

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 12, 2003

3:35 p.m.

**MEMBERS PRESENT**

Senator Scott Ogan, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Fred Dyson  
Senator Ralph Seekins  
Senator Ben Stevens  
Senator Kim Elton

**MEMBERS ABSENT**

Senator Georgianna Lincoln

**COMMITTEE CALENDAR**

SENATE BILL NO. 116

"An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 44

"An Act relating to the recovery of the expenses of the Department of Environmental Conservation that are incurred when containing or cleaning up a discharge, release, or threatened release of oil; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 69

"An Act relating to regulation of shallow natural gas leasing and closely related energy projects; and providing for an effective date."

SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

SB 116 - No previous action to record.

SB 44 - No previous action to record.

**WITNESS REGISTER**

Commissioner Ernesta Ballard  
Department of Environmental Conservation  
410 Willoughby  
Juneau, AK 99801-1795

**POSITION STATEMENT:** Presented SB 116

Mr. Tom Chapple  
Director, Air and Water Quality  
Department of Environmental Conservation  
410 Willoughby  
Juneau, AK 99801-1795

**POSITION STATEMENT:** Answered questions about the Emission Control Program

Ms. Marilyn Crockett  
Alaska Oil and Gas Association (AOGA)  
121 West Fireweed Lane  
Anchorage, Alaska 99503

**POSITION STATEMENT:** Supports the concept of SB 116

Ms. Charlotte MacKay  
3105 Lakeshore Dr.  
Building A, Suite 101  
Anchorage, Alaska 99517

**POSITION STATEMENT:** Testifying on her own behalf in support of SB 116.

Mr. Tadd Owens  
Resource Development Council  
121 W. Fireweed, No. 207  
Anchorage, AK 99503

**POSITION STATEMENT:** Supports SB 116.

Mr. John Kuterbach  
Division of Air & Water Quality  
Department of Environmental Conservation  
410 Willoughby  
Juneau, AK 99801-1795

**POSITION STATEMENT:** Gave a sectional analysis of SB 116

Senator Donald Olson  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of SB 44

**ACTION NARRATIVE**

**TAPE 03-13, SIDE A**

Number 0001

**CHAIR SCOTT OGAN** called the Senate Resources Standing Committee meeting to order at 3:35 p.m. All members were present except Senator Lincoln, who was excused. The committee took up SB 116.

#SB 116

**SB 116-EMISSION CONTROL PERMIT PROGRAM**

COMMISSIONER ERNESTA BALLARD, Department of Environmental Conservation (DEC), provided the following description of SB 116. This legislation is a proposal to streamline the permitting process. Over the last 30 years, much has been learned about the environmental and health hazards associated with air pollution, emission control technologies, air modeling and, most importantly, about the necessary protective ambient air standards. Through national and state legislation, DEC has recognized shared values of environmental protection, along with many other core values enshrined by the legislature in state law. These values form the framework for government regulatory programs.

COMMISSIONER BALLARD told members that environmental protection is not incompatible with resource development; it is a fundamental component of resource development as are labor and worker safety laws. Governor Murkowski is committed to enhancing Alaska's economy through resource development and he is equally committed to protecting Alaska's environment. A strong economy will generate the revenue needed to continue funding important regulatory programs. Governor Murkowski and his cabinet recognize that Alaska's laws form the framework for a successful resource development program. Environmental laws are one of the essential pieces of a public policy mosaic. They are no more and no less important than the other pieces. SB 116 will improve the process and the function of the underlying state policy to protect the environment. It will not in any way change the protective standards.

COMMISSIONER BALLARD told members through DEC's proposed fiscal year 2004 budget, DEC intends to sharpen its focus on its core responsibilities, air permitting being one. SB 116 is essential to achieve the results promised in its budget proposal.

COMMISSIONER BALLARD said the federal Clean Air Act and the Environmental Protection Agency (EPA) rules have been amended several times in recent years to establish new programs and control concepts. Alaska's state permitting program has not kept pace with the national regime and, more importantly, it has not kept pace with the needs of Alaskan communities and industry. Alaska must have a predictable permitting process that is protective of air quality. In the past, DEC has not been able to mesh its federal programs well with the needs of the remote, isolated and small communities in Alaska. DEC seeks to be flexible and timely enough to take advantage of fast changing business opportunities, particularly on the North Slope. SB 116 does both. It provides the tools DEC needs to work with Alaska-specific isolated geography and tools to meet the challenges of industry.

COMMISSIONER BALLARD said specifically, SB 116 creates a predictable, timely and rational permitting program. It differentiates major pollution sources from minor sources. It regulates minor sources with standardized permit conditions based on best management practices. DEC's present permit by rule program works in the oil industry for the drilling rigs. DEC wants to expand that concept of permit by rule to include more situations. DEC has more mobile and portable plants and machinery than most states and issues more Title 5 permits than Colorado and more PSD permits than the state of New Jersey. DEC needs appropriate tools to work with Alaska's very unusual but essential mobile fleet. SB 116 provides those tools and allows DEC to exempt sources from permitting to the extent allowed under federal law. It achieves efficiency in permitting through adopting federal rules by reference, making it easier for DEC to permit rural power plants. DEC will be able to use the clean unit test to avoid a detailed site-by-site technology analysis now required for every rural plant.

COMMISSIONER BALLARD told members that currently, Alaska is regulating minor sources in the same way it manages major sources of air emissions. SB 116 establishes a permit program for minor air pollution sources, when it is needed to protect ambient air quality and health. This single improvement in permitting minor sources will be widely recognized as significant permit streamlining. DEC worked with a stakeholder work group last fall that recommended this and other changes and will herald the incorporation of these changes into state law. SB 116 makes an important revision to the permit fee structure. It changes the present hourly permit administration fees to flat fees whenever possible. This single change will allow permittees

to predict in advance both community permittees and industrial permit applicants. They will know their permit costs in advance and plan for those costs in their budget cycle.

COMMISSIONER BALLARD told members SB 116 is the result of two very important efforts DEC concluded at the end of the last calendar year. The first was a several year benchmarking effort in which other states' permit programs were evaluated and compared to DEC's permit programs. DEC determined it needed the benefit of statutory changes, which will be accompanied by regulatory changes. DEC will need a staff increase to meet the standards maintained in other states. The other effort this bill reflects is the effort of the stakeholder work group, an effort facilitated by Brian Rogers and concluded in a report made available to committee members.

COMMISSIONER BALLARD said she is proud to propose legislation that she believes reflects the best practices in other states and also reflects the wishes and expectations of the work group comprised of those who need air permits to succeed in Alaska. She noted that Tom Chapple and John Kuderbach of DEC were available to answer questions.

SENATOR WAGONER questioned why SB 116 requires an increase in the number of staff at DEC if the legislation will make the permit process more efficient.

COMMISSIONER BALLARD said DEC concluded, from its benchmarking study, that it has not put adequate manpower into its permitting programs, both in the field to understand site-specific circumstances, and in the office to do the work. The tools that those individuals will require also need to be sharpened through statutory reform. For example, DEC will need to be able to incorporate federal rules more quickly and more efficiently. That is accomplished through a statutory change. In addition, DEC needs a larger work force to accommodate the very large work burden of air permitting in the state. Those are both requirements of DEC's proposed budget and the Governor's requested legislation.

CHAIR OGAN said he shares Senator Wagoner's concern. He asked if most of SB 116 contains technical changes to conform to federal definitions, while the section that will require extra staff is on page 14. He also asked if the additional costs of the fiscal note will be recovered from emission fees.

COMMISSIONER BALLARD said those costs will be recovered from permit fees.

CHAIR OGAN asked if the emission fees are charged on a per ton basis of the emission of pollutants. He noted the bill changes the word "contaminant" to "pollutant." He asked her to address the provision on page 14.

COMMISSIONER BALLARD said the language on page 14 refers to emission fees. She said the good news is that DEC's emission fee income is declining because emission fees are based on emissions. The implementation of better control technology has lowered emissions throughout the state. The manpower changes within DEC will be offset by an increase in the permit fee charged to issue a permit.

COMMISSIONER BALLARD explained that one reason it is so important for DEC to have adequate field staff is to reflect the unique circumstances in Alaska. In the instance of air emissions, those circumstances are particularly unique and do not apply anywhere else in the country. Alaska has permafrost, which sometimes results in a larger project footprint than in an area that only requires digging to construct a single foundation. Sealift in harbors is also common in Alaska and requires larger storage capacities. DEC needs to use the flexibility provided in the federal rule to the maximum and incorporate it into its standards to reflect its unique circumstances. DEC found, in its benchmarking study, that to accomplish that, DEC has less staff than states with a fairly similar permitting burden. She repeated that DEC's permitting workload is comparable to or greater than any state in the nation for its size because Alaska does not have a power grid. The air emission control program is one of the most important to economic development and environmental protection in the state. If Alaska had a power grid, this would be a relatively minor issue.

CHAIR OGAN noted that Governor Murkowski told the Legislature that if it increases the budget in any component, it must decrease it elsewhere. He asked if DEC is planning to offset the \$900,000 fiscal note by raising the cost of processing permits through an increase in permit fees, which is essentially a user fee for developers. He referred to the language on page 14, line 2, and pointed out it says "these shall be recovered from emission fees under AS 46.14.258 for the following services." He asked if DEC is charging for those services now or whether they are new charges.

COMMISSIONER BALLARD said DEC charges for those items now. Many of the permit applications are for community power plants. DEC does not exclusively provide this service to industry. It is a necessary component of permitting all sources of emission. The permit program will cover its costs through permit fees, as it does now.

CHAIR OGAN asked if DEC is requesting any additional authorization for program receipts to cover the \$900,000 cost.

COMMISSIONER BALLARD said the fiscal note shows exactly what positions will be necessary.

CHAIR OGAN said that basically, SB 116 appears to contain technical changes to the law. He suggested requesting additional positions in the Governor's operating budget.

COMMISSIONER BALLARD said all of the positions are in the operating budget proposal. However, a statutory change needs to occur to allow those positions to be as effective as possible. DEC's present statutes and regulations established a program that does not meet the needs of Alaska's communities and industries because they contain terms that are inconsistent with federal terms. That inconsistency makes it difficult for DEC to adopt, by rule, federal changes. The inconsistency requires DEC to go through a lengthy site-by-site or permit-by-permit process. DEC will charge more to cover the cost of its staff increase, however it would not be appropriate to charge more for an outdated program so the statutory changes are necessary. She explained that in the spirit of the Governor's request that increased costs to budget components be offset by decreases elsewhere, DEC's budget contains a fairly significant reduction of other activities in order to focus on this effort. DEC has proposed a net reduction of positions in order to accommodate the growth of this core program.

CHAIR OGAN asked why DEC provided a fiscal note if this increased cost is being "washed out" by other cost savings.

COMMISSIONER BALLARD said the fiscal note fulfills DEC's requirement to communicate to the Legislature the precise fiscal impact of the legislation. Even if DEC raises its permit fees, it needs the Legislature to appropriate increased revenue. She noted that a requirement of the federal Clean Air Act is that the program fees cover the cost of the program.

SENATOR ELTON asked if SB 116 will only cover stationary sources of emissions and not apply to cruise ship emissions.

COMMISSIONER BALLARD deferred to Tom Chapple for an answer.

MR. TOM CHAPPLE, Director of the Division of Air and Water Quality, DEC, told Senator Elton that SB 116 does not change anything relative to cruise ships; it addresses stationary sources that require permits.

CHAIR OGAN asked if SB 116 makes any substantive changes.

MR. CHAPPLE replied that the terminology changes will change terms in state law to comport with federal terms. That major feature of the bill will allow DEC to streamline the program by both adopting the federal rules and the court cases behind the federal rules. He explained that whenever a question arises about what a term means when DEC is implementing a permit, people do not have to ask whether DEC's terms differ from terms in the decisions made in four court cases. Using the same terminology will save costs to both industry and the state.

CHAIR OGAN asked why, in spite of the streamlining, the program will cost more.

MR. CHAPPLE told members that SB 116 is a step forward toward timely, responsible, predictable permits. DEC's past record for construction permits, which are required to build a new mine or power plant, takes an average of 254 days. That is not timely. SB 116 will allow DEC to accomplish efficiencies through streamlining but that alone will not enable DEC to issue permits in 90 to 120 days, which would be timely.

CHAIR OGAN said his line of questioning reflects his concern about the "disconnect" between the bill and the fiscal note. The bill will streamline the permit process by changing terminology to comport with federal rules, but it necessitates additional employees.

COMMISSIONER BALLARD said if DEC does not make both changes, it could not achieve the promised result. Both changes were presented together because DEC believes they are inseparable. It would be pointless to put more manpower into the existing permit program because it is cumbersome and does not achieve for the permit holder the opportunities to conform to federal programs. SB 116 alone will not allow DEC to achieve the efficiencies because it will not have the manpower to use the better tools.

DEC believes they belong together and, in the interest of full disclosure, they ought to be presented as one piece. SB 116 is necessary to gain the efficiencies that the manpower will use; the manpower is needed to make the bill real.

SENATOR SEEKINS asked if SB 116 will enable DEC to use the same terminology as the federal government so that SB 116 in itself will not create additional expense, but implementing it to reduce the permit process time will require additional staff.

COMMISSIONER BALLARD said that is correct. Certain requirements in the bill will, in and of themselves, require additional effort, which DEC believes will be beneficial. That entails reallocating minor sources to a permit-by-rule category and writing some new general permits. Some of the work associated with this bill is over and above DEC's current permitting regime. That alone will not achieve the result expected by the communities and industries that need these permits.

SENATOR SEEKINS noted the funding source identified on the fiscal note is the 1093 Clean Air Protection Fund\*. He asked what the asterisk signifies.

MR. CHAPPLE explained that the user fee revenues are deposited into the Clean Air Protection Fund. That dedicated fund was created in Alaska law in 1993 because the Clean Air Act requires the operating permit program to be a dedicated fund. DEC realized since then that only the operating permit program is supposed to have dedicated protection. The revenues generated from construction permits and minor source permits should go into a different fund - the Emission Control Permit Fund. SB 116 will create that new fund. The asterisk signifies the year 2006 because that is when DEC believes the funds need to be split. Until DEC accomplishes the permit reforms, it will be impossible to say how much should go into each pot.

CHAIR OGAN referred to page 2 of the fiscal note and read, "...the accounting for the air permits will change to align with requirements of the Alaska Constitution..." He asked what part of the current program is out of alignment with the Alaska Constitution.

MR. CHAPPLE answered under the Alaska Constitution, a dedicated fund can only be established if it is required under a federal law provision. This change will allow only the fees from the operating permit program to go into the Clean Air Protection Fund to align with federal law. Right now, the fees from

construction permits and operating permits go into that fund and that is not consistent with the Alaska Constitution.

CHAIR OGAN asked why that is being done.

MR. CHAPPLE said DEC is trying to correct the problem.

CHAIR OGAN asked what portion of the bill addresses the dedicated fund.

MR. CHAPPLE said that is in Section 34 on page 17.

CHAIR OGAN asked if changing the conforming language in regulation will be a one-time expense.

COMMISSIONER BALLARD said that is correct. She explained that the fiscal note anticipates DEC's fiscal year '04 budget request. It is conceivable that DEC will need a different staffing configuration or number in later years.

There being no further questions, CHAIR OGAN took public testimony.

MS. MARILYN CROCKETT, Deputy Director of the Alaska Oil and Gas Association (AOGA), told members that an AOGA representative participated in DEC's stakeholder work group that put together a package of recommendations to streamline and enhance the air emissions permit program. The group met on a regular basis over a four-month period and wrestled with the problem of reduced emission fee revenues and the challenge of timely issuance of permits. Members unanimously supported the work group's report, issued in December. The commissioner has adopted that report; SB 116 is one result. AOGA has not had the opportunity to scrutinize the bill, but she understands, from the briefing she received from Mr. Chapple and Mr. Kuterbach, that the intent is to implement those recommendations. If SB 116 accomplishes that intent, AOGA supports it and applauds DEC for proposing it. She advised members that AOGA might propose some minor changes to the legislation. AOGA agrees that the statutory changes will allow DEC to adopt a more federalized-looking permit program, which will resolve a lot of the problems that come up on individual permits.

CHAIR OGAN informed Ms. Crockett that the committee will hear SB 116 in about two weeks and asked her to submit comments by that time.

MS. CHARLOTTE MacKAY, representing herself, told members that SB 116 removes the necessary obstacles to allow DEC to adopt the work group's recommendations. The work of restructuring is yet to be done and she believes the fiscal note will help enable the process to continue. She said DEC has been very open and receptive to outside suggestions. She believes that by following the work group's recommendations, DEC will be able to maintain its high level of protectiveness while concurrently creating a more responsive and predictable air permit program.

MR. TADD OWENS, Executive Director of the Resource Development Council (RDC), said that although the RDC did not formally participate in the work group, several RDC members had direct participation in that process. The RDC is pleased to see DEC and the Administration come forward with SB 116 to implement the recommendations from that work group. The RDC believes SB 116 is part of a comprehensive effort to streamline the state's permitting systems. He made two comments in regard to the fees:

It's our understanding that under the old air program, those fees that were charged on an hourly basis will now fall under the old HB 361 that was passed several years ago. Under that fee structure, the RDC supports very strongly. I would also like to commend DEC for - the committee has discussed the fiscal note of this bill and I believe Commissioner Ballard noted that the overall DEC budget reflects that there's a gain in this program and they've made adjustments in other areas to make sure that their overall budget request has come in flat. We very much appreciate their efforts on that behalf as well.

CHAIR OGAN asked if he is aware of any discussion about who will bear the cost of the increase in user fees.

MR. OWENS replied that it is the RDC's understanding that the fees that were previously charged on an hourly basis for construction and operating permits will now fall under the legislation that the RDC and its members spearheaded several years ago. The RDC feels very comfortable with the sideboards that legislation puts on fees charged to permit applicants. The RDC also feels very comfortable with the division between the costs borne by the private sector and the overhead costs borne by DEC.

There being no one else wishing to testify, CHAIR OGAN asked for a sectional analysis of the substantive changes that will be made if the legislation is enacted.

MR. JOHN KUTERBACH, manager of the Air Permits Program, gave the following explanation of specific sections of the bill.

Section 12 (page 5) makes two changes. It allows DEC to exempt operations from getting an operating permit to the extent allowed under federal law. Under DEC's current statute, if EPA exempts a source, DEC is to follow suit. However, it does not specify what to do when EPA's decision is pending. Federal law allows DEC to exempt an operator under that scenario; Section 12 allows DEC to follow that federal law.

He explained that federal law lists a class of sources for which EPA is supposed to decide whether a permit is required. EPA has not yet made a decision on most of those categories of sources but it allows states to defer permitting.

CHAIR OGAN asked what would happen if DEC takes a more liberal interpretation of the law than the federal agency and whether DEC can back-pedal if it has issued a permit.

MR. KUTERBACH explained that would fall under DEC's Title 5 permit program so DEC would submit a proposed regulation to EPA for approval. He then continued with the sectional analysis.

Section 12 also requires permits for the minor [source] permit program that are categorized under regulation.

Sections 13 and 14 establish the minor permit program. The language that requires permitting of minor sources from the major source permitting programs is removed in Section 13. It is re-established under Section 14 as the minor permit program to provide a clear distinction in statute between the major source permitting program, which will cover construction and operating permits, and the minor source permitting program.

CHAIR OGAN asked for a description of the differences between the two programs.

MR. KUTERBACH said the major source permitting programs are actually set up in the Clean Air Act for operations with a large potential for major sources of air pollution. The federal rules contain what is called, "new source review," which includes prevention of significant deterioration (PSD) permits for large

industrial operations or large increases of pollutants at existing operations. The permitting process for those operations is very extensive; the permits are referred to as Title 5 permits. They are for operations with large sources of pollution or sources subject to federal regulation that may apply to smaller units. It is on those smaller unit federal emission standards that EPA must decide whether an operating permit is required. Those sources would be deferred.

SENATOR BEN STEVENS referred to language on page 5, line 21, and asked whether the phrase, "has the potential to emit" is in federal law.

MR. KUTERBACH said it is.

SENATOR BEN STEVENS asked how that determination is made.

MR. KUTERBACH said the evaluation is based on the actual measured ability of sources to emit pollutant and on some assumptions about how those sources would operate. The federal definition, which DEC would incorporate by reference, bases it on the maximum amount of emissions the facility could emit in one year based on the design of the equipment and any approved limitations to that emission.

SENATOR BEN STEVENS expressed concern that the words, "has the potential to emit" are very ambiguous and asked whether DEC must follow strict guidelines in that evaluation.

TAPE 03-13, SIDE B

SENATOR BEN STEVENS noted he has the potential to be as wealthy as Warren Buffett but he doesn't know whether he'll realize that potential.

SENATOR ELTON said he hopes so.

CHAIR OGAN asked if DEC hires consultants or has engineers on staff to make that determination.

MR. KUTERBACH said the evaluation is technical in nature and is based on the engineering design of the equipment and the maximum ability of that equipment to emit pollutants. He noted that physical principles are involved.

SENATOR BEN STEVENS thanked Mr. Kuterbach for the clarification. He then asked why the phrase, "as having the potential to

violate the ambient air quality standards" was deleted on lines 26-27.

MR. KUTERBACH explained that the technical evaluation of having the potential to violate ambient air quality standards has a much less technical basis behind it. It is very easy to measure the exhaust of a boiler and multiply that measurement by hours and days. It is much more difficult to predict how that pollution will distribute through the atmosphere and possibly violate ambient air quality standards.

SENATOR BEN STEVENS commented that in his way of thinking, having the potential to emit is essentially the same as having the potential to violate the ambient air quality standards but, because technical guidelines are used, he would not press the matter further.

MR. CHAPPLE told members that the language on both lines 17 and 21 that mention the 100 tons per year and potential to emit 250 tons per year are based upon federal law, which defines those as large sources. The Clean Air Act is based on the premise that states need to identify what sources have the potential to violate ambient standards and manage those sources. In the past, DEC has lumped both small and large sources together under the construction and operating permit program. Those are being separated in SB 116. He stated:

And so, ones that have the potential to violate ambient standards tend to be the smaller ones even though the bigger ones will too. It's just not as - the federal law says clearly when you're above this amount, you have the potential to be a major source and the potential to violate health standards. It's the smaller ones - it's where we have done other work to say a source smaller than 100 tons in this situation, or this type of source, could violate public health standards and therefore put them into the minor source permitting program. We think that's an improvement because we can streamline the minor source permitting. That's the separation that's occurring in this section, Senator Stevens.

SENATOR BEN STEVENS then referred to Section 3(b)(4) on page 2 and noted that a new section AS 46.14.130(c)(2) is being added. He felt that language is ambiguous. He asked if Section 14 (page 6) contains the reasons for issuing a minor permit and expressed

concern that the phrase, "the potential to violate" gives DEC a lot of latitude.

MR. KUTERBACH said that language does give DEC a lot of latitude, however, the language on page 2 deals with those regulations that must go through special procedures in order to be adopted by DEC. The special procedures include a peer review of DEC's determination of the need for that regulation.

SENATOR BEN STEVENS asked if Section 3 on page 2 pertains to regulations.

MR. KUTERBACH said that is correct. He explained the intent of Section 3 is to update the cross-reference. DEC currently has this broad language about the public health effects distributed both in the construction and operating permits. That is what is cross-referenced in Section 3 on line 25. It removes the old cross-reference and puts in a new cross-reference. AS 46.14.010(b) or Section 3 specifies that certain types of DEC regulations must go through extra procedures in order to be adopted.

SENATOR BEN STEVENS said it looks to him like SB 116 streamlines and will be more definitive but yet adds a new subsection, which is very broad.

CHAIR OGAN suggested that Senator Stevens meet with Mr. Kuterbach to discuss the matter.

MR. KUTERBACH continued with his sectional analysis.

Section 15 adds a phrase that recognizes that DEC does not want to use the same processes for minor source permits that it uses for the major source permits and adds an exception to the types of regulations that DEC has to adopt in order to implement the permit program. Minor source permits are exempted. That allows DEC to decide what is most appropriate for the type of minor permit that regulations are being developed for.

Section 17 eliminates an application deadline. The current operating permit program has two application deadlines: one for existing facilities and another for new facilities that do not require construction permits. The second application deadline is not in federal law and it only applies to minor facilities that need an operating permit but not a construction permit. Since the minor permits will be pulled out, very few facilities would fall under this deadline so DEC recommends that it be removed.

Section 20 is new. It adds a deadline for issuing minor permits.

Section 23 recognizes that a public comment process will be unnecessary for a majority of the minor permits and refers to the adjudicatory hearing requirement only if a public comment process is required or solicited.

Section 25 is a new section that specifies requirements for general minor permits. DEC currently has a section under AS 46.14, which allows general permits. That language comes from federal rules for major permits and does not recognize explicitly that the permit can be valid for operations that are mobile. The intent is to explicitly say that the general permit can be used for operations that move around. However, because the other language is important for the major source permitting program, it was retained.

Section 26 adds a phrase required by federal language for the major operating program and specifies that is what the restrictions are for.

Section 28 changes the fee structure from hourly fees to the flat fees based on AS 37.

CHAIR OGAN asked which are greater.

MR. KUTERBACH said most people would say the hourly fees are greater. He continued.

The current AS 46.14.240 contains an explicit list of what services hourly fees can be charged for. Section 28 changes that to the flat fees. Section 30 says that DEC is not allowed to directly charge qualified small businesses for some of those permit services under federal Title 5 mandates. Those services must be paid for from emission fees.

Section 31 pertains to a change on page 15, line 31. At present, DEC is supposed to periodically review its fees every three years. AS 37 requires that review to occur every four years. Section 31 changes the three-year requirement to four years for the sake of consistency.

Section 32 changes the current statutory requirement to use emission fees for cost recovery from operating permits only. It specifies that emission fees will also support the implementation of minor permits or construction permits.

Section 34 establishes a new receipts account. When the construction permit fees and minor permit fees are separated out of the dedicated fund, they will be placed in this new account.

Section 35 simply adds minor permits to DEC's authority to terminate, modify, or revoke permits.

Sections 48 through 60 contain the permit definition changes. In every case, DEC has tried to replace the department term or definition of a term with its federal equivalent. One exception is Section 59, which adopts the federal definition of "stationary source," which corresponds to the Alaska definition of "facility." However, the Alaska definition has one unique situation not covered in the federal definition, that being that Alaska has both floating and onshore processors. DEC's current statute treats them the same. The state definition explains that a vessel can also be considered a facility if it is engaged in an industrial operation. The federal rule does not make that distinction so it has been retained so that onshore and offshore processors are treated the same under the permit program.

CHAIR OGAN asked why that is being done.

MR. KUTERBACH said it retains the decision made in 1993 to treat them the same way.

SENATOR ELTON said his guess is that was done to make sure there is an equal playing field between those who have invested onshore and those who have not.

CHAIR OGAN asked if DEC currently gets emission fees from vessels.

MR. KUTERBACH said this covers what DEC currently does; it will not add any new facilities. If DEC were to change to the federal definition without including offshore processors, they would no longer be regulated under the permit program. He explained that Sections 61 through 63 provide for the transition period. While SB 116 removes a lot of impediments to streamlining, DEC will have to promulgate regulations to get the minor permit program established and up and running. These sections provide for that time period. Sections 64 through 66 address the effective dates. The majority of the changes become effective immediately. The sections changing the fee from an hourly fee to a flat fee take effect January 1, 2005 to give DEC time to determine what the flat fees should be and to establish the necessary regulations.

Section 66 establishes that the separation of the dedicated fund will occur in 2006.

**4:48 p.m.**

CHAIR OGAN thanked the DEC participants and closed the hearing on SB 116. The committee took up SB 44.

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#SB 44

**SB 44-OIL SPILL RESPONSE COST RECOVERY**

SENATOR DONALD OLSON, sponsor of SB 44, said he introduced this measure in response to concerns that in certain circumstances, the Department of Environmental Conservation (DEC) needs more flexibility to recover the actual costs of oil spill containment and clean up. Under the current statutes, DEC is required to promptly seek reimbursement for the state's oil spill response costs from persons or entities that have caused or are liable for the spill. The current statutes do not allow DEC to adjust or waive reimbursement requirements in situations where the costs far exceed the financial resources of the individual or the responsible entity. The resulting financial constraints could cause serious social impacts that affect essential local government programs.

SENATOR OLSON explained that DEC currently utilizes the scope of the attorney general's authority to waive or reduce oil spill recovery costs. The attorney general has to determine these actions without specific regulatory guidelines or standards that are known or available to the public, resulting in inconsistent actions. For example, Little Diomedes is on a payment program for 34 years for a spill, as compared to Tetlin and Stevens Village where the attorney general decided not to pursue those cases so that staff time could be used in a more beneficial manner. SB 44 provides a process whereby DEC can consider waiving or reducing the reimbursement requirements in special circumstances in a consistent manner. The process relies on the explicit public interest findings by DEC where a reduction or waiver is warranted.

SENATOR OLSON said the provisions in SB 44 allow DEC to consider waiving costs in the following circumstances:

- where the expenses are not recoverable, such as from a federal source of funds

- where an individual is responsible for a tank system containing residential heating fuel for less than five families
- for an unincorporated community, a village, or a municipality with a population of less than 5,000
- where the expenses incurred by DEC are less than \$3,000

SENATOR OLSON stressed that SB 44 does not allow blanket exemptions or automatic waivers.

SENATOR DYSON asked if Senator Olson's intent is consistency.

SENATOR OLSON said consistency is one of his goals, as well as creating a "black and white" way to make determinations. In addition, his intent is to prevent the attorney general's work schedule from being burdened by time spent trying to determine the feasibility of recovering the costs. He noted one community is on a 34-year payment plan while another, that is more vocal, is paying nothing.

SENATOR DYSON said his reading of SB 44 is that Senator Olson is also hoping that some communities will not have to pay the full cost of any amount of the damage.

SENATOR OLSON said that is an extreme view of what SB 44 does. However, it gives DEC the discretion to decide whether it is worth trying to recover the costs, depending on the financial situation of the violator. He pointed out that DEC will expend money trying to collect over a protracted time period in some cases. He said the fact that Little Diomedes will be paying interest for 34 years on a small amount of money does not make sense. Right now, DEC has no discretion.

SENATOR DYSON said if DEC waived the costs for the two villages, it must have the capacity to forego charging a community for the cost of the oil recovery.

SENATOR OLSON noted Senator Dyson's concerns are valid. He said he cannot find any written guidelines used by DEC to make determinations, which is the reason for SB 44. He said his intent is not to exempt someone who is responsible for an oil spill if that person or entity is capable of paying.

SENATOR DYSON asked Senator Olson if he considered, when looking for a remedy, bankruptcy protections.

SENATOR OLSON said the original statute does not make it any easier to shrug the costs associated with oil spill cleanup for someone who files bankruptcy.

SENATOR BEN STEVENS referred to language on page 2, Section 2, and questioned why a municipality with a population under 5,000 can be exempted. He pointed out that a municipality of that size could have very large oil tanks.

CHAIR OGAN then questioned the provision that says, "if the expenses incurred by the department are less than \$3,000," and asked if that includes the cost of clean up.

SENATOR OLSON noted the thought behind the waiver for a municipality with a population of 5,000 or less was that a municipality could be a second-class city.

SENATOR BEN STEVENS said that few communities have a population above 3,000.

CHAIR OGAN said Palmer just recently broke the 5,000-resident population barrier within its city limits.

SENATOR BEN STEVENS said he is curious why that number was used because some areas on the road system have a commercial entity that operates the distribution network. He asked if such an entity would be exempt under SB 44.

SENATOR OLSON said any town in Alaska with a population of 5,000 is considered to be sizeable but many of Alaska's rural communities are poised to grow. However, the intent of SB 44 is to give DEC broad discretion. He said he assumes Palmer is a first class city with different requirements and guidelines.

SENATOR SEEKINS asked for the definition of an "unincorporated community" and whether that could include a commune. He expressed concern that the bill "opens the barn door wide."

CHAIR OGAN was unsure whether a definition of "unincorporation community" exists in statute.

SENATOR OLSON said a definition exists but he did not have it at this time.

SENATOR ELTON said he agrees with Senator Olson's intent to give more latitude to DEC, but he expressed concern that the provision that limits DEC's expenses to \$3,000 is too

restrictive. He pointed out if a small spill of residential heating oil occurred in King Cove, the cost of travel and per diem would run about \$3,000. He questioned whether SB 44 will create a situation where the legislature is telling DEC that if the cost is over \$3,000, it has no latitude and must recover costs.

SENATOR OLSON agreed that is a valid concern, but said the bill does not state that DEC must take action if the cost is less than \$3,000.

SENATOR ELTON said if travel costs are \$3,200 or \$3,300, DEC will have to make an attempt to recover fees.

CHAIR OGAN asked a representative from DEC to answer questions.

MR. LARRY DIETRICK, Acting Director of the Division of Spill Prevention and Response for DEC, read the following testimony into the record.

DEC is required by statute to seek reimbursement for its expenses in cleaning up or containing the discharge of oil or hazardous substance. Alaska statutes, like the federal laws and laws of most other states, are based on the principle that the spiller pays for the cost of clean up. It is a self-sustaining mechanism by which costs incurred by the state are recovered from the spiller and returned to the state's response fund to ultimately avoid the use of public funds for clean up.

CHAIR OGAN asked if that is the 470 fund.

MR. DIETRICK said it is. He continued.

The department very much appreciates being able to work with the sponsor of this legislation to examine ways to provide exceptions or guidelines to this spiller pays, self-sustaining principle established in the statutes. We have been working with the sponsor. We appreciate his intent to provide some guidelines. It's not an easy thing to do and we have been interactive with him in an attempt to try to get a system to meet his intent. It will help us all to provide the clarity that we are trying to see.

This bill would establish, in our opinion, certain exemptions for certain types of discharges and it sets a threshold below which the department would not recover costs. Currently we do take into account the ability to pay, the potential costs to the state of pursuing reimbursement or other mitigating factors when determining whether or not to pursue cost recovery in any given case. We currently exercise this discretionary authority on a case-by-case basis.

After careful consideration, we've concluded that establishing the exemptions as currently proposed, and the threshold below which no cost recovery is authorized will shift the cost of clean up to the state along with the corresponding fiscal impacts. Exemptions and thresholds we believe remove some of the flexibility we have right now to seek recovery of costs based on the circumstances of each case. While we appreciate the idea of getting good guidelines and would welcome those guidelines, I think the work that we've done with the sponsor to date illustrates the complexity of trying to develop those. There are so many site-specific circumstances; it becomes a very big challenge to do that. We appreciate the scrutiny and the good faith efforts to improve the system, but we've concluded that the legislation as currently drafted will increase our costs and eliminate, we believe, some of the flexibility we have now to take care of individual site-specific, case-by-case evaluations. Thank you very much Mr. Chair.

CHAIR OGAN stated that having a cost recovery provision acts as a hammer and motivates individuals and entities to comply. He said he recognizes how large an issue leaky tanks are in rural Alaska and, although the Denali Commission has alleviated some of the problem, it is still huge. He asked Mr. Dietrick if he is also concerned that exempting communities will act as a disincentive to do a good job.

MR. DIETRICK said he believes the system the state has created has been very sensitive to Alaska businesses and municipalities with regard to cost recovery and the problems with fuel systems in rural Alaska. He said a clear example of the compassion shown is the financial assistance program created by the legislature for underground storage tanks. The state has also embarked on a course of action to upgrade leaking above-ground storage tanks

in rural Alaska through the Denali Commission using federal funding. That problem is estimated to cost \$200 million to fix.

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MR. DIETRICK said DEC also tries to use a high degree of compassion based on ability to pay. He noted the reason Little Diomedede has a \$200 per month bill is that DEC negotiated a workable arrangement with that village. In cases where an entity does not have the ability to pay, DEC waives those costs on a case-by-case basis. That is part of DEC's challenge. It recognizes Alaska's unique situation. DEC is not opposed to guidelines but the circumstances are highly variable.

CHAIR OGAN noted that Little Diomedede's payment of \$200 per month will equate to \$20 per month in 34 years after inflation.

MR. DIETRICK said those payments were dictated by affordability and the intent of the statute to seek cost recovery.

SENATOR DYSON asked if interest is being charged on the unpaid balance in the Little Diomedede case.

MR. DIETRICK deferred to the assistant attorney general for an answer.

SENATOR DYSON asked Mr. Dietrick if DEC's criteria includes whether cost recovery will exceed the cost of administration.

MR. DIETRICK said that is one criteria used. If the cost of recovery exceeds the amount to be recovered, it is not pursued. DEC uses, as a general guideline, a cost threshold of about \$1,000. He said if the recovery cost exceeds \$1,000, it is a prime candidate for pursuing cost recovery.

SENATOR DYSON asked if DEC is comfortable with the 5,000 population cutoff mark.

MR. DIETRICK said DEC would normally conclude that a community of 5,000 has some ability to pay but other factors would have to be taken into consideration, such as extraordinary clean up costs and the facts behind the spill.

SENATOR DYSON asked if DEC considers that a community or entity acted recklessly and, if so, whether DEC would try to collect higher recovery costs to teach a lesson.

MR. DIETRICK said penalties apply if a spill was intentional or willful. Those penalties are considered separately from and in addition to the clean up cost.

CHAIR OGAN asked if a lack of culpability but negligence is factored into the cost recovery.

MR. DIETRICK said that would be taken into consideration.

SENATOR ELTON referred to language on page 2, line 24, "or (3) the expenses incurred by the department were less than \$3,000" and repeated his concern that language would preclude DEC from waiving cost recovery if department expenses were \$3,100. He gave King Cove as an example and asked if DEC's travel expenses are \$3,500, and DEC determined that King Cove cannot pay, whether this language would preclude DEC from waiving costs.

MR. DIETRICK said DEC wrestled with that language and interpreted that provision to mean that the first \$2,999 would be waived. DEC would pursue cost recovery for any costs over that amount. SB 44 limits the liability of the spiller at the low end but does not insulate the spiller for costs that exceed \$3,000.

SENATOR ELTON expressed surprise at that interpretation.

SENATOR WAGONER asked if service stations are now required to do pressure tests on their tanks on a regular basis.

MR. DIETRICK said he believes Senator Wagoner is referring to underground storage tanks, which are regulated under federal law. DEC completed the removal and upgrade of 6,000 tanks in Alaska in 1998. DEC originally had 7,000 on the list, about 1,000 tanks fall into that category now and are subject to the new requirements for leak detection, overflow, corrosion monitoring, inventory controls and other controls. All of the new tanks have to meet those requirements so hopefully that will result in no future spills.

SENATOR WAGONER asked if the same type of pressure test could be performed on the tanks that SB 44 applies to before filling the tank.

MR. DIETRICK said he was referencing commercial tanks that are subject to those requirements. He believes the sponsor's intent is to apply SB 44 to non-commercial tanks, which are not legally required to follow the federal requirements.

SENATOR WAGONER said he assumed that Little Diomedes's tank was not commercial but a centralized system for the village.

MR. DIETRICK said the Little Diomedes tanks are above-ground storage tanks, which are not regulated by DEC unless they exceed 420,000 gallons.

CHAIR OGAN announced that he would hold SB 44 in committee.

SENATOR OLSON told members that DEC's interpretation of Section 2 on page 2, as described by Mr. Dietrick, regarding the expenses of \$3,000, was not his intent. Regarding the incident at Little Diomedes, he noted the tanks did not leak, a valve on a line downstream ruptured. The tanks had nothing to do with the spill and the spill was not even discovered until the snow began to melt. He noted that Mr. Dietrick said there was a threshold level of the cost recovery that DEC would not go after, however, he did not intend to put any minimum amount in the bill. He asked Mr. Dietrick to respond.

MR. DIETRICK said that DEC's understanding is that the first criteria would be that the expenses that would be incurred would not be recoverable from the federal fund.

SENATOR OLSON asked Mr. Dietrick to cite the language that applies to the federal funds.

MR. DIETRICK said that language is on page 2, line 13. He then stated:

Criteria number one then - that is being carved out here - is the person here that would qualify would be an individual. The fuel would have to be residential heating oil. And the tank, from which the fuel leaked, would have to serve fewer than five families and the spill would not be the result of overfilling. That would be the criteria that would be met there for them to waive costs.

The second one then, as we understand it, the responsible party would be a municipality, i.e. unincorporated community, village, or municipality with a population under 5,000. It again applies only to residential heating oil. There [are] no limitations - it presumably is from any tank system as opposed to number one, which is explicit that it would be

residential oil for fewer than five families. This could be any tank and we have a lot of tanks in rural Alaska with residential fuel that may be serving a lot of different uses - and, again, the discharge was not the result of a tank overfill. So, in any given case, we would apply these given criteria and, if they fit, if the circumstances fit these then we understand - we would conclude then that the cost recovery would be waived, if we properly understand your intent.

SENATOR ELTON said he reads it to mean that DEC can then make a determination to waive, but DEC is not required to waive.

MR. DIETRICK said he would agree.

SENATOR OLSON said Mr. Dietrick testified that SB 44 will limit DEC's flexibility and asked him to elaborate. He said that was not his intent.

MR. DIETRICK said he was saying that DEC has a lot of flexibility to consider these and other criteria now. DEC sees SB 44 as limiting what it can consider in any given case.

CHAIR OGAN announced that he would hold SB 44 in committee and that the committee would not meet during the following week. He then adjourned the meeting at 5:30 p.m.

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