

(4) the name or call sign of and Port of Registry for each of the owner's or operator's vessels that is scheduled either to call upon a port in this state or otherwise to be in the marine waters of the state during the calendar year and after the date of registration; and

(5) an agreement to comply with the terms and conditions of vessel discharges specified under AS 46.03.462.

(b) Registration under (a) of this section shall be executed under oath by the owner or operator.

(c) Upon request of the department, the registrant shall submit registration information required under this section electronically.

_Sec. 46.03.462. Terms and conditions of discharge permits.

(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a commercial passenger vessel into the marine waters of the state unless the owner or operator

(1) obtains a permit under AS 46.03.100 that complies with the terms and conditions of vessel discharge requirements specified in (b) of this section; or

(2) has a plan approved under (k) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under (a)(1) of this section require that the owner or operator

(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable state or federal law governing the disposal or discharge of solid or liquid waste material;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect to those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

(c) [Repealed, §§ 2, 9, and 13, ch. 56, SLA 2007]

(d) [Repealed, § 5 ch 1 SLA 2013.]

(e) When issuing, reissuing, renewing, or modifying a permit required under (a)(1) of this section, the department may only include the authorization of a mixing zone for a commercial passenger vessel that employs an advanced wastewater treatment system that falls within the class of systems identified by the department under (j) of this section or employs other means of pollution prevention, control, and treatment that the department finds can achieve a quality of effluent that is comparable to that of one or more vessels employing an advanced wastewater treatment system. If a commercial passenger vessel employs an advanced wastewater treatment system that satisfies the requirements of this subsection, the department shall find the commercial passenger vessel satisfies all state technology-based treatment requirements for authorization of a mixing zone.

(f) [Repealed, § 5 ch 1 SLA 2013.]

(g) [Repealed, § 5 ch 1 SLA 2013.]

(h) Nothing in this section shall be construed to limit the authority of the department to

(1) restrict the areas in which discharges permitted under this section may occur; or

(2) impose additional terms and conditions on the manner in which discharges permitted under this section may be made in a specific area.

(i) Notwithstanding any contrary provision of law, the department may administratively extend until December 15, 2015, the duration of the general permit that was issued in 2010 under AS 46.03.100 to regulate wastewater discharges from commercial passenger vessels. The department may modify the terms of the administratively extended general permit following the process provided for by law for modifying other permits issued by the department under AS 46.03.100.

(j) In this section, the department shall determine the systems that constitute the class of advanced wastewater treatment systems that may be approved by permit under (e) of this section considering factors deemed appropriate by the department. At a minimum, the department's determination must find

(1) that the system provides treatment of sewage and graywater on board commercial passenger vessels that achieves levels of biological treatment, solids removal, and disinfection higher than that achieved by traditional marine sanitation devices required by 33 C.F.R. 159; and

(2) that effluent discharged from that system meets all requirements under P.L. 106-554, 33 U.S.C. 1901 note.

(k) The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges. The alternative terms and conditions may include alternatives to the requirements under AS 46.03.465(a) — (d). The department shall approve the plan for a five-year period if the department finds that the alternative terms and conditions in the plan incorporate the best management practices for protecting the environment to the maximum extent feasible. The department shall adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard. In this subsection, “best management practices” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

_Sec. 46.03.463. Prohibited discharges; limitations on discharges. (a) Except as provided in (h) of this section, a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.

(b) Except as provided in (h) of this section or under a plan for a small commercial passenger vessel approved under AS 46.03.462(k), a person may not discharge sewage from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters.

(c) Except as provided in (h) of this section or under a plan for a small commercial passenger vessel approved under AS 46.03.462(k), a person may not discharge graywater or other wastewater from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters.

(d) [Repealed, § 5, 2006 Primary Election Ballot Measure No. 2.]

(e) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater, or other wastewaters is otherwise prohibited.

(f) Except as provided in (h) of this section, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(g) [Repealed, § 5, 2006 Primary Election Ballot Measure No. 2.]

(h) The provisions of (a) — (f) of this section do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

_Sec. 46.03.464. Advisory panel on wastewater treatment; commissioner's reports to the legislature. [Repealed, § 5 ch 1 SLA 2013.]

_Sec. 46.03.465. Information-gathering requirements; exemption.

(a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the state, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other wastewaters into the marine waters of the state, and provide electronic copies of those records on a monthly basis to the department not later than five days after each calendar month of operation in state waters.

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling technique approved by the department.

(c) While a commercial passenger vessel is present in the marine waters of the state, the department, or an independent contractor retained by the department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the state.

(d) The owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) The owner or operator of a commercial passenger vessel shall pay for all reporting, sampling, and testing of samples under this section.

(f) If the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information gathering, gathered the information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

(g) [Repealed, § 9, ch. 56, SLA 2007]

(h) On request, the owner or operator of a commercial passenger vessel discharging wastewater under AS 46.03.462(b) shall provide the department with information relating to wastewater treatment, pollution avoidance, and pollution reduction measures used on the vessel, including testing and evaluation procedures and economic and technical feasibility analyses.

(i) The department may exempt from the requirements of (a) — (d) of this section the owner or operator of a small commercial passenger vessel who has a plan for alternative terms and conditions of vessel discharges approved under AS 46.03.462(k).

_Sec. 46.03.470. Record keeping requirements.

An owner or operator subject to AS 46.03.465 shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was

gathered.

_Sec. 46.03.475. Reporting requirements.

(a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of AS 46.03.463 shall immediately report that discharge to the department. There is no audit report privilege under AS 09.25.450 for this information.

(b) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the Administrator of the United States Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage, graywater, or other wastewater and keep records of the sampling and testing, the owner or operator shall, within 21 days after the sewage, graywater, or other wastewater is tested, submit to the department a copy of the records.

(c) Within 21 days after the testing required under AS 46.03.465(d), the owner or operator shall submit a written report to the department that contains the measurements required under AS 46.03.465(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements.

(d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the laws of the United States or by the laws of Canada or of a province or territory of Canada to file a report or provide notice of a discharge or offloading of a hazardous waste, as defined in AS 46.03.900, or of a hazardous substance, as defined in AS 46.03.826, that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the state, the owner or operator shall submit to the department a copy of the report or notice within 21 days after having provided the report or notice to an agency of the government of the United States or to an agency of the government of Canada or of a province or territory of Canada.

(e) Before the operation of a commercial passenger vessel in the marine waters of the state, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for

(1) offloading in this state or disposing into the marine waters of the state of nonhazardous solid waste other than sewage; and

(2) offloading of hazardous waste or a hazardous substance from the vessel while it is operating in the marine waters of the state to the extent that the offloading is not covered by (d) of this section.

(f) Upon request of the department, the information required under this section shall be submitted electronically.

(g) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

_Sec. 46.03.476. Ocean rangers.

(a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have an ocean ranger hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew, and residents at ports are protected from improper sanitation, health, and safety practices.

(b) The ocean ranger shall monitor, observe, and record data and information related to the engineering, sanitation, and health related operations of the vessel, including but not limited to registration, reporting, record-keeping, and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the ocean ranger shall be promptly conveyed to the department and the United States Coast Guard on a form or in a manner approved by the commissioner of environmental conservation. The commissioner may share information gathered with other state and federal agencies.

(d) In this section, "ocean ranger" means

(1) a marine engineer licensed by the United States Coast Guard; or

(2) a person who holds a degree in marine safety and environmental protection, or an equivalent course of study approved by the department, from an accredited maritime educational institution.

_Sec. 46.03.480. Fees.

(a) There is imposed an environmental compliance fee on each commercial passenger vessel operating in the marine waters of the state.

(b) The fee imposed by (a) of this section for all commercial passenger vessels, other than vessels operated by the state, is a separate fee for each voyage during which the commercial passenger vessel operates in the marine waters of the state. The fee shall range from $.70 to $1.75 per berth, based on the overnight accommodation capacity of the vessel, determined with reference to the number of lower berths, according to the following categories:

(1) $75 for a commercial passenger vessel with overnight accommodations for at least 50 but not more than 99 passengers for hire;

(2) $175 for a commercial passenger vessel with overnight accommodations for at least 100 but not more than 249 passengers for hire;

(3) $375 for a commercial passenger vessel with overnight accommodations for at least 250 but not more than 499 passengers for hire;

(4) $750 for a commercial passenger vessel with overnight accommodations for at least 500 but not more than 999 passengers for hire;

(5) $1,250 for a commercial passenger vessel with overnight accommodations for at least 1,000 but not more than 1,499 passengers for hire;

(6) $1,750 for a commercial passenger vessel with overnight accommodations for at least 1,500 but not more than 1,999 passengers for hire;

(7) $2,250 for a commercial passenger vessel with overnight accommodations for at least 2,000 but not more than 2,499 passengers for hire;

(8) $2,750 for a commercial passenger vessel with overnight accommodations for at least 2,500 but not more than 2,999 passengers for hire;

(9) $3,250 for a commercial passenger vessel with overnight accommodations for at least 3,000 but not more than 3,499 passengers for hire;

(10) $3,750 for each commercial passenger vessel with overnight accommodations for 3,500 or more passengers for hire.

(c) The fee imposed by (a) of this section for a commercial passenger vessel that is operated by this state shall be determined by agreement between the commissioner of environmental conservation and the commissioner of transportation and public facilities.

(d) An additional fee in the amount of $4 per berth is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the ocean ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

(e) A commercial passenger vessel operating in the marine waters of the state is liable for the fee imposed by this section. The fee is due and payable to the department in the manner and at the times required by the department by regulation.

_Sec. 46.03.481. Citizens' suits.

(a) Any citizen of the state may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the attorney general.

(b) Subject to appropriation, as necessary, up to 50 percent and not less than 25 percent of any fines, penalties, or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

_Sec. 46.03.482. Commercial passenger vessel environmental compliance fund.

(a) The commercial passenger vessel environmental compliance fund is created in the general fund.

(b) The fund consists of the following, all of which shall be deposited in the fund upon receipt:

(1) money received by the department in payment of fees under AS 46.03.480;

(2) money received under AS 46.03.760(e) as a result of a violation related to AS 46.03.460 — 46.03.490 unless the money would otherwise be deposited in the oil and hazardous substance release prevention and response fund established by AS 46.08.010;

(3) money appropriated to the fund by the legislature;

(4) earnings on the fund.

(c) The legislature may make appropriations from the fund to the department to pay for the department's operational costs necessary to prepare reports that assess the information received by the department for the cruise ship seasons of 2000, 2001, 2002, and 2003 and for the department's operational costs necessary to carry out activities under AS 46.03.460 — 46.03.490 relating to commercial passenger vessels.

(d) The unexpended and unobligated balance of an appropriation made from the fund to the department for the purposes described in (c) of this section lapses into the fund on December 31 following the end of the period for which the appropriation was made.

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

_Sec. 46.03.485. Recognition program.

The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law.

_Sec. 46.03.487. Exemption for vessels in innocent passage.

AS 46.03.460 — 46.03.490 do not apply to a commercial passenger vessel that operates in the marine waters of the state solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the state, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the

(1) Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606; or

(2) United Nations Convention on the Law of the Sea 1982,

December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

_Sec. 46.03.488. Activities of the department.

The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the state:

(1) direct in-water monitoring of discharges or releases of sewage, graywater, and other wastewater and direct monitoring of the opacity of air emissions from those vessels;

(2) monitoring and studying of direct or indirect environmental effects of those vessels; and

(3) researching ways to reduce effects of the vessels on marine waters and other coastal resources.

_Sec. 46.03.490. Definitions.

In AS 46.03.460 — 46.03.490,

(1) "agent for service of process" means an agent upon whom process, notice, or demand required or permitted by law to be served upon the owner or operator may be served;

(2) "commercial passenger vessel" means a vessel that carries passengers for hire except that "commercial passenger vessel" does not include a vessel

(A) authorized to carry fewer than 50 passengers;

(B) that does not provide overnight accommodations for at least 50 passengers for hire, determined with reference to the number of lower berths; or

(C) operated by the United States or a foreign government;

(3) "discharge" means any release, however caused, from a commercial passenger vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying;

(4) "federal cruise ship legislation" means secs. 1401 — 1414 of H.R. 5666, as incorporated by reference into P.L. 106-554;

(5) "fund" means the commercial passenger vessel environmental compliance fund established under AS 46.03.482;

(6) "graywater" means galley, dishwasher, bath, and laundry waste water;

(7) "large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 250 or more passengers for hire, determined with reference to the number of lower berths;

(8) "marine waters of the state" means all waters within the boundaries of the state together with all of the waters of the Alexander Archipelago even if not within the boundaries of the state;

(9) “offloading” means the removal of a hazardous substance, hazardous waste, or nonhazardous solid waste from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works;

(10) “other wastewater” means graywater or sewage that is stored in or transferred to a ballast tank or other holding area on the vessel that may not be customarily used for storing graywater or sewage;

(11) “passengers for hire” means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel;

(12) “sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste;

(13) “small commercial passenger vessel” means a commercial passenger vessel that provides overnight accommodations for 249 or fewer passengers for hire, determined with reference to the number of lower berths;

(14) “treated sewage” means sewage that meets all applicable effluent limitation standards and processing requirements of 33 U.S.C. 1251 — 1376 (Federal Water Pollution Control Act), as amended, the federal cruise ship legislation, and regulations adopted under 33 U.S.C. 1251 — 1376 or under the federal cruise ship legislation;

(15) “untreated sewage” means sewage that is not treated sewage;

(16) “vessel” means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion;

(17) “voyage” means a vessel trip to or from one or more ports of call in the state with the majority of the passengers for hire completing the entire vessel trip; a vessel trip involving stops at more than one port of call is considered a single voyage so long as the majority of passengers for hire complete the entire trip;

(18) “waters of the Alexander Archipelago” means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58 degrees 11 minutes 41 seconds North, 136 degrees 39 minutes 25 seconds West (near Cape Spencer Light), thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points: (A) 58 degrees 05 minutes 17 seconds North, 136 degrees 33 minutes 49 seconds West and 58 degrees 11 minutes 41 seconds North, 136 degrees 39 minutes 25 seconds West (Cross Sound); (B) 56 degrees 09 minutes 40 seconds North, 134 degrees 40 minutes 00 seconds West and 55 degrees 49 minutes 15 seconds North, 134 degrees 17 minutes 40 seconds West (Chatham Strait); (C) 55 degrees 49 minutes 15 seconds North, 134 degrees 17 minutes 40 seconds West and 55 degrees 50 minutes 30 seconds North, 133 degrees 54 minutes 15 seconds West (Sumner Strait); (D) 54 degrees 41 minutes 30 seconds North, 132 degrees 01 minutes 00 seconds West and 54 degrees 51 minutes 30 seconds North, 131 degrees 20 minutes 45 seconds West (Clarence Strait); (E) 54 degrees 51 minutes 30 seconds North, 131 degrees 20 minutes 45 seconds West and 54 degrees 46 minutes 15 seconds North, 130 degrees 52 minutes 00 seconds West (Revillagigedo Channel);

the portion of each such geodesic situated beyond three nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.

Article 9. Cleanup of Illegal Drug Sites.

_Sec. 46.03.500. Notice of illegal drug manufacturing site; Internet list.

(a) When a law enforcement officer or team of law enforcement officers, qualified under federal regulations to investigate and dismantle illegal drug manufacturing sites, determines that a site constitutes an illegal drug manufacturing site, the primary law enforcement agency that conducted the investigation shall notify the owner of the property, the occupants and users of the property, and the department that the determination has been made. The owner of the property may appeal the determination to the superior court for review of whether the determination was made in compliance with this subsection. In the appeal, the burden of proving by a preponderance of the evidence that the determination was made in compliance with this subsection is on the primary law enforcement agency that conducted the investigation.

(b) The notice to the property owner required under (a) of this section shall be given in a manner that is consistent with the Alaska Rules of Civil Procedure for the service of process in a civil action in this state and must include the following information:

(1) the parcel identification number and legal description of the property where the site is located;

(2) a statement of the determination made by the primary law enforcement agency that the site was an illegal drug manufacturing site and the findings that formed the basis for the determination;

(3) a citation to, and short summary of, AS 46.03.510, which restricts transfer and occupancy of the site until it is determined to be fit for use; and

(4) the following information, which shall be provided to the primary law enforcement agency by the department:

(A) a copy of the standards contained in regulations adopted under AS 46.03.530 that determine whether the property is fit for use;

(B) a copy of the sampling and testing procedures established under AS 46.03.520(b) and a copy of the list of laboratories maintained under AS 46.03.520(c) that must be used for determining whether the property is fit for use; and

(C) a copy of the guidelines for decontamination established by the department under AS 46.03.540(b).

(c) The notice to the department required under (a) of this section must include

(1) the parcel identification number and legal description of the property where the site is located;

(2) a statement of the determination made by the primary law enforcement agency that the site was an illegal drug manufacturing site and the findings that formed the basis for the determination; and

(3) the name and mailing address of the person who owns the property where the site is located.

(d) The notice required under (a) of this section for the occupants and users of the property shall be accomplished by immediate posting of the property with a notice that includes the location of the property, the information described in (b)(2) and (3) of this section, and a statement that the property may pose a substantial risk of physical harm to persons who occupy or use the property. For purposes of posting of the notice to the occupants and users of the property required by this subsection, the posting shall be made, for property that is

(1) a single family dwelling, at the main entryway of the property; and

(2) other than a single family dwelling and for a hotel, motel, public inn, or similar place of public accommodation that provides lodging, at the door of the unit that is the site that constitutes the illegal drug manufacturing site.

(e) If a person other than the owner, such as a property manager or rental agency, is authorized to let others use or occupy property for which an owner has received a notice under (a) of this section or is authorized to transfer, sell, lease, or rent the property to others, the owner of the property shall communicate the substance of the notice to that person within four days after receiving the notice.

(f) The department shall maintain on its Internet website a list of all properties for which a notice has been issued under (a) of this section. For each of those properties, the list must contain the parcel identification number, legal description, and physical address and owner's name at the time the notice was issued.

_Sec. 46.03.510. Restrictions on property.

(a) Until determined to be fit for use under AS 46.03.550, the property for which a notice has been issued under AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person except as provided in (b) of this section, and a person may not use or occupy the property at any time after the fourth day following the day on which the property was posted with the notice required under AS 46.03.500(d), except as necessary for sampling, testing, or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract that would transfer, sell, lease, rent, or otherwise allow the use of the property in violation of this subsection is voidable between the parties at the option of the purchaser, transferee, user, lessee, or renter. However, this subsection does not

(1) make voidable a promissory note or other evidence of indebtedness or a mortgage, trust deed, or other security interest securing the promissory note or evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust deed, or other security interest was given to a person other than the person transferring, selling, using, leasing, or renting the property to induce the person to finance the transfer, sale, use, leasing, or rental of the property;

(2) make voidable a lease or rental agreement between the property owner and the person who caused the property to be contaminated and determined unfit for use; or

(3) impair obligations or duties required to be performed on termination of a contract, as required by the contract, such as payment of damages or return of refundable deposits.

(b) Notwithstanding (a) of this section, property covered by (a) of this section may be transferred or sold if full written disclosure is made to the prospective transferee or purchaser that the property has been determined to be an illegal drug manufacturing site and the property has not been determined to be fit for use. The disclosure shall be attached to the earnest money receipt, if any, and shall accompany the transfer or sale document. The disclosure is not considered to be part of the transfer or sale document, however, and may not be recorded. The property shall continue to be subject to the restrictions in (a) of this section after transfer or sale under this subsection.

(c) A person who knowingly transfers, sells, leases, or rents property to another, knowingly allows another to use or occupy property, or, being the owner of property, knowingly occupies or uses the property in violation of this section is guilty of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a).

(d) It is an affirmative defense to a prosecution under (c) of this section for allowing another to use or occupy the property that the defendant or an agent of the defendant, within four days after receiving a notice under AS 46.03.500, filed an appropriate civil action to remove the user or occupier from the property for which the notice was received.

_Sec. 46.03.520. Sampling and testing procedures.

(a) If the owner of the property for which notice was received under AS 46.03.500(b) desires to determine if the property is fit for use, the owner shall cause the site to be sampled and tested for the substances covered in regulations adopted under AS 46.03.530, using the procedures and laboratory services specified under (b) and (c) of this section. The property owner shall inform the laboratory used for sampling or testing under this subsection that the sampling and testing are related to property that has been determined to be an illegal drug manufacturing site.

(b) The department shall establish procedures for sampling and testing property that may have been an illegal drug manufacturing site.

(c) The department shall establish and maintain a list of laboratories in the state that have notified the department that they have the capacity to perform the sampling and testing procedures and that they wish to be on the list maintained under this subsection. A laboratory may not be included on the list unless the laboratory agrees to send the department a copy of test results related to properties whose owners have informed the laboratory that the test results are for property that has been determined to be an illegal drug manufacturing site.

_Sec. 46.03.530. Standards for determining fitness.

(a) Property for which a notice was received under AS 46.03.500(b) is

not fit for use if sampling and testing of the property under AS 46.03.520 shows the presence of substances for which the department has set a limit under (b) of this section.

(b) The Department of Public Safety shall annually submit a list of substances to the Department of Environmental Conservation. The department shall adopt regulations that set the limit for each substance specified by the Department of Public Safety for purposes of determining whether the property for which a notice was received under AS 46.03.500 is fit for use. The department may also determine whether there are other substances associated with illegal drug manufacturing sites that may pose a substantial risk of harm to persons who occupy or use the site or to public health and may adopt regulations that set limits for those substances for the purposes of determining whether the property for which notice was received under AS 46.03.500 is fit for use.

_Sec. 46.03.540. Decontamination requirements.

(a) If the owner desires to decontaminate the property for which a notice has been issued under AS 46.03.500, the owner shall follow the guidelines established by the department under (b) of this section.

(b) The department shall establish guidelines for decontamination of sites that are determined to be unfit for use under AS 46.03.530. The department shall provide a copy of the guidelines to any person who requests a copy.

_Sec. 46.03.550. Fitness for use.

(a) Property for which a notice has been issued under AS 46.03.500 shall be determined by the department to be fit for use if the owner certifies to the department under penalty of unsworn falsification in the second degree that

(1) based on sampling and testing procedures established by the department under AS 46.03.520(b) and performed by laboratories that are on the list maintained by the department under AS 46.03.520(c), the limits on substances specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

(2) if the property was ever sampled and tested under AS 46.03.520 and the test results showed the property to be unfit for use under AS 46.03.530, decontamination procedures were performed in accordance with the guidelines established under AS 46.03.540(b) and the requirements of (1) of this subsection have been met; or

(3) a court has held that the determination that the property was an illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

(b) The department shall maintain a list of properties for which the department has received notice under AS 46.03.500(c). When the department determines under (a) of this section that a property on the list is fit for use, the department shall note on the list maintained on its Internet website under AS 46.03.500(f), and on any other list or database it maintains related to illegal drug manufacturing sites, that the property is fit for use and shall notify the owner of the property

that the property is fit for use. The property shall remain on the lists or databases for five years after it is determined that the property is fit for use and shall be removed from the lists or databases within three months after the five-year period has elapsed. On request, the department shall give a copy of the list maintained under this section to any person who requests the list.

_Sec. 46.03.560. Securing the property.

The owner of property for which a notice was received under AS 46.03.500(b) shall ensure that the property is vacated and secured against use

(1) within four days after receiving the notice if the owner does not test the property under AS 46.03.520 within four days after receiving the notice; or

(2) within four days after receiving the test results if the owner tests the property within four days after receiving the notice, the test shows the presence of a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and the owner does not begin decontamination procedures under AS 46.03.540 within four days after receiving the test results.

_Sec. 46.03.570. Duties of the department; regulations.

The department shall adopt regulations implementing AS 46.03.500 — 46.03.599.

_Sec. 46.03.599. Definitions.

In AS 46.03.500 — 46.03.599,

(1) "illegal drug manufacturing site" means property on which there is reasonable cause to suspect contamination with chemicals associated with the manufacturing of a controlled substance and where

(A) activity involving the unauthorized manufacture of a controlled substance listed on schedule I or II in AS 11.71 or a precursor chemical or necessary chemical for the substances has occurred; or

(B) there are kept, stored, or located any of the devices, equipment, things, or substances used for the unauthorized manufacture of a controlled substance listed on schedule I or II in AS 11.71;

(2) "site" means an illegal drug manufacturing site.

Article 10. Prohibited Acts, Penalties, and Damages.

_Sec. 46.03.710. Pollution prohibited.

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

_Sec. 46.03.715. Sale and use of TBT-based antifouling paint.

(a) Except as otherwise provided in this section, a person may not sell or use TBT-based marine antifouling paint or coating in the state, nor may a person sell, rent, or lease in the state, or import into the state, or use in state water, a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or item has been painted or treated with TBT-based marine antifouling paint or coating.

(b) TBT-based marine antifouling paint or coating need not be removed from fishing gear, or from a vessel or other item that was painted or treated before December 1, 1987, but the vessel, gear, or item may not be repainted or retreated with TBT-based marine antifouling paint or coating. Fish culture or capture nets treated with TBT-based marine antifouling coating before December 1, 1987, may not be used in state water on or after December 1, 1992.

(c) Notwithstanding other provisions of this section, slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units. Aluminum vessel hulls and lower outboard drive units to which a slow-leaching TBT-based marine antifouling paint has been applied may be imported into and sold, rented, leased, or used in the state.

(d) If a vessel of the United States government, a foreign vessel in state water fewer than 90 consecutive days, or a vessel of 4,000 gross tons or more was painted or treated with a TBT-based marine antifouling paint or coating before January 1, 2001, the paint or coating need not be removed, but the vessel may not be repainted or retreated with a TBT-based marine antifouling paint or coating.

(e) In this section

(1) “slow-leaching TBT-based marine antifouling paint” means a TBT-based marine antifouling paint, but not a coating or other treatment, that has a measured release rate equal to or less than the maximum release rate established for qualified antifouling paints containing organotin by the United States Environmental Protection Agency under 33 U.S.C. 2401 — 2410 (the Organotin Antifouling Paint Control Act of 1988);

(2) “TBT-based marine antifouling paint or coating” means a paint, coating, or treatment that contains tributyltin, or a triorganotin compound used as a substitute for tributyltin, and that is intended to control fouling organisms in a fresh water or marine environment;

(3) “vessel” means watercraft used or capable of being used as a means of transportation on water, including

(A) aircraft equipped to land on water; and

(B) barges.

_Sec. 46.03.720. Public water system plan review requirement.

(a) [Repealed, § 12 ch 136 SLA 2004.]

(b) A person may not construct, extend, install, or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section.

_Sec. 46.03.730. Pesticides.

A person may not spray or apply, or cause to be sprayed or applied dichloro-diphenyl-trichloroethane (DDT), dieldrin, or other pesticide or broadcast chemical in a manner that may cause damage to or endanger the health, welfare, or property of another person, or in a manner that is likely to pollute the air, soil, or water of the state without prior authorization of the department.

_Sec. 46.03.740. Oil pollution.

A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

_Sec. 46.03.742. Reckless operation of tank vessel.

(a) A person commits the crime of reckless operation of a tank vessel when, by recklessly operating, navigating, or piloting a tank vessel, the person causes a release of a hazardous substance and the release causes serious physical injury to another person or damage to the property of another.

(b) Reckless operation of a tank vessel is a class C felony.

(c) In this section, "reckless" has the meaning given in AS 11.81.900.

_Sec. 46.03.743. Negligent operation of tank vessel.

(a) A person commits the crime of negligent operation of a tank vessel when, by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates an unjustifiable risk of a release of a hazardous substance or an unjustifiable risk of harm to a person or property.

(b) Negligent operation of a tank vessel is a class A misdemeanor.

(c) In this section, "criminal negligence" has the meaning given in AS 11.81.900.

_Sec. 46.03.744. Definitions for AS 46.03.742 — 46.03.744.
In AS 46.03.742 — 46.03.744,

(1) "hazardous substance" has the meaning given in AS 46.03.826;

(2) "tank vessel" means

(A) a vessel that is constructed or adapted to carry, or that carries, as a means of transportation by water, a hazardous substance in bulk as cargo or cargo residue;

(B) the vessel that propels the tank vessel if the tank vessel is a barge or other vessel that is not self-propelled.

_Sec. 46.03.745. Hazardous substance release.
Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

_Sec. 46.03.750. Ballast water discharge.
(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

_Sec. 46.03.755. Discharge reporting.
(a) A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of AS 46.03.740 or 46.03.750, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

_Sec. 46.03.758. Civil penalties for discharges of oil.

(a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport, and subsistence fishing, tourism, and the state's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term, or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking that poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) $10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) $2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) $1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless

disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor shall be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating

to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

(k) [Repealed, § 19 ch 59 SLA 1986.]

(l) In this section,

(1) “adjacent outer continental shelf” means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) “confined saltwater environment” means a bay, sound, or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) “discharge of oil” means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) “intertidal” means the ocean area between highest high water and lowest low water of tidal action;

(5) “offshore platform” means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) “oil” means petroleum and any substance refined from petroleum, except crude oil;

(7) “operator” means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) “vessel” means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

_Sec. 46.03.759. Civil penalties for discharges of crude oil. (a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of $500,000,000, in the amount of

(1) $8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the $500,000,000 maximum set under (a) of this section the court shall assess four times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

(2) the defendant did not take reasonable measures to contain and clean up the discharged oil; or

(3) the defendant did not act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the

defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the state or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

_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.

_Sec. 46.03.763. Attorney fees and costs.
In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

_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.

_Sec. 46.03.770. Detention of vessel without warrant as security for damages.

A vessel that is used in or in aid of a violation of AS 46.03.740 — 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 — 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g).

_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, § 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, § 5 ch 141 SLA 1990.]

(f) [Repealed, § 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.

_Sec. 46.03.800. Water nuisances.

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

(b) A person who neglects or refuses to abate the nuisance upon order of the department is guilty of a misdemeanor and is punishable as provided in AS 46.03.790. In addition to this punishment, the court shall assess damages against the defendant for the expenses of abating the nuisance.

_Sec. 46.03.810. Air and land nuisances.

(a) A person is guilty of creating or maintaining a nuisance if the person

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

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

(b) A person who neglects or refuses to abate the nuisance upon order of an officer of the department is guilty of a misdemeanor and is punishable as provided in AS 46.03.790. In addition to this punishment, the court shall assess damages against the defendant for the expenses of abating the nuisance.

_Sec. 46.03.820. Emergency powers.

(a) When the department finds, after investigation, that a person is

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

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

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

(d) After a hearing the department may affirm, modify, or set aside the order. An order affirmed, modified, or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

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

_Sec. 46.03.822. Liability for the release of hazardous substances. (a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exceptions set out in (i), (m), and (o) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the

incurrence of response costs, of a hazardous substance;

(3) any person who, at the time of disposal of any hazardous substance, owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) [Repealed, § 4 ch 112 SLA 2018.]

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85-508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) and (l) of this section, the person must have undertaken, at the time of voluntary acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner, operator, or other person subject to liability

under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section or after the issuance of a potential liability determination by the department. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) A unit of state or local government that acquired ownership or control of a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax delinquency proceeding, abandonment, escheat, the exercise of eminent domain authority by purchase or condemnation, or circumstances in which the governmental unit involuntarily acquired title by virtue of its function as a sovereign is not liable as an owner or operator under this section unless the governmental unit has caused or contributed to the release or threatened release of a hazardous substance at or from the facility or vessel, in which case, the governmental unit is subject to liability under this section in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. A hazardous substance release shall be determined to have occurred as provided in this section. For purposes of this subsection, "caused or contributed to the release or threatened release of a hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility or vessel of a hazardous substance in the air, land, or water that had first been released to the environment by a person other than the governmental unit that acquired the facility or vessel;

(2) does not include the exercise or failure to exercise regulatory or enforcement authority;

(3) after the ownership or control of the facility or vessel has been acquired by the governmental unit, includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(l) For purposes of determining liability in an action to recover damages or costs under this section, a person who acquires a facility and who, upon discovering a release or threatened release on, in, or at the facility that occurred before acquisition of the facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, and who, upon discovering the release or threatened release, acted in accordance with (b)(2) of this section to begin operations to contain and clean up the hazardous substance, may not be held liable under this section unless the person has caused or contributed to the release or threatened release of the hazardous substance, in which case, the person is subject to liability under this section in the same manner as any other person. For purposes of this subsection, "caused or contributed to the release or threatened release of the hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility of a hazardous substance in the air, land, or water that had first been released into the environment by a person other than the person that acquired the facility;

(2) after the ownership or control of the facility has been acquired by the person includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(m) A Native corporation that acquired land under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not liable under this section for a release or threatened release of a hazardous substance on the land unless the Native corporation, by an act or omission, caused or contributed to the release or threatened release of the hazardous substance.

(n) In this section,

(1) "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825;

(2) "Native corporation" has the meaning given in 43 U.S.C. 1602(m);

(3) "potential liability determination" means an administrative determination issued by the department notifying a person of the person's potential liability under (a) of this section as the result of

the release or threatened release of hazardous substances and includes a

(A) letter notifying the person that the person is a potentially responsible party;

(B) notice to a person of state interest in a release or threatened release of a hazardous substance;

(C) request to the person for site characterization or cleanup;

(D) notice of violation; and

(E) similar notification by the department of a person's potential liability under this section.

(o) A person who holds or held a security interest in a vessel or facility to secure a loan made by the person is not liable because of the security interest for a release or threatened release of a hazardous substance from the vessel or facility, if the person

(1) did not participate in the management of the vessel or facility before a foreclosure on the vessel or facility, even if the person

(A) forecloses on the vessel or facility; and

(B) after foreclosing on the vessel or facility, acts to preserve or protect the vessel or facility or prepare the vessel or facility for sale or disposition, including

(i) selling the vessel or facility;

(ii) if the vessel or facility is the subject of a lease finance transaction, re-leasing or liquidating the vessel or facility;

(iii) maintaining business activities involving the vessel or facility;

(iv) undertaking with respect to the vessel or facility a response action in accordance with state law; and

(2) seeks to sell the vessel or facility, re-lease or liquidate the vessel or facility in the case of a lease finance transaction, or otherwise divest the person of the vessel or facility at the earliest practicable commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

_Sec. 46.03.823. Hazardous substance response action contractors. (a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must

show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

(c) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

(f) This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

(g) In this section, “response action” means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

_Sec. 46.03.824. Damages.

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

_Sec. 46.03.825. Oil spill response action contractors.

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

(A) approved under AS 46.04.030 or 46.04.055 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

(b) The limitation on liability contained in (a) of this section does not apply to

(1) an action for personal injury or death; or

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030 or 46.04.055, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 or 46.04.055 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 or 46.04.055 is in use.

(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission of the oil spill response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply to an oil spill response action contractor who would have been liable for the initial release or threatened release of oil under AS 46.03.822 even if that contractor had not carried out a response action.

(d) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(e) Except as provided in (d) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(f) Nothing in this section is intended to amend AS 46.04.030(l) or 46.04.055, or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor.

(g) In this section,

(1) "consistent" means in substantial compliance with a contingency plan;

(2) "primary response action contractor" has the meaning given in AS 46.04.035;

(3) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, clean up, marine salvage, incident management team services, response plan facilitator services, or removal of a release or threatened release of oil.

_Sec. 46.03.826. Definitions for AS 46.03.822 — 46.03.828. In AS 46.03.822 — 46.03.828,

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(5) "hazardous substance" means

(A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);

(6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

(7) “oil” means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(8) “owner” and “operator”

(A) mean

(i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;

(ii) in the case of facility, any person owning or operating the facility;

(iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and

(iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;

(B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;

(9) “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

(10) “response action contract” means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release under state or federal law;

(11) “response action contractor” means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that

enters into a response action contract relating to a release or threatened release;

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract; and

(C) a person who acts as a volunteer and is engaged in a response action;

(12) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(13) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(14) "vessel" means every description of watercraft or other artificial contrivance that is used, or is capable of being used, as a means of transportation on water, or that carries hazardous substances for the purpose of incineration of the hazardous substances;

(15) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the state.

_Sec. 46.03.828. Other rights of action not affected. The provisions of AS 46.03.822 — 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury.

_Sec. 46.03.830. Proof of financial responsibility required for petrochemical facility or hazardous waste disposal site operation. (a) A person may not operate a petrochemical facility or a hazardous waste disposal site unless the person has furnished proof to the commissioner of financial ability to control a hazardous waste that will be used in, produced by, or disposed of at the facility or the site. Proof of financial responsibility shall include responsibility for the hazardous waste after the facility or site is closed, and may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations adopted by the department.

(b) Acceptance of proof of financial responsibility under this section

expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or

(3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

_Sec. 46.03.833. Compliance with financial responsibility requirements.

(a) A person whose proof of financial responsibility is accepted by the department under AS 46.03.830 or 46.03.100(f) shall notify the department at least 90 days before the effective date of a change in, or expiration or cancellation of, the proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under AS 46.03.830 or 46.03.100(f) must be filed at least 90 days before the date of expiration.

(b) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred that warrants revocation under regulations adopted by the department.

_Sec. 46.03.840. Radiation penalties. [Repealed, § 12 ch 172 SLA 1978. For current provisions, see AS 18.60.475 — 18.60.545.]

_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 11. 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.

_Sec. 46.03.865. Authority of department in cases of emergency.

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. If there is an incident command system established under AS 26.23 or AS 46.04.200 — 46.04.210 that is applicable to the situation for which the department issues an order under this subsection, the department's exercise of authority under this subsection shall be guided by the relevant provisions of the incident command system.

(b) A person to whom an order is directed shall comply with it immediately, but on application to the department shall be given a hearing under AS 44.62 (Administrative Procedure Act). Thereafter the department may affirm, revoke, or modify the order.

(c) During a period of emergency declared under (a) of this section, each state agency shall take whatever action the department finds necessary to meet the emergency and to protect the public health, welfare, or environment, consistent with the responsibilities assigned to them under an incident command system established under AS 26.23 or AS 46.04.200 — 46.04.210 if one is applicable to the situation.

_Sec. 46.03.870. Actionable rights.

(a) Except as specified in AS 46.03.822 — 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 — 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

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

_Sec. 46.03.875. 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)(25), 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) "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" means 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 processing by 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) [Repealed, § 61 ch 22 SLA 2015.]

(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.