ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE
April 4, 2003
3:36 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
Senator Georgianna Lincoln

MEMBERS ABSENT

All members present

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."
MOVED CSSB 116(RES) OUT OF COMMITTEE

PREVIOUS ACTION

SB 116 - See Resources minutes dated 3/12/03.

WITNESS REGISTER

Mr. Tom Chapple
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Described the changes made in CSSB 116(RES)

Ms. Dana Olson
HC-30 Box 5438
Wasilla 99654
POSITION STATEMENT: Expressed concerns about the Air and Water Quality Program

Ms. Marilyn Crockett

Alaska Oil and Gas Association (AOGA)
121 West Fireweed Lane
Anchorage, Alaska 99503
POSITION STATEMENT: Supports CSSB 116(RES)

ACTION NARRATIVE

TAPE 03-23, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:36 p.m. All members were present. SB 116 was before the committee.

SB 116-EMISSION CONTROL PERMIT PROGRAM

CHAIR OGAN announced that a committee substitute was prepared that incorporates the changes made to the House version of the bill by the House Finance Committee.

SENATOR WAGONER moved to adopt the proposed committee substitute to SB 116 (Version D) as the working document of the committee.

SENATOR LINCOLN objected for the purpose of an explanation of the changes made in Version D.

MR. TOM CHAPPLE, Director of the Air and Water Quality Division, Department of Environmental Conservation (DEC), affirmed that Version H contains the same changes made in the House Finance Committee to HB 160, the companion legislation. Those changes are as follows:

- Page 5, Section 12 - on line 6, after the word "exempt" the words "or defer" were inserted to take advantage of any federal provisions to exempt or defer permitting of a facility in Alaska.
- Page 5, Section 13, which pertains to who needs construction permits - the changes reflect the federal language by including the term "major stationary source" and "major modification," terms of art in the federal law. Subsection (3) adds the phrase, "a project subject to the construction permitting requirements of 42 U.S.C. 7412(i) Clean Air Act, sec. 112(i)." That refers to the section of federal law that deals with hazardous air pollutants. The purpose of Section 13 is to streamline the statutory language to capture the terms of art in federal law and to make sure that Alaska's law comports exactly with when construction permits are required in federal law.

- Page 7, Section 15, line 21, paragraph (2) contains a new insert. In this case, an operating permit pertains to monitoring, record keeping, and reporting. This language asserts that the State of Alaska permits will comply with the requirements in the federal rules and provides assurances those provisions will be used in Alaska. It also provides the ability to modify those, taking into account Alaska's unique conditions. The term "Alaska's unique conditions" is one of the features of the work group's report.

CHAIR OGAN asked if federal law provides the state with the latitude to conform but takes into account its unique conditions.

MR. CHAPPLE said DEC wants to be more site specific and considerate of Alaska's business needs and its natural environmental conditions when permitting. Sometimes the federal law does not provide much latitude, but in the areas with room to interpret and modify, SB 116 would allow DEC to do so.

SENATOR LINCOLN noted that a previous amendment contained the term "major stationary source" yet Version D contains the term "stationary source." She asked if the difference is significant.

MR. CHAPPLE said federal law contains a distinction. A stationary source is any operation that has an air pollution source. A major source is one that is big enough to require a permit. Under federal law, "major source" is defined as 250 tons per year of air pollution. This law also creates minor permitting requirements that were previously called "major." It separates the two permit programs.

MR. CHAPPLE told members the next change is in Section 25 on page 12. Section 25 deals with general minor permits. This change deletes a sentence at the end of this section that read, "A general minor permit issued to a particular person takes effect when the person's application is determined to be complete unless the department notifies the applicant that the general permit is not applicable to the person's stationary source." He explained that was removed because a general permit is developed and not issued to an individual applicant; the permit is created and "put on the shelf" until someone applies for it and the applicant is authorized to operate under that general permit. That sentence was confusing and the parties that opposed the amendment suggested it would be easier to deal with those changes in regulations.

MR. CHAPPLE said one other change on page 12 in Section 26 deals with temporary operations and changes 30 days to 10 days. When this section of Alaska law was first created in 1993, the federal law said temporary operations need to give notice before they move but no calendar date is specified in federal law. Since that time, the federal regulations used 10 days. This change matches Alaska law to the federal regulations and provides more flexibility for mobile operations.

SENATOR LINCOLN said that 10 days might be a very short period for a business in a remote area and asked if notification could entail a faxed notice.

MR. CHAPPLE said that written documentation, either faxed or mailed, would be considered notification.

SENATOR LINCOLN asked if DEC feels 10 days is adequate.

MR. CHAPPLE said these operations are usually portable and are originally permitted with the anticipation that they will move around. The motivation is to ensure the operation would comply with other environmental standards at numerous locations. The notice would simply allow DEC to know the location and whether an inspection would occur. Any considerations about unique site conditions would be handled before the permit was issued.

MR. CHAPPLE continued with his explanation of the bill. The next change is on page 23, in Section 54 of the bill. The definition of "modification" was expanded to include "and 40 CFR § 60.14." This change will incorporate the result of court cases at the federal level where the definition was further resolved. It creates some additional provisions of value in Alaska.

MR. CHAPPLE said the next change is in Section 59 on page 24, where a definition of "major modification" was inserted. This is linked to an earlier change, which determines who needs a construction permit.

MR. CHAPPLE said the last change to the bill was made in Section 62, under the transition features. Beginning on line 29 the first sentence is new. It addresses new federal regulations adopted in December of 2002 to accomplish some streamlining for construction permits. This language was inserted to assure that DEC adopts these rules quickly. He summarized that the Alaska Oil and Gas Association brought the changes in the committee

substitute to DEC. Most of the changes are for the purpose of clarification. DEC supports these changes.

CHAIR OGAN asked Mr. Chapple to summarize any policy changes that might result from the adoption of Version D.

MR. CHAPPLE said Version D clarifies that there are some opportunities for exemptions in federal law that should be applied in Alaska. It also speaks to the fact that during DEC's workgroup process last fall, DEC said it wanted to adopt the new federal rules. These changes commit DEC to moving forward expeditiously with those changes. It also clarifies the language about who needs a construction permit and makes it comport more closely to federal law.

SENATOR ELTON asked if the members of the workgroup reviewed the technical changes.

MR. CHAPPLE said he hasn't directly talked to all members of the workgroup. He said Marilyn Crockett with AOGA has worked with some of the other members and will be testifying today.

SENATOR LINCOLN removed her objection to the adoption of Version D as the working draft before the committee, therefore the motion carried.

CHAIR OGAN took public testimony.

MS. DANA OLSON gave the following testimony.

> I've been very passionate about air quality issues for many years. I believe there is a lot of hot air on this bill. [Indisc.] some EPA determinations - petitions that I have filed and got answers on and one of them was a petition that I alleged that the Southcentral Clean Air Authority was defunct and provided no public participation. What I got from the regional EPA administrator was a decision, which was appealable, that said it was not defunct and that it was a valid and legal authority in Alaska.
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> Now one of the problems I find is I sent you down an [indisc.] - the first provision of the bill. I do not have the committee substitute but I sent down a question why is the implementation not under the Southcentral Clean Air Authority. This is the public process that was in desist of the 1972 standard that

was federally approved. When the ADEC decided to appoint a committee of interested persons, they did not allow the general public to apply. I did file and raise objections.

First of all, if you're going to go in and narrow the topic, then you have to allow the public a general opportunity to apply at least. This was not done. Furthermore, when I went to those meetings, the ones that I did attend to and wasn't discouraged from, I found that the people were not willing to represent any of my issues. They would tell me about how to use the computer or how to do this or that. They were not willing to work with what I had and there is nothing in state law, there is nothing in federal law that says I must come to a group in order to participate.

Now one of the [indisc.], I find that I'd like to address was [indisc.], when you go into Elmendorf Air Force Base in Southcentral Alaska, outside of Anchorage, you have to have an ion test certificate if you intend to go on that base more than six times a month. That's their policy. So, in other words, the funds that are ion testing funds that are being used - it doesn't matter where you live. If you come down from Ft. Greeley and you go to Elmendorf Air Force Base six times, you need an ion-testing certificate to get on base. For you to go in and narrowly restrict the funds that will be used, [indisc.] Elmendorf and the federal government is recognizing that they are using a statewide standard and not a restricted thing is contrary to what is actually occurring here. That seems to be one of your problems that needs resolving.

One of the things that I find that when you're in a non-attainment area is that you have to have conformity standards that are published in the federal register. I'm hearing a lot of things that were done to comply with federal law but the truth is they've not been published in the federal register and for you to go in and set up a provision of state law, to say that based on a federal court case that you're going to allow for characteristics of Alaska determined only by this group for consideration of not complying with standards is objected to on grounds that first of all it's not a provision of federal law, it's an interpretation and it may not be valid here. We have

no court case articulating that that is the premise of which it can be relied on.

I wanted to also mention something about negotiated rule making. Negotiated rule making has no constitutional grounds for overriding copyrights, it has no constitutional grounds for interfering with public trust, and therefore when the legislature set up negotiated rule making, it failed to show who was the intended beneficiaries of this rule making would be. Is it simply the permittees or was the public in whole addressed? I have the advice of an attorney who said that when there's not a remedy - in other words when there's not a legal remedy - that one doesn't have to comment. So, if this is a public process, technically I don't have the process - I don't have to participate because I don't have any remedy to enforce one way or another your implementation.

One of the problems I found with this bill was a lot of presumptions. One was that one could petition for redress of a grievance. In the prior Administration, I petitioned for air quality in the Chase area and my petition was not even answered. I petitioned for an administrative hearing many times on the Knik incinerator. I've not even had an answer. AS 46.03.040 is the state's environmental plan and as I said down here in my comments, if you find [indisc.], it doesn't address - if you took out the statutes, you took out the regulations and you said this is an environmental plan.

CHAIR OGAN asked Ms. Olson to refine her testimony to the statutory changes under consideration.

MS. OLSON said she meant to say if you call all of the regulatory provisions a plan, it would be deficient because it didn't address the public as a whole. She continued:

Now one of the things I found in your bill was that you went in under statutory construction, you went in and used proposed, futuristic law and made it a [indisc.] existing law and implementation. This is unconstitutional and it won't stand up.

So, in other words, I [indisc.] reading this bill - remember I don't have your new committee substitute,

and it's not even in fact [indisc.]. The problem is it's very confusing to be talking about something in the future that hasn't occurred yet. It seems to me that you're trying to rewrite a program and not simply implement one. I would appreciate consideration of my comments. I would like them on record. I have prior given a 60-day notice to the state and to the federal government alleging grievances under the Clean Air Act. Thank you very much.

CHAIR OGAN thanked Ms. Olson and asked her if she is representing herself.

MS. OLSON said she is representing the communities that she lives in.

CHAIR OGAN continued to take public testimony.

MS. MARILYN CROCKETT, Deputy Director of the Alaska Oil and Gas Association (AOGA), told members when SB 116 was first before the Senate Resources Committee, she testified that the bill was under review by AOGA and that she may come forward with amendments. She said AOGA supports Version D. The amendments reviewed by Mr. Chapple are intended to bring the bill directly in line with the recommendations that the workgroup put together by DEC last fall. The bill does two things:

- It revises the fee structure to give the department the revenue it needs to run the program as required by the Clean Air Act. It picks up the funding mechanism unanimously adopted by the legislature three years ago. It moves away from the hourly fee structure to a mix of flat fees and negotiated fees.
- It provides statutory authority to DEC to revise its permitting program so that they more closely mimic the federal programs but retain DEC's ability to take into account Alaska's unique conditions. This provides local control on one hand while providing a more streamlined, clear, and updated structure for DEC to work within.

MS. CROCKETT said AOGA believes the committee substitute implements the recommendations of the workgroup and supports the legislation.

SENATOR WAGONER said he checked with the industrial "folks" he represents and they have no problem with the bill. He moved CSSB

116(RES) from committee with individual recommendations and its zero fiscal note.

There being no objection, CHAIR OGAN announced the motion carried. He adjourned the meeting at 4:08 p.m.