

HB377

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 14, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/7/92

The FINANCE Committee considered:

HB 377

HOUSE BILL NO. 377

AIR POLLUTION CONTROL PROGRAM

"An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 377 (FIN) the same title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact HFC 5/7/92

fiscal note(s) DEC 2/24/92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Mike Yavou</u> Navarre	<input checked="" type="checkbox"/>	<u>Eileen P. McLean</u> MacLean		X	
<u>Monica Bay</u> Bay	<input checked="" type="checkbox"/>	<u>Jamara Barnes</u> Barnes		X	
<u>Jan Brown</u> Brown	<input checked="" type="checkbox"/>	<u>Art Sharp</u> Sharp		X	
<u>[Signature]</u> Koponen	<input checked="" type="checkbox"/>	<u>Rod E. Phillips</u> Phillips		X	
<u>F. Ulmer</u> Ulmer	<input checked="" type="checkbox"/>	<u>Ronald J. Larson</u> Larson		X	

Mike Yavou E.P. McLean
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HR 377 (FIN)

Revision Date: 5/1/92

Department Affected: Environmental Conservation

Title: "An Act Relating to Air Quality"

BRU: Environmental Quality

Component: Air Program

Sponsor: Representative Moyer

Requestor: House Finance Committee

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	50.6	41.0				
CONTRACTUAL	380.2	279.0				
SUPPLIES	52.1	83.8				
EQUIPMENT	46.2	235.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	529.1	639.1				

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS	250.0					
OTHER	279.1	639.1				
FUND SOURCE:						
TOTAL	529.1	639.1				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: CO-Chair Mike Navarre *Mike Navarre* Phone: 465-3779
CO-Chair Eileen MacLean *Eileen MacLean* Phone: 465-4833
 Division: House Finance Committee Date: _____

Approved by Commissioner: _____

Agency: _____ Date: _____

Distribution (by preparor): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

HYDROCARBON and HAZE AIR QUALITY INVESTIGATIONS

HYDROCARBON INVESTIGATIONS

	FY 92	FY 93	FY 94	FY 95
100				
200		20.6	41.0	
300		160.2	279.0	
400		52.1	83.8	
500		46.2	235.3	
600				
700				
800				
SUBTOTAL		279.1	639.1	

HAZE INVESTIGATIONS

100			
200		30.0	
300		220.0	
400			
500			
600			
700			
800			
SUBTOTAL		250.0	
FY TOTAL		529.1	639.1

COMBINED HYDROCARBON & HAZE INVESTIGATIONS

100	0.0	0.0	0.0
200	0.0	50.6	41.0
300	0.0	380.2	279.0
400	0.0	52.1	83.8
500	0.0	46.2	235.3
600	0.0	0.0	0.0
700	0.0	0.0	0.0
800	0.0	0.0	0.0
FY TOTAL	0.0	529.1	639.1

NOTE: The FY 94/95 costs for investigations not known at this time, will depend upon the findings of the initial investigations. Out year costs for haze study could be substantial, perhaps as high as several million dollars.

Fiscal Note — Additional Information

HB 377 — HYDROCARBON & HAZE INVESTIGATIONS

Haze Study

The fiscal note reflects Phase I of the haze pollution effort (250.0) in FY 93. Future year costs would depend upon the findings of the initial investigations.

Hydrocarbon Study

The fiscal note reflects an initial work effort in FY 93 focused on hydrocarbon/VOC pollution in the Anchorage area with continuation level funding provided for FY 94 (279.1).

In FY 94, an expanded hydrocarbon/VOC work effort is undertaken in Fairbanks, building upon the data and experience developed initially as a result of the Anchorage study effort (360.0). This would include aquisition of new monitoring station equipment.

This fiscal note also assumes that 400.0 from the Oil and Hazardous Substance Release Response Fund, authorized for expenditure in the FY 92, will be used to initiate the hydrocarbon/VOC investigations and purchase equipment.

* * * * *

The proposed hydrocarbon and haze investigations are described in greater detail in the attached materials.

ANCHORAGE HAZE AND HYDROCARBON STUDY

The Department is proposing to conduct an evaluation into the source of "brown" haze identified over the Anchorage and Fairbanks Carbon Monoxide non-attainment areas. The proposed multi-phased project would be required to evaluate and control the cause of the reported haze. Cost estimates are based on projected courses of action which may grossly underestimate the full cost required to conduct a particular phase. Phase I will be completed by February 1994. Step 1 and 2 can be completed by February 1993. Step 3, Phase I to be conducted Spring 1993 - data report available February 1994.

Phase I: Preliminary Assessment \$250K

Step 1. Literature Search: Review of previous haze, aerosol and photo chemical smog studies. \$50K

Step 2. Technical Steering Committee: Representatives from the following, but not limited to; academia, EPA, State of Alaska, other state air quality experts, industry, private consultants and foreign air quality experts. \$35K

Step 3. Preliminary Analytical Work: Air quality screening analysis to identify target compounds and preliminary meteorological evaluation. This analysis will result in a gross assessment of environmental components and atmospheric characteristics associated with the reported haze. \$165K

Phase II: Measurement Programs \$2-6MM Est - could be higher

Step 1. Advanced survey analysis: Conduct complete emission inventory of chemical constituents as identified by the technical steering committee in the preliminary assessment. Evaluate meteorological dynamic of the Anchorage Bowl and Upper Cook Inlet airshed.

Step 2. Field Monitoring: Air quality monitoring for criteria and non-criteria pollutants, source testing and tracer studies - short range transport studies. Study will require state-of-the-air sampling instrumentation; doppler acoustic sounder, lidar, portable rawinsondes, tethersondes, thirty meter meteorological towers, airborne monitoring platforms (instrumented C131 aircraft), SUMMA VOC monitoring canisters and GC-MS analytical monitoring systems

Step 3. Dispersion Modelling: To evaluate potential environmental impacts and project pollutant concentrations. First run comparisons with preliminary monitoring results to help direct more refined monitoring protocol

Step 4. Signature Working: Monitoring; Refined chemical and meteorological measurements to finger print physical dynamics of the haze.

Phase III: Data Review and Results \$100-200K

Step 1. Data Evaluation: Laboratory analytical, QA/QC, data review

Step 2. Results and Recommendations

Phase IV: Control and Implementation \$500K-\$1MM

Step 1. Sensitivity Analysis: Evaluation of chemical contribution, modelled impacts vs actual monitored concentration. Evaluation of temporal/seasonal contributions to haze development.

Step 2. Control Strategies: Development, evaluation and implementation

MEMORANDUM

STATE OF ALASKA
Department of Environmental Conservation
Division of Environmental Quality - Air Quality

TO: Mike Conway, Director, SPAR
DATE: April 15, 1992
FILE NO: F80C1G

THRU: Mike Menge, Director, EQ
Jim Hayden, Env. Mgr, SPAR
Leonard Verrelli, Chief, AQ *Robert Verrelli*
TELEPHONE NO: 465-5100

FROM: Gerry Guay, Project Manager *Gerry Guay*
SUBJECT: Transfer of Funds
Government Hill Hydrocarbon
Monitoring

The Division of Environmental Quality requests \$400,000 from the Oil and Hazardous Substance Release Response Fund (OHSRRF) to fund expenditures for the period of July 1, 1992, through June 30, 1993, to procure air monitoring instrumentation to evaluate ambient air quality in and around the Government Hill community of Anchorage. An additional \$279,100 is requested for FY93, July 1, 1992, through June 30, 1993, to operate Government Hill monitoring sites and conduct associated grab-sample monitoring.

The purpose of this project is to quantify ambient air quality impacts from hydrocarbon emissions at the Port of Anchorage. Department air quality modelling analyses have predicted extremely high, ground-level concentrations of hydrocarbon emissions in the Government Hill residential community as the result of fugitive emission from the Port of Anchorage tank farm. Benzene, one of the pollutants of concern, is a known carcinogen and was modelled at concentrations which correspond to a Unit Risk Factor of 1 in 10,000. Numerous citizen and legislative complaints received by the Department and Municipality of Anchorage over the past three years have heightened the State's concern for local air quality conditions.

To address potential health risk concerns, the Department submitted an FY 91 budget request for funding to conduct air quality monitoring. The Air Quality Program requested \$360.0K to procure, install, operate and maintain one Volatile Organic Carbon (VOC) monitoring site for one year. The budget request did not survive the Governors's final budget cuts, but the Commissioner's Office requested that the Air Program attempt to conduct an evaluation of Government Hill VOC levels through some alternative funding source.

Staff explored the use of EPA special project monies, re-programmed project funds and re-directed funds with little success. Completion of the 1991 summer monitoring season in Nikiski, without the availability of OHSRRF(470 Fund) monies, consumed all

discretionary FY92 Ambient Analysis Group program funds, leaving no money to initiate a new monitoring project. After exhaustive negotiations with EPA, the State obtained authorization to re-direct funding from another air toxics special project for use in the Government Hill study. Simultaneously, the air staff initiated a VOC grab-sample monitoring study to evaluate ambient concentrations in the residential community. The initial monitoring was intended to be the rapid response phase of a more in-depth monitoring program to be conducted during the winter of 1991-92. In addition, the Air Toxics Project issued an RFP to sample the vapor phase concentration in the fuel storage tanks to develop better emission factors for use in computer modelling.

The grab-sample monitoring study was conducted from late September through mid-October. Most ambient concentrations ranged from 3-20 ug/m³. This range of concentration was identified by the State's contractor, the Oregon Graduate Institute, as being similar to the results of other VOC monitoring studies conducted in rural/urban regions of the nation. To better understand the magnitude of short term public exposure during fuel storage tank loading, staff collected samples adjacent to the military's Defense Fuels storage facility during one of their tank loading operations. The sample concentrations showed very high, short-term exposure levels - 2505 ug/m³. A literature review identified this level of exposure as similar to concentrations experienced during refueling of automobiles. It must be noted that there are no "instantaneous" standards for measuring VOC concentrations.

Unknown to the Air Quality Program staff, Representative Kay Brown had been successful in identifying an Oil and Hazardous Substance Release Response Fund (OHSRRF) line item of \$400K specifically established for the Department to evaluate VOC impacts in Government Hill. Although the Spill Prevention and Response Division was aware of the funding earlier in the fiscal year, the Air Program was not aware of the money's existence until early October.

The Commissioner's Office requested that the Attorney General's Office review the intent of the 470 Fund to see if Fund monies could be used for air monitoring. In an October 9, 1991, response, Breck Tostevine, Assistant Attorney General, stated that air releases do fall within the coverage of the Fund. Based on this legal interpretation, the Air Program requested access to the 470 Fund to conduct further monitoring on Government Hill.

The Division of Environmental Quality verbally requested use of the Government Hill response funds in mid-October, but was told that all funding should be considered a short-term loan and must be recoverable. The air quality staff contacted tank farm owners to see what funding was available and how much support could be mustered to pay for a monitoring program. The response was lukewarm. Industry had several concerns with the State's modelling results. They also did not necessarily feel that they were causing a threat to the residents of the area. If monitoring was going to be costly, they felt they would be better off to retrofit their tanks. Staff concluded that cost recovery would be difficult.

A decision briefing concerning tank farm emissions at Government Hill and a proposal to begin developing regulations to control tank farm emission at the Port of Anchorage was presented to the Commissioner on January 17, 1992. The Commissioner approved a plan to conduct a second grab-sample study which would include selected monitoring locations throughout Anchorage. Because the source of funding for this project was unclear, the monitoring start date has been delayed. During this period the Air Staff has been working closely with the laboratory staff to enhance DEC's capability for performing VOC analytical work. No new monitoring has been conducted to date.

On March 31, 1992, the Commissioner made the decision to move forward with regulations based on risk analysis alone. This decision redirected the Air Program's thoughts on monitoring and led to a revised monitoring strategy. The Department's Ambient Analysis Group is developing a monitoring project plan to evaluate the ambient concentration of Benzene and other toxic hydrocarbon air pollutants in the Municipality of Anchorage. The focus of this monitoring is hydrocarbon emissions from storage tanks, automobiles, gas stations, and home heating.

The initial phase of this monitoring project will establish two full-time monitoring sites at Government Hill. The first site will be installed along Bluff Drive and will include a meteorological tower and instrumentation. The second site will be installed adjacent to tank farm property at the bottom of the hill. These sites are scheduled to operate continuously for one year. A third analyzer, currently being purchased by the Department's laboratory staff, will be temporarily installed in site one to serve as a collocated, precision pair. The analyzer will add credibility to monitored results. The analyzer will eventually be installed at the Municipality's new oxides of nitrogen monitoring site in downtown Anchorage to evaluate hydrocarbon concentration. The Department is planning to conduct quarterly saturation monitoring studies using SUMMA canister monitors. The study will evaluate Municipality-wide hydrocarbon concentrations to provide the Department with better information on potential health impacts to residents. Collected data will be compared with Government Hill results to identify the quality of air which exists in the upper Cook Inlet Basin.

Monitoring for VOCs requires very specialized instrumentation. The Department is proposing to purchase two Gas Chromatograph Mass Spectrometry (GC-MS) analyzers (\$100K ea.) to serve as the foundation of our VOC monitoring program. Each analyzer will require a front end sampling train (\$24K ea). The Department is in the process of researching the possibility of complementing the GC-MS analyzers with a Fourier Transform Infrared (FTIR) Multiple-gas Remote Sensor which uses Differential Absorption Lidar technology to conduct VOC measurements over a larger cross-sectional area. The Department will purchase additional "SUMMA" canister samplers for use in saturation sampling studies.

Project manager Gerald Guay will be responsible for budget management, obligation/expenditure approval, fund report documentation, and justification.

The Government Hill project budget breakout for FY92 and FY93 is presented in the following table. The funds requested for this project would be expended in line items 200, 300, 400 and 500. Contractual services, travel and capital expenditures are expected to take the largest allocation. Due to the number of highly technical instruments located at the site, instrument maintenance and repair tasks are frequent and necessary for the continued successful operation of the monitoring site. The contractual expenditures listed here are for a site contractor, utilities and shipping of consumable items and instruments. Commodity purchases are to provide consumable supplies such as calibration gases, recorder paper, etc., in addition to any needed instrument parts. Staff will conduct site selection, installation, training for a site operation, and instrument repair, in addition to managing contractual services. Federal funds (not reflected in the table) will be used to conduct oversight audits of the instrument performance.

PROJECTED EXPENDITURES SFY 92/93

	FY92	FY93
Personnel (100)	0.0	
Travel (200)	8.0	20.6
Contractual (300)	12.0*	160.2**
Monitoring		
Grab Sample		
Commodities (400)	0.0	52.1
Equipment (500)	<u>380.0</u>	<u>46.2</u>
	\$400.0K	\$279.1
TOTAL		

* FY92 Monitoring (\$0.0), Grab-Sample (\$12.0)

** FY93 Monitoring (\$140.0), Grab-Sample (\$20.2)

The budget request of \$400,000 will allow the Department to purchase monitoring instrumentation for evaluating the concentration of hydrocarbon emissions in Statewide ambient air. The immediate use of this instrumentation is to conduct air quality analyses in Government Hill in FY93. The \$279,100 requested FY93 funding will be used to install and operate two monitoring sites plus conduct at least one saturation study.

Approved

Approved Budget Amount

Date

Disapproved

Date

GAG/jmb
Attachment

cc: Barbara Frank, Admin. Officer, SPAR

FISCAL NOTE

No. 1
 Bill Version: CSHB 377 (Res)
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Alaska Air Permit Statutes
 Sponsor: Representative Tom Moyer
 Requestor: Resources Committee

Department Affected: Environmental Conservation
 BRU: Division of Environmental Quality
 Component: Air Quality Management

COMPONENT SERIAL NO. 114 218

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	728.7	180.0	603.3	315.9	243.3	260.2
TRAVEL	180.2	0.0	106.3	48.7	151.5	9.5
CONTRACTUAL	48.2	(60.0)	(393.1)	20.0	270.7	0.0
SUPPLIES	56.0	0.0	35.7	16.1	145.7	8.8
EQUIPMENT	207.0	(120.0)	0.0	(34.2)	30.0	60.0
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1220.1	0.0	352.2	366.5	841.2	338.5

CAPITAL						
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REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5
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FUNDING: (Thousands of Dollars) (Incremental Increases)

GENERAL FUND	0 (Note3)	0.0	0.0	0.0	(38.3)	(168.0)
FEDERAL FUNDS	(100.0)	0.0	(542.1)	0.0	0.0	0.0
OTHER	1,320.1	0.0	894.3	366.5	879.5	506.5
TOTAL	1220.1	0.0	352.2	366.5	841.2	338.5

POSITIONS:

FULL-TIME	18.0	0.0	6.0	0.0	0.0	0.0
PART-TIME	0.5	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

- Note 1. FY93 General Fund program receipts are contained in the Governor's FY93 Operating Budget.
 Note 2. Revenue Fund Source consists of program receipts deposited in the General Fund. Following passage of this bill, program receipts are to be deposited in the Clean Air Protection Fund.
 Note 3. No additional general funds will be required for this program over FY92 levels.

Prepared by: Leonard D. Verrelli
 Division: Environmental Quality

Phone: 465-5100
 Date: 20-Feb-92

Approved by Commissioner: [Signature] for John S. ...
 Agency: Department of Environmental Conservation Date: 2/27/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS4B317(Res)
2-24-92

	FY93	FY94	FY95	FY96	FY97	FY98
Full-time positions added	18	0	6	0	0	0
Part-time positions added	.5	0	0	0	0	0
Incremental costs						
Line Item	FY93	FY94	FY95	FY96	FY97	FY98
71000 Personal	728.7	180.0	603.3	315.9	243.3	260.2
72000 Travel	180.2	0.0	106.3	48.7	151.5	9.5
73000 Contract	48.2	(60.0)	(393.1)	20.0	270.7	0
74000 Supplies	56.0	0.0	35.7	16.1	145.7	8.8
75690 Equipment	207.0	(120.0)	0.0	(34.2)	30.0	60.0
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Cost Projection	1220.1	0.0	352.2	366.5	841.2	338.5

INCREMENTAL REVENUE PROJECTIONS

Projected revenues for the FY93 and FY94 years are directly derived from the budgets prepared, and interim program receipts projections. Revenue projections for operating permit program for FY95 and later are comprised of two components: permit fees assessed to existing facilities and permit fees assessed to new facilities. The fee structure used to estimate revenue has three components: a base cost of \$1500 for a permit to a "small" affected facility, \$25 per ton of regulated air contaminant per year emitted by existing facilities (larger than 100 tons per year), and a fee "cap" at 4000 tons per year. From emission estimates of currently permitted facilities, the fee schedule was applied and "phased in" over three years. The estimate for new facilities revenues was derived from an assumption of composition of these sources, 80 percent of which emit less than 100 tons per year, the remainder emitting less than 500 tons per year. These facilities will be permitted starting in the third year of the program. Note that program receipts directly offset any expenditure that would otherwise be required from general funds.

Projected Incremental Revenues

Year	FY93	FY94	FY95	FY96	FY97	FY98
General Fund Match	0.0	0	0	0	(38.3)	(168.0)
CAA Supplemental funds <100.0>		0	<542.1>	0	0	0
Interim fees, current	1320.1	0	(617.3)	(330)	(424.1)	0
Fees, current facilities	0	0	1511.6	696.5	864.4	61.9
Fees, new facilities	0	0	0	0	439.2	444.6
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Funds	1220.1	0	352.2	366.5	841.2	338.5

Adopted

7-LS1624Z ✓
Lauterbach
5/6/92

CS FOR HOUSE BILL NO. 377 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to procurement of alternative-fueled vehicles and transition plans to
2 reduce emissions from vehicles; establishing a small business assistance program and a
3 compliance advisory panel in the Department of Environmental Conservation in a manner
4 that will enable the state to maintain primary management of air quality in the state by
5 meeting the requirements of federal law that the state have an assistance program and
6 advisory panel; requiring a report to the legislature concerning an air quality control
7 permit fee program; stating that the state's policy is to comply with the Clean Air Act;
8 relating to fees imposed for air pollution control permits; relating to the duration of air
9 pollution control permits, reopening of air pollution control permits, and termination,
10 modification, amendment, revocation, and reissuance of air pollution control permits;
11 allowing air pollution control permits for temporary operations; providing that a timely and
12 complete application for a permit is sufficient to bring an owner and operator into

1 compliance with state laws requiring an air pollution control permit unless delay was due
2 to the owner's and operator's fault; relating to records held by the Department of
3 Environmental Conservation; relating to motor vehicle pollution; relating to local air quality
4 control programs; clarifying that owners and operators are both subject to air pollution
5 control requirements; allowing the Department of Environmental Conservation to impose
6 administrative penalties in addition to allowing the department to seek criminal and civil
7 penalties and other remedies for violation of air pollution control laws; establishing a clean
8 air protection fund; providing for the deposit into the general fund of certain money
9 related to air pollution control; clarifying that air pollution control laws do not give the
10 Department of Environmental Conservation jurisdiction over certain areas; relating to studies
11 of haze and hydrocarbon pollution; relating to civil, administrative, and criminal penalties,
12 damages, and other remedies for air quality control violations; clarifying the definition of
13 'hazardous substance' to include releases and threatened releases to the atmosphere;
14 amending the lien provisions relating to the oil and hazardous substance release response
15 fund; providing that this Act does not authorize the Department of Environmental
16 Conservation to adopt regulations that establish ambient air quality standards, emission
17 standards, or classifications of facilities or sources according to characteristics relating to
18 air quality;^{repealing a provision relating to variances} and providing for an effective date."

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

20 * Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance
21 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
22 in state law are necessary to allow the state to continue to have primary management of air quality in
23 the state and to retain federal approval of the state's air quality control program in order to ensure the
24 continued receipt of federal highway and air pollution control money. The federal Environmental
25 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold

1 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

2 (b) The legislature also recognizes that the replacement of automobiles, light trucks, and vans
3 in the state fleet with vehicles fueled by energy sources other than gasoline will contribute to the
4 improvement of air quality in the communities in which they are used. Therefore, another purpose of
5 this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate
6 matter to procure alternative-fueled vehicles.

7 * Sec. 2. AS 14.09 is amended by adding a new section to read:

8 Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. (a) The department shall develop
9 plans to encourage contractors that provide school bus transportation to

10 (1) procure alternative-fueled buses; and

11 (2) develop transition plans to reduce the emission of oxides of nitrogen, volatile
12 organic compounds, carbon monoxide, and particulates from existing vehicles through vehicle
13 modification or use of oxygenated fuels.

14 (b) In this section, "alternative-fueled" means capable of operating on a fuel such as
15 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or
16 electricity that, compared to operation on regular fuel, results in lower emissions of oxides of
17 nitrogen, volatile organic compounds, carbon monoxide, or particulates.

18 * Sec. 3. AS 36.30 is amended by adding a new section to article 1 to read:

19 Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the
20 Department of Transportation and Public Facilities procures an automobile, light truck, or van,
21 other than for the Department of Public Safety, for addition to the state fleet that will be used
22 at a location in a carbon monoxide nonattainment area in which the Department of Transportation
23 and Public Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall
24 procure only an alternative fueled vehicle if

25 (1) an alternative fueled vehicle is available from an original equipment
26 manufacturing company; and

27 (2) at least one compatible alternative fuel fueling facility is located in the
28 nonattainment area.

29 (b) In making a procurement under this section, the procurement officer may give a
30 preference to an automobile, light truck, or van operated on compressed natural gas.

31 (c) In this section, "alternative-fueled" means capable of operating on a fuel such as

1 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or
2 electricity that, compared to operation on regular fuel, results in lower emissions of oxides of
3 nitrogen, volatile organic compounds, carbon monoxide, or particulates.

4 * Sec. 4. AS 46.03.140 is amended by adding a new subsection to read:

5 (b) It is the policy of the state to have a program to prevent, abate, control, and identify
6 air pollution that complies with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal
7 regulations adopted under those laws.

8 * Sec. 5. AS 46.03 is amended by adding new sections to read:

9 Sec. 46.03.161. PAYMENT OF FEES. The owner and operator of a facility who is
10 required to apply for a permit under AS 46.03.140 - 46.03.160 shall pay the applicable fees
11 established by the department under AS 44.46.025(a)(2). The owner and operator shall pay the
12 fees to the department or to the public entity designated by the department.

13 Sec. 46.03.162. PENALTY AND INTEREST FOR NONPAYMENT. (a) The
14 department shall adopt regulations that provide for the assessment of a penalty of five percent
15 per month of delinquency up to a maximum of 25 percent of the fee established under
16 AS 44.46.025(a)(2) against the owner and operator of a facility if the owner and operator fail to
17 timely pay a fee lawfully imposed under AS 44.46.025(a)(2). The department may also assess
18 interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under
19 AS 46.03.161 and is unpaid.

20 (b) If a permittee has failed to pay a fee required under AS 46.03.161 or a penalty or
21 interest imposed under (a) of this section, the department may, after 30 days' written notice to
22 the permittee

23 (1) terminate the permit for which the fee, penalty, or interest remains unpaid; or

24 (2) refuse to issue or renew permits requested by the permittee or refuse to amend
25 or modify a permit when the amendment or modification is requested by the permittee.

26 Sec. 46.03.163. DURATION OF PERMITS. (a) A permit under AS 46.03.140 -
27 46.03.160 shall be issued for a fixed term established by the department that is no longer than
28 five years and no shorter than three years after the date of issue, except as provided for
29 temporary permits under AS 46.03.167.

30 (b) If a timely and complete application for renewal of a permit is submitted to the
31 department, the existing permit issued under AS 46.03.160 does not expire until the renewal

1 permit has been issued or denied.

2 Sec. 46.03.164. REOPENING OF PERMITS. (a) A permit issued under AS 46.03.140 -
3 46.03.160 is subject to review and reopening by the department based on the determination of
4 the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q
5 (Clean Air Act), as amended.

6 (b) A permit issued under AS 46.03.140 - 46.03.160 is subject to review and reopening
7 by the department if the permit is issued to a major facility and is valid for a term of three or
8 more years. The department shall reopen a permit described in this subsection to incorporate
9 changes in law, or to impose equivalent emission limitations, that became applicable after the
10 permit was issued. The department shall make incorporations allowed under this subsection as
11 soon as practicable, but, regarding a change in law, no later than 18 months after the change in
12 law took effect. The department may not reopen a permit under this subsection if the change in
13 law is not effective until after the date that the permit expires. Reopening of a permit under this
14 subsection shall be treated as a permit renewal by the department if the procedural requirements
15 for permit renewal have been met.

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

19 Sec. 46.03.165. TERMINATION, MODIFICATION, AMENDMENT, OR
20 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the
21 permittee, the department may

22 (1) terminate, modify, amend, or revoke and reissue a permit if the department
23 finds that

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

27 (B) the permittee has violated AS 46.03.140 - 46.03.249, a regulation, a
28 judicial or administrative order, or a material term or condition of a permit, approval, or
29 acceptance issued under AS 46.03.140 - 46.03.249; or

30 (C) there has been a material change in the quantity or type of air
31 contaminant emitted from the facility;

1 (2) modify, amend, or revoke and reissue a permit if the department finds that the
2 permit contains a material mistake.

3 Sec. 46.03.166. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION
4 AND REISSUANCE OF PERMITS. The department shall take measures practicable and
5 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal
6 administrator of permits issued by the department under AS 46.03.140 - 46.03.160.

7 Sec. 46.03.167. TEMPORARY OPERATIONS. The department may issue a single
8 permit authorizing a facility to operate at specific multiple locations in the state for temporary
9 periods of time not to exceed one year at any one location. A permit described in this section
10 is valid only for the specific locations identified in the application and authorized by the
11 department. The department may not issue a permit under this section unless the permit contains
12 conditions that will ensure compliance with AS 46.03.140 - 46.03.249 at each authorized location,
13 including compliance with ambient air quality standards and applicable increment or visibility
14 requirements adopted under AS 46.03.140 - 46.03.150. A permit under this section must require
15 the owner and operator to notify the department at least 30 days before a change in location of
16 a facility permitted under this section.

17 Sec. 46.03.168. RELATION TO OTHER LAWS. Holding and complying with a permit
18 issued under AS 46.03.140 - 46.03.160 does not alter or affect

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

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

23 Sec. 46.03.169. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
24 and operator have submitted a timely and complete application for a permit or a permit renewal,
25 as applicable, but final action has not been taken on the application, the owner's and operator's
26 failure to have a permit is not a violation of AS 46.03.140 - 46.03.160 unless the delay in final
27 action was due to the failure of the owner and operator to timely submit information required or
28 requested to process the application.

29 * Sec. 6. AS 46.03.180 is repealed and reenacted to read:

30 Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. (a) Records and information,
31 other than emission data, in the department's possession and control are considered confidential

1 records if

2 (1) the owner and operator have certified under oath to the department or
3 authorized local program that public disclosure would tend to affect adversely the owner's and
4 operator's competitive position; and

5 (2) the records are entitled to protection as trade secrets.

6 (b) Except as provided in (a) of this section, permits, permit applications, emissions and
7 monitoring reports, compliance reports, certifications, and monitoring, reporting, and quality
8 assurance plans in the department's possession and control are available to the public for
9 inspection and copying.

10 * Sec. 7. AS 46.03 is amended by adding new sections to read:

11 Sec. 46.03.181. SMALL BUSINESS ASSISTANCE PROGRAM. A small business
12 assistance program is established in the department.

13 Sec. 46.03.182. SCOPE OF PROGRAM. (a) The small business assistance program
14 shall

15 (1) collect, coordinate, and disseminate information on methods and technologies
16 that will assist small business facilities to comply with AS 46.03.140 - 46.03.249 and regulations
17 adopted under AS 46.03.140 - 46.03.249;

18 (2) encourage lawful cooperation among small business facilities and other
19 persons to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations adopted under
20 AS 46.03.140 - 46.03.249;

21 (3) provide small business facilities with information on pollution prevention and
22 accidental release detection and prevention, including information on alternative technologies,
23 process changes, products, and methods of operation that help reduce air pollution;

24 (4) assist small business facilities in determining applicable requirements and in
25 receiving permits under AS 46.03.140 - 46.03.160 in a timely and efficient manner;

26 (5) ensure that small business facilities receive notice of their rights under
27 AS 46.03.140 - 46.03.249 in a manner and form that ensures adequate time for the facilities to
28 evaluate compliance methods and to evaluate applicable proposed or final regulations adopted
29 or standards issued under AS 46.03.140 - 46.03.249 or 42 U.S.C. 7401 - 7671q (Clean Air Act),
30 as amended;

31 (6) inform small business facilities of their obligations under AS 46.03.140 -

1 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

2 (7) provide small business facility operators with a list of auditors available for
3 auditing the operation of the facility or, if possible, and at the request of a facility owner or
4 operator, audit a facility to evaluate compliance with AS 46.03.140 - 46.03.249 and regulations
5 adopted under AS 46.03.140 - 46.03.249; an audit under this paragraph may not be regarded as
6 an inspection or investigation;

7 (8) assist in developing and implementing modified work practices or technical
8 changes to processes to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations
9 adopted under AS 46.03.140 - 46.03.249;

10 (9) coordinate with the federal small business stationary source technical and
11 environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air
12 Act, sec. 507(b)), as amended;

13 (10) collect and make available guidance prepared by the federal small business
14 stationary source technical and environmental compliance assistance program;

15 (11) at the request of a facility owner or operator, refer questions concerning
16 compliance with AS 46.03.140 - 46.03.249, or with a regulation adopted or permit issued under
17 AS 46.03.140 - 46.03.249, to air quality management personnel of the department; and

18 (12) designate a person to be an advocate for small businesses while serving as
19 a liaison between small businesses and air quality management personnel of the department.

20 (b) If the legislature appropriates money from the general fund for purposes of the small
21 business assistance program, the department shall provide the services listed in (a) of this section
22 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631, as
23 amended, but that otherwise meets the definition of a small business facility under AS 46.03.249
24 and is subject to the requirements of AS 46.03.140 - 46.03.249.

25 **Sec. 46.03.183. POWER TO LIMIT PROGRAM.** After consultation with the federal
26 administrator and the administrator of the United States Small Business Administration, and after
27 providing notice and opportunity for public hearing, the department may exclude from the scope
28 of the small business assistance program established in AS 46.03.182 a category or subcategory
29 of small business facilities that the department finds to have sufficient technical and financial
30 capabilities to meet the requirements of state and federal law without the assistance provided
31 under AS 46.03.181 - 46.03.184.

1 Sec. 46.03.184. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel
2 is established in the department. The panel members shall serve without compensation, but are
3 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

4 (b) The panel consists of

5 (1) three members who are not owners or representatives of owners of small
6 business stationary sources, two of whom are selected by the governor to represent the general
7 public and one of whom is selected by the governor to represent either environmental or health
8 interests;

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

10 (3) four members, who are owners or representatives of owners of small business
11 stationary sources, selected as follows:

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

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

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

24 (c) The compliance advisory panel shall

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

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

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

31 (4) make periodic reports to the administrator concerning the compliance of the

1 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction
2 Act), as amended, 5 U.S.C. 601 (Regulatory Flexibility Act), as amended, and 5 U.S.C. 504
3 (Equal Access to Justice Act), as amended;

4 (5) review information designed to assist small business facilities in complying
5 with AS 46.03.140 - 46.03.249 to ensure that the information is understandable by laypersons;
6 and

7 (6) have the small business advocate designated under AS 46.03.182(a)(12) assist
8 the panel in the development and dissemination of panel reports and advisory opinions.

9 Sec. 46.03.185. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
10 specifically indicated otherwise, the responsibilities of AS 46.03.140 - 46.03.249 and of
11 regulations adopted under AS 46.03.140 - 46.03.249 are imposed on the owner and the operator
12 of a facility subject to AS 46.03.140 - 46.03.249. If the owner and operator of the facility are
13 separate persons, only one person is required to discharge a specific responsibility. Both persons
14 are liable for noncompliance with the requirements of AS 46.03.140 - 46.03.249 or of regulations
15 adopted under AS 46.03.140 - 46.03.249.

16 Sec. 46.03.186. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The
17 department may assess an administrative penalty against a person who violates, or causes, or
18 allows to be violated a provision of AS 46.03.140 - 46.03.249, a regulation adopted under
19 AS 46.03.140 - 46.03.249, or a term or condition of an order, permit, or approval of the
20 department under AS 46.03.140 - 46.03.249.

21 (b) An administrative penalty assessed under this section may not exceed \$10,000 a day
22 for each offense. Each provision, regulation, term, or condition violated is a separate and distinct
23 offense. If a violation of a provision, regulation, term, or condition continues from day to day,
24 each day is a separate offense. In determining the amount of a penalty assessed under this
25 section, the department shall consider the effect of the offense on the public health or the
26 environment, prior history of compliance or noncompliance with AS 46.03.140 - 46.03.249, the
27 need to deter future offenses, the economic benefit of noncompliance realized by the offender,
28 and other factors that the department considers relevant. The department shall, by regulation,
29 prepare, publish, and make available to interested persons, a penalty policy describing the factors
30 to be considered in setting penalties, the methods for weighing the factors, and other aspects of
31 penalty computation.

1 (c) If a penalty is assessed under this section, the department shall provide the assessment
2 notice to the person affected, by personal service or by certified mail, return receipt requested.
3 An administrative penalty assessed under this section becomes a final agency action 30 days after
4 service or mailing of the assessment notice unless an administrative hearing is requested by the
5 person against whom the penalty is assessed. Failure to request an administrative hearing within
6 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
7 right to an administrative hearing. The department may extend the time periods specified in this
8 subsection for good cause.

9 (d) If an administrative hearing is requested, the department shall grant a hearing and
10 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,
11 the department may modify, rescind, or affirm the administrative penalty. The modification,
12 rescission, or affirmation of a penalty under this subsection is a final agency action.

13 (e) A person against whom an administrative penalty is assessed may obtain judicial
14 review of the administrative penalty as provided in Alaska Rules of Appellate Procedure. The
15 court may set aside, or adjust the amount of, the administrative penalty only if the administrative
16 record, taken as a whole, does not contain a reasonable basis to support the finding of offense
17 or the amount of penalty assessed by the department.

18 (f) Action under this section by the department does not limit or otherwise affect the
19 authority of the department to enforce AS 46.03.140 - 46.03.249, or to recover damages,
20 restoration expenses, investigation costs, court costs, attorney fees, and other necessary expenses.
21 The court shall reduce a judicial penalty subsequently imposed under AS 46.03.760 by any
22 amount ordered to be paid under this section by the same person for the same offense.

23 (g) The assessment of an administrative penalty under this section does not affect the
24 obligation of a person to comply with AS 46.03.140 - 46.03.249 or with a regulation, order,
25 permit, or approval of the department under AS 46.03.140 - 46.03.249.

26 (h) If a person fails or refuses to pay an administrative penalty assessed under this
27 section after the penalty has become a final agency action, the department may request the
28 attorney general to commence a judicial action or take other appropriate steps to bring an action
29 to collect the penalty. If the department prevails in court, the court shall order the person to pay

30 (1) the amount of the administrative penalty assessed;

31 (2) interest at the statutory rate under AS 45.45.010(a) from the date the penalty

1 became a final agency action; and

2 (3) reasonable attorney fees and costs incurred by the department in the collection
3 action before the court.

4 Sec. 46.03.187. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund
5 is established. The fund consists of

6 (1) fees, penalties, and interest collected by the department under AS 46.03.161
7 and 46.03.162, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec.
8 502(b)(3)(C)(iii)), as amended, for state participation in the federal emission control permit
9 program; and

10 (2) appropriations to the fund.

11 (b) The money deposited into the clean air protection fund under (a)(1) of this section
12 may be used solely to cover the reasonable direct and indirect costs, including court costs and
13 attorney fees, required to support the permit program under AS 46.03.140 - 46.03.160, and those
14 activities of the small business assistance program that are directed at facilities subject to
15 AS 46.03.140 - 46.03.249.

16 Sec. 46.03.188. SPECIAL ACCOUNT. An administrative penalty, and any interest,
17 attorney fees, and costs collected under AS 46.03.186, and any civil penalties, assessments, or
18 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to
19 AS 46.03.140 - 46.03.249, shall be deposited in the general fund.

20 * Sec. 8. AS 46.03.190 is repealed and reenacted to read:

21 Sec. 46.03.190. MOTOR VEHICLE POLLUTION. (a) When the department determines
22 that the state of knowledge and technology may allow or make appropriate the control of
23 emissions from motor vehicles to further air quality control, the department may provide, by
24 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
25 requirements for the installation and use of equipment designed to reduce or eliminate emissions
26 and for the proper maintenance of this equipment.

27 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
28 element of the air pollution control system or mechanism of a motor vehicle if the department
29 adopts regulations requiring that an air pollution control system or mechanism be maintained in
30 or on the motor vehicle. Failure to maintain a required system or mechanism in operating
31 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle

1 whose registration has been suspended or canceled under this subsection is not eligible for
2 subsequent registration until the owner or operator obtains certification from the department,
3 based on a demonstration that the air pollution control system or mechanism is restored to
4 operating condition.

5 (c) The department shall consult with the Department of Public Safety regarding
6 implementation of the motor vehicle pollution control program. The Department of Public Safety
7 shall cooperate with the department in implementing the program.

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

16 * Sec. 9. AS 46.03.210 is repealed and reenacted to read:

17 Sec. 46.03.210. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the
18 approval of the department, a municipality with a population of 1,000 or more may establish and
19 administer within its jurisdiction a local air quality control program that is consistent with all or
20 part of the department's air quality program as established under AS 46.03.140 - 46.03.249. A
21 first or second class borough may administer an air quality control program approved by the
22 department under this subsection on an areawide basis and is not subject to the restrictions for
23 acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A third class
24 borough may administer an air quality control program approved by the department under this
25 subsection only in a service area formed under AS 29.35.490(b) or (c).

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

29 (c) The department may require expansion or contraction of the jurisdictional boundaries
30 of a local air quality control program approved under (a) or (b) of this section to include an
31 adjacent municipality or contiguous area in the unorganized borough if the department determines

1 that the expansion or contraction is necessary for the effectiveness and efficiency of the
2 administration of a local program based upon an evaluation of

- 3 (1) the location, character, or extent of particular concentrations of population;
4 (2) local air contaminant sources; or
5 (3) relevant geographic, topographic, or meteorological factors.

6 (d) A municipality or a local air quality district seeking department approval for a local
7 air quality control program shall enter into a cooperative agreement with the department. The
8 cooperative agreement must include provisions specifying

- 9 (1) the respective duties and authority of the department and the municipality or
10 local air quality district in the administration of the local air quality control program;
11 (2) the authority of the municipality or the local air quality district to employ staff
12 to administer the local air quality control program;
13 (3) duties of staff employed under (2) of this subsection;
14 (4) respective enforcement responsibilities of the department and the municipality
15 or the local air quality district.

16 (e) A local air quality control program shall provide for the exemption of a locally
17 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.03.190
18 if the motor vehicle is not used within the program's jurisdiction.

19 (f) A municipality or a local air quality district administering a program under this
20 section shall administer its local air quality control program according to this chapter, regulations
21 adopted under AS 46.03.140 - 46.03.249, and its cooperative agreement under (d) of this section,
22 except that a municipality's or local air quality district's program may be more stringent than the
23 program administered by the department if the municipality or district has additional legal
24 authority authorizing additional requirements.

25 (g) A decision, order, permit, or other determination made or issued under a local air
26 quality control program is considered to be a decision, order, permit, or other determination of
27 the department.

28 * Sec. 10. AS 46.03.220 is repealed and reenacted to read:

29 Sec. 46.03.220. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
30 local air quality district has an approved air quality control program under AS 46.03.210 and the
31 department determines that the program is being implemented in a manner that fails to prevent

1 or control air pollution in the jurisdiction to which the program applies, the department shall give
2 written notice, setting out its determination, to the municipality or local air quality district.
3 Within 45 days after giving written notice, the department shall conduct a public hearing on the
4 matter.

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

12 (c) If the municipality or local air quality district fails to take corrective action within
13 the time period set by the department under (b) of this section, the department shall terminate
14 the cooperative agreement and resume management of the program in the affected jurisdiction.
15 If the municipality or the local air quality district partially remedies, to the department's
16 satisfaction, the deficiencies found in the determination, the department shall amend the
17 cooperative agreement to reflect a modified allocation of responsibilities between the department
18 and municipality or the local air quality district.

19 (d) A municipality or local air quality district that has had its cooperative agreement
20 terminated may resume, with the department's approval, a local air quality control program if the
21 municipality or district agrees to comply with AS 46.03.210 and with any corrective action plan
22 required by the department.

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

30 * Sec. 11. AS 46.03.230 is repealed and reenacted to read:

31 Sec. 46.03.230. STATE AND FEDERAL AID. A municipality or local air quality

1 district with a local air quality control program may apply for, receive, administer, and spend
 2 state or federal aid for the control of air emissions or the development and administration of the
 3 program if an application is first submitted to and approved by the department. Subject to
 4 available money appropriated by the legislature, the department shall approve an application if
 5 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
 6 the requirements of AS 46.03.140 - 46.03.249.

7 * Sec. 12. AS 46.03.245 is repealed and reenacted to read:

8 Sec. 46.03.245. LIMITATIONS. AS 46.03.140 - 46.03.249 do not

9 (1) grant jurisdiction or authority with respect to air contamination existing solely
 10 within a residential dwelling or a commercial or industrial plant, workplace, or shop;

11 (2) affect the relations between employers and employees with respect to or
 12 arising out of a condition of air contamination or air pollution; or

13 (3) supersede or limit the applicability of a law or an ordinance relating to
 14 sanitation, industrial health, or safety.

15 * Sec. 13. AS 46.03 is amended by adding a new section to article 4 to read:

16 Sec. 46.03.249. DEFINITIONS. Notwithstanding AS 46.03.900, in AS 46.03.140 -
 17 46.03.249,

18 (1) "air contaminant" means a regulated air contaminant or a hazardous air
 19 contaminant;

20 (2) "ambient air" means that portion of the atmosphere, external to buildings, to
 21 which the general public has access;

22 (3) "ambient air quality standard" means a standard, other than an emission
 23 limitation or standard, adopted under AS 46.03.140 - 46.03.150 or 42 U.S.C. 7409 (Clean Air
 24 Act, sec. 109), as amended;

25 (4) "certificate of inspection" means a form prepared or approved by the
 26 department, signed by a qualified mechanic who attests that the mechanic has inspected a motor
 27 vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and
 28 bearing the statement above the mechanic's signature that false statements are punishable as a
 29 crime under AS 11.56.210 and AS 46.03.790(a);

30 (5) "commissioner" means the commissioner of environmental conservation;

31 (6) "construct" or "construction" means to fabricate, erect, or install, or to make

1 a physical change, that would result in emissions;

2 (7) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings
3 in a facility from which an air contaminant could be emitted;

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

5 (9) "emission" means a release of one or more air contaminants to the atmosphere;

6 (10) "equivalent emission limitation" means

7 (A) a limitation for hazardous air contaminants established by the federal
8 administrator or the commissioner on a case-by-case basis that is equivalent to the
9 limitation that would apply to a source or facility if an emission standard had been
10 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)), as
11 amended; or

12 (B) if the criteria of the early reduction program established in 42 U.S.C.
13 7412(i)(5) (Clean Air Act, sec. 112(i)(5)), as amended, are met, a limitation established
14 under that subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5)), as
15 amended;

16 (11) "facility" means one or more structures, buildings, installations, or properties
17 upon which a source or sources are located, that are contiguous or adjacent, and that are owned
18 or operated by the same person or by persons under common control;

19 (12) "federal administrator" means the administrator of the United States
20 Environmental Protection Agency;

21 (13) "fugitive emissions" means emissions of an air contaminant that could not
22 reasonably be emitted from a contaminant outlet;

23 (14) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
24 7412(b) (Clean Air Act, sec. 112(b)), as amended;

25 (15) "local air quality control program" means a program authorized under
26 AS 46.03.210 to implement some or all of the provisions of AS 46.03.140 - 46.03.249;

27 (16) "major facility" means a facility that emits or has the potential to emit at
28 least

29 (A) 100 TPY of a regulated air contaminant;

30 (B) 10 TPY of a hazardous air contaminant; or

31 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;

1 (17) "modification" or "modify" means to make a change or a series of changes
2 in operation, or any physical change or addition to a facility or source that increases the actual
3 emissions of an air contaminant;

4 (18) "operator" means a person or persons who direct, control, or supervise a
5 facility or source that has the potential to emit an air contaminant to the atmosphere;

6 (19) "owner" means a person or persons with a proprietary or possessory interest
7 in a facility or source that has the potential to emit an air contaminant to the atmosphere;

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

11 (21) "reconstruct" means to replace components of a facility with new components
12 to such an extent that the fixed capital cost of the new components exceeds 50 percent of the
13 fixed capital cost that would be required to construct a comparable entirely new facility;

14 (22) "register" or "registration" means vehicle registration under AS 28.10;

15 (23) "regulated air containment" means

16 (A) a material, compound, or element for which a national or state
17 ambient air quality standard has been adopted;

18 (B) oxides of nitrogen;

19 (C) a volatile organic compound; and

20 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
21 7411 - 7412 (Clean Air Act, sec. 111 - 112), as amended;

22 (24) "small business facility" means a facility that

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

24 (B) is a small business concern as defined in 15 U.S.C. 631 (Small
25 Business Act), as amended; and

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

27 (25) "source" means a device, process, activity, or equipment that causes, or could
28 cause, a release of an air contaminant;

29 (26) "TPY" means tons per year.

30 * Sec. 14. AS 29.35 is amended by adding a new section to read:

31 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may

1 establish a local air quality control program as provided in AS 46.03.210 only if the municipality
2 has obtained the consent of its governing body through an ordinance authorizing the participation.

3 * Sec. 15. AS 37.05.146(4) is amended by adding a new subparagraph to read:

4 (P) clean air protection fund (AS 46.03.187).

5 * Sec. 16. AS 46.03.790(a) is amended to read:

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

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

11 (2) fails to provide information or provides false information required by
12 AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under
13 AS 46.03.755, AS 46.04, or AS 46.09; [OR]

14 (3) makes a false statement or representation in an application, label, manifest,
15 record, report, permit, or other document filed, maintained, or used for purposes of compliance
16 with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the
17 department under AS 46.03.250 - 46.03.314;

18 (4) makes a false statement, representation, or certification in an application,
19 notice, record, report, permit, or other document filed, maintained, or used for purposes
20 of compliance with AS 46.03.140 - 46.03.249 or a regulation adopted under AS 46.03.140 -
21 46.03.249; or

22 (5) renders inaccurate a monitoring device or method required to be
23 maintained under AS 46.03.140 - 46.03.249, a regulation adopted under AS 46.03.140 -
24 46.03.249, or a permit issued by the department or a local air quality control program
25 under AS 46.03.140 - 46.03.249.

26 * Sec. 17. AS 46.03.790 is amended by adding a new subsection to read:

27 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to
28 AS 46.03.140 - 46.03.249 and described in (a) of this section, a defendant who is not an
29 organization may be sentenced to pay a fine of not more than \$10,000 for each separate offense.

30 * Sec. 18. AS 46.08.075(a) is amended to read:

31 (a) The state has a lien for expenditures by the state from the oil and hazardous substance

1 release response fund or from any other state fund, for the costs of response, containment,
2 removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,
3 with respect to response costs, the substantial threat of a release of oil or a hazardous substance
4 against all property owned by a person who is determined by the commissioner to be liable for
5 the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal
6 law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the
7 date of the expenditures. The state may file an action in a court of competent jurisdiction in
8 order to foreclose on the lien.

9 * Sec. 19. AS 46.08.900(6) is amended to read:

10 (6) "hazardous substance" means an element or compound that, when it enters into
11 the atmosphere or into or on the surface or subsurface land or water of the state, presents an
12 imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
13 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
14 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
15 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
16 not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons
17 or less;

18 * Sec. 20. AS 46.09.900(4) is amended to read:

19 (4) "hazardous substance" means (A) an element or compound that, when it enters
20 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents
21 an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,
22 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
23 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
24 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
25 not include uncontaminated crude oil or uncontaminated refined oil;

26 * Sec. 21. AS 46.03.170 and 46.03.225 are repealed.

27 * Sec. 22. HAZE AND HYDROCARBON STUDIES; REPORT. (a) The Department of
28 Environmental Conservation shall contract with qualified experts to perform studies of haze and
29 hydrocarbon air pollution in areas of the state that are carbon monoxide nonattainment areas under
30 federal law. The studies must include

31 (1) monitoring in neighborhoods, industrial centers, and areas of high vehicular use;

1 (2) determination of the major components and sources of haze and hydrocarbon
2 pollution;

3 (3) assessment of the health, safety, and environmental effects of haze and hydrocarbon
4 pollution;

5 (4) identification of program alternatives designed to prevent, abate, and control haze and
6 hydrocarbon pollution.

7 (b) The Department of Environmental Conservation shall, by January 15, 1994, report to the
8 legislature concerning the studies performed under (a) of this section. The report must include the
9 department's legislative recommendations for program authorization to prevent, abate, and control haze
10 and hydrocarbon air pollution, including recommendations concerning whether the state should have
11 ambient or emission standards relating to these types of pollution that are more stringent than applicable
12 federal standards.

13 * Sec. 23. REPORT TO LEGISLATURE. (a) By January 31, 1993, the Department of
14 Environmental Conservation shall submit a report to the legislature that includes

15 (1) the department's recommendations for legislation to establish an air quality control
16 permit and permit fee program that will

17 (A) meet the requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act), as
18 amended; the department shall solicit the comments of appropriate officials in the federal
19 Environmental Protection Agency as to the legal adequacy under federal law of the recommended
20 legislation and submit to the legislature any comments received from the federal officials;

21 (B) equitably allocate direct and indirect costs of the program among owners and
22 operators of facilities that are required to have permits under AS 46.03.140 - 46.03.160; and

23 (C) ensure maximum efficiency and minimize total cost of all program elements
24 that will be financially supported by the permit fees, including staffing for permit applications
25 and meetings;

26 (2) the department's recommendations for a fee schedule for permits issued under
27 AS 46.03.140 - 46.03.160, including

28 (A) a detailed discussion of the facts and rationale for the proposed schedule;

29 (B) a detailed comparison between the cost and staffing data for the department's
30 air quality permit program and other similar regulatory programs administered by the department,
31 based on the number of permits issued or otherwise processed annually; and

1 (C) a comparison of the proposed fee schedule with the fee schedules of at least
2 five other states that have air quality permit programs that are operating in compliance with 42
3 U.S.C. 7401 - 7671q (Clean Air Act), as amended; and

4 (3) a summary of the public comments received under (b) of this section, including
5 alternative fee schedules suggested by the public, and the department's analysis of the public comments.

6 (b) In preparation for submitting the final report required under (a) of this section, the
7 Department of Environmental Conservation shall, by November 15, 1992, publish a draft report for
8 public review and comment. The draft report must contain the information required under (a)(1) and
9 (2) of this section.

10 * Sec. 24. COOPERATION. The Department of Transportation and Public Facilities and the
11 Department of Environmental Conservation shall cooperate with each other as necessary to achieve
12 implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

13 * Sec. 25. LIMITATION. This Act does not authorize the Department of Environmental
14 Conservation to adopt regulations that establish

15 (1) ambient air quality standards;

16 (2) emission standards; or

17 (3) classifications of facilities or sources according to characteristics relating to air
18 quality.

19 * Sec. 26. Sections 2 and 3 of this Act take effect July 1, 1994.

20 * Sec. 27. AS 46.03.161, 46.03.162, 46.03.165, and 46.03.167, enacted by sec. 5 of this Act; and
21 secs. 4 and 6 - 25 of this Act take effect immediately under AS 01.10.070(c).

22 * Sec. 28. AS 46.03.163, 46.03.164, 46.03.166, 46.03.168, and 46.03.169, enacted by sec. 5 of this
23 Act, take effect November 15, 1993.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
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FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 2, 1992

Re: In what ways does HB 377
exceed requirements of the
Federal Clean Air Act?

To Interested Parties:

You may be familiar with the section-by-section analysis of HB 377 which compares every section of that bill to the Federal Clean Air Act (CAA) and existing Alaska law. This correspondence is intended to supplement that analysis. This correspondence has a narrower scope, however.

Members of the regulated community have expressed concern that HB 377 goes far beyond federal requisites. To date, that concern has been levied as a generic condemnation of the bill. This correspondence lists the specific areas in which HB 377 exceeds Federal statutory requirements. It is offered as guidance so that concerns can be focused on specific phrases or provisions of HB 377.

The following provisions of HB 377 have no direct counterpart in Federal law or exceed Federal law in some way:

1. Sec. 14.09.030 Alternative-fueled Buses

This provision instructs the Department of Education to encourage school bus operators to use buses which run on alternative fuels. It has no direct counterpart in the CAA.

2. Sec. 36.30.097 Procurement of certain vehicles

The Department of Transportation and Public Facilities is instructed to procure alternatively fueled vehicles. The Federal law does not do this.

3. Sec. 46.14.010 Emission Control Regulations

While this statutory provision does not, itself, go beyond the CAA, it empowers the Department of Environmental Conservation to "adopt regulations under this chapter as necessary to prevent, abate, control, or identify air pollution" The department could exercise this authority to create standards not imposed by the United States Congress.

This provision closely tracks existing Alaska law. AS 46.03.140 states:

The department may adopt air pollution control regulations that in its judgment are necessary to prevent, abate, or control air pollution.

This has been Alaska law since 1971. It has never been abused. It has been invoked beyond federal minima only on two occasions; when regulating ammonia and hydrogen sulfide. This 21-year track record unequivocally demonstrates that concerns over potential abuse of proposed section 46.14.010 are baseless.

4. Sec. 46.14.215(a)(1) State Air Quality Plan

This section notes that the state's policy is to have an approved state implementation plan (SIP). Such a plan exists and it guides Alaska's air quality program. While federal law does not contain a word-for-word equivalent to this section, it does tell states to adopt such plans. CAA § 110(a)(1).

5. Sec. 46.14.240 General Operating Permits

Federal law allows, but does not require, a state to issue general operating permits. Alaska has exceeded the requirements of the CAA by allowing for such general permits.

6. Sec. 46.14.255 Penalty and Interest for Nonpayment of Fees

If an Alaskan business fails to pay a fee imposed by the State of Alaska, that business may be liable for a penalty up to 25 percent of the fee. In the absence of a state program, a federal program will be implemented. If an Alaskan business fails to pay a fee imposed by the U.S.-EPA, that business shall be liable for a penalty of 50 percent of the fee. In this respect, HB 377 differs from the CAA in that HB 377 is less onerous.

7. Sec. 46.14.410(j) Scope of Small Business Program

The federally established small business program is limited to very small facilities. Alaska believes that some larger facilities may need the assistance this program will provide. Subsection 46.14.410(b) allows DEC to assist larger facilities.

8. Sec. 46.14.500 Local Air Quality Programs

Under Federal law, Alaska does not have to allow local governments control over air programs. However, for the past 19 years Alaska has found it politic to do so. See AS 46.03.210. Fairbanks, Juneau, and Anchorage have taken advantage of this opportunity to locally control localized air pollution problems. Proposed section 46.14.500 would allow Juneau to control wood smoke, allows Fairbanks to control ice fog, and allows Anchorage to control vehicular pollution.

9. Sec. 46.14.820 Responsibilities of Owners and Operators

Both owners and operators are liable for noncompliance with the CAA. Both owners and operators will be liable for non-compliance with HB 377. In neither case are both owners and operators expected to duplicate each other's efforts at compliance. Thus, the intent of HB 377 is coextensive with the intent of the CAA.

However, the Federal law speaks to the "owner or operator." U.S.-EPA, the Department of Justice, and the Federal courts have read this to mean "owner and/or operator." E.g., *United States v. Tzavah Urban Renewal Corp.*, 696 F. Supp. 1013, 1015 and 1021 (D.N.J. 1988) (construing air regulations [40 C.F.R. 61.146] which use the term "owner or operator" as meaning "owner and/or operator.") DEC prefers statutory candor. Thus, it proposed section 46.14.820. That says in statute what the fed's say in court.

10. Sec. 46.14.830 Administrative Penalties for Air Pollution

It is true that Congress did not require states to have the ability to levy administrative penalties. It is also true that Congress did require "adequate enforcement." CAA § 502(b)(3)(C)(i); § 502(b)(5)(E); § 502(i)(1). This term is given meaning by the enforcement powers Congress created in the CAA. Under the Federal CAA, enforcers may:

- a). Bring suit;
- b). Unilaterally issue administrative orders;
- c). Bring citizen suits;
- d). Secure judicial penalties up to \$25,000/day/violation;
- e). Secure various criminal sanctions including fines up to \$1,000,000 and imprisonment up to 5 years;
- f). Unilaterally assess administrative penalties up to \$200,000 and assess any amount of administrative penalty with Department of Justice approval;
- g). Issue "field citations" up to \$5,000/day/violation;
- h). Issue awards up to \$10,000 to informants;
- i). Recoup the economic benefit of noncompliance by imposing "noncompliance" penalties.

The proposal to allow administrative penalties in Alaska cannot credibly be said to go beyond the federal law.

11. Sec. 46.14.850 Special Account

This section allows collected penalties to be deposited in a special account. The CAA has no direct equivalent because it establishes dedicated funds.

12. Sec. 46.14.900 Limitation of Powers

The proposed section--which limits the applicability of HB 377 to avoid duplication of regulation with the Departments of Health and Labor, mirrors existing AS 46.03.245. While the CAA contains no identical section, it achieves the same purpose through a "savings" clause.

13. Sec. 46.08.900(6); 46.09.900(4) Definition of "Hazardous Substance"

As used in federal law, this term already includes air contaminants. See 42 U.S.C. § 9601(14)(E). As used in AS 46.03.826(5) this term already includes air contaminants.

Interested Parties
Re: HB 377

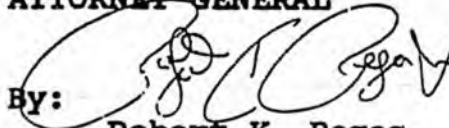
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Thus, although the proposed housekeeping amendment does not arise from a mandate of the CAA, it does arise from previously iterated mandates of the state and federal governments.

To the best of my knowledge, HB 377 does not exceed Federally mandated minima in any other respect.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 

Robert K. Reges
Assistant Attorney General

RKR:tg

Attachment

**20**
1971-1991

Alaska Center for the Environment

519 West 8th Ave. #201 • Anchorage, Alaska 99501 • (907) 274-3621

Alaska Clean Air Act (HB 377) Position Paper

4/29/92

- 1) **DEC and local air quality authorities should maintain their broad authority under current law to set standards and requirements more stringent than the federal government.**

The Kenai Peninsula is home to one of the largest ammonia-urea fertilizer plants in the world. The Unocal-Mitsubishi plant emits approximately 25 tons of ammonia into the air each day. Major ammonia spills occur on a regular basis, usually two or three times per year. Ammonia is an irritant and can be absorbed through the upper respiratory tract, causing burns of the eyes, nose, throat and skin. The trees, shrubs, moss, and lichens across the road from the Unocal plant have died from exposure to ammonia. In response to the air pollution, DEC established an ambient standard for ammonia in 1990. Ammonia is not on EPA's list of hazardous air pollutants, but is a major source of pollution in Alaska. DEC's authority to take action to address Alaska's needs when federal law is silent is vital to protection of public and environmental health.

The hydrocarbon pollution at Government Hill provides a second example of why DEC and local governments need the flexibility to set standards above and beyond federal standards. The Government Hill neighborhood is located immediately adjacent to six fuel tank farms—a situation unique to the rest of the country. In response to strong outcry from the community, DEC is working at a somewhat faster schedule than EPA to develop regulations to control hydrocarbon emissions.

- 2) **Administrative penalties are a needed tool to improve DEC's effectiveness in enforcing pollution laws. The penalty amount (written at \$10,000 per day of violation) should be raised to \$25,000 and should include an inflation adjustment.**

DEC currently only has the power to assess judicial penalties, which require court proceedings and cost the department a great deal of money and staff time. Consequently, only the worst violators are worth DEC's effort and many other polluters slip through the cracks. Administrative penalties tend to be less severe than judicial penalties and are assessed in a manner similar to parking tickets. Twenty-eight other states and the EPA use administrative penalties.

- 3) **DEC should have the ability to set clean air standards and limitations based both on impact to human health and welfare and upon impact to the environment.**

The Department of Environmental Conservation is statutorily mandated to carry

out the state of Alaska's "responsibility as trustee of the environment for the present and future generations" (AK Stat. 46.03.010). This includes guarding the overall integrity of Alaska's environment. The current language in HB 377, stating "standards and limitations may be based on human health and welfare or on available technology..." (Sec. 4) is not strong enough. The language should be changed to clearly state DEC's authority to set standards and limitations to protect human health and the environment.

- 4) **The Alaska Clean Air Act should make a commitment to a strong, comprehensive monitoring program that measures the quality of Alaska's air.**

Alaska currently lacks a comprehensive air quality monitoring program. Monitoring is necessary to develop an early warning system to alert DEC if and when air quality is threatened. As a start towards developing this system, Alaska Center for the Environment supports inclusion of a hydrocarbon monitoring program for Anchorage (measuring hydrocarbon levels at major roadways) and a study of the brown haze in Anchorage.

- 5) **The Alaska Clean Air Act should hold industry accountable for violating permit conditions and air quality standards under any circumstances.**

The timber and mining industries want excess emissions resulting from "startup, shutdown, malfunction, or routine scheduled maintenance" to be exempted from being considered as violations. DEC appears willing to negotiate on this point, assuring the public that the agency would only exempt violations of stack emission standards, not ambient standards. Small comfort this is, given that ambient monitoring of air quality in Alaska is rare and incomplete. EPA allows some exemptions for specific instances that are completely beyond the control of the operator, but the language is much more specific than what is being proposed.

- 6) **The fee schedule (charge per ton of emission) adopted by DEC should remain flexible in order to collect fees that fully cover the direct and indirect costs of implementing the state air program.**

At this early date, it is impossible to accurately estimate the costs of implementing the new permitting program (with its attendant inspections, permit review, monitoring, etc.). It is not logical so early in the program development to put limits on the amount DEC will charge per ton of emission in the statutes when the state does not even know the full costs of the program. Alaska Center for the Environment opposes any fee exemption for polluters emitting amounts above 4000 tons (or any other amount). Exempting large polluters from paying for all of their emissions removes any incentive to reduce emissions.

- 7) **DEC should have the ability to substantially penalize companies that fail to pay their fees.**

DEC hardly has time to enforce state laws against polluters, much less sue them

for failure to pay fees. DEC's time and resources should be spent protecting public health and the environment from pollution, not seeking payment of delinquent funds.

- 8) "Fugitive" emissions are an important contributor to air pollution in Alaska (fuel storage tanks, leaky pipes) and should be directly regulated.

Fugitive emissions accounted for almost 350,000 pounds of emissions in the 1988 Toxic Release Inventory (TRI). The TRI includes emissions only from manufacturing facilities; it does not include emissions from tanker loadings, storage tanks, pipelines, etc., so clearly there are other sources of fugitive emissions. Fugitive emissions should be regulated in permits and state regulations.

- 9) The state's definition of "hazardous substance" should include air pollution releases.

The definition of what DEC considers a hazardous substance should be clear and easily understandable by the regulated community and the public.

- 10) The "compliance advisory panel" should include two additional seats: one for a representative of health concerns, and another for environmental concerns.

- 11) Economic considerations should not unduly influence DEC's calculations of penalties for violation of the law.

Current state statutes direct DEC to calculate civil penalties that compensate the state for damages to the environment, that reflect reasonable costs incurred by the state in investigating and correcting the violation, and that include the economic savings realized by the polluter in not complying with the law. Penalties in state statute are intended to reflect the cost of pollution to the environment; it is a major policy change to measure the cost for that damage inconsistently based on economic considerations. Alaska Center for the Environment supports maintaining the current criteria for penalty calculation.

- 12) Information about pollution law violations obtained in environmental audits should not be used in DEC enforcement actions for six months; following that grace period, if the polluter has not voluntarily taken action to correct the violation, then the polluter should be held accountable for the violation by DEC.

With diminishing state resources, it is clear that DEC will be unable to conduct audits at all regulated facilities. DEC should be able to require audits of facilities with the understanding that if the audit reveals information showing violation of state law, then the polluter will have an opportunity to address the problem for a period of time, but will still be held accountable for failure to act.

- 13) Section 46.14.275, stating that DEC "shall take measures practicable and otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal administrator of permits issued by the department under this chapter", should be deleted

from the HB 377.

DEC should not be in the position of being mandated to defend a permit if the federal administrator has a problem with it. Many times in the past, DEC has asked the Environmental Protection Agency not to take enforcement action against facilities, and there is no reason to think that DEC will not do so again if the agency feels it necessary. But such action should be discretionary, not mandatory.

- 14) Section 46.14.240, regarding general operating permits, should include language specifying in what situations a general operating permit would not be issued.

This section states that DEC will establish a single general operating permit applicable to more than one facility "determined by the department to be similar in source structure," but gives no guidance as to what "similar in source structure" means. Clarification of this section is needed.

- 15) Language should be added to Section 46.14.265 to give DEC the flexibility to reopen a permit if conditions have been violated and/or if the health and welfare of the public or environment are adversely affected.

If DEC finds that environmental damage is occurring because of violations of permit conditions or because of unexpected adverse environmental and health impacts resulting from permit flaws, DEC should be able to have the option of changing the permit. Obtaining a permit to operate a facility which causes pollution is a privilege, not a right.

- 16) Section 46.14.810, regarding confidentiality of records, should include a provision to allow release of records if it is in the public's interest to have access to the information. HB 377 should also include a definition of "trade secrets".

On the rare occasion that company records are important knowledge to the public interest, DEC should have the authority to release them.