

HB

377

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 24, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-10-92

The JUDICIARY Committee considered:

HB 377

HOUSE BILL NO. 377

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

RECOMMENDATIONS:

be replaced with CS HB 377 (JUDICIARY) ☐ the same title
☐ a new 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 _____

☒ 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>X</u> <u>L. Gruesby</u>	<u>/</u>	<u>Terry Masten</u>		<u>/</u>	
<u>H. Ellis</u>	<u>X</u>	<u>Mark Stanley</u>		<u>X</u>	
		<u>Mike Miller</u>		<u>X</u>	
		<u>Kevin P. Parnell</u>		<u>/</u>	
	<u>(</u>	<u>Daric Donley</u>			<u>/</u>

Daric Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1Bill Version: CSHB 377 (Res)(H) Publish Date: 2-24-92STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:

Title: Alaska Air Permit StatutesDepartment Affected: Environmental ConservationBRU: Division of Environmental QualitySponsor: Representative Tom MoyerComponent: Air Quality ManagementRequestor: Resources Committee

COMPONENT SERIAL NO.

1 14 2 18

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						

REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5

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. VerrelliPhone: 465-5100Division: Environmental QualityDate: 20-Feb-92Approved by Commissioner: James A. Adams for John SanfordAgency: Department of Environmental ConservationDate: 2/24/92

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

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#1
CSAB 377 (Res)
2-24-92

FISCAL NOTE COMPUTATIONS

OVERVIEW

The current statewide program consists of 30.5 professionals and three clerical persons. This staff level includes six positions created in mid FY92 with additional grant funds from EPA for Clean Air Act implementation. Because the new permit program requires a major restructuring of the existing permit program, and at least tripling of the number of state air quality permits, the department must obtain significant staff increases to accomplish the mandates of the Act. Failure to develop and implement the new permit program will result in withdrawal of federal highway construction funds. In addition, the Act mandates that permit program direct and indirect costs be completely funded by operating permit fees.

Twelve (12) new technical positions and four (4) administrative support positions would perform the program development work. Development work to be accomplished in FY93 and early FY94 includes a complete rewrite of the regulations in 18 AAC and the associated State Air Quality Control Plan, and working with the regulated community to adopt a program that meets Alaskan as well as federal needs.

Another major aspect of the permit program is small business support function. The Small Business Assistance program will provide technical and compliance assistance on air pollution matters, and establishes a state small business liaison to provide direct oversight. In addition, the Act creates a compliance advisory panel composed of appointees from the Executive and Legislative branches to determine the effectiveness of the program. In FY93, the Small Business Assistance program would fund one full-time Environmental Specialist, one part-time Clerk Typist, one position for the small business liaison, staff travel, contractual, publication and distribution of information material, and the direct (but not salary) costs of quarterly meetings of the Compliance Advisory Panel.

INCREMENTAL EXPENDITURE PROJECTION

Salary projections are based on the FY93 operating budget increment request. For projections beyond FY93, specific line item budget needs are based on funding required for new personnel and shifts in program tasks as the permit restructuring progresses from the development phase to the operations phase. The employee estimate is derived from the year-by-year workload evaluation based on the deadlines established in the Clean Air Act, the number of permits to be issued, and the increases in the associated work tasks, such as inspections and facility report review. For FY94 and beyond, personnel estimates are based on a management structure that shifts from central office program development to one that is primarily implemented by the department's regional offices, beginning in FY96.

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	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

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OVERVIEW OF TOTAL PROGRAM DEVELOPMENT

To fully evaluate the effects of the requirements of the Clean Air Act on the air quality management program, the total program costs, personnel, and funding are presented. Note that a number of positions which are currently funded by federal grants and state matching funds will be funded by permit program fee revenue after the implementation of the new program.

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
FTE	33.5	52.0	52.0	58.5	58.5	58.5	58.5
Total Costs							
Personal	1646.5	2375.2	2555.2	3158.5	3474.4	3717.7	3977.9
Travel	175.8	356.0	356.0	462.3	511.0	662.5	672.0
Contract	816.3	864.5	804.5	411.4	431.4	702.1	702.1
Supplies	68.2	124.2	124.2	159.9	176.0	321.7	330.5
Equipment	52.2	259.2	139.2	139.2	105.0	135.0	195.0
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

Total Program Funding							
Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	1534.2	1434.2	1434.2	892.1	892.1	892.1	892.1
G.F. Match	1174.1	1174.1	1174.1	1173.5	1173.5	1135.2	967.2
P/R	49.7	1370.8	1370.8	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.3
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

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*denotes material
not in SB383. Changes
in section numbering
are also indicated.*

CS FOR HOUSE BILL NO. 377 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/24/92

Referred: Judiciary, Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and control of air
2 pollution; relating to civil and criminal penalties, damages, and other remedies for air
3 quality control violations; amending the definition of 'hazardous substance'; relating to use
4 of the oil and hazardous substance release response fund; relating to inspection and
5 enforcement powers of the Department of Environmental Conservation; and providing for
6 an effective date."

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

8 * Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance
9 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
10 in state law are necessary to allow the state to continue to have primary management of air quality in
11 the state and to retain federal approval of the state's air quality control program in order to ensure the
12 continued receipt of federal highway and air pollution control money. The federal Environmental
13 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. The department shall develop plans
9 to encourage contractors that provide school bus transportation to procure alternative-fueled
10 buses. In this section, "alternative-fueled" means capable of operating on a fuel such as
11 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
12 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
13 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

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

15 Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the
16 Department of Transportation and Public Facilities procures an automobile, light truck, or van
17 for addition to the state fleet at a location in a nonattainment area in which the Department of
18 Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement
19 officer shall procure only an alternative-fueled vehicle if an alternative-fueled vehicle is available
20 from an original equipment manufacturing company.

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

23 (c) In this section, "alternative-fueled" means capable of operating on a fuel such as
24 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
25 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
26 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

27 * Sec. 4. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 14. AIR QUALITY CONTROL.

29 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

30 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the
31 department may adopt regulations under this chapter as necessary to prevent, abate, control, or

1 identify air pollution due to emissions, including regulations setting emission standards,
2 performance standards, and limitations. The standards and limitations may be based on risk
3 assessments or on available technology and may be for the state as a whole or may vary from
4 area to area in recognition of local conditions.

5 (b) In implementing this chapter, the department may not require a person to use
6 machinery, devices, or equipment from a particular supplier or produced by a particular
7 manufacturer if the required emission limitations or performance standards may be met by
8 machinery, devices, or equipment available from another manufacturer.

9 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING.

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

16 (b) The department or a local program authorized under AS 46.14.500 may require an
17 owner and operator of a facility or source classified under this section to report information to
18 the department or the authorized local program concerning location, size, and height of
19 contaminant outlets or area sources, processes employed, fuels used, the nature and time periods
20 or duration of emissions, and other information relevant to air quality that is available or
21 reasonably capable of being calculated and compiled.

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
24 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a
25 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an
26 order or other determination of the department under this chapter.

27 (b) A person may not operate a major facility or a facility that contains one or more of
28 the sources listed in AS 46.14.205(b) except in compliance with the operating permit and an
29 order or other determination of the department under this chapter.

30 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply
31 with the terms and conditions of that permit.

(d) The department shall ensure that permits issued, modified, amended, or renewed under this chapter comply with the emission limitations and other requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control plan.

(e) If the federal administrator exempts a source from the requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source from some or all of the requirements of this chapter.

Sec. 46.14.205. ^{AND SOURCES deleted} FACILITIES REQUIRING PERMITS. (a) Before constructing, installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain a construction permit from the department if the facility is any one of the following:

(1) a new facility that has the potential to emit greater than 250 tons per year (TPY) of a regulated air contaminant;

(2) a new facility of a type classified under AS 46.14.020 that has the potential to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions;

(3) a new facility of a type classified under AS 46.14.020 that has the potential to violate the ambient air quality standards or otherwise pose a threat to public health;

(4) a new facility that has the potential to emit greater than 10 TPY of a hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air contaminants;

(5) an existing facility, otherwise described in (1), (2), (3), or (4) of this subsection, for which a modification is proposed that would increase actual emissions of ^{an air} ~~a regulated~~ contaminant to an amount equal to or greater than the annual emission quantity set out in regulations adopted under AS 46.14.010.

(b) The owner and operator of a facility shall obtain an operating permit from the department if the facility is a major facility or if the facility contains one or more of the following sources:

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

(2) another stationary source designated by the federal administrator or the department, by regulation.

1 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)
2 The department may adopt regulations to implement AS 46.14.200 - 46.14.290. The department
3 shall adopt regulations to address the following elements of the emission control permit program:

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

6 (2) procedures for preparation and submission of a monitoring, reporting, and
7 quality assurance plan and, if required, a compliance schedule describing how a permitted facility
8 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

9 (3) procedures for

10 (A) expeditiously determining when a permit application is complete;

11 (B) processing and reviewing an application; and

12 (C) providing public notice, including opportunity for public comment and
13 hearing;

14 (4) standard permit conditions, including conditions for

15 (A) emission standards and limitations;

16 (B) monitoring, recordkeeping, and reporting;

17 (C) inspection and entry;

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

19 (E) annual certification of compliance; and

20 (F) excess emission or process deviation reporting;

21 (5) fees, and procedures for collecting fees;

22 (6) procedures for renewing, modifying, amending, or revising a permit that
23 provide maximum flexibility in the operation of the facility consistent with the purposes of this
24 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

25 (7) procedures for approving physical or operational limitations that will reduce
26 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200
27 and 46.14.205.

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

31 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy

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

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

7 (c) omitted
8 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner
9 and operator of a facility required to have an operating permit under this chapter shall submit the
10 required application and monitoring, reporting, and quality assurance plan no later than 12
11 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time
12 if required by the department.

13 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except
14 as provided in AS 46.14.245, after receipt of a complete application, and after notice and
15 opportunity for public comment and hearing, the department shall issue or deny

16 (1) a construction permit within 30 days after the close of the public comment
17 period;

18 (2) an operating permit, other than a general operating permit, within 18 months
19 after receipt of the complete application by the department.

20 (b) Notwithstanding (a) of this section, the department may establish a phased schedule
21 for acting on operating permit applications submitted on or before November 15, 1994. A phased
22 schedule must ensure that at least one-third of the applications submitted on or before
23 November 15, 1994, will be acted on by the department during each of the three years after
24 November 15, 1994. On or before November 15, 1997, the department shall act on all
25 applications received on or before November 15, 1994.

26 (c) Failure by the department to act within the time limits established in or under (a) or
27 (b) of this section shall be treated as a final agency action, but only for purposes of judicial
28 review to require that action be taken by the department.

29 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
30 this chapter, the owner and operator, a person who participated in the public comment process,
31 or a person with standing under state or federal law to obtain administrative or judicial review
of a permit action under this chapter may request an adjudicatory hearing under the department's

1 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party
2 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of
3 Appellate Procedure.

4 ~~Sec. 46.14.235. SINGLE PERMIT.~~ Regardless of whether a facility contains a single
5 source or multiple sources, only a single operating permit is required for the facility.

6 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for
7 public comment and hearing, and after approval by the federal administrator, the department may
8 establish a general operating permit that would be applicable to more than one facility determined
9 by the department to be similar in source structure. A general operating permit must contain
10 provisions that meet the requirements of this chapter applicable to operating permits. A general
11 operating permit is not effective for a specific facility until the owner and operator of the facility
12 has submitted an application under AS 46.14.220 and the department has issued the general
13 operating permit. The department shall issue or deny a general operating permit within 30 days
14 after receipt of a complete application.

15 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating
16 permit may not be issued under this chapter until the federal administrator approves the permit,
17 or until 45 days after a copy of the final draft permit has been provided by the department to the
18 federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator
19 files an objection with the department, the department shall notify the applicant of the objection.
20 The permit may not be issued until the objection is resolved or the permit is revised to meet the
21 objection of the federal administrator.

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

26 Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and
27 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the
28 applicable fees set out in the fee schedule adopted by the department under (b) of this section.
29 The owner and operator shall pay the fees to the department or to the public entity designated
30 by the department.

31 (b) The department shall adopt, by regulation, a fee schedule based upon the type of

1 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source
2 classifications; and other factors reflecting the cost of administering the emission control permit
3 program under this chapter. Fees must be sufficient to cover, but not significantly exceed, the
4 reasonable direct and indirect costs required to develop and implement the permit program and
5 the federally mandated aspects of the small business assistance program established in this
6 chapter. For purposes of this subsection, "costs" include expenditures for

- 7 (1) preparing and adopting regulations to implement the permit program;
- 8 (2) preparing guidance on the permit program;
- 9 (3) reviewing and acting upon a permit application;
- 10 (4) implementing and enforcing the terms and conditions of a permit, excluding
11 court costs and attorney fees;
- 12 (5) monitoring of emissions and ambient air quality;
- 13 (6) reviewing and executing models, analyses, and demonstrations to evaluate
14 emissions;
- 15 (7) preparing inventories and tracking of facility emissions;
- 16 (8) performing data management, analysis, and report writing;
- 17 (9) conducting training, audits, or other services as provided under the small
18 business assistance program under AS 46.14.400 - 46.14.430; and
- 19 (10) reviewing and acting upon plans and other information submitted under
20 AS 46.14.200 - 46.14.290.

21 (c) The department shall review the fee structure adopted under (b) of this section at least
22 every five years and when there are changes in state or federal laws that affect the costs of
23 operating the permit program or the federally mandated aspects of the small business assistance
24 program. Upon review, the department shall amend the fee structure as necessary to ensure that
25 the fees cover, but do not significantly exceed, the reasonable costs authorized by (b) of this
26 section.

27 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department
28 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee
29 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and
30 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also
31 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is

1 due under this chapter and is unpaid.
2 *Was Sec 46.14.265 in SB383*

3 Sec. 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit
4 ~~under this chapter shall be issued for a fixed term established by the department, but in no case~~
5 may the term exceed five years after the date of issue.

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

9 *Was Sec. 46.14.270 in SB383*
10 Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this chapter
11 is subject to review and reopening by the department based on the determination of the federal
12 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air
13 Act).

14 (b) A permit issued under this chapter is subject to review and reopening by the
15 department if the permit is issued to a major facility and is valid for a term of three or more
16 years. The department shall reopen a permit described in this subsection to incorporate changes
17 in law, or to impose equivalent emission limitations, that became applicable after the permit was
18 issued. The department shall make incorporations allowed under this subsection as soon as
19 practicable, but, regarding a change in law, no later than 18 months after the change in law took
20 effect. The department is not required to reopen a permit under this subsection if the change in
21 law is not effective until after the date that the permit expires. Reopening of a permit under this
22 subsection may be treated as a permit renewal by the department if the procedural requirements
23 for permit renewal have been met.

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

27 *Was Sec 46.14.275 in SB383*
28 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR
29 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the
30 permittee, the department may terminate, modify, amend, or revoke and reissue a construction
31 or operating permit if the department finds that

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

(2) the permit contains a material mistake;

1 (3) the permittee has violated this chapter, a regulation, a judicial or
2 administrative order, or a term or condition of a permit, approval, or acceptance issued under this
3 chapter.

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

6 (5) the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty
7 or interest imposed under AS 46.14.255.

8 *was Sec 46.14.28 in SB383*
9 Sec. 46.14.275. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION
10 AND REISSUANCE OF PERMITS. The department shall take measures practicable and
11 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal
12 administrator of permits issued by the department under this chapter.

13 *was Sec 46.14.285 in SB383*
14 Sec. 46.14.280. TEMPORARY OPERATIONS. The department may issue a single
15 operating permit under AS 46.14.225, authorizing a facility to operate at specific multiple
16 locations in the state for temporary periods of time not to exceed one year at any one location.
17 A permit described in this section is valid only for the specific locations identified in the
18 application and authorized by the department. The department may not issue a permit under this
19 section unless the permit contains conditions that will ensure compliance with this chapter at each
20 authorized location, including compliance with ambient air quality standards and applicable
21 increment or visibility requirements adopted under this chapter. A permit under this section must
22 require the owner and operator to notify the department at least 30 days before a change in
23 location of a facility permitted under this section.

24 *was Sec. 46.14.290 in SB383*
25 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued
26 under this chapter is considered to be compliance with the operating permit program established
27 under this chapter.

28 (b) Nothing in this section alters or affects

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

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

32 *was Sec. 46.14.292 in SB383*
33 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner
and operator have submitted a timely and complete application for a permit or a permit renewal,

1 as applicable, but final action has not been taken on the application, the owner's and operator's
2 failure to have an operating permit is not a violation of this chapter unless the delay in final
3 action was due to the failure of the owner and operator to timely submit information required or
4 requested to process the application. An owner and operator required to have an operating permit
5 under this chapter are not in violation of the operating permit program established under this
6 chapter before the date on which the owner and operator are required to submit an application
7 under AS 46.14.220.

8 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

9 Sec. 46.14.300. MOTOR VEHICLE POLLUTION. (a) When the department determines
10 that the state of knowledge and technology may allow or make appropriate the control of
11 emissions from motor vehicles to further air quality control, the department may provide, by
12 regulation, for the control of the emissions from motor vehicles. The regulations may prescribe
13 requirements for the installation and use of equipment designed to reduce or eliminate emissions
14 and for the proper maintenance of this equipment.

15 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any
16 element of the air pollution control system or mechanism of a motor vehicle if the department
17 adopts regulations requiring that an air pollution control system or mechanism be maintained in
18 or on the motor vehicle. Failure to maintain a required system or mechanism in operating
19 condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle
20 whose registration has been suspended or canceled under this subsection is not eligible for
21 subsequent registration until the owner or operator obtains certification from the department,
22 based on a demonstration that the air pollution control system or mechanism is restored to
23 operating condition.

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

27 (d) If the department adopts regulations requiring the maintenance of air pollution control
28 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle
29 subject to those regulations may not be issued a certificate of inspection unless the required air
30 pollution control system or mechanism has been inspected in accordance with the standards,
31 testing techniques, and instructions furnished by the department and the motor vehicle has been

1 found to meet those standards. A valid certificate of inspection for the emission control system,
2 if required by the department, must be presented to the Department of Public Safety before that
3 department may register a motor vehicle.

4 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

5 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. A small business assistance program
6 is established in the department. The program shall be included in the state air quality control
7 plan under AS 46.14.215.

8 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program
9 shall

10 (1) collect, coordinate, and disseminate information on methods and technologies
11 that will assist small business facilities to comply with this chapter and regulations adopted under
12 this chapter;

13 (2) encourage lawful cooperation among small business facilities and other
14 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

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

18 (4) assist small business facilities in determining applicable requirements and in
19 receiving permits under this chapter in a timely and efficient manner;

20 (5) ensure that small business facilities receive notice of their rights under this
21 chapter in a manner and form that ensures adequate time for the facilities to evaluate compliance
22 methods and to evaluate applicable proposed or final regulations adopted or standards issued
23 under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

24 (6) inform small business facilities of their obligations under this chapter and
25 regulations adopted under this chapter;

26 (7) provide small business facility operators with a list of auditors available for
27 auditing the operation of the facility or, if possible, and at the request of a facility owner or
28 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under
29 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

30 (8) assist in developing and implementing modified work practices or technical
31 changes to processes to facilitate compliance with this chapter and regulations adopted under this

1 chapter;

2 (9) coordinate with the federal small business stationary source technical and
3 environmental compliance assistance program established under 42 U.S.C. 7661f(b) ~~(Clean Air-~~
4 Act, sec. 507(b));

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

7 (11) at the request of a facility owner or operator, refer questions concerning
8 compliance with this chapter, or with a regulation adopted or permit issued under this chapter,
9 to air quality management personnel of the department; and

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

12 (b) If the legislature appropriates money from the general fund for purposes of the small
13 business assistance program, the department shall provide the services listed in (a) of this section
14 to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631 but that
15 otherwise meets the definition of a small business facility under AS 46.14.990 and is subject to
16 the requirements of this chapter.

17 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal
18 administrator and the administrator of the United States Small Business Administration, and after
19 providing notice and opportunity for public hearing, the department may exclude from the scope
20 of the small business assistance program established in AS 46.14.410 a category or subcategory
21 of small business facilities that the department finds to have sufficient technical and financial
22 capabilities to meet the requirements of this chapter and federal law without the assistance
23 provided under AS 46.14.400 - 46.14.430.

24 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel
25 is established in the department. The panel members shall serve without compensation, but are
26 entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

27 (b) The panel consists of

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

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

31 (3) four members, who are owners or representatives of owners of small business

1 stationary sources, selected as follows:

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

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

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

14 (c) The compliance advisory panel shall

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

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

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

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

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

26 (6) have the small business advocate designated under AS 46.14.410(a)(12) assist
27 the panel in the development and dissemination of panel reports and advisory opinions.

28 ARTICLE 5. LOCAL PROGRAMS.

29 Was Sec. 46.14.520 in 8B383
Sec. 46.14.500.

30 LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the
31 approval of the department, a municipality with a population of 1,000 or more may establish and
administer within its jurisdiction a local air quality control program that is consistent with all or

1 part of the department's air quality program as established under this chapter. A first or second
2 class borough may administer an air quality control program approved by the department under
3 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional
4 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer
5 an air quality control program approved by the department under this subsection only in a service
6 area formed under AS 29.35.490(b) or (c).

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

10 (c) The department may require expansion or contraction of the jurisdictional boundaries
11 of a local air quality control program approved under (a) or (b) of this section to include an
12 adjacent municipality or contiguous area in the unorganized borough if the department determines
13 that the expansion or contraction is necessary for the effectiveness and efficiency of the
14 administration of a local program based upon an evaluation of

15 (1) the location, character, or extent of particular concentrations of population;

16 (2) local air contaminant sources; or

17 (3) relevant geographic, topographic, or meteorological factors.

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

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

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

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

26 (4) respective enforcement responsibilities of the department and the municipality
27 or the local air quality district.

28 (e) A local air quality control program shall provide for the exemption of a locally
29 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.14.300
30 if the motor vehicle is not used within the program's jurisdiction.

31 (f) A municipality or a local air quality district administering a program under this

1 section shall administer its local air quality control program according to this chapter, regulations
2 adopted under this chapter, and its cooperative agreement under (d) of this section, except that
3 a municipality's or local air quality district's program may be more stringent than the program
4 administered by the department if the municipality or district has additional legal authority
5 authorizing additional requirements.

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

9 *Was Sec 46.14.530 in 8B383*
10 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a
11 local air quality district has an approved air quality control program under AS 46.14.500 and the
12 department determines that the program is being implemented in a manner that fails to prevent
13 or control air pollution in the jurisdiction to which the program applies, the department shall give
14 written notice, setting out its determination, to the municipality or local air quality district.
15 Within 45 days after giving written notice, the department shall conduct a public hearing on the
16 matter.

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

24 (c) If the municipality or local air quality district fails to take corrective action within
25 the time period set by the department under (b) of this section, the department shall terminate
26 the cooperative agreement and resume management of the program in the affected jurisdiction.
27 If the municipality or the local air quality district partially remedies, to the department's
28 satisfaction, the deficiencies found in the determination, the department shall amend the
29 cooperative agreement to reflect a modified allocation of responsibilities between the department
30 and municipality or the local air quality district.

31 (d) A municipality or local air quality district that has had its cooperative agreement
terminated may resume, with the department's approval, a local air quality control program if the

1 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan
2 required by the department.

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

10 *Was Sec. 46.14.540 in SB 383*
Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality

11 district with a local air quality control program may apply for, receive, administer, and spend
12 state or federal aid for the control of air emissions or the development and administration of the
13 program if an application is first submitted to and approved by the department. Subject to
14 available money appropriated by the legislature, the department shall approve an application if
15 it is consistent with the terms and conditions of the applicable cooperative agreement and meets
16 the requirements of this chapter.

17 *Was Sec. 46.14.500 in SB 383*
ARTICLE 6. MISCELLANEOUS PROVISIONS.

18 Sec. 46.14.800. PUBLIC RECORDS. Except as provided in AS 46.14.810, permits,
19 permit applications, emissions and monitoring reports, compliance reports, certifications, and
20 monitoring, reporting, and quality assurance plans in the department's possession and control are
21 available to the public for inspection and copying.

22 *Was Sec. 46.14.510 in SB 383*

22 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records and information, other
23 than emission data, in the department's possession and control are considered confidential records
24 if

25 (1) the owner and operator have certified to the department or authorized local
26 program that public disclosure would tend to adversely affect the owner's and operator's
27 competitive position; and

28 (2) the records

29 (A) relate to production figures, sales figures, processes, or production
30 techniques of the owner and operator; or

31 (B) consist of meteorological or ambient air quality data collected by the

1 owner or operator to support a permit application or amendment.
2 *Was Sec. 46.14.560 in 8B383*

3 Sec. 46.14.820. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless
4 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted
5 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.
6 If the owner and operator of the facility are separate persons, only one person is required to
7 discharge a specific responsibility. Both persons are liable for noncompliance with the
8 requirements of this chapter or of regulations adopted under this chapter.

9 *Was Sec. 46.14.295 in 8B383*
10 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The
11 department may assess an administrative penalty against a person who violates, or causes, or
12 allows to be violated a provision of this chapter, a regulation adopted under this chapter, or a
13 term or condition of an order, permit, or approval of the department under this chapter.

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

24 (c) If a penalty is assessed under this section, the department shall provide the assessment
25 notice to the person affected, by personal service or by certified mail, return receipt requested.
26 An administrative penalty assessed under this section becomes a final agency action 30 days after
27 service or mailing of the assessment notice unless an administrative hearing is requested by the
28 person against whom the penalty is assessed. Failure to request an administrative hearing within
29 30 days after service or mailing of the assessment notice constitutes a waiver of that person's
30 right to an administrative hearing. The department may extend the time periods specified in this
31 subsection for good cause.

(d) If an administrative hearing is requested, the department shall grant a hearing and
conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,

1 the department may modify, rescind, or affirm the administrative penalty. The modification,
2 rescission, or affirmation of a penalty under this subsection is a final agency action.

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

8 (f) Action under this section by the department does not limit or otherwise affect the
9 authority of the department to enforce this chapter, or to recover damages, restoration expenses,
10 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall
11 reduce a judicial penalty subsequently imposed under AS 46.03.760 by any amount ordered to
12 be paid under this section by the same person for the same offense.

13 (g) The assessment of an administrative penalty under this section does not affect the
14 obligation of a person to comply with this chapter or with a regulation, order, permit, or approval
15 of the department under this chapter.

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

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

21 (2) interest at the statutory rate under AS 45.45.010(a) from the date the penalty
22 became a final agency action; and

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

25 was 46.14.240 ~ 80383

26 Sec. 46.14.840. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund
is established. The fund consists of

27 (1) fees, penalties, and interest collected by the department under AS 46.14.250
28 and 46.14.255, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii))
29 for state participation in the emission control permit program; and

30 (2) appropriations to the fund.

31 (b) The money deposited into the clean air protection fund under (a)(1) of this section

1 may be used solely to cover the reasonable direct and indirect costs, including court costs and
2 attorney fees, required to support the permit program under this chapter, and those activities of
3 the small business assistance program that are directed at facilities subject to this chapter.

4 *Was Sec. 46.14.260 (c) in SB 383*
Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,
5 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or
6 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this
7 chapter, shall be deposited in the general fund.

8 ARTICLE 7. GENERAL PROVISIONS.

9 *Was Sec. 46.14.550 in SB 383*
Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

10 (1) grant jurisdiction or authority with respect to air contamination existing solely
11 within residential dwellings or commercial and industrial plants, works, or shops;

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

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

16 *Was Sec. 46.14.900 in SB 383*
Sec. 46.14.990. DEFINITIONS. In this chapter,

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

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

21 (3) "ambient air quality standard" means a standard, other than an emission
22 limitation or standard, adopted under AS 46.14.010 or 42 U.S.C. 7409 (Clean Air Act, sec. 109);

23 (4) "area source" means a source of fugitive emissions;

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

29 (6) "commissioner" means the commissioner of environmental conservation;

30 (7) "construct" or "construction" means to fabricate, erect, or install, or to make
31 a physical change, that would result in emissions;

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

3 (9) "department" means the Department of Environmental Conservation;

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

6 (11) "emission limitation" and "emission standard" mean a requirement established
7 by the department or the federal administrator, other than an ambient air quality standard, that
8 limits the quantity, rate, or concentration of emission of an air contaminant, including a
9 requirement relating to the operation or maintenance of a source to ensure continuous emission
10 reduction, and design, equipment, work practice, or operational standard adopted under this
11 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

12 (12) "equivalent emission limitation" means

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

17 (B) if the criteria of the early reduction program established in 42 U.S.C.
18 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that
19 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

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

23 (14) "federal administrator" means the administrator of the United States
24 Environmental Protection Agency;

25 (15) "fugitive emissions" means emissions of an air contaminant that are not
26 emitted from a contaminant outlet;

27 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.
28 7412(b) (Clean Air Act, sec. 112(b));

29 (17) "local air quality control program" means a program authorized under
30 AS 46.14.500 to implement some or all of the provisions of this chapter;

31 (18) "major facility" means a facility with the potential to emit at least

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

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

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

4 (19) "modification" or "modify" means to make a change or a series of changes
5 in operation, or any physical change or addition to a facility or source that increases the actual
6 emissions of an air contaminant;

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

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

11 (22) "person" has the meaning given in AS 01.10.060 and also includes a
12 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,
13 agencies, instrumentalities, units, and corporate authorities of the state;

14 (23) "potential to emit" means the maximum quantity of a release of an air
15 contaminant, considering a facility's physical or operational design, based on continual operation
16 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of
17 pollution control equipment and approved state or federal limitations on the capacity of the
18 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates
19 of operation and type or amount of material combusted, stored, or processed; "potential to emit"
20 does not include

21 (A) a one-time, accidental release of an air contaminant; or

22 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);

23 (24) "register" or "registration" means vehicle registration under AS 28.10;

24 (25) "regulated air contaminant" means

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

27 (B) oxides of nitrogen;

28 (C) a volatile organic compound; and

29 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.
30 7411 - 7412 (Clean Air Act, sec. 111 - 112);

31 (26) "small business facility" means a facility that

1 (A) is owned or operated by a person who employs 100 or fewer persons;
2 (B) is a small business concern as defined in 15 U.S.C. 631 (Small
3 Business Act); and

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

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

7 (28) "TPY" means tons per year.

8 * Sec. 5. AS 28.10.041(a)(10) is amended to read:

9 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection
10 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.500
11 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle
12 uses a fuel source that does not primarily emit carbon monoxide;

13 * Sec. 6. AS 28.10.423 is amended to read:

14 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition
15 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle
16 required to be inspected under an emission control program established under AS 46.14.300 or
17 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner
18 as the registration fee.

19 * Sec. 7. AS 29.35 is amended by adding a new section to read:

20 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may
21 establish a local air quality control program as provided in AS 46.14.500 only if the municipality
22 has obtained the consent of its governing body through an ordinance authorizing the participation.

23 * Sec. 8. AS 29.35.200(b) is amended to read:

24 (b) A first class borough may by ordinance exercise the following powers on an areawide
25 basis:

26 (1) provide transportation systems;

27 (2) provide water pollution control;

28 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -
29 46.03.230];

30 (4) license day care facilities;

31 (5) license, impound, and dispose of animals.

1 * Sec. 9. AS 29.35.210(a) is amended to read:

2 (a) A second class borough may by ordinance exercise the following powers on a
3 nonareawide basis:

4 (1) provide transportation systems;

5 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
6 fireworks;

7 (3) license, impound, and dispose of animals;

8 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
9 collection and disposal;

10 (5) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
11 AS 46.03.140 - 46.03.230];

12 (6) provide water pollution control;

13 (7) participate in federal or state loan programs for housing rehabilitation and
14 improvement for energy conservation;

15 (8) provide for economic development;

16 (9) provide for the acquisition and construction of local service roads and trails
17 under AS 19.30.111 - 19.30.251;

18 (10) establish an emergency services communication center under AS 29.35.130;

19 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
20 vehicles and operators;

21 (12) engage in activities authorized under AS 29.47.460;

22 (13) contain, clean up, or prevent a release or threatened release of oil or a
23 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
24 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
25 consistent with a regional master plan prepared by the Department of Environmental
26 Conservation under AS 46.04.210.

27 * Sec. 10. AS 29.35.210(b) is amended to read:

28 (b) A second class borough may by ordinance exercise the following powers on an
29 areawide basis:

30 (1) provide transportation systems;

31 (2) license, impound, and dispose of animals;

1 (3) provide air pollution control under AS 46.14.500 [IN ACCORDANCE WITH
2 AS 46.03.140 - 46.03.230];

3 (4) provide water pollution control;

4 (5) license day care facilities.

5 * Sec. 11. AS 37.05.146(4) is amended by adding a new subparagraph to read:

6 (P) clean air protection fund (AS 46.14.840).

7 * Sec. 12. AS 44.46.025(a) is amended to read:

8 (a) The Department of Environmental Conservation may adopt regulations that prescribe
9 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs
10 of the following services provided by the department:

11 (1) inspections, permit administration, plan review and approval, and other related
12 services provided under AS 03.05, AS 17.20, and AS 18.35;

13 (2) the emission control permitting program and the motor vehicle pollution
14 control program under AS 46.14; fees established under this paragraph shall also cover
15 indirect costs of the programs to the extent required by federal law [AIR QUALITY
16 PERMITS UNDER AS 46.03.140 AND 46.03.160];

17 (3) hazardous waste permits under AS 46.03.299 and 46.03.302;

18 (4) plan approvals and permits for sewerage system and treatment works and
19 wastewater disposal systems, and plan approvals for drinking water systems, under AS 46.03.720;

20 (5) oil discharge financial responsibility approvals under AS 46.04.040;

21 (6) oil discharge contingency plan approvals under AS 46.04.030;

22 (7) water and wastewater operator training under AS 46.30.

23 * Sec. 13. AS 44.62.330(a)(44) is amended to read:

24 (44) Department of Environmental Conservation, except to the extent that
25 AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated
26 under the provisions of AS 46.03 and AS 46.14;

27 * Sec. 14. AS 46.03.760(f) is amended to read:

28 (f) A person who violates or causes or permits to be violated a provision of
29 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a
30 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued
31 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum

1 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,
2 nor more than \$10,000 for each day after that on which the violation continues, and that shall
3 reflect, when applicable,

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

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

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

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

14 * Sec. 15. AS 46.03.765 is amended to read:

15 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation
16 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the
17 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or
18 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought
19 under this section, temporary or preliminary relief may be obtained upon a showing of an
20 imminent threat of continued violation, and probable success on the merits, without the necessity
21 of demonstrating physical irreparable harm. The balance of equities in actions under this section
22 may affect the timing of compliance, but not the necessity of compliance within a reasonable
23 period of time.

24 * Sec. 16. AS 46.03.780(a) is amended to read:

25 (a) A person who violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or
26 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, [OR] AS 46.09, or
27 AS 46.14, or violates or disregards an order, permit, or other determination of the department
28 made under the provisions of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14, respectively,
29 and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the
30 environment of the state is liable to the state for damages.

31 * Sec. 17. AS 46.03.790(a) is amended to read:

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

3 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,
4 a regulation or order of the department, or a permit, approval, or acceptance, or a term or
5 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]
6 AS 46.09, or AS 46.14;

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

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

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

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

20 * Sec. 18. AS 46.03.790 is amended by adding a new subsection to read:

21 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.14
22 and described in (a) of this section, a defendant who is not an organization may be sentenced to
23 pay a fine of not more than \$10,000 for each separate offense.

24 * Sec. 19. AS 46.03.850(a) is amended to read:

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

31 * Sec. 20. AS 46.03.875 is amended to read:

1 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter,
2 [OR] AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil,
3 or criminal, under a section of this chapter, [OR] AS 46.04, or AS 46.14 does not stop the state
4 from obtaining relief under any other section of this chapter, [OR] AS 46.04, or AS 46.14.

5 * Sec. 21. AS 46.03.890(b) is amended to read:

6 (b) Inspection and enforcement employees of the department designated by the
7 commissioner are peace officers in the performance of their duties under this chapter, AS 46.04,
8 [AS 46.03, AND] AS 46.09, and AS 46.14.

9 * Sec. 22. AS 46.08.075(a) is amended to read:

10 (a) The state has a lien for expenditures by the state from the oil and hazardous substance
11 release response fund or from any other state fund, for the costs of response, containment,
12 removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or,
13 with respect to response costs, the substantial threat of a release of oil or a hazardous substance
14 against all property owned by a person who is determined by the commissioner to be liable for
15 the expenditures under this chapter, AS 46.03, AS 46.04, AS 46.14, 42 U.S.C. 9607, or other
16 state or federal law. The lien includes interest, at the maximum rate allowable under
17 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of
18 competent jurisdiction in order to foreclose on the lien.

19 * Sec. 23. AS 46.08.900(6) is amended to read:

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

28 * Sec. 24. AS 46.09.900(4) is amended to read:

29 (4) "hazardous substance" means (A) an element or compound that, when it enters
30 into the atmosphere, or into or on the surface or subsurface land or water of the state, presents
31 an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation,

1 or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a
2 substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive
3 Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does
4 not include uncontaminated crude oil or uncontaminated refined oil;

5 * Sec. 25. AS 46.35.200(4)(A) is amended to read:

6 (A) emission control [AIR EMISSIONS] permit - AS 46.14
7 [AS 46.03.150], 18 AAC 50.120;

8 * Sec. 26. AS 46.35.200(8) is amended to read:

9 (8) "state agency" means a state department, commission, board or other agency
10 of the state; for the purposes of this chapter "state agency" also means a local or regional air
11 pollution control authority established under AS 46.14.500 [AS 46.03.210].

12 * Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,
13 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

14 * Sec. 28. REGULATIONS. The Department of Environmental Conservation may adopt regulations
15 as authorized under AS 46.14, enacted by sec. 4 of this Act, and other statutory authority, to implemen
16 changes made by this Act. Regulations adopted under this section may not take effect until the enabling
17 statute takes effect under sec. 31 or sec. 32 of this Act.

18 * Sec. 29. COOPERATION. The Department of Transportation and Public Facilities and the
19 Department of Environmental Conservation shall cooperate with each other as necessary to achieve
20 implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

21 * Sec. 30. Sections 2 and 3 of this Act take effect July 1, 1994. (procurement)

22 * Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),
23 46.14.210, 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280,
24 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 -
25 46.14.850, 46.14.900, and 46.14.990, enacted by sec. 4 of this Act, and secs. 1 and 5 - 29 of this Act
26 take effect immediately under AS 01.10.070(c).

27 * Sec. 32. AS 46.14.200(b), 46.14.205(a)(4) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,
28 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,
29 1993.

Davidson

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: House Members
From: Representative Tom Moyer
Date: January 14, 1991
Re: HB 377, Clean Air Act Legislation

Clean Air -- Clean Air -- Get your Clean Air, Today!

After 10 years of debate in Congress, amendments to the Clean Air Act were passed in 1990. The amendments spell out the direction of anti-air pollution policy, however implementation of these policies still looms ahead of us.

Alaska already has strong clean air statutes. However, unless states take the lead and implement air quality programs described in the Act, the Federal Government will, in November of 1993, take over management of Alaska's clean air policy. Alaska's federally-approved program and state implementation plan must be in place by then. It is important to note that for the first time, permits will be required from many small businesses. HB 377 is consistent with federal law in that it phases in implementation, therefore, some types of permits may not be required for months or years after the effective date. Managing our own program means we can better tailor it to local conditions.

The state must show that it has the authority to implement all federal standards to prevent a loss of federal transportation funds.

Page 2

Alaskans know better than anyone the steps we should take to keep our air as clean as possible. With HB 377, we can take the actions needed to keep the federal governments in Washington, D.C. and Seattle from requiring us to do it their way.

The bill spells out authorities the state needs in order to be consistent with federal laws in the areas of: permitting, fee collection, enforcement, penalties; and establishes a small business compliance assistance program.

Please join me in co-sponsorship of this important legislation.

DRAFT CSHB 377, BY REPRESENTATIVE TOM MOYER

~~ALASKA AIR QUALITY STATUTES~~

SECTION-BY-SECTION ANALYSIS

2/11/92

SECTION 1. PURPOSE

This section is self explanatory

SECTION 2. AMENDS AS 46 TO CREATE A NEW CHAPTER 14

AS 46.14.010 REGULATION AUTHORITY; EMISSION CONTROL STANDARDS

OBJECTIVE:

This section provides basic powers to the department to control air pollution sources and activities by establishing "out-of-stack" emission limits and ground level ambient standards for health protection. The first portion of sub-section (a) incorporates the language from the existing AS 46.03.140 proposed for repeal. The last sentence of (a) is new language

FEDERAL REQUIREMENT:

CAA Section 502(b)(5)(C) provides authority to impose emission limits in permits that are issued

CAA Section 112(j) specifies that state permit programs must incorporate federal emission limits or impose equivalent emission limits if EPA does not promulgate an emission limit for a type of source for which EPA is

STATE INTENT & EXPLANATION:

Retain existing authority and satisfy minimum requirements of the amended Clean Air Act.

to clarify authorities of the department to establish emission standards based upon either the need to prevent excessive ground level concentrations of an air contaminant, or the use of a pollution control technology that is reasonably available and economically justifiable for a particular source or class of air pollution sources to use.

scheduled to do so under the Clean Air Act.

CAA section 112(1) specifies minimum criteria for state programs executing the section 112 provisions of the Clean Air Act. Section 112(1)(5)(A) addresses emission limits.

CAA Section 165(a)(4) requires technology-based emission limits upon sources at a subject facility via a permit review evaluation which determines the "Best Available Control Technology" on a case-by-case basis.

AS 46.14.020 CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING

OBJECTIVE:

This section incorporates the existing language from AS 46.03.150 (proposed for repeal) to provide authority to classify facilities and sources causing emissions of air contaminants as needed to ensure responsible and efficient management of air pollution. Subsection (b) provides authority to require reporting of information from those who emit air contaminants.

FEDERAL REQUIREMENT:

CAA Section 504 presents the minimum contents of a permit which includes reporting of information to assess compliance by the facility with the terms of the permit. CAA Section 503 discusses when permit applications are required to be submitted to the permitting agency.

STATE INTENT AND EXPLANATION :

Retain existing authorities and meet new minimum federal requirement. Existing authorities enable to department to require the submittal of information regarding air emissions and processes that cause air emissions. This authority exists regardless of the need for an entity to obtain an air permit. The authority needs to be retained to enable the department to perform its most basic function of protecting air

resources by having knowledge concerning activities that result in emissions of air contaminants.

AS 46.14.200 PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION

OBJECTIVE:

This section prohibits undertaking certain actions that cause air pollution without first obtaining a permit from the department. If a permit is required, activities must be performed in compliance with the terms of an authorized permit, order or other determination of the department. The section incorporates the authority that currently exists in AS 46.03.160(a) & (d)(proposed for repeal).

FEDERAL REQUIREMENT:

Permits to construct or modify are required under CAA Sections 165(a) and 112(g)(2).

Permits to operate are required under CAA Section 502(a).

STATE INTENT & EXPLANATION:

The state intends to execute a permit program that meets the minimum requirements of the Clean Air Act. Such a program must greatly expand the number of permits issued by the state because of the reduced minimum facility size that is now subject to permit requirements. The state generally intends to exempt any facility from permit requirements if a federal exemption is authorized unless there is strong basis of need, from the state's perspective, to retain the permit as a mechanism to contain or minimize an air pollution problem.

AS 46.14.205 FACILITIES AND SOURCES REQUIRING PERMITS

OBJECTIVE:

This section specifies which facilities are required to obtain a permit to construct and which

FEDERAL REQUIREMENTS:

Identical references as noted for 46.14.200

STATE INTENT & EXPLANATION:

The intent is to implement a permit program that satisfies the minimum federal requirements but

are required to obtain a permit to operate. Facilities that are required to obtain a permit to construct will be a sub-set of the facilities that must obtain a permit to operate.

Currently, the department's permit to operate is also used as authorization to construct. To be as timely as possible to permittees, while also complying with the new federal requirements, it is advantageous to issue a permit to construct separate from a permit to operate when the construction permit is necessary under federal law.

Please note the importance and special meaning of the term "major facility" used in subsection (b) and defined in section 46.14.990.

Permits to construct are issued for those facilities required by federal law and others that "have the potential to violate the ambient air quality standards or otherwise pose a threat to public health". The purpose of this clause within AS 46.14.205(a)(3) is to prevent the construction of a facility designed in such a manner that its emissions of air contaminants will immediately threaten public health and thereby require remediation

is also tailored as much as possible to meet Alaska's unique needs.

Implementing a "permit to construct" ~~separate from a~~ "permit to operate" will enable the department to issue a construction authorization in the amount of time currently taken, while the additional mandatory review steps for the permit to operate will be ongoing. In practice, the applicant will submit one permit application. The permit to construct, if required, would be issued within 30 days after completion of a public comment period and the permit to operate would be issued approximately 60-90 days, later after the draft permit undergoes the required federal review.

following construction. These facilities will be classified and listed in the department's regulations.

AS 46.14.210 EMISSION CONTROL PERMIT PROGRAM REGULATIONS

OBJECTIVE:

This section directs the department to adopt regulations which include all elements of the permit program expressly required by the Clean Air Act. Subsection (b) incorporates the authority from the existing AS 46.03.160(g) (proposed for repeal).

FEDERAL REQUIREMENTS:

CAA Section 502(b). The proposed language addresses the federal requirements as shown below:

- AS 46.14.210(a)(1): see
CAA Section 502(b), (b)(1);
AS 46.14.210(a)(2): see
CAA Section 502(b)(2),
503(b)(1);
AS 46.14.210(a)(3): see
CAA Section 502(b)(6);
AS 46.14.210(a)(4): see
CAA Section 504(a), (b), and
(c), 503(b)(2), 40 CFR
70.6(a)(iv)(A), (B)(Proposed);

AS 46.14.210(a)(5): see
CAA Section 502(b)(3)(A);
AS 46.14.210(a)(6): see
CAA Section 502(b)(5)-(10);
AS 46.14.210(a)(7): no federal
requirement. This is a state
initiative.

STATE INTENT & EXPLANATION:

The intent is to meet the minimum federal requirements and to create a mechanism to avoid the issuance of permits to those facilities which can contain their emissions below the applicable levels through voluntary process or operational restrictions.

AS 46.14.215 STATE POLICY; STATE AIR QUALITY PLAN

OBJECTIVE:

This section identifies the State Air Quality Control Plan and designates that the department will act in the Governor's behalf, with respect to the plans. All actions taken by the department must conform with the plan.

FEDERAL REQUIREMENTS:

CAA Sections 110, 502(b)(5)(C), 502(d), 40 CFR 52.70

STATE INTENT & EXPLANATION:

The State Air Quality Control Plan is the resource management document that identifies the specific methods to be employed by the department for reducing air pollution in areas that currently exceed public health standards. The plan establishes methods for maintaining acceptable air quality in the remaining portions of the state, and provides detailed guidance concerning the air permit program. The Plan is the official document reviewed by EPA in determining if the state program adequately implements the Clean Air Act. As such it becomes adopted into federal law at the time of approval and is then enforceable by EPA.

AS 46.14.220 TIME FOR SUBMISSION OF PERMIT APPLICATIONS

OBJECTIVE:

The section identifies when permit applications are due under the new permit program that takes effect November 15, 1993.

FEDERAL REQUIREMENTS:

CAA Section 503(a), and (c)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements and to insure that the state maintains primacy over the federal government in this program.

AS 46.14.225 ADMINISTRATIVE ACTIONS REGARDING PERMITS

OBJECTIVE:

Identify the time schedule under which the department will take actions on permit applications. Sub-section (a) (1) adopts the concept that currently exist in AS 46.03.160(b) (proposed for repeal).

FEDERAL REQUIREMENTS:

AS 46.14.215(a)(1) ---- no applicable federal requirement

AS 46.14.215(a)(2) ---- see CAA Section 503(c)

AS 46.14.215(b) ---- see CAA Section 503(c)

STATE INTENT & EXPLANATION:

The intent is to comply with minimum federal requirements and to be as responsive as possible to the needs of Alaska industries for construction permits.

It is anticipated that the number of permits issued will triple or quadruple in comparison to 1991. This will place a tremendous burden upon the agency to issue permits during the years of 1993 to 1997. Thus phased scheduling is allowed for that start-up period.

AS 46.14.230 REVIEW OF PERMIT ACTION

OBJECTIVE:

This section identifies the remedies that are open to those who are aggrieved by a permit action.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(6)

STATE INTENT & EXPLANATION:

Under the Clean Air Act, the state must provide an opportunity for an aggrieved party to obtain judicial review of a permit action. The state desires to retain the currently existing administration adjudication process as a first step for an aggrieved party. The administrative adjudication process is less costly and more

responsive for a party and therefore a more efficient first step remedy. The opportunity for judicial review is available after adjuratory review.

AS 46.14.235 SINGLE PERMIT

OBJECTIVE:

The section presents the concept that a facility, regardless of the number of air contaminant sources it contains, will secure only one air permit which will identify all applicable state and federal laws pertaining to the facility's air contaminant emissions. Although language from the existing AS 46.03.225 (proposed for repeal) is not used, the concept of one permit is retained.

FEDERAL REQUIREMENTS:

CAA Section 502(c)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements. This provision is also in the best interest of Alaskans because all federal and state requirements will be consolidated within a single document; the permit.

AS 46.14.240 GENERAL OPERATING PERMITS

OBJECTIVE:

Incorporation of this elective provision within federal law should be extremely beneficial in accomplishing timely issuance of

FEDERAL REQUIREMENTS:

CAA Section 504(d) specifies that states may elect to issue general permits.

STATE INTENT & EXPLANATION:

General permits will be a method of quickly issuing individual permits for facilities that have

air permits for selected facility categories.

similar source configurations, do not pose a threat to air quality standards, or a facility in which the potential threat can be uniformly managed by specific permit conditions.---Several general permits would be created; one for each group of similar facility configurations. Before the permit is issued to any subject facility, the draft general permit would undergo public and EPA review. It would then serve as a model that could be issued to a qualifying facility upon filing of a permit application.

AS 46.14.245 OBJECTION BY THE ADMINISTRATOR

OBJECTIVE:

This section delineates the role of the EPA Administrator in the permit review process.

FEDERAL REQUIREMENTS:

CAA Section 505(b)

STATE INTENT & EXPLANATION:

This is a required provision of any state approved air permit program. The intent is to comply with the federal requirement regarding permit review by EPA.

AS 46.14.250 PAYMENT OF FEES AND FEE STRUCTURE

OBJECTIVE:

Establish that permit fees will be assessed by the department. The structure of fee rates is proposed to be established by the department in regulation. The selected fee structure could be based upon a number of variables that either affect direct cost to the department or that are related to the quantity or toxicity of emitted air contaminants.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(3)(A) and (B)

STATE INTENT & EXPLANATION:

The Clean Air Act requires that permit fees be collected and that such fees must be adequate to pay the direct and indirect costs for executing all tasks associated with the permit program. The fees can not be used to pay other air program costs (example: the costs of controlling carbon monoxide pollution in Anchorage and Fairbanks because this problem is not caused by "permitted facilities").

Specific fees are not established in the bill because it would be difficult or impossible to establish an equitable fee structure. There is only limited knowledge about the fiscal impact of potential fee amounts to specific industry groups especially for small businesses that must now obtain permits. Much more research and public review is needed for setting an equitable fee structure.

AS 46.14.255 PENALTY AND INTEREST FOR NONPAYMENT

OBJECTIVE:

This section establishes a deterrence for non-payment of fees.

FEDERAL REQUIREMENTS:

No specific requirement, but, authority for EPA to assess penalties and interest is set out in CAA Section 502(b)(C)(ii).

STATE INTENT & EXPLANATION:

Establishing an adequate deterrent to non-payment of permit fees will result in a low percent of non-payment and will keep overall fees lower and reduce costs for collection of debt.

Sec. 46.14.260 DURATION OF OPERATING PERMITS

OBJECTIVE:

The section identifies the maximum duration for any permit before renewal must be sought.

FEDERAL REQUIREMENTS:

AS 46.14.265(a) ---- see
CAA 502(b)(5)(B)

AS 46.14.265(b) ---- see
CAA 503(d)

STATE INTENT & EXPLANATION:

Currently air permits are issued for up to 5 years. It is expected that the same policies would be retained since this concept is reflected in federal law. Although most permits would be issued for 5 years, facilities that have compliance problems would be issued permits for lesser durations. Facilities that traditionally re-locate on a frequent basis would probably also be issued for shorter durations since the applicant would not be able to anticipate facility location for five years in advance.

AS 46.14.265 REOPENING OF PERMITS

OBJECTIVE:

The purpose of the section is to specify under what conditions a permit can be re-opened to incorporate new requirements.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(9)
Also see CAA Section 502(b)(10)

STATE INTENT & EXPLANATION:

It is the intent of Congress that permits are closed documents once issued and thereby serve as a shield for the permittee by containing all applicable requirements of state and federal law. Congress also saw a need to delineate specific events when the issuing agency could re-open a permit to incorporate new requirements of federal law. The department's intent is to comply with the federal requirement to provide for a re-opener in these limited instances.

AS 46.14.270 TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS

OBJECTIVE:

This section specifies the procedure and causes for the department to terminate or change a permit after issuance.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(5)(D)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirements and delineate explicitly "reasons for cause". Proposed language for this section is taken from the current language of AS 46.03.120 for waste disposal permits except for subsection (5) which is new language.

Sec. 46.14.275 FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS

OBJECTIVE:

This section directs the department to take all necessary actions to avoid federal pre-emption on a permit that may result in permit termination or modification.

FEDERAL REQUIREMENTS:

CAA Section 505(e)

STATE INTENT & EXPLANATION:

The intent is to avoid federal intervention in permits issued by the department. Inclusion of this provision in statute is not mandatory, but, serves a valid purpose.

AS 46.14.280 TEMPORARY OPERATIONS

OBJECTIVE:

The purpose is to provide a specific permitting mechanism for operations that typically relocate to numerous areas of the state depending upon short term contractual projects.

FEDERAL REQUIREMENTS:

CAA Section 504(e)

STATE INTENT & EXPLANATION:

There is a direct advantage in exercising this elective provision in federal law when recognizing the needs of certain Alaska industries. Typical facilities likely to receive permits using this provision include asphaltic concrete plants, portable incinerators and combustion devices used to clean petroleum contaminated soils. It may be desirable to extend the temporary period at any location beyond the one year stated in the proposed statute. Federal law does not limit the duration for a location, however there is a need

to stay within the bounds of "temporary".

AS 46.14.285 PERMIT AS A SHIELD

OBJECTIVE:

This section delineates that an issued permit serves as a shield for the permittee.

FEDERAL REQUIREMENTS:

CAA Section 504(f)

STATE INTENT & EXPLANATION:

The intent is to comply with federal requirement, but, include certain exceptions to the shield that must be retained to protect public health and the environment during unanticipated catastrophic events.

AS 46.14.290 TIMELY AND COMPLETE APPLICATION AS A SHIELD

OBJECTIVE:

This section delineates that filing a timely and complete permit application allows the owner and operator to continue lawful operation of the facility in the event that the department fails to issue or renew the permit.

FEDERAL REQUIREMENTS:

CAA Section 503(d)

STATE INTENT & EXPLANATION:

This provision is especially important for initial program start-up when the department will not be able to issue all of the permits immediately. This will also allow facilities that are not currently required to have a permit to continue operation without the permit. It is quite important to provide this assurance to permit applicants.

AS 46.14.300 MOTOR VEHICLE POLLUTION

OBJECTIVE:

This section would continue the existing authorities in AS 46.03.190 (proposed for repeal) to control emissions of air contaminants from motor vehicles.

FEDERAL REQUIREMENTS:

CAA Section 187(a)(4)
Also see CAA Section 182(c)(3)

STATE INTENT & EXPLANATION:

The department currently performs several functions relating to control of vehicular emissions. The entirety of 18 AAC 52 focuses upon vehicular emission controls authorized under the current AS 46.03.190. The language proposed here simply up-dates the existing statute and does not provide any new authorities in this area.

AS 46.14.400 DEVELOPMENT OF PROGRAM (SMALL BUSINESS ASSISTANCE PROGRAM)

OBJECTIVE:

This section establishes the small business assistance program to provide aid to small businesses in complying with the requirements of the Clean Air Act.

FEDERAL REQUIREMENTS:

CAA Section 507(a)

STATE INTENT & EXPLANATION:

Providing this assistance to small businesses affected by the Clean Air Act will reduce the financial burden upon these businesses, increase their knowledge and understanding of obligations placed upon them by the Act and assist them in controlling and preventing release of air contaminants to the atmosphere. The small business assistance program is a required feature of any federally approved state permit program.

AS 46.14.410 SCOPE OF PROGRAM

OBJECTIVE:

This section lists the specific tasks that will be performed by the small business assistance program staff.

FEDERAL REQUIREMENTS:

CAA Section 507(a)(1)-(7)
Also see - CAA Section 507(d)

STATE INTENT & EXPLANATION:

This assistance program is to be viewed as a substantial aid to those entities that are least knowledgeable and least capable of coping with the technical, fiscal and legal provisions of the Clean Air Act. This section as drafted will provide this assistance to the greatest number of Alaska industries as possible. The federal definition of a small business for eligibility of this assistance is quite restrictive. This is so because of the congressional desire to contain cost of the assistance in recognition that the program is to be funded by the collected permit fees. The department has suggested statutory language that will expand the definition of a small business as much as allowed under the Act to make this assistance available to a larger portion of our small businesses. Furthermore, language is suggested to enable yet an additional expansion of the service if the Legislature were to allocate additional monies to this activity from the general fund. Such monies may originate

from the settlement of enforcement cases as discussed in AS 46.14.260(c).

AS 46.14.420 POWER TO LIMIT PROGRAM

OBJECTIVE:

This section identifies that the Administrator of EPA and the department can exclude certain businesses from the assistance program, that would otherwise be eligible, if certain criteria are met.

FEDERAL REQUIREMENTS:

CAA Section 507(c)(3)

STATE INTENT & EXPLANATION:

The intent is to incorporate this elective provision into state law as described in federal law which will enable the state to exclude a small business facility or group of similar facilities from the assistance program. The facility or group will be excluded only if it is determined by EPA, the U.S. Small Business Administration and the department that the facility or group, in light of its technical and financial capabilities, is not in need of the assistance provided by this program.

AS 46.14.430 COMPLIANCE ADVISORY PANEL

OBJECTIVE:

This section establishes an oversight panel to guide the small business assistance program

FEDERAL REQUIREMENTS:

CAA Section 507(e)

STATE INTENT & EXPLANATION:

This language has been drafted in recognition of the separation of powers criteria in Alaska law. It is possible that additional

and to report its findings to the EPA Administrator.

discussions and negotiations will need to occur with EPA to clarify if the proposed language satisfies the federal obligations.

The language regarding semi-annual meetings is not specified in federal law, but was included to contain the annual expenses of the panel in recognition of their limited duties.

AS 46.14.500 LOCAL AIR QUALITY CONTROL PROGRAMS

OBJECTIVE:

This section establishes a mechanism for local governments or groups of local governments to implement all or parts of this chapter within their respective jurisdictions. This language is intended to replace the existing AS 46.03.210 (proposed for repeal).

FEDERAL REQUIREMENTS:

There is no direct requirement in federal law. CAA Sections 110(a)(2)(E) and 502(d) do discuss the concept of local programs. The state remains responsible for achieving the goals of a permit program even if it is executed by a local government entity.

STATE INTENT & EXPLANATION:

The proposed language represents some major conceptual differences in comparison to that which exists in AS 46.03.210. This language provides much greater flexibility to the department to implement a cooperative program with any significantly sized local government for carrying out all or some of the provisions of this chapter. The existing statute would not allow any local government to assume responsibility for implementing the permit provisions of the amended Clean Air Act. The proposed language establishes a vehicle for achieving this interagency program. Called a

"cooperative agreement", this document will delineate the respective responsibilities of each agency and enable the department to approve the activities of the local program.

AS 46.14.510 INADEQUACY OF LOCAL PROGRAM

OBJECTIVE:

This establishes the mechanism for identifying and reconciling inadequacies of a local government program. The section incorporates some of the language that currently exists in AS 46.03.220 (proposed for repeal).

FEDERAL REQUIREMENTS:

CAA Section 110(a)(2)(E) specifies that the state is the responsible entity for implementing the requirements of the Clean Air Act.

STATE INTENT & EXPLANATION:

The intent of the section remains the same as the existing statute, however, the provisions are substantially changed primarily to work with the concept of a cooperative agreement.

AS 46.14.520 STATE AND FEDERAL AID

OBJECTIVE:

The proposed language reflects to a large degree the existing language of AS 46.03.230 (proposed for repeal)

FEDERAL REQUIREMENTS:

CAA Section 105 authorizes federal grants for air pollution control efforts implemented by state and local governments.

STATE INTENT & EXPLANATION:

The proposed statute includes only minor changes to the existing language. Although this provision of law is currently only used to a minor degree, it is anticipated that this may be executed on a much broader basis with the new permit program if some of the local governments desire to become partners in

implementing the permit program. This statute would allow the state to provide all or a portion of the monies needed to carry out air permit functions by local government entities. -

AS 46.14.800 PUBLIC RECORDS

OBJECTIVE:

This section provides that documents in the department's possession are public records with very few exceptions (see - AS 46.14.810).

This section is more expansive than existing public records laws in that this law recognizes fewer exceptions for process and production related information.

FEDERAL REQUIREMENTS:

CAA Section 503(e)

STATE INTENT & EXPLANATION:

The intent to comply with federal requirements. All permit records are public records except in those cases where confidentiality is necessary to protect a competitive position or to safeguard company information relating to confidential information about markets, processes or products.

AS 46.14.810 CONFIDENTIALITY OF RECORDS

OBJECTIVE:

This section identifies the criteria that must be met to exclude documents from being public records. The language incorporates the existing language in AS 46.03.180

FEDERAL REQUIREMENTS:

CAA Section 503(e)

CAA Section 114(c)

STATE INTENT & EXPLANATION:

This language is intended to meet the federal requirements. In general, federal regulations allow more information to be held as confidential in comparison to existing Alaska law. The proposed language will not alter

(proposed for repeal) with some clarifications.

existing state law, except for the items specifically noted here. Language is proposed to address situations when ambient monitoring and meteorological data can be considered confidential. This would protect the uncontrolled use of the collected data by entities that do not contribute to the cost of the data collection but would stand to benefit by its use in a reduced overall cost to themselves for preparation of a permit application.

AS 46.14.820 RESPONSIBILITIES OF OWNERS AND OPERATORS

OBJECTIVE:

This section is to clarify the respective responsibilities and liabilities of facility owners and operators for compliance with the provisions of this chapter.

FEDERAL REQUIREMENTS:

There is no applicable federal citation except that the state must be able to enforce upon responsible parties for violations of this chapter.

STATE INTENT & EXPLANATION:

The intent is to delineate the responsibilities and liabilities of facility owners and operators.

Most of the obligations in the Act are imposed on both owners and operators. This allows the department to secure expeditious compliance, without waiting for private parties to determine who, among them will effectuate compliance. However, this section is needed to avoid duplicative efforts by the private parties.

AS 46.14.830 ADMINISTRATIVE PENALTIES FOR AIR POLLUTION

OBJECTIVE:

This section would create a mechanism for the department to assess penalties administratively for violations of this chapter, regulations adopted under this chapter and for conditions of permits authorized by this chapter.

FEDERAL REQUIREMENTS:

none - see explanation for more detail

STATE INTENT & EXPLANATION:

Although there is no direct federal requirement, the Clean Air Act substantially enhances the enforcement authority of the U.S. Environmental Protection Agency. These enforcement authorities are found in CAA Sections 113, 205, 304, and 307. These powers are quite encompassing and include administrative penalties and field citations. Of greatest concern is that the U.S. EPA can determine that the state's enforcement is inadequate and then take action to intervene or supersede the state enforcement position with respect to compliance with state law with any individual permit issued by the department.

In drafting this proposed section, the state's intent is to develop an enforcement program that will be viewed as efficient in execution, effective in deterring violations and substantive in fine amounts to avoid a "pay to pollute" attitude by industries. Such a program need not be of equal par with EPA's enforcement program, but it must be of adequate backbone

if the state is to prevent frequent or recurrent intervention by the EPA.

AS 46.14.840 CLEAN AIR PROTECTION FUND

OBJECTIVE:

This section establishes a special fund for the exclusive purpose of receiving permit fees, penalties and interest payments to be used to pay the costs of executing the permit program.

FEDERAL REQUIREMENTS:

CAA Section 502(b)(3)(C)(iii)

STATE INTENT & EXPLANATION:

This is a federally mandated provision for any approved state permit program. The department's intent is to comply with the minimum requirements of federal law.

AS 45.14.850 SPECIAL ACCOUNT

OBJECTIVE:

Monies received as a result of settlements from violations of law, including permit provisions, would be deposited in the general fund. The department may request appropriation by the Legislature of these monies for use in carrying out the air quality program of this chapter.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

The intent is to keep track of these within the general fund special account and request appropriations to support the air quality program.

AS 46.14.900 LIMITATION OF POWERS

OBJECTIVE:

This section describes the limits upon powers authorized by this chapter. The language reflects the contents of existing AS 46.03.245 (proposed for repeal).

FEDERAL REQUIREMENTS:

no applicable federal citation

STATE INTENT & EXPLANATION:

The intent is to retain the existing limits upon authority. A language addition was made to exclude air quality within residential dwellings from the purview of the department.

AS 46.14.990 DEFINITIONS

OBJECTIVE:

This section defines terms used within the chapter.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

Intent and explanation not necessary.

SECTIONS 3 THROUGH 14

OBJECTIVE:

Amend:

AS 28.10.041(a)(10)
AS 28.10.423

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

The intent is to amend existing statutes to implement the new Chapter 14 of Title 46.

AS 29.35
AS 29.35.200(b)
AS 29.35.210(a)
AS 29.35.210(b)
AS 37.05.146(4)
AS 44.46.025(a)(2)
AS 44.62.330(a)(44)
AS 46.03.760(f)
AS 46.03.765
AS 46.03.780(a)

to incorporate reference to the
new Chapter 14 of Title 46 of
Alaska Statutes.

Add Clean Air Protection Fund to
program receipt authority.

SECTION 15 AMEND AS 46.03.790(a)

OBJECTIVE:

Expand the type of actions that
become subject to criminal
prosecution.

FEDERAL REQUIREMENTS:

CAA Section 113(c)(2)

STATE INTENT & EXPLANATION:

The intent is to comply with
federal requirements.

SECTION 16 AMEND AS 46.03.790 TO ADD (h)

OBJECTIVE:

Make criminal violations of this
chapter subject to a maximum fine
of \$ 10,000 per offense.

FEDERAL REQUIREMENTS:

Proposed 40 CFR 70.11
FR May 10, 1991
Also see CAA Section 502(b)(5)(E)

STATE INTENT & EXPLANATION:

The intent is to comply with
federal requirements.

SECTIONS 17 THROUGH 19

OBJECTIVE:

Amend: AS 46.03.850(a)
AS 46.03.875
AS 46.03.890(b)
AS 46.08.075(a)
to incorporate reference to the
new Chapter 14 of Title 46 of
Alaska Statutes

FEDERAL REQUIREMENTS:

There is no applicable federal
citation

STATE INTENT & EXPLANATION:

The intent is to amend existing
statutes to implement the new
Chapter 14 of Title 46.

SECTIONS 20, 21 AND 22 AMEND AS 46.08.075, AS 46.08.900(6) AND AS 46.09.900(4)

OBJECTIVE:

Amend the definition of hazardous
substance to include elements or
compounds that enter the
atmosphere.

FEDERAL REQUIREMENTS:

There is no applicable federal
citation.

STATE INTENT & EXPLANATION:

Releases of air contaminants can
and do result in direct and
immediate damage to public health
and the environment. This
language change is essentially a
house keeping function. The
Attorney General's Office has
interpreted the existing
definition of hazardous substance
to include emissions to the
atmosphere.

SECTION 23 AND 24 AMENDS AS 46.35.200(4) AND AS 46.35.200(8)

OBJECTIVE:

Amend AS 46.35.200(4) to incorporate air permits issued under Chapter 14; amends reference to local programs under Chapter 14.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The intent is to amend existing statute to incorporate the new Chapter 14 of Title 46.

SECTION 25

OBJECTIVE

This section repeals existing statutes for air quality control.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The new Chapter 14 replaces all existing statutes for air quality control except AS 46.03.170. There is no longer a purpose for AS 46.03.170 since EPA has taken a position that they will not endorse any actions taken by the department under this authority. As discussed in AS 46.14.215, the State Plan becomes enforceable by EPA. EPA will not approve a plan incorporating this authority.

SECTION 26

OBJECTIVE:

This section authorizes the department to adopt regulations to implement this chapter.

FEDERAL REQUIREMENTS:

There is no applicable federal citation.

STATE INTENT & EXPLANATION:

The intent is to enable the department to fully implement the programs described in the chapter.

SECTIONS 27 AND 28

OBJECTIVE:

These sections provide for an effective date for each of the respective statutes within this bill.

FEDERAL REQUIREMENTS:

N/A

STATE INTENT & EXPLANATION:

Several statutes within section 2 of the bill require a delayed effective date to provide time to develop and adopt implementing regulations.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2020
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 16, 1992

SUBJECT: Sectional Description for HB 377
Clean Air Act Amendments

TO: Representative Tom Moyer

FROM: Terri Lauterbach
Legislative Counsel *Thil*

Sec. 1. Findings.

Sec. 2. Amends a statutory list of dedicated funds to add the new air pollution control fund that is set up in sec. 8. Federal law at 42 U.S.C. 7661a(b)(3)(C)(iii) requires that air pollution permit fees be used only for the air pollution permit program, so a dedicated fund to receive these fees is necessary for compliance with the federal Clean Air Act. A need to comply with federal law is recognized as an exception to the usual prohibition against dedicated funds under art. IX, sec. 7, Constitution of the State of Alaska.

Sec. 3. Amends the fee-charging authority of DEC so that DEC may charge fees if it operates a vehicle inspection and maintenance program. Federal law at 42 U.S.C. 7661q(b)(3)(A) requires that both direct and indirect costs be covered by permit fees, so I have added that language in paragraph 2. You will note that current language of AS 44.46.025(a) limits fees to those covering direct costs.

Sec. 4. Adds a declaration of policy that the legislature intends for DEC to operate a program that complies with federal law. Also requires DEC to submit the appropriate plans to the federal government.

Sec. 5. Directs DEC to adopt a permit program that complies with federal requirements.

Sec. 6. Incorporates some federal regulatory and statutory requirements into DEC's current permit program.

Sec. 7. New Sec. 46.03.163 adds permit renewal procedures to the statutes. New Sec. 46.03.165 adds termination and modification procedures to the statutes.

Sec. 8. New Secs. 46.03.175 and 46.03.177 establish the new air pollution control fund and require DEC to charge permit fees that meet the requirements of federal law, which is quite detailed on the matter of permit fees. They also allow DEC to charge a processing fee if it turns out that a permit is not required. New Sec. 46.03.179 allows DEC to have a registration program to gather information.

Sec. 9. Clarifies the requirements for local air pollution control programs.

Sec. 10. Clarifies the department's ability to retain state jurisdiction over air contaminant sources.

Sec. 11. New Sec. 46.03.227 requires DEC to have a small business assistance program. New Sec. 46.03.228 establishes a small business compliance advisory panel. The detail contained in Sec. 46.03.228(a)(3) is required because federal law simply refers to appointments by "majority and minority leadership," a phrase that is not always clear when applied to the Alaska State Legislature. New Sec. 46.03.229 is the definition used in federal law.

Sec. 12. A technical amendment necessitated by the new subsection (g) that is added by sec. 13 of the draft.

Sec. 13. Sets the level for civil fines relating to the air quality program. The \$10,000 per day level is required under federal law at 42 U.S.C. 7661a(b)(5)(E), so this subsection is necessary to separate air quality fines from the \$5,000 per day fines otherwise applicable under AS 46.03.760(a).

Sec. 14. Sets the level for criminal fines relating to the air quality program at a minimum of \$10,000 per day as accomplished in sec. 13 for civil fines. (A fine for a class A misdemeanor in Alaska is currently a maximum of \$5,000.) Federal law at 42 U.S.C. 7661a(b)(5)(E) requires "appropriate criminal penalties" to enforce the state program, without further detail, so this change may not be necessary. However, it seemed to me to be appropriate because federal requirements necessitated increasing the current \$5,000 civil fine to \$10,000.

Sec. 15. Repeals the variance system in current law. Federal law does not appear to allow variances. If waivers are possible, DEC will have authority to grant them under the general statutory directive in sec. 5 of the draft that they implement the permit program in a manner that complies with federal law.

Sec. 16. Contains directions from the legislature as to the time period in which the executive branch should be implementing the laws that would be enacted by this draft. The deadlines are the minimums required under federal law.

Sec. 17. Governs local programs that are operating when this Act takes effect.

Sec. 18. Gives an immediate effective date to the provision under which a small business assistance program is required so that it can be in place by the federally-mandated date of November 1992. Also gives an immediate effective date to the directives contained in sec. 16 so that DEC has authority to begin implementation of the rest of the laws that would be enacted by this draft.

Sec. 19. Gives the remainder of the draft a November 1993 effective date, the latest allowed by federal law. Please note that this does not mean that the state will necessarily be requiring permits from all businesses for all pollutants as of that date. It merely means that the federally-approved permitting program and state implementation plan must be in place by then. Federal law allows approval of programs and plans that call for a phased-in implementation of the requirements of federal law. So, some types of permits may not be required for months or years after November 1993.

TML:pl
92-019.plm

To: Tom
From: Christine
Date: March 20, 1992
Re: CS HB377 (JUD)

The following sections are ones in which HB377 gives DEC more authority than federal mandates require, select favorable options not available to EPA, or makes other accommodations not addressed in federal statutes.

46.14.010 Emission Control Regulations

The first sentence of this section is taken from existing statute. It reads "After public hearing, the department may adopt regulations under this chapter as necessary to prevent, abate, control or identify air pollution due to emissions, including regulations setting emission standards, performance standards, and limitations." Now, industry is saying that the DEC should not have this authority. We argue that for years, industry has been arguing that Alaska should not be lumped into general EPA policy because we are a unique state and need flexibility to fashion policy to address these differences. For instance, we are exempt from acid rain provisions and the wetlands policy. That's okay with industry. The state does not abuse this existing authority as evidenced by our 20 year track record of only creating ammonia standards (Kenai) and hydrogen sulfide standards. HB 377 continues existing authority.

The second sentence of that section allows DEC to base those standards on human health and welfare in addition to available technology. The feds reference technology based standards as of the past four years as a second layer to the health risk standard. For example, if a level of "x" parts per million would cause no more than 1 sick person out of a million, that would be considered the health based standard. In addition to that level "x", a facility would be required to reduce "x" by a percentage based on what technology is available -- such as a pollution control device. It is good public policy that the DEC is authorized to, like the federal government, base these standards on human health and welfare as well as available technology.

AS 46.14.225 Administrative Actions Regarding Permits

To be as responsive as possible to the needs of industry for construction (reconstruction) permits. Instead of having to wait for an operating/construction permit, industry will have the advantage of beginning construction while the operating permit is in review. Industry supports this change that is not required by the federal act.

AS 46.14.240 General Permits

Here we have selected an option to issue general permits that the feds would not offer if they ran the air quality permit program.

AS 46.14.255 Penalties and Interest for Nonpayment

If EPA runs our air quality program, then there will be a penalty for nonpayment assessed at 50% of the permit fee. The states are not required to have a penalty for nonpayment. By having this provision, we could assess only 5% per month, up to 25% of the fee, which is a less onerous structure than the feds.

AS 46.14.500 Local Air Quality Control Programs

Unlike the feds, HB 377 would allow local municipalities to run their own program. Industry has not voiced any opposition to this provision.

AS 46.14.820 Responsibilities of Owners and Operators

The federal law makes both the owner and operator apply for a permit. The state exempts the owner and operator from duplicating efforts. Industry supports this accommodation.

AS 46.14.830 Administrative Penalties

This section grants admin. penalty authority to DEC. Under the new federal act, the feds have increased enforcement powers. DEC would like to have the authority, although not as broad, along parallel grounds to give them the enforcement tools necessary to keep the EPA "out of our backyard" so to speak. No agreement on this provision.

AS 46.08.075 Definition of Hazardous Substance

The title was tightened to prevent this from becoming omnibus legislation to provide additional access to 470 funds. The provision in HB 377 is to clarify in statute what grounds the DEC has been accessing 470 funds. There is an AG's opinion that support this change. It is considered a housekeeping measure. Industry suggested this change and supports this section.

HOUSE COMMITTEE REPORT

2-24-92

(9)

Date Referred: 1/13/92

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/20/92

The RESOURCES 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 (RES)

[] the same title
[X] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[X] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

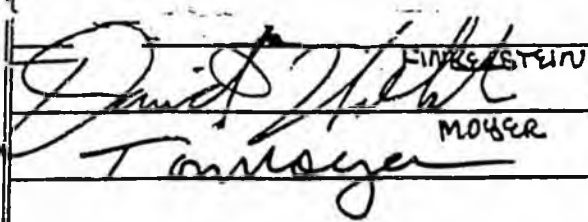
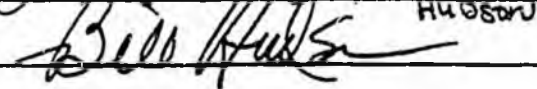
APPROVES PREVIOUS: (Dept/Date)

[X] fiscal impact DEC

[] fiscal note(s)

[] zero fiscal note

[] zero fiscal note(s)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
 FINKESTEIN MOYER	X	 LINCOLN		X	
		 CARNEY		X	
		 LEMAN			
		 HUDSON			

VICE-CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO CSHB 377 (RES)Revision Date: _____
Title: Alaska Air Permit StatutesDepartment Affected: Environmental Conservation
BRU: Division of Environmental QualitySponsor: Representative Tom Moyer
Requestor: Resources CommitteeComponent: Air Quality Management

COMPONENT SERIAL NO.

1 | 4 | 2 | 18

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						

REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5

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 QualityPhone: 465-5100
Date: 20-Feb-92Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation Date: 2/2/92

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

FISCAL NOTE COMPUTATIONS

OVERVIEW

The current statewide program consists of 30.5 professionals and three clerical persons. This staff level includes six positions created in mid FY92 with additional grant funds from EPA for Clean Air Act implementation. Because the new permit program requires a major restructuring of the existing permit program, and at least tripling of the number of state air quality permits, the department must obtain significant staff increases to accomplish the mandates of the Act. Failure to develop and implement the new permit program will result in withdrawal of federal highway construction funds. In addition, the Act mandates that permit program direct and indirect costs be completely funded by operating permit fees.

Twelve (12) new technical positions and four (4) administrative support positions would perform the program development work. Development work to be accomplished in FY93 and early FY94 includes a complete rewrite of the regulations in 18 AAC and the associated State Air Quality Control Plan, and working with the regulated community to adopt a program that meets Alaskan as well as federal needs.

Another major aspect of the permit program is small business support function. The Small Business Assistance program will provide technical and compliance assistance on air pollution matters, and establishes a state small business liaison to provide direct oversight. In addition, the Act creates a compliance advisory panel composed of appointees from the Executive and Legislative branches to determine the effectiveness of the program. In FY93, the Small Business Assistance program would fund one full-time Environmental Specialist, one part-time Clerk Typist, one position for the small business liaison, staff travel, contractual, publication and distribution of information material, and the direct (but not salary) costs of quarterly meetings of the Compliance Advisory Panel.

INCREMENTAL EXPENDITURE PROJECTION

Salary projections are based on the FY93 operating budget increment request. For projections beyond FY93, specific line item budget needs are based on funding required for new personnel and shifts in program tasks as the permit restructuring progresses from the development phase to the operations phase. The employee estimate is derived from the year-by-year workload evaluation based on the deadlines established in the Clean Air Act, the number of permits to be issued, and the increases in the associated work tasks, such as inspections and facility report review. For FY94 and beyond, personnel estimates are based on a management structure that shifts from central office program development to one that is primarily implemented by the department's regional offices, beginning in FY96.

	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

OVERVIEW OF TOTAL PROGRAM DEVELOPMENT

To fully evaluate the effects of the requirements of the Clean Air Act on the air quality management program, the total program costs, personnel, and funding are presented. Note that a number of positions which are currently funded by federal grants and state matching funds will be funded by permit program fee revenue after the implementation of the new program.

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
FTE	33.5	52.0	52.0	58.5	58.5	58.5	58.5
Total Costs							
Personal	1646.5	2375.2	2555.2	3158.5	3474.4	3717.7	3977.9
Travel	175.8	356.0	356.0	462.3	511.0	662.5	672.0
Contract	816.3	864.5	804.5	411.4	431.4	702.1	702.1
Supplies	68.2	124.2	124.2	159.9	176.0	321.7	330.5
Equipment	52.2	259.2	139.2	139.2	105.0	135.0	195.0
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

Total Program Funding

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	1534.2	1434.2	1434.2	892.1	892.1	892.1	892.1
G.F. Match	1174.1	1174.1	1174.1	1173.5	1173.5	1135.2	967.2
P/R	49.7	1370.8	1370.8	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.3
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

Position Title ENVIRONMENTAL ENGINEER III			No. of Positions 5	Range / Step 19A	Barg. Unit GG
Time Status Full-time	Staff Months 49		Location Various		Election District Various
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Environmental Engineer IIIs will assist senior staff to: 1. develop revised regulations, recognizing small business concerns 2. identify and assist new permittees 3. develop standardized permit applications 4. prepare draft permits 5. provide assistance and information to permit applicants 6. develop the small business and pollution prevention programs 7. training regional and district permit liaisons 8. conduct inspections and compliance certifications 9. develop regulations to minimize release of hazardous air pollutants, - and 10. establish a quality control/quality assurance audit program.		
Salary		182.6			
Benefits		78.4			
Premium Pay					
Other					
Total Personal Services		261.0			
Travel		32.0			
Contractual		24.0			
Commodities		10.0			
Equipment		25.0			
Other					
Total Cost		352.0			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004				
I-A Receipts	1007				
CIP Receipts	1061				
Other	PROGRAM RECEIPTS	352.0			

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Position Title ENVIRONMENTAL ENGINEER II		No. of Positions 4	Range / Step 17A	Org. Unit GG
Time Status Full-time	Staff Months 24	Location Various		Election District Various
TYPE OF EXPENDITURE		Amount		
Salary		78.6		
Benefits		33.6		
Premium Pay				
Other				
Total Personal Services		114.2		
Travel		15		
Contractual		10		
Commodities		4		
Equipment		20		
Other				
Total Cost		163.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
I.A. Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	163.2		
		Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Environmental Engineer IIs will assist senior staff to: 1. develop revised regulations, recognizing small business concerns 2. identify and assist new permittees 3. develop standardized permit applications 4. prepare draft permits 5. provide assistance and information to permit applicants 6. develop the small business and pollution prevention programs 7. training regional and district permit liaisons 8. conduct inspections and compliance certifications 9. develop regulations to minimize release of hazardous air pollutants, and 10. establish a quality control/quality assurance audit program.		

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Position Title ENVIRONMENTAL SPECIALIST II			No. of Positions 2	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 6		Location Various	Election District Various	
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Environmental Specialist IIs will assist senior staff to: 1. develop revised regulations, recognizing small business concerns 2. identify and assist new permittees 3. develop standardized permit applications 4. prepare draft permits 5. provide assistance and information to permit applicants 6. develop the small business and pollution prevention programs 7. training regional and district permit liaisons 8. conduct inspections and compliance certifications 9. develop regulations to minimize release of hazardous air pollutants, and 10. establish a quality control/quality assurance audit program.		
Salary		25.7			
Benefits		7.2			
Premium Pay					
Other					
Total Personal Services		32.9			
Travel		6			
Contractual		4			
Commodities		1			
Equipment		10			
Other					
Total Cost		54.9			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.E. Match	1003				
General Fund	1004				
LA Receipts	1007				
CIP Receipts	1061				
Other	PROGRAM RECEIPTS	54.9			

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Position Title CLERK TYPIST III		No. of Positions 2.5	Range / Step 08A	Org. Unit GG
Time Status *	Staff Months 15	Location Various		Election District Various
TYPE OF EXPENDITURE		Justification		
Salary		The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The two full-time and one part-time Clerk Typist IIIs will assist senior staff to: 1. develop procedures to track permit applications 2. prepare information packets for potential permittees 3. issue and receive standardized permit applications 4. prepare permit documentation and correspondence 5. provide assistance and information to permit applicants 6. operate small business and pollution prevention hotlines 7. develop correspondence tracking systems, and 8. develop and maintain permit and permit application files.		
Benefits				
Premium Pay				
Other				
Total Personal Services	41.1			
Travel	0			
Contractual	5			
Commodities	2.5			
Equipment	15			
Other				
Total Cost	63.6			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
I.A. Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	63.6		
* Full-time (2) Part-time (.5)				

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Position Title ACCOUNTING CLERK II		No. of Positions 1	Range / Step 09A	Barg. Unit GG
Time Status Full-time	Staff Months 3	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Justification		
Salary	Amount	The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Accounting Clerk II will assist senior staff by: 1. developing procedures for permit fees and assessments 2. preparing information packets for potential permittees 3. developing uniform accounting procedures for permit fees 4. preparing permit documentation and correspondence 5. providing assistance and information to permit applicants 6. tracking small business and pollution prevention funds 7. implementing report and audit procedures, and 8. developing standardized managerial summaries of fund activity.		
Benefits	6.3			
Premium Pay	2.4			
Other				
Total Personal Services	8.7			
Travel	0			
Contractual	2			
Commodities	1			
Equipment	5			
Other				
Total Cost	16.7			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS			
	16.7			

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Position Title PARALEGAL ASSISTANT II		No. of Positions 1	Range / Step 16A	Barg. Unit GG
Time Status Full-time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Amount	Justification The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Paralegal Assistant II will assist in: 1. drafting enabling authority 2. developing comprehensive and understandable regulations 3. drafting procedures for public participation in the permit process 4. preparing draft regulations for pollution prevention 5. providing assistance to program staff on regulatory procedures 6. developing the new State Air Quality Plan 7. preparing program authority certifications to USEPA 8. developing enhanced administrative review procedures, and 9. coordinating with established judicial review procedures.	
Salary		27.7		
Benefits		10.8		
Premium Pay				
Other				
Total Personal Services		38.5		
Travel		0		
Contractual		2		
Commodities		1		
Equipment		5		
Other				
Total Cost		46.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	46.5		

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Position Title ADMINISTRATIVE ASSISTANT II		No. of Positions 1	Range / Step 14A	Barg. Unit GG
Time Status Full-time	Staff Months 9	Location Juneau		Election District Juneau
TYPE OF EXPENDITURE		Justification		
Salary		The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods. The Administrative Assistant II will: 1. supervise procedures to track permit applications and fees 2. implement reporting and auditing procedures 3. issue standardized permit applications 4. supervise and audit permit documentation procedures 5. provide assistance and information to permit applicants 6. assure uniform accounting procedures for permit fees 7. coordinate program support functions, and 8. provide standardized managerial summaries of program activity.		
Benefits				
Premium Pay				
Other				
Total Personal Services	34.0			
Travel	0			
Contractual	2			
Commodities	1			
Equipment	5			
Other				
Total Cost	42.0			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
IA Receipts	1007			
CIP Receipts	1061			
Other	PROGRAM RECEIPTS	42.0		

Justification

The new Clean Air Act of 1990 requires all states to establish a completely new operating permit program which takes into account small sources never permitted before, includes greater public participation in the permit process, and requires the collection of fees to completely offset all costs for the review, issuance, and maintenance of the permit program. The Act also requires states to establish a Small Business Assistance Program which aids small businesses in permit process, provides technical and compliance assistance, and provides information about pollution prevention methods.

The Administrative Assistant II will:

- 1. supervise procedures to track permit applications and fees**
- 2. implement reporting and auditing procedures**
- 3. issue standardized permit applications**
- 4. supervise and audit permit documentation procedures**
- 5. provide assistance and information to permit applicants**
- 6. assure uniform accounting procedures for permit fees**
- 7. coordinate program support functions, and**
- 8. provide standar."zed managerial summaries of program activity.**

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AMENDMENTS
OFFERED BY ATTORNEY GENERAL'S OFFICE
AS READ INTO RECORD
AT HEARING OF FEBRUARY 18, 1992

CS FOR HOUSE BILL NO. 377
7-LS1624\G Lauterbach 2/12/92
AS ADOPTED IN HOUSE RESOURCES COMMITTEE
ON FEBRUARY 19, 1992

FIRST PROPOSED AMENDMENT

Sec. 46.14.200 Page 3, lines 6-7

Take what is now subsection 46.14.215(c) (Page 5, lines 10 - 12), make it 46.14.200(d), and reword the subsection as follows:

(d)[(c)] The department shall ensure that permits issued, modified, amended, or renewed under this chapter comply with the emission limitations and other requirements of the Clean Air Act, applicable federal regulations and the state air quality control plan.

Reletter what was 46.14.200(d) (Page 3, line 7) as 46.14.200(e).

SECOND PROPOSED AMENDMENT

Sec. 46.14.205 Page 3, lines 10.

Delete "AND SOURCES" from the title of this section.

THIRD PROPOSED AMENDMENT

Sec. 46.14.205(a)(4) Page 3, lines 20 - 23.

Reword as follows:

(4) an existing facility, otherwise described in (1), (2), [OR] (3) , or (5) of this subsection for which a modification is proposed that would increase actual emissions of an [REGULATED] air contaminant to an amount equal to or greater than the annual emission quantity set out in regulations adopted under AS 46.14.010.

FOURTH PROPOSED AMENDMENT

Sec. 46.14.830 Page 17, lines 22 - 23

Add the word "regulation" as shown:

(b) An administrative penalty assessed under this section may not exceed \$10,000 a day for each offense. Each provision, regulation, term, or condition violated is a separate and distinct offense. If a violation of a provision, regulation, term or condition continues from day to day, each day is a separate offense.

FIFTH PROPOSED AMENDMENT

Sec. 46.14.830(h) Page 18, line 26.

Insert the words as shown:

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

SIXTH PROPOSED AMENDMENT

Sec. 46.14.340(b) Page 19, line 12.

Substitute the words "this chapter" for "AS 46.14.205" as shown:

(b)...the small business assistance program that are directed at facilities subject to [AS 46.14.205] this chapter.

same clause

PRODUCERS' COUNCIL **DRAFT**

USE OF FEDERAL STANDARDS

David Rogers; Mary Nordale

Replace 46.14.010(a) with the following text:

Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the department may adopt regulations under this chapter setting such air pollution emission standards, performance standards and limitations as are essential to meet the minimum requirements of state air quality control programs mandated by the Clean Air Act as amended, 42 U.S.C. 7401-7671q, and federal regulations promulgated thereunder. Where a federal standard or limitation is in effect for a given air contaminant, the department shall not adopt a standard or limitation that is more stringent than the federal standard or limitation. Where there is no federal standard or limitation in effect, the department shall not adopt a standard or limitation except in those instances where such adoption is federally required, and in those instances the department shall apply the same criteria in determining the standard or limitation as the federal administrator is required by the Clean Air Act to apply; provided, however, that state regulations in effect on April 1, 1992 regulating air contaminants not federally regulated may remain in effect until a federal regulation for the same air contaminant becomes effective. The department shall provide exemptions for fugitive emissions to the extent allowed under federal laws and regulations.

* * * * *

COMMENT: This proposed amendment is still under review

and is subject to change. Under the Clean Air Act Amendments of 1990, EPA will regulate far more kinds of sources, and far more kinds of chemical air pollutants than ever before, and will require state operating permit programs to reflect this far-reaching and pervasive federal regulatory activity. As one example, EPA has already identified 189 chemicals (and will add more) which will be federally regulated as hazardous air pollutants; this contrasts vividly with the fact that before the CAA 1990, EPA had regulated only five hazardous air pollutants. With the expanded federal program there will be no need for Alaska to adopt more stringent standards than those adopted by EPA, or to regulate emission sources more extensively than EPA will be regulating them as it implements the new federal statute. The state, with its limited scientific capabilities within ADEC compared to those available to EPA, should not attempt to make independent evaluations of health-related studies, but instead should rely on federal determinations.

If Alaska industries are forced to meet the higher costs resulting from more stringent regulations, they will be placed at serious economic disadvantage when competing for markets, both foreign and domestic, which will compound the disadvantage faced by Alaska industries now because of higher costs of production. Therefore, HB 377 should limit the authority of ADEC to adopt regulations that exceed federal requirements. Similarly, HB 377 should require the department to provide exemptions for fugitive emissions to the extent allowed by federal law.

The next to last sentence allows the department to

regulate kinds of sources and air contaminants which the Clean Air Act requires states to regulate if EPA has not done so by a prescribed deadline; i.e., the requirement for states to set "equivalent emission limitations" in permits under 42 U.S.C. 7412(j).

FEDERAL EXEMPTIONS

Delete Section 200 and insert in lieu thereof, the following:

Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR OPERATION. (a) Every person intending to construct, install, modify, reconstruct, or establish a facility subject to AS 46.14.205(a) must comply with the terms and provisions of the construction permit issued under this chapter.

(b) Every person operating a facility described in AS 46.14.205(a) or a facility that contains one or more of the sources listed in AS 46.14.205(b) must comply with the terms and provisions of the operating permit issued under this chapter.

(c) Permits issued, modified, amended, or renewed under this chapter must comply with the emission limitations and other requirements of 42 U.S.C. 7401-7671q (Clean Air Act), applicable federal regulations, and the state air quality control plan.

(d) The department shall promptly exempt a source or sources from the requirements of this chapter whenever the federal administrator exempts a source or sources from the requirements of 42 U.S.C. 7661a(a) (Clean Air Act, Sec. 502(a)).

* * * * *

COMMENT: This revision of Sec. 200 is primarily a grammatical change, placing the requirements of the section in the affirmative rather than the negative.

The phrase "and an order or other determination of the department under this chapter." is deleted from subsections (a) and (L) to eliminate the possibility of confusion. As rewritten, a permittee under either (a) or (b) is required to comply with the permit. The permit should contain all of the terms and provisions required by this chapter and additional orders and determinations should not be necessary to allow construction or operation.

The work draft version did not contain a subsection (c). Subsection (c) of the revision appears as subsection (d) in the work draft.

Subsection (d) has been added to require the department to exempt sources exempted under federal law. The current bill text only authorizes (but does not require) ADEC to adopt federal exemptions of particular sources EPA decides to exempt under 42 USC 7661a(a), which allows EPA to exempt sources or source categories (but not "major" sources) from operating permit requirements. In keeping with the spirit of amendment #1 (which prevents the state from adopting standards and limitations that are more stringent than corresponding federal requirements), the bill should also require ADEC to promptly exempt particular sources or source categories to the extent that EPA adopts such exemptions. The term "promptly" has been added to prevent unreasonable delays.

Amend subsection (b) of 46.14.205 to read as follows:

(b) The owner and operator of a facility shall obtain an operating permit from the department if the facility is [A MAJOR FACILITY,] a facility subject to (a) of this section, or a facility that contains one or more of the following sources:

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

(2) another stationary source designated by the federal administrator [OR THE DEPARTMENT, BY REGULATION.]

* * * * *

COMMENT: The definition of "major facility" contained in Sec. 990 includes all of the types of facilities listed in subsection (a). Inclusion of "major facility" in subsection (b) is unnecessarily confusing as there is no other use of the phrase in this section that explains it. The change in (2) simply restricts the department to federal stationary source designations.

Amend the first sentence of 46.14.210(a) to read as follows:

EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a) The department shall adopt regulations to address all substantive [THE FOLLOWING] elements of the emission permit program including:

* * * * *

COMMENT: This change will assure that all important aspects of the new program will be defined in regulation and subject to public review and comment.

Amend 46.14.210(a)(6) as follows:

(6) procedures for renewing, modifying, amending, or revising a permit that provide maximum flexibility in the operation consistent with [THE PURPOSES OF THIS CHAPTER AND] 42 U.S.C 7401-7671q (Clean Air Act), including procedures to allow changes within a permitted facility without requiring a permit revision as provided in 42 USC 7661a(10); and

* * * * *

COMMENT: The federal statute requires state programs to include:

"Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting

authority provides in its regulations a different
~~timeframe for emergencies.~~

The current draft bill does not specifically refer to this federal provision, which requires state programs to allow certain "changes" within a permitted facility to proceed without a permit revision following notice by the applicant to the permitting authority (ADEC).

Because the EPA regulations regarding permit revisions are still under discussion, it is impossible to provide for these situations with any specificity. However, this general amendment will at least assure coverage in the ADEC regulations to the maximum extent permitted by the final EPA rules. In addition, deletion of the reference to "consistency with the purposes of this chapter" will assure that these procedures are no more restrictive than applicable federal requirements.

INITIAL APPLICATION DEADLINE.

Amend 46.14.220 to read as follows:

Section 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner and operator of a facility required to have an operating permit under this chapter shall submit the required application and monitoring, reporting, and quality assurance plan no later than 12 months after the date on which the facility becomes subject to AS 46.14.200, [OR AT AN EARLIER TIME IF REQUIRED BY THE DEPARTMENT.] or 12 months after the date on which EPA approves the state permit program under 42 U.S.C. 502(d), whichever is later. The department may accept and begin processing applications filed earlier than the deadline, and such early applications may be given priority for permit issuance.

* * * * *

COMMENT: The current text allows ADEC to set application and information deadlines that are shorter than those required under the federal Clean Air Act. The federal program implementing the 1990 amendments of the Clean Air Act will regulate a wide range of facilities which never before have needed air quality related permits. For many of the smaller businesses, such as rural electrical utilities, this may be their first encounter with environmental regulations and permit requirements. The regulated

community will need a reasonable time to understand what they must do, and to prepare their permit applications.

The bill should establish a statutory deadline of 12 months from the date the facility is subject to 46.14.200, or 12 months after the date on which EPA approves the state permit program, whichever is later, and also allow earlier filing of applications.

APPLICABLE REVIEW AND APPROVAL DEADLINES¹/

Amend proposed 46.14.225 to read as follows:

Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS.

(a) Except as provided in AS 46.14.245, after receipt of a complete application, and after notice and opportunity for public comment and hearing, the department shall issue or deny

(1) a construction permit within 30 days after the close of the public comment period;

(2) an operating permit, other than a general operating permit, within 6 [12] months after receipt of the complete application by the department.

The department shall give preferential priority to the issuance of permits for construction of new facilities and modification of existing facilities if the department is unable to process expeditiously all operating permits for existing facilities.

(b) Within 30 days after receipt of a written application for a permit, the department shall provide the applicant with a written determination of completeness. In the absence of a timely determination by the department, the application shall be deemed complete for purposes of the shield provided by AS 46.14.290; but the department may seek such additional information from the applicant as is reasonably needed to complete the processing of the application. If the department determines that the application is

¹/Also see proposed amendment to as 46.14.290

incomplete, the department shall, no later than 10 days following issuance of its determination, specify to the applicant the additional information needed. The department may elect to invoke the shield provision of AS 46.14.290 effective on the date the department received the application.

(c) [(b)] Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted on or before November 15, 1994. A phased schedule must ensure that at least one -third of the applications submitted on or before November 14, 1994, will be acted on by the department during each of the three years after November 15, 1994. On or before November 15, 1997, the department shall act on all applications received on or before November 15, 1994.

(d) [(c)] Failure by the department to act within the time limits established in or under (a) or (b) of this section shall be treated as a final agency action [, BUT ONLY] for purposes of judicial review to require that action be taken by the department.

* * * * *

COMMENT: The current text establishes an outside limit of 12 months for ADEC to act on applications for operating permits (AS 46.14.265(B)), and is silent on the question of deadlines for a completeness review of applications. Although existing facilities are protected by timely and complete applications under proposed permit shield provisions, new

facilities cannot commence operations until the permit is obtained, and a similar problem exists for modifications of existing facilities. The 12 month period is too long, though it is an improvement over the 18 months in the original text. In addition, without a reasonable completeness review provision in the statute, there is no way to assure timely identification of problems, nor to assure the presence of the shield provision afforded by a "timely and complete" application as intended by the federal statute.

To provide some level of predictability for all operations and to eliminate unnecessary delays for new facilities and modifications of existing facilities, the bill should specify time limits for the application review and permit issuance processes. The deadlines should be no longer than 30 days for the determination of completeness and no longer than 6 months for permit issuance after receipt of a complete application.

Relative priority should be given to the processing of applications for permits to construct new facilities or modify existing facilities, as those actions cannot go forward without an issued permit, whereas existing facilities can continue to operate (under the shield of their submitted application) while their permits are being processed. In fact, EPA's latest draft regulation (draft dated January 27, 1992, at page 68) indicates that state programs should ensure a priority for applications for construction and modification permits.

PERMIT REVIEWS.

Amend 46.14.230 to read as follows:

Section 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under this chapter the owner and operator, and any person who participated in this public comment process, [OR A PERSON WITH] who has standing under state [OR FEDERAL] law to obtain [ADMINISTRATIVE] judicial review of a permit action under this chapter may request an adjudicatory hearing under the department's adjudicatory hearing procedures. Administrative review is limited to those issues raised in the public comment process. After the issuance of an adjudicatory hearing decision, a party to the hearing may obtain judicial review of that decision as provided in Alaska Rules of Appellate Procedure.

* * * * *

COMMENT: The existing language allows anyone to appeal a decision, including those who failed or refused to participate in the public comment process. It is unfair to allow people who did not participate to seize an opportunity to block a project by making the decision-making process unduly burdensome. If a person has a significant interest in a permit, he should be

required to participate in the process in order to appeal a decision he doesn't like.

Both ADEC and the permittee should have an opportunity to consider and act in response to public comments made during the public process afforded for review of the draft permit. Persons who may later challenge the issued permit should be limited to those who came forward during the public comment period and expressed their concerns. Similarly, later review of the issued permit should be limited to those issues that were raised in the public comment period.

GENERAL PERMITS

Amend 46.14.240 to read as follows:

Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for public comment and hearing, the department may, unless the permit is disapproved by the federal administrator, establish a general operating permit that would be applicable to more than one facility determined by the department to be similar in source structure. A general operating permit must contain provisions that meet the requirements of this chapter applicable to operating permits. A general operating permit becomes effective on the thirty-first calendar day following the applicant's submittal of an application to the agency, provided such application provides substantially complete information on such forms as the agency shall provide pursuant to the general permit; and provided the department has not notified the applicant by the end of the thirtieth calendar day (a) that the general permit is not applicable to that facility, or (b) that the application is not complete. [IS NOT EFFECTIVE FOR A SPECIFIC FACILITY UNTIL THE OWNER AND OPERATOR OF THE FACILITY HAS SUBMITTED AN APPLICATION UNDER AS 46.14.220 AND THE DEPARTMENT HAS ISSUED THE GENERAL OPERATING PERMIT. THE DEPARTMENT SHALL ISSUE OR DENY A GENERAL OPERATING PERMIT WITHIN 30 DAYS AFTER RECEIPT OF A COMPLETE APPLICATION.]

* * * * *

~~COMMENT: The bill requires ADEC to approve each~~
application submitted for an individual facility to come under a
general operating permit. ADEC approval of an application filed
under a general permit should not be required where the application
is substantially complete, but instead should make the
applicability of the general permit to the applicant automatic
unless ADEC within 30 days issues a determination that the
application is not complete or that the source is of a kind that
does not qualify under the general permit. Such a procedure is
allowable under EPA's proposed permit program regulations. Their
latest draft (dated January 27, 1992), in its discussion of general
operating permits at page 89 of the preamble, states:

"The permitting authority may also determine in the first
instance whether it will issue a response for each
individual general permit application, and may specify in
the general permit a reasonable time period after which
a source which has submitted an application will be
deemed to be authorized to operate under the general
permit."

The procedure provided in this amendment would cut down
on ADEC's paperwork burden, and is consistent with procedures used
in other regulatory programs that utilize general permits.

Amend subsection (a) of 46.14.245 to read as follows:

Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating permit may not be issued under this chapter until the federal administrator approves the permit, or until 45 days after a copy of the final draft permit has been provided by the department to the federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator files an objection with the department, the department shall notify the applicant of the objection. The permit may not be issued until the objection is resolved or the permit is revised to meet the objection of the federal administrator. The department shall assist the permit applicant in resolving promptly any objection by the federal administrator.

* * * * *

COMMENT: ADEC's assistance in resolving objections by the federal administrator is essential, as ADEC is the permitting authority and, presumably, drafted the permit in good faith. Both the permit applicant and ADEC must rely on ADEC's regulations, so an objection by a federal administrator must affect either the language of ADEC's regulation or ADEC's interpretation of the regulation. While the obligation to assist may be implicit, without specific statutory language to require assistance, ADEC could state that it has no such authority. It would be unfair to force a permit applicant to defend his application and ADEC at the same time.

In Sec. 46.14.245, add new subsection (c):

(c) During pendency of a petition filed under (b) of this section and until any objection made by the federal administrator has been resolved, the owner and operator of a facility that is operating under a permit issued under (a) of this section shall be entitled to the shield provided in Sec. 285.

* * * * *

COMMENT: A period of uncertainty as to the finality of the provisions of an initial permit will exist from the date the permit is issued under (a) through the date on which the federal administrator determines whether or not to file an objection. A petitioner for an objection may deem it appropriate to seek an injunction to bar a facility from operating until the federal administrator has had time to file an objection and the objection has been resolved. State courts may be persuaded that an injunction is appropriate because the permit is an initial permit and, therefore, the owner and operator should not have an expectation of being able to commence operations until after the federal administrator has considered the petition. The concern is that a court would distinguish the period during pendency of an objection and the 90 days for state response from the periods when no petition for an objection is being acted upon, thereby leaving the facility without the protection of the Sec. 285 shield.

Amend Sec. 46.14.250 to read as follows:

Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the applicable fees established [SET OUT IN THE FEE SCHEDULE ADOPTED BY THE DEPARTMENT] under (b) of this section. The owner and operator shall pay the fees to the department or to the public entity designated by the department.

(b) The department shall adopt, by regulation, [A] fee schedules for minimum direct costs and for indirect costs. Fees must be sufficient to cover, but not exceed, the reasonable direct and indirect costs required to develop and implement the permit program and the federally mandated aspects of the small business assistance program established in this chapter. Fees for direct costs shall be based upon the types of facilities; the quantities, types or toxicity of air contaminants emitted; the emission source classifications; and other factors reflecting the cost of administering the emission control permit program under this chapter. [FEES MUST BE SUFFICIENT TO COVER, BUT NOT EXCEED, THE REASONABLE DIRECT AND INDIRECT COSTS REQUIRED TO DEVELOP AND IMPLEMENT THE PERMIT PROGRAM AND THE FEDERALLY MANDATED ASPECTS OF THE SMALL BUSINESS ASSISTANCE PROGRAM ESTABLISHED IN THIS CHAPTER.] Fees to cover direct costs may, after consultation with the owner and operator, exceed the fees established in the schedule if the department determines that the appropriate levels of monitoring and

enforcement reasonably required to implement the permit are greater than the minimum. For purposes of this subsection, "costs" include expenditures for

(1) preparing and adopting regulations to implement the permit program;

(2) preparing guidance on the permit program;

(3) reviewing and acting upon a permit application;

(4) implementing and enforcing the terms and conditions of a permit, excluding court costs or other costs associated with an enforcement action;

(5) monitoring of emissions and ambient air quality;

(6) reviewing and executing models, analyses, and demonstrations to evaluate emissions;

(7) preparing inventories and tracking of facility emissions;

(8) performing data management, analysis, and report writing;

(9) conducting training, audits, or other services as provided under the small business assistance program under AS 46.14.400 - 46.14.430; and

(10) reviewing and acting upon plans and other information submitted under AS 46.14.200 - 46.14.290.

(c) The department shall review the fee schedules [STRUCTURE] adopted under (b) of this section at least every five years and when there are changes in state or federal laws that affect the costs of operating the permit program or the federally

mandated aspects of the small business assistance program. Upon review, the department shall adopt changes to [AMEND] the fee schedules [STRUCTURE] as necessary to ensure that the fees cover, but do not [SIGNIFICANTLY] exceed, the reasonable costs authorized by (b) of this section.

(d) If fees are determined on a tonnage basis, fees from all sources shall not exceed, in the aggregate, \$25 per ton of each regulated pollutant. In determining this amount, the department shall not include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

* * * * *

COMMENT: This proposal rewrites Sec. 250 to make clearer and more precise the direction to the department with respect to fee schedules; requires direct and indirect costs to be determined separately and in subsection (c) substitutes the word "schedules" for "structure" and deletes "significantly" to conform to the language of subsection (b) where "significantly" has already been deleted.

This proposal also requires the department to establish minimum fees for direct costs to give owners and operators some certainty as to minimum costs associated with a particular facility. This will permit owners and operators to plan their businesses more effectively. The proposal also permits the department to establish fees greater than the minimum if the complexity or scope of a facility requires greater effort by

department personnel. It permits the department to cooperate with a facility to achieve the greatest degree of economy in implementation of the permit without diminishing the ability of the department to achieve appropriate levels of air quality control.

A new subsection (d) is added. Federal law requires a state program to assess a fee which is not less than \$25 per ton in the aggregate from all sources or such other amount as the administrator may determine adequately reflects the reasonable costs of the permit program, with certain exceptions. In calculating whether a program has met the per tonnage minimum, CAA 1990 further provides that the permitting authority is not required to include any amount of regulated pollutant emitted by any source which is in excess of 4,000 tons per year of that regulated pollutant. This amendment simply provides that if fees are set on a per tonnage basis, the aggregate cannot exceed \$25 per ton and that this calculation will not be based on emissions over 4,000 tons from any source.

The EPA draft regulations require that fees be adjusted annually "by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989." The consumer price index to be used is the index published by the U. S. Department of Labor for all-urban consumers. If the department elects to use a per-ton calculation, the department will be able to recover escalating costs for services.

Amend 48.14.255 to read as follows:

Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. (a) [THE DEPARTMENT SHALL ADOPT REGULATIONS THAT PROVIDE FOR THE ASSESSMENT OF A PENALTY OF FIVE PERCENT PER MONTH OF DELINQUENCY UP TO A MAXIMUM OF 25 PERCENT OF THE FEE ESTABLISHED UNDER AS 46.14.250(b) AGAINST THE OWNER AND OPERATOR OF A FACILITY IF THE OWNER AND OPERATOR FAIL TO TIMELY PAY A FEE LAWFULLY IMPOSED UNDER THIS CHAPTER.] The department may [ALSO] assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under this chapter and is unpaid.

(b) The department may refuse to issue, amend, modify or renew a permit if the permittee has failed to pay a fee imposed under AS 46.14.250 or a penalty or interest imposed under (a) of this section.

* * * * *

COMMENT: It is important to note that late payment penalties are not federally required in state programs, although this remedy is available to EPA when EPA is implementing the air program within a state, 42 USC 7661a(b)(3)(C)(ii). Moreover, while the revised late payment penalty provision contained in the 3/17 CS (5% per month up to 25%) certainly is an improvement over the initial proposal (up to 50%), it still is unnecessarily burdensome. Other requirements in the bill, including interest on late payments

and departmental discretion to refuse to issue, amend or renew a permit if the permittee has failed to pay a fee, provide adequate incentives and penalties. In any event, the best means to encourage timely payment of fees is swift and certain judicial enforcement action in appropriate cases.

DURATIONAL TERMS.

Amend 46.14.260(a) to read as follows:

Section 46.14.260. DURATION OF OPERATING PERMITS. (a) An operating permit under this chapter shall be issued for a fixed term of five years [ESTABLISHED BY THE DEPARTMENT THAT IS NO LONGER THAN FIVE YEARS BUT NO SHORTER THAN THREE YEARS] after the date of issue, except for a permit issued under AS 46.14.280 or unless a shorter term is requested by the permit applicant.

* * * * *

COMMENT: Limiting ADEC discretion by establishing a five year permit duration unless a shorter term is requested by the applicant may avoid having a permit constantly in the renewal process.

According to EPA, every permitted facility will have a compliance plan; and those existing facilities not immediately able to meet the emission limitations in the permit will have a compliance schedule. Hence, there is no need for shorter duration permits in noncompliance situations (a concern expressed by ADEC).

ADEC also has called attention to the potential for the holder of a permit for construction of a new facility (or modification of an existing facility) to "occupy" a PSD increment

without proceeding with construction in a timely manner, which would preclude some other facility from obtaining a construction permit. This can be prevented by inserting in construction permits a reasonable deadline by which construction must commence or else the permit will expire, as is often done with building permits issued by local governments. There is no need to use operating permit duration to accomplish this control, and hence no need for permits with durations shorter than 5 years (other than those for temporary locations, in section 46.14.280).

PERMIT REOPENING

Amend 46.14.265 to read as follows:

Sec. 46.14.265. REOPENING OF PERMITS. (a) A permit issued under this chapter is subject to review and reopening by the department, subject to (b) of this section, based on the determination of the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

(b) A permit issued under this chapter is subject to review and reopening by the department only if the permit is issued to a major facility and the remaining duration of the permit is [IS VALID FOR A TERM OF] three or more years. The department shall reopen a permit described in this subsection solely to incorporate changes in laws, or to impose equivalent emission limitations, that became applicable after the permit was issued. A permit shall not be subject to reopening sooner than 18 months following its issuance, renewal, modification, amendment, or revocation and reissuance. Notwithstanding the provisions of this subsection, if the owner and operator of a permitted facility requests that the permit be reopened either to authorize a change in operation or to incorporate a decreased emission standard resulting from a change in law, the department shall reopen the permit in accordance with the request. The department shall make incorporation allowed under this subsection as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law took effect. The department may not reopen a permit under this subsection if the

change in law is not effective until after the date that the permit expires. Reopening of a permit under this subsection shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met. [(C)] Proceedings to reopen a permit shall [FOLLOW THE SAME PROCEDURE AS FOR INITIAL PERMIT ISSUANCE AND] affect only those parts of the permit for which the department had cause to reopen under this section.

* * * * *

COMMENT: This section allows the state to reopen permits based on a determination by the EPA that the permit must be revised to comply with the Clean Air Act. The bill does not provide for any particular grace period before reopening procedures may be initiated (other than the 18-month maximum period under CAA), which would help minimize the problem of some sources being constantly under permit review. Finally, it appears to allow for reopening permits to insert a newly promulgated emission standard into permits with less than three years remaining in the term of the existing permit, contrary to our reading of federal law.

Except for situations where the new standard is less stringent than the permit standard, or where the permittee seeks a change in operations, the bill should limit reopening procedures to permits with 3 or more years remaining; and should establish an 18-month grace period prior to initiation of reopening procedures. EPA's proposed regulations (draft dated January 27, 1992, at page

88) appear to require reopening and revising a permit for a major source to insert a newly issued legal requirement only for permits ~~with a remaining permit term of 3 or more years.~~

Under this proposed amendment, a permit with a total duration of 5 years, but only 2 years remaining would not have to be reopened (the new standard would be inserted at the time of permit renewal); but a permit with a total duration of 5 years, and with 3.5 years remaining as of the effective date of the newly issued federal standard, would have to be reopened to insert the new standard. Contrast this with the result under the bill's present language: Every permit with a total duration of 3 or more years (which means every permit, except "temporary locations" permits) would be subject to reopening if the effective date of the new federal standard falls prior to the permit's scheduled renewal date.

Amend 46.14.270 to read as follows:

Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the permittee, the department may

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

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

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

(C) there has been material change in the quantity or type of air contaminant emitted from the facility.

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

* * * * *

COMMENT: The latest CS is a substantial improvement over prior versions and has incorporated two out of three of our requests (no termination for failure to pay fees -- now a ground for refusal to renew, modify or amend -- or for material mistake). However, termination for permit violations should be further limited to violations of "material" terms and conditions.

TIMELY AND COMPLETE PERMIT APPLICATIONS^{1/}

Amend 46.14.290 to read as follows:

Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner and operator have submitted a timely and complete application for a permit or a permit renewal, as applicable, but final action has not been taken on the application, the owner's and operator's failure to have an operating permit is not a violation of this chapter. [UNLESS THE DELAY IN FINAL ACTION WAS DUE TO THE FAILURE OF THE OWNER AND OPERATOR TO TIMELY SUBMIT INFORMATION REQUIRED OR REQUESTED TO PROCESS THE APPLICATION.] An owner and operator required to have an operating permit under this chapter are not in violation of the operating permit program established under this chapter before the date on which the owner and operator are required to submit an application under AS 46.14.220. An application shall be deemed complete for purposes of invoking the shield provided by this section if the applicant submits the application on forms provided by the department and the applicant substantially complies with the information requirements of the form.

* * * * *

COMMENT: Federal law and the current bill say that applications must be "timely and complete" before the permit shield can be considered effective pending issuance of a new and/or modified/amended permit; and "complete" is federally defined in a

^{1/} Also see proposed amendment to 46.14.225.

way that does not require absolute perfection in an application before it is to be considered "complete" for shield purposes. The issue is that there may be minor problems with an application that should not prevent the application from being considered timely and complete. EPA's proposed permit program regulations require state programs to contain a provision that any permit application is to be deemed "complete" (thus bringing the "shield" provision into effect) if within some specified number of days (not more than 60) the state agency has not issued a determination to the contrary. The agency can still ask for supplemental information from the permittee. There is nothing in the federal statute or regulations that precludes a state from adopting a shorter period, such as 30 days. No such mechanism is reflected in the bill.

This amendment defines a "complete" application as one in which the applicant has provided substantially all the information called for on a standard application form which the federal statute requires ADEC to develop. The proposed amendment to 46.14.225 provides the 30-day period within which, if ADEC does not act, an application will be deemed complete for shield purposes.

EQUIPMENT MALFUNCTIONS.

Add a new section 46.14.295, to read as follows:

Excess emissions caused because of a startup, shutdown, malfunction or routine scheduled maintenance of a source (including pollution control equipment or process equipment) shall not be considered a violation of a permit or the emission limitation or counted as an increase in emissions.

Add the following definitions to section 990 and renumber definitions accordingly.

- "Excess emission" means the emission of air contaminants in excess of applicable emission limitations or standards in a permit or in any applicable regulation in 18 AAC 50.
- "Malfunction" means any sudden and unavoidable failure of a source, including air pollution control equipment and process equipment. Failures caused by poor maintenance or careless operation shall not be considered a "malfunction."

- "Shutdown" means the cessation of operation of any source, including pollution control equipment, process equipment or process for any purpose.

- "Startup" means the setting into operation of any source, including pollution control equipment, process equipment or process.

* * * * *

COMMENT: Federal courts have long recognized that EPA regulations must provide exemptions for periods of startup or upset when the air pollution control equipment may not function normally. See generally Portland Cement Association v. Ruckelshaus, 486 V.2d 375 (D.C. Cir. 1973); Essex Chemical Corporation v. Ruckelshaus, 486 F.2d 427 (D.C. Cir. 1973). After these two cases were decided, EPA finalized the new source performance standard regulation 40 C.F.R. § 60.8(c), which states in pertinent part:

"Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard."

Similar provisions are found under the NPDES provisions of the Clean Water Act. See 40 C.F.R. § 122.41(n).

At the end of Sec. 46.14.410, add new subsection (c):

(c) Audits performed by the department or any person shall not be deemed waivers by owners and operators of facilities of any constitutional or statutory rights. The information obtained by the department through audits shall not be used for enforcement or for termination, modification, revocation, reissuance or reopening of permits and shall not be required to be disclosed in any administrative or judicial proceeding.

* * * * *

COMMENT: Courts have held that a person who voluntarily gives a governmental agency information even under an agreement that the information will not be used against him has waived any constitutional or statutory rights against self-incrimination. Without the prohibition, the department would be free to use any information uncovered in the course of an audit against the owner and operator of a facility. The EPA has long recognized that businesses should be encouraged to perform audits to assist in diminishing pollution and has imposed upon itself a prohibition against use of audit information or the requirement that audit information be disclosed.

The prohibition is necessary in order to protect owners and operators from incriminating disclosures of information discovered in the course of audits and to protect owners and operators of facilities from disclosure in the course of pretrial discovery procedures under either administrative or judicial rules.

Amend 46.14.500(f) as follows:

(f) A municipality or a local air quality district administering a program under this section shall administer its local air quality control program according to this chapter, regulations adopted under this chapter, and its cooperative agreement under (d) of this section. [EXCEPT THAT] A municipality's or local air quality district's program may not be more stringent than the program administered by the department [IF THE MUNICIPALITY OR DISTRICT HAS ADDITIONAL LEGAL AUTHORITY AUTHORIZING ADDITIONAL REQUIREMENTS].

* * * * *

COMMENT: For the reasons outlined in the comment to amendment #1, local air quality programs also should be prevented from exceeding federal standards and limitations.

ADMINISTRATIVE PENALTIES

Delete 46.14.830 as follows:

[Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION.

(A) THE DEPARTMENT MAY ASSESS AN ADMINISTRATIVE PENALTY AGAINST A PERSON WHO VIOLATES, OR CAUSES, OR ALLOWS TO BE VIOLATED A PROVISION OF THIS CHAPTER, A REGULATION ADOPTED UNDER THIS CHAPTER, OR A TERM OR CONDITION OF AN ORDER, PERMIT, OR APPROVAL OF THE DEPARTMENT UNDER THIS CHAPTER.

(B) AN ADMINISTRATIVE PENALTY ASSESSED UNDER THIS SECTION MAY NOT EXCEED \$10,000 A DAY FOR EACH OFFENSE. EACH PROVISION, REGULATION, TERM, OR CONDITION VIOLATED IS A SEPARATE AND DISTINCT OFFENSE. IF A VIOLATION OF A PROVISION, REGULATION, TERM, OR CONDITION CONTINUES FROM DAY TO DAY, EACH DAY IS A SEPARATE OFFENSE; IN DETERMINING THE AMOUNT OF A PENALTY ASSESSED UNDER THIS SECTION, THE DEPARTMENT SHALL CONSIDER THE EFFECT OF THE OFFENSE ON THE PUBLIC HEALTH OR THE ENVIRONMENT, PRIOR HISTORY OF COMPLIANCE OR NONCOMPLIANCE WITH THIS CHAPTER, THE NEED TO DETER FUTURE OFFENSES, THE ECONOMIC BENEFIT OF NONCOMPLIANCE REALIZED BY THE OFFENDER, AND OTHER FACTORS THAT THE DEPARTMENT CONSIDERS RELEVANT. THE DEPARTMENT SHALL, BY REGULATION, PREPARE, PUBLISH, AND MAKE AVAILABLE TO INTERESTED PERSONS, A PENALTY POLICY DESCRIBING THE FACTORS TO BE CONSIDERED IN SETTING PENALTIES, THE METHODS FOR WEIGHING THE FACTORS, AND OTHER ASPECTS OF PENALTY

COMPUTATION.

(C) IF A PENALTY IS ASSESSED UNDER THIS SECTION, THE DEPARTMENT SHALL PROVIDE THE ASSESSMENT NOTICE TO THE PERSON AFFECTED, BY PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. AN ADMINISTRATIVE PENALTY ASSESSED UNDER THIS SECTION BECOMES A FINAL AGENCY ACTION 30 DAYS AFTER SERVICE OR MAILING OF THE ASSESSMENT NOTICE UNLESS AN ADMINISTRATIVE HEARING IS REQUESTED BY THE PERSON AGAINST WHOM THE PENALTY IS ASSESSED. FAILURE TO REQUEST AN ADMINISTRATIVE HEARING WITHIN 30 DAYS AFTER SERVICE OR MAILING OF THE ASSESSMENT NOTICE CONSTITUTES A WAIVER OF THAT PERSON'S RIGHT TO AN ADMINISTRATIVE HEARING. THE DEPARTMENT MAY EXTEND THE TIME PERIODS SPECIFIED IN THIS SUBSECTION FOR GOOD CAUSE.

(D) IF AN ADMINISTRATIVE HEARING IS REQUESTED, THE DEPARTMENT SHALL GRANT A HEARING AND CONDUCT THE HEARING IN ACCORDANCE WITH ITS ADJUDICATORY HEARING PROCEDURES. AFTER THE HEARING, THE DEPARTMENT MAY MODIFY, RESCIND, OR AFFIRM THE ADMINISTRATIVE PENALTY. THE MODIFICATION, RESCISSION, OR AFFIRMATION OF A PENALTY UNDER THIS SUBSECTION IS A FINAL AGENCY ACTION.

(E) A PERSON AGAINST WHOM AN ADMINISTRATIVE PENALTY IS ASSESSED MAY OBTAIN JUDICIAL REVIEW OF THE ADMINISTRATIVE PENALTY AS PROVIDED IN ALASKA RULES OF APPELLATE PROCEDURE. THE COURT MAY SET ASIDE, OR ADJUST THE AMOUNT OF, THE ADMINISTRATIVE PENALTY ONLY IF THE ADMINISTRATIVE RECORD, TAKEN AS A WHOLE, DOES NOT CONTAIN A REASONABLE BASIS TO SUPPORT THE FINDING OF OFFENSE OR THE AMOUNT OF PENALTY ASSESSED BY THE DEPARTMENT.

(F) ACTION UNDER THIS SECTION BY THE DEPARTMENT DOES NOT LIMIT OR OTHERWISE AFFECT ~~THE AUTHORITY OF THE DEPARTMENT TO~~ ENFORCE THIS CHAPTER, OR TO RECOVER DAMAGES, RESTORATION EXPENSES, INVESTIGATION COSTS, COURT COSTS, ATTORNEY FEES, AND OTHER NECESSARY EXPENSES; THE COURT SHALL REDUCE A JUDICIAL PENALTY SUBSEQUENTLY IMPOSED UNDER AS 46.03.760 BY ANY AMOUNT ORDERED TO BE PAID UNDER THIS SECTION BY THE SAME PERSON FOR THE SAME OFFENSE.

(G) THE ASSESSMENT OF AN ADMINISTRATIVE PENALTY UNDER THIS SECTION DOES NOT AFFECT THE OBLIGATION OF A PERSON TO COMPLY WITH THIS CHAPTER OR WITH A REGULATION, ORDER, PERMIT, OR APPROVAL OF THE DEPARTMENT UNDER THIS CHAPTER.

(H) IF A PERSON FAILS OR REFUSES TO PAY AN ADMINISTRATIVE PENALTY ASSESSED UNDER THIS SECTION AFTER THE PENALTY HAS BECOME A FINAL AGENCY ACTION, THE DEPARTMENT MAY REQUEST THE ATTORNEY GENERAL TO COMMENCE A JUDICIAL ACTION OR TAKE OTHER APPROPRIATE STEPS TO BRING AN ACTION TO COLLECT THE PENALTY. IF THE DEPARTMENT PREVAILS IN COURT, THE COURT SHALL ORDER THE PERSON TO PAY

- (1) THE AMOUNT OF THE ADMINISTRATIVE PENALTY ASSESSED;
- (2) INTEREST AT THE STATUTORY RATE UNDER AS 45.45.010(A) FROM THE DATE THE PENALTY BECAME A FINAL AGENCY ACTION; AND
- (3) REASONABLE ATTORNEY FEES AND COSTS INCURRED BY THE DEPARTMENT IN THE COLLECTION ACTION BEFORE THE COURT.]

* * * * *

COMMENT: In addition to civil penalties (up to \$100,000 for the initial violation and up to \$10,000 for each day there-

after while the violation continues) and criminal penalties (which the CAA 1990 requires but does not specify an amount), the CS also authorizes state administrative penalties, which are not required by federal law. Administrative penalties that appear to grant to ADEC on-the-spot "ticketing" authority are significant (\$10,000 per day for each offense) and can be assessed without going to court. The first level of appeal would be to an administrative hearing officer. Judicial review (if the penalized person seeks review) would be under the "any reasonable basis" standard, which precludes the court from a thorough discretionary review of the penalty and favors the agency decision.

This provision, which is not required by federal law, should be deleted because of the potential for abuse and discriminatory application. Civil and criminal penalties (required for state program approval) and other enforcement authorities in the bill give ADEC all the tools it needs to enforce the state air program.

In 46.14.990, add the following new definitions and renumber definitions accordingly:

"direct cost" is any cost that can be identified specifically with a particular application or permit, including modification, amendment, revocation and reissuance, reopening, termination, monitoring and inspection;

"indirect cost" includes any cost that is not a direct cost, incurred to develop and implement the permit program and the federally mandated aspects of the small business assistance program. Indirect costs shall be determined in an equitable manner so that no source or source classification bears an unreasonable or disproportionate share of the cost of the permit program or the small business assistance program.

* * * * *

COMMENT: Subsection 250(b) requires that fees cover both direct and indirect costs, but no classification of those costs appears in the subsection. Inclusion of definitions of "direct" and "indirect" costs gives guidance and a standard to ADEC in the development of regulations. These definitions will assure a fair apportionment of the costs of the program among both large and small facilities.

Delete Section 14; add new section (to become part of 46.14)
to read as follows:

Sec. _____. Civil Penalties for Air Pollution.

(a) A person who violates or causes or allows to be violated a permit or regulation or any rule, order or waiver issued by the department under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not more than \$10,000 for the initial violation and for each day on which the violation continues.

(b) In determining the amount of a penalty assessed under this section, the court shall consider the effect of the offense on the public health or the environment, the size of the business, the economic impact of the penalty on the business, prior history of compliance or noncompliance with this chapter, and the violator's good faith effort to comply, the need to deter future offenses, the economic benefit of noncompliance realized by the offender, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the seriousness of the violation, and other factors that the court considers relevant. The department shall, by regulation, prepare, publish, and

make available to interested persons, a penalty policy describing the factors to be considered in recommending penalties, the methods for weighing the factors, and other aspects of penalty computation.

* * * * *

COMMENT: The bill amends existing civil penalty provisions by adding violations of AS 46.14 to the civil penalty statute. The proposal does not include certain criteria contained in parallel federal penalty provisions (42 USC 7413(e)(1)) such as the owner's good faith efforts and past track record. Nor does it incorporate a requirement similar to that proposed for administrative penalties (AS 46.14.830) to adopt a penalty policy by regulation.

This amendment creates a separate civil penalty process applicable to air quality violations which includes certain federal criteria and requires that a civil penalty assessment policy be adopted by regulation. These changes will help assure fairness and predictability in the use and application of civil penalties.

AIR CONTAMINANTS AS "HAZARDOUS SUBSTANCES"

Delete Sections 23 and 24, and renumber subsequent sections of the bill.

* * * * *

COMMENT: Hazardous air pollutants will be extensively regulated by EPA (and hence, by the State of Alaska) through source emission standards under the Clean Air Act as amended in 1990. "Releases" into the air are currently covered under Alaska's strict liability statute (AS 46.03.822). This bill should not be used to create a cross-linkage to all the other statutes governing "hazardous substances," nor should it be used to authorize raiding the "470 fund" (spill cleanup monies) for purposes unrelated to the uses for which that fund was created.

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN
HOUSE FINANCE COMMITTEE

FAIRBANKS

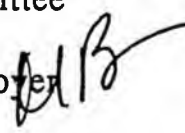
1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

TO: Representative Cliff Davidson, Chair
House Resources Committee

From: Representative Mark Boyer 

Date: February 4, 1992

Subject: Amendment to HB 377 "An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

Attached is a proposed amendment which I plan to offer at your next committee hearing of HB 377. The proposal is appropriate to this bill as it deals with alternate fueled vehicles and improved air quality under the 1990 Clean Air Act Amendments. I have been in contact with the sponsor of the bill, Representative Moyer, and he agrees that his bill is an appropriate vehicle for this amendment.

The amendment would require the Department of Transportation (DOTPF) when purchasing, leasing, or otherwise contracting for the procurement of vehicles for the State Equipment fleet, in geographic areas where DOTPF maintain a fleet of at least 15 vehicles, to acquire an alternative fuel vehicle under the invitation to bid process.

Anchorage, Fairbanks, and Juneau are in non-compliance with the Federal Clean Air Act's National Ambient Air Quality Standards (NAAQS), with a December 31, 1995 deadline for compliance. I feel that it is appropriate that the State take the responsibility and provide the leadership role in using clean-burning fuels which when used in motor vehicles can achieve significant reductions in harmful emissions.

FAIRBANKS 20B

Page 2.
Resource Committee

The advantages of implementing a clean vehicle fleet are:

- (1) a clean vehicle fleet program will help develop the State's infrastructure to meet the requirements of the Federal Clean Air Act;
- (2) high costs associated with vehicle fleet operation and maintenance can be reduced by the use of alternative fuels;
- (3) use of natural gas as one possible alternative fuel will develop additional markets for our natural gas reserves, bring additional revenue to the State, and, reduce, albeit in a very minor way, our dependence on imported oil and its refined products.

When this amendment is adopted, Alaska will join with 28 other states, (Texas has the most comprehensive program) which have enacted legislation regarding the use of alternative fuels to run both private and government owned vehicles.

There are currently two pilot projects utilizing alternative fuels; Municipality of Anchorage running compressed natural gas (CNG) automobiles, and Fairbanks DOT-PF utilizing liquid propane gas (LPG) to fuel one flat bed and 5 pickup trucks. The Anchorage project has recently been evaluated. The Fairbanks project just began in March 1991 and will not be evaluated before one year of operation and extreme cold weather testing.

This is an exciting area and I hope that the Committee will share my enthusiasm for what this amendment might foster for other uses of alternate fueled vehicles in non-government environments.

Nanci Jones of my staff is available should you need additional information at 3466. Thank you in advance for your consideration of this amendment.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BOYER

TO: CSHB 377(); 7-LS-1624G

Page 1, line 8:

Delete "PURPOSE. The"

Insert "PURPOSES. (a) The primary"

Page 2, after line 1:

Insert

replacement of automobiles, light trucks and vans in the state fleet with vehicles

"(b) The legislature also recognizes that the acquisition by the state of automobiles, light trucks, and vans fueled by energy sources other than gasoline for inclusion in the state fleet and their regular use by state agency personnel in the state's major metropolitan centers would will materially contribute to the improvement of air quality in those communities. Therefore, another purpose of this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate matter to procure alternative-fueled vehicles.

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

Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans to encourage contractors that provide school bus transportation to procure alternative-fueled buses. In this section, "alternative-fueled" means capable of operating on a fuel such as compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

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

Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the Department of Transportation and Public Facilities procures an automobile, light truck, or van for addition to the state fleet at a location in which the Department of Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall procure only an alternative-fueled vehicle if an alternative-fueled vehicle is available from an original equipment

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BY REPRESENTATIVE BOYER

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manufacturing company.

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

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

Renumber the following bill sections accordingly.

Page 28, line 24:

Delete "2"

Insert "4"

Page 28, line 26:

Delete "27"

Insert "31"

Delete "28"

Insert "32"

Page 28, after line 26:

Insert new bill sections to read:

"* Sec. 29. COOPERATION. The Department of Transportation and Public Facilities and the Department of Environmental Conservation shall cooperate with each other as necessary to achieve implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

* Sec. 30. Sections 2 and 3 of this Act take effect July 1, 1994."

Renumber the following bill sections accordingly.

Page 28, line 30:

Delete "2"

Insert "4"

Delete "3 - 26"

Insert "5 - 29"

Page 29, line 2:

Delete "2"

Insert "4"

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: Nanci Jones, Staff
Representative Mark Boyer
Capital Building # 411

DATE: February 4, 1992

FILE NO: 1080

TELEPHONE NO: 243-7671

FROM: Ken Langel *K. Langel*
Fleet Manager
Statewide Equipment Fleet

SUBJECT: Draft Legislation for
Alternate Fuel Vehicles

I have reviewed the Amendment to HB 377 which deals with alternate fuel vehicles. The comments that follow parallel the ideas we discussed by phone earlier this morning.

1. The intent language to be added to Page 1, line 11, after "regulation" provides a clear statement that Alaska will benefit from the acquisition of alternate fuel vehicles. This is helpful language for setting the tone of new programs.
2. Sec. 14.09.030 seems to be okay as written.
3. Sec. 36.30.097 (a). This section, as currently written, will be difficult to comply with at this time. The following points should be considered.
 - a. Unless the intent is to single out DOT/PF, the language in para (a) should refer to all state agencies within the non-attainment areas. In reality, the areas inclusive of Anchorage, Fairbanks, and Juneau all have more than 15 vehicles of the three types (autos, light trucks, vans) targeted for alternate fuel. Different wording, or a different approach to the 15 unit threshold, might ease the administrative burden of keeping track of what the next purchase needs to be vis-a-vis alternate fuel, conventional fuel.
 - b. Language should be clear that procurement of alternate fueled vehicles should be made "where available from the original equipment manufacturer (OEM)". This clarifies that we are not retrofitting existing units, but purchasing factory units that are manufactured to run on alternate fuel.
 - c. We need to be aware that at the current time, there is a very limited number of alternate fuel vehicle types available from OEMs. The Big Three (Ford, GM, Chrysler) are all developing programs, but current production and model selection is limited. As this improves, we will be in a better position to comply with alternate fuel vehicle requirements.

February 4, 1992

- d. Alternate fuel vehicles, for a number of reasons, may not be suitable for some work situations encountered by state agencies. What provisions, if any, should there be for legitimate exemptions? One of the loudest objections voiced by users is that alternate fuel vehicles (particularly CNG units) have a very restricted range (about half that of conventional gas or diesel powered units). Many agency users are required to travel long distances from their base of operations; i.e., Anchorage based employees drive to Seward and Homer. Currently manufactured CNG units could not make that trip unless there were refueling stations on the Kenai Peninsula. This issue of range is more pertinent to Alaska than to other states who have developed alternate fuel legislation because of the nature of Alaska's road system, population, and geographical make-up.
- e. Alternate fuel distribution systems need to be addressed. If we are to procure alternate fuel vehicles, we need fuel distribution stations where users can refuel their vehicles. For CNG in particular, the availability of refueling points is extremely limited in Alaska.
- f. In summary, the wording of paragraph (a) may be too imperative. Because of problems discussed above, we may not be able to comply with mandatory requirements to procure alternate fuel vehicles at this time. Perhaps a change from imperative language to intent language would be appropriate to get the state moving in the direction of using alternate fuels, but at the same time allow us to move in concert with the development of distribution systems and availability of manufactured vehicles that run on alternate fuel.
4. Sec 36.30.097 (b). This section should include a specific preference. Procurement problems will most probably arise if the preference granted to bidders for alternate fuel vehicles is left up to the procurement officer. An appropriate price advantage similar to the state's five percent Alaska bidder's preference could be used. A range of five to ten percent would probably be appropriate.

I appreciate the opportunity to provide comment to this measure. Please do not hesitate to contact me if I can be of further assistance.

cc: Robert N. Bartholomew, Director, Admin Services
Katy McHugh, DOT/PF Legislative Liaison
Reading File



STATE GOVERNMENT INITIATIVES TO PROMOTE CLEAN TRANSPORTATION FUELS

A REPORT OF THE AMERICAN GAS ASSOCIATION STATE AND LOCAL SUBCOMMITTEE

Boldface indicates 1991 additions

The American Gas Association is heartened by the gathering momentum behind state government action to promote greater use of natural gas vehicles (NGVs) and other clean-fuel vehicles. The passage of the Clean Air Act Amendments of 1990 provides additional incentives for state and local governments to seriously consider the many benefits of an aggressive NGV program.

The natural gas industry is strongly committed to the development, commercialization and public acceptance of NGVs. NGVs can improve the environment by substantially reducing vehicular emissions of reactive hydrocarbons and carbon monoxide. In addition, since roughly two-thirds of all the oil consumed in the United States is used as a transportation fuel, NGVs can bolster national security -- and keep more of America's capital resources at home -- by displacing imported oil in the only major market where oil still has a monopoly.

Since 1987, individual cities and states have been leading the way in this important area. What follows is a report on significant actions to date.

Arizona: In 1991, Chapter 176 was enacted which requires that the Director of the Department of Administration, in consultation with the State Energy Office, to implement a replacement program for fleets with vehicles that are the most fuel efficient in their class and to increase the use of alternative fuels in state-owned vehicles.

In 1987, the Arizona Legislature enacted a law that mandates shifts to clean-fuel vehicles by certain public and private fleets in metropolitan Phoenix and Tucson. In 1988, the mandate was extended to buses, and natural gas was given a partial and temporary exemption from the state's motor fuels tax.

Arkansas: In 1991, Act 559 creates a 9-member alternative fuels commission to coordinate and direct the alternative fuels market.



American Gas Association

1515 Wilson Boulevard, Arlington, VA 22209 • (703) 841-8597

2

California: In September 1990, California enacted a number of measures that will help promote the use of NGVs. One law provides for tax credits for the cost of devices installed on new or used vehicles to convert them to Low Emission Vehicles. Credits are limited to \$1000 per automobile and \$3500 on other motor vehicles. Another law authorizes local units of government to assess emission fees to fund vehicle demonstration programs. A third law requires the Public Utilities Commission to evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of NGVs and electric vehicles. The PUC must hold hearings, consider specific policies and provide the legislature with a progress report. The PUC also must sponsor workshops to address the regulation of the sale of natural gas for use in vehicles.

In September 1990, the California Air Resources Board adopted regulations for tailpipe emissions standards and test procedures for light- and medium-duty vehicles, and the distribution and availability of clean fuels. The proposal is designed to achieve the greatest possible emission reductions in the most efficient manner by spurring the development of advanced vehicle technology and allowing the use of cleaner-burning fuels. The regulations establish emission standards in four progressively more stringent categories: transitional low-emission vehicles, low-emission vehicles, ultra-low-emission vehicles and zero-emission vehicles. The phased-in production mandate for clean-fuel vehicles applies to vehicles produced for sale and use in the state of California. The hydrocarbon emission standards, expressed as non-methane organic gases (NMOG), include measurements of non-methane hydrocarbons, aldehydes, ketones, and alcohols. The NMOG will be adjusted for reactivity and starting with the 1994 model light-duty vehicle (including passenger cars) category, will have to meet a fleet average NMOG standard. A system for earning marketable credits for use in complying with fleet average standards will be established.

The Clean Air Act Amendments of 1990 include a California Pilot Program which requires, at a minimum, 150,000 clean-fuel vehicles to be produced, sold and distributed annually in 1996-98. Beginning in 1999, 300,000 such vehicles must be produced, sold and distributed annually.

In September 1989, the California legislature enacted two measures that promote the vehicular use of natural gas and other clean transportation fuels. One law provides that, until 1995, the incremental cost of any clean-fuel vehicle will be exempt from the state's 6 percent sales tax. Another law requires that, subject to vehicle availability, at least 25 percent of all newly acquired state government vehicles must have clean-fuel capability.

In the Los Angeles Basin, the South Coast Air Quality Management District has developed an Air Quality Management plan, aimed at achieving Clean Air Act standards by 2007. Although the plan has no force of law, it will be a factor in EPA decisions on noncompliance penalties. This has the effect of making the plan binding in the sense that significant departure from the plan would provide grounds for litigation and federal intervention. The plan includes a commitment by South Coast to issue a clean-fuels mandate for both private and public fleets in the Los Angeles Basin -- a policy that could affect up to 1 million vehicles over the next 14 years.

Colorado: A 1990 Colorado law requires that 10% of the new motor vehicles purchased or leased by state agencies during fiscal year 1991-92 operate on clean fuels.

Each year thereafter through FY94-95, an additional 10% must use alternative fuels. New vehicles may be bi-fuel, and existing vehicles may be converted to reach the percentage requirements. Emergency vehicles and heavy-duty vehicles are exempt. The law also removes the sale of natural gas as a vehicle fuel from the jurisdiction of the public utilities commission.

In 1989, the Colorado Legislature enacted a law that provides a \$200 rebate for any person who acquires a clean-fuel vehicle or retrofits an existing vehicle. State and municipal agencies are also eligible to receive the rebates, which are capped at five vehicles per person.

Connecticut: In 1991, the General Assembly passed two bills related to alternative fuels. Act 91-142 directs the Commissioner of Environmental Protection to conduct a study on the adoption of California's emission standards.

Act 91-179 establishes a 10% tax credit for any investments or expenditures relating to alternative fuel vehicles until 1993. Alternative fuel vehicle tunnel restrictions were removed. Also, effective October 1, 1991, this Act exempts from the sales tax and use tax: new vehicles that use clean alternative fuel; equipment to convert vehicles to clean alternative fuel or to dual use of a clean alternative fuel and another fuel; and, equipment incorporated into or used in compressed natural gas filling stations.

A bill aimed at global warming was passed in May 1990. Of interest in the bill is a section that prompts the Standardization Committee of the Public Works Department to "consider vehicles using alternative fuels when considering new purchases."

District of Columbia: In December 1990, the District of Columbia enacted sweeping alternative fuels legislation. The law requires government and private owners and operators of fleets of 10 or more to convert 5 percent of their vehicles to operate on clean alternative fuels each year beginning in 1993 through 2000. Reformulated gasoline is excluded from the clean alternative fuels definition.

The law also bans, effective 1998, commercial vehicles not powered by an alternative fuel from operating in the Central Employment Area (downtown area) of the District from sunrise to sunset between May 1 and September 15, the period when smog is particularly bad.

By February 15, 1992, and on October 1 of each subsequent year, each owner and operator of a commercial fleet is required to submit plans to the mayor that contain specific short- and long-range goals and timetables for the implementation of a clean alternative fuels program. Fines of up to \$5000 per day for non-compliance may be levied.

✱ Florida: In October 1991, the governor of Florida passed Executive Order 91-253 mandating alternative fuels in state agency vehicles. By January 1, all state agencies must submit FY 92-93 budget amendments to begin use of alternatively fueled fleet vehicles in air quality nonattainment areas. By the year 2000, all possible fleet vehicles will be required to use the most efficient, least-polluting alternative fuels. Highly visible demonstration programs using new technologies are also mandated. The governor's office will also make changes to implement the use of alternatively fueled fleet vehicles in FY 92-

93 with the goal of operating all possible fleet vehicles on alternative fuels. Florida's Energy Office, in conjunction with the Department of General Services and agency fleet managers, will develop a comprehensive state plan for alternatively fueled vehicle purchases and fueling and service infrastructure.

Hawaii: In 1991, the legislature passed two bills related to alternative fuels. SR 154 and SCR 175 requests that the Department of Business, Economic Development and Tourism, with the Department of Accounting and General Services, determine 1) alternative motor vehicle fuels, 2) conversion costs, 3) additional purchasing costs for alternatively fueled vehicles, 4) comparative costs of fossil and alternative fuels, and 5) short- and long-term benefits of using alternative fuels.

Iowa: In 1991, SF-508 establishes a mandate, beginning in 1992, that at least 5% of the new state vehicles purchased shall be equipped to utilize alternative fuels, increasing to 10% in 1994. Also, alternatively fueled vehicles may be financed under the Iowa Energy Bank Program, which provides energy financing for the state, state agencies, political subdivisions, school districts, area education agencies and community colleges.

Louisiana: SB 537 was passed in 1991 providing a 20% income tax credit for clean burning alternatively fueled vehicles and property related to the dispensing of such fuel.

In 1990, Louisiana enacted legislation that requires 30% of new state agency fleet vehicles to have clean-fuel capability as of September 1, 1994. The mandate increases to 50% in 1996, and could increase to 80% in 1998, pending a review of the program by the Louisiana Department of Environmental Quality.

The legislature has directed the Public Service Commission to deregulated the direct sales of natural gas by producers, pipelines, distribution companies or other persons for vehicle fuel purposes.

Maryland: The Maryland NGV Working Group, comprised of natural gas utility representatives from around the state, will have recommendations to submit to the legislature on compressed natural gas- and LNG-powered vehicles in 1992.

Massachusetts: In December 1990, Massachusetts enacted a law that will allow the Commonwealth to adopt the non-methane hydrocarbon emissions standards based on California's 1994 low-emission vehicle standards. The Massachusetts standards are to be phased in, beginning with model year 1993 vehicles, and prohibit any corporation or person from selling vehicles in the state unless they comply with the standards. In model year 2000, the hydrocarbon standard that can be met by gasoline-powered vehicles will be completely phased out.

The statute's language would allow Massachusetts to delay implementation of these standards by up to two years if the state determines that other New England states or New Jersey are unlikely to adopt the California standards. New York adopted California standards in 1990. (see New York)

Exemptions to the program are available for certain vehicles, such as used vehicles that

are sold as used vehicles in Massachusetts. Exemptions also are available for vehicles originally registered outside of Massachusetts but brought into the state because of ownership transfers pursuant to inheritance, divorce or legal separation.

Minnesota: Minnesota deregulated the sales of natural gas for resale to end-users for vehicle fuel purposes, making such sales a non-utility function. (1984)

Missouri: Passed in 1991, HB 45 sets a timetable for the conversion of government vehicle fleets to alternative fuels. Any fleet of 15 or more vehicles must convert 10% by July 1, 1996, 30% by July 1, 1998, and 50% by July 1, 2000, to be capable of burning alternative fuel. By July 1, 2002, 30% of government vehicles *must operate solely* on alternative fuels.

Nevada: AB 81Z relates to clean air; requires the state environmental commission to conduct public hearings and submit a report concerning the use of alternative fuels in certain motor vehicles; requires the state environmental commission to adopt the laws of California concerning certain emission tests for diesel vehicles.

New Mexico: In 1991, the legislature passed HM 23 which establishes the Clean Alternative Fuel Task Force.

New York: a 1991 *New York City* ordinance requires the city to purchase 385 alternative fuel motor vehicles by June 30, 1992, and establishes a rate of purchase for alternative fuel buses.

In Fall 1990, the New York Department of Environmental Conservation adopted California's 1993 motor vehicle emission standards and durability requirements. Beginning in 1993, 40% of passenger cars and light-duty trucks and certain medium-duty vehicles manufactured for sale in New York must meet exhaust standards of 0.25 gm/mi for hydrocarbons, 0.4 gm/mi for nitrogen oxides and 3.4 gm/mi for carbon monoxide. The percentage rises to 80% in 1994 and 100% in 1995. All emission control equipment must be certified to last 100,000 miles. As noted earlier, California has since adopted more stringent standards. New York is expected to follow suit, maintaining an equivalent program.

In August 1990, New York embarked on a six-year, \$40-million state demonstration program to operate 268 cars, buses and trucks on alternative fuels. The vehicles will be purchased or retrofitted, operated throughout the state, and tested extensively for performance, durability and emissions. In addition, several fueling facilities will be built, and funding will be provided for driver and mechanic training and an information network. The vehicles operating on natural gas in the program will include buses and light- and heavy-duty trucks.

Also in August 1990, The Port Authority and the Triborough Bridge and Tunnel Authority (TBTA) jointly announced that they have opened access to their tunnels and bridges "to certain [dedicated] alternative-fueled motor vehicles that reduce air pollution." The TBTA fully lifted its ban on bi-fuel vehicles as well.

In 1989, three state agencies issued a jointly developed New York State Energy Plan

that calls for a 50% increase in natural gas use by 2008. While the plan stopped short of advocating an outright mandate for the use of clean transportation fuels, it did call for accelerated state government demonstration programs and asserted that New York State "should encourage the use of compressed natural gas as a transportation fuel".

North Carolina: Chapter 738 requires the Energy Division of the Department of Economic and Community Development and the Department of Administration to study the use of clean transportation fuels in state-owned vehicles and to develop a demonstration project using natural gas as the fuel for state-owned vehicles.

Oklahoma: The "1991 Alternative Fuels Conversion Act" (HB 1193) provides for a 50% tax credit for conversion of a vehicle to liquid propane gas, liquid natural gas and compressed natural gas and for equipment used to fuel vehicles for a period of two years. The 50% tax credit is applicable from December 31, 1990 to January 1, 1993. At the end of the two-year period, the tax credit reverts back to the 20% implemented in 1990 by the legislature.

The Office of Public Affairs currently administers the \$1.5 million Oklahoma Alternative Fuels Conversion Fund. The fund will reimburse costs to any state, county, municipal or school district, up to \$3500 per conversion, that voluntarily converts a vehicle to compressed natural gas, LNG, propane, ethanol or electricity. The fund will also pay the costs, up to \$100,000, to install fueling stations. In return, the agencies will repay the fund from the fuel savings achieved until the fund is repaid. Repayment will be suspended if the clean fuel price is not below the price of the fuel displaced by the alternative fuel.

Also, the sale of compressed natural gas, liquid natural gas, and liquid propane gas as a vehicle fuel was deregulated.

Oregon: Enacted in 1991, SB 765 requires a certain percentage of state vehicles to be capable of using alternative fuel to the maximum extent economically possible. After July 1, 1994, the state shall acquire only alternative fuel vehicles except in areas unable to economically dispense alternative fuel.

SB 766 requires motor vehicles, subject to the control of certain mass transit and transportation districts, to use alternative fuel to the maximum extent economically possible.

HB 2130 expands the energy conservation tax credit programs to include costs associated with acquiring and operating alternatively fueled fleet vehicles. It also permits investor-owned utilities to offer commercial and industrial customers cash to assist in the purchase of alternatively fueled fleet vehicles and fueling facilities.

HB 3344 establishes two studies. First, the Department of Transportation will study the feasibility of replacing department passenger-carrying gasoline vehicles with NGVs. The second directs the Department of Energy, in consultation with the Economic Development Department, to assess renewable fuels and cost of achieving state fuel independence.

The Oregon Department of General Services has established a demonstration program for clean-fuel vehicles. The Salem state motor pool is operating a 2-year demonstration program using 14 bi-fuel vehicles. Thus far, the program administrators are very pleased

with all aspects of the NGVs. Another 20-vehicle procurement is being considered.

Pennsylvania: In December 1989, both Houses of the Pennsylvania legislature adopted a resolution that urges Congress "to enact a meaningful mandate for phased shifts to alternative transportation fuels by a substantial number of our nation's vehicles, and to assure that any such mandate permits undistorted competition, under comparable regulatory conditions, between all transportation fuels that are substantially cleaner than oil-based products." The Pennsylvania resolution also urges Congress "to enact tax incentives for the private sector, and financial assistance incentives for the states and municipalities, in order to reduce the obstacles posed by initial capital expenditures for shifts to alternative transportation fuels."

South Dakota: In 1990, the South Dakota Legislature passed a resolution, patterned closely after the Pennsylvania resolution, that urges Congress "to enact a meaningful mandate for phased shifts to clean transportation fuels by a substantial number of our nation's vehicles." Like the Pennsylvania resolution, the South Dakota resolution also calls for federal tax incentives for the private sector, federal financial assistance incentives for states and municipalities, and federal policies that permit "undistorted competition" between clean transportation fuels.

Texas: In 1991, the Texas legislature passed sales tax exemption status for propane and natural gas as a motor vehicle fuel.

In May 1989, the Texas legislature enacted two laws that mandate a phased shift to clean transportation fuels by certain vehicles in nonattainment areas. The mandate covers all metropolitan buses, state agencies with fleets of over 15 vehicles and school districts with fleets of over 50 school buses. The mandate directs affected fleet operators to attain clean-fuel capability for all vehicles acquired after September 1, 1991. Retrofitting of vehicles will be necessary in the probable event that sufficient clean-fuel vehicles are not yet available directly from Original Equipment Manufacturers.

The following targets for compliance must be met:

- 30% of each affected fleet by September 1, 1994;
- 50% of each affected fleet by September 1, 1996; and
- If certain findings are made by the Texas Air Control Board, 90% of each affected fleet by September 1, 1998.

The Texas Air Control Board is also empowered to set mandates for most local government fleets of over 15 vehicles --and for private fleets of over 25 vehicles.

For compliance, vehicles must have the capability to use compressed natural gas "or other alternative fuels that result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates or any combination of them". Exemptions can be obtained if refueling facilities are unavailable and/or if clean-fuel suppliers do not offer adequate financing.

Enactment of these laws followed a one-year state government demonstration program, involving 12 state government vehicles, which showed that retrofitting vehicles to natural gas led to substantial reductions in operating costs and dramatic improvements in emission levels.

Texas also passed HB 1878, which deregulates the sale of natural gas for resale to end users for vehicle purposes, making such sales a non-utility function, effective September, 1989.

Utah: Several programs were established with HB 122 and HB 142. A Clean Fuel Private Sector Incentive Program will award monies from an annual budget of \$10,000 to private sector conversions or purchases of clean-fuel vehicles. The second law established the revolving Clean Fuel Conversion Fund. An appropriation of \$10,000 will be given annually. Up to \$3,000 per government vehicle may be loaned out to government departments, school divisions, etc. with repayment required within seven years.

Virginia: In 1991, Virginia passed extensive alternative fuels legislation. SJR 206 and HJR 481 established an 18-month pilot project in Northern Virginia, Greater Metropolitan Richmond, and Hampton Roads to determine the feasibility of domestic clean fuels.

HB 1401 prohibits the School Board from preventing the use of alternative fuels in school buses.

HJR 321 calls for each of the seven school divisions to develop plans for conversion of bus fleets to alternative fuels emphasizing compressed natural gas.

HB 1454 makes loans available from the Literary Fund to purchase alternative fuel buses, to convert buses to alternative fuels, and to build alternative fuel refueling facilities.

HJR 334 furthers the joint subcommittee on Clean Transportation Fuels through the 1992 legislative session.

SB 627 allows SCC to deregulate the sale of natural gas as a vehicle fuel on a case-by-case basis.

HJR 336 provides for the removal of tunnel restrictions on alternatively fueled vehicles.

In 1990, the Virginia General Assembly created a special joint subcommittee to study the possible use of natural gas vehicles and other clean-fuel vehicles in the state. The group is studying the emissions, economics, safety and other benefits of clean-fuel vehicles that could be purchased or leased by state agencies, school districts and local transit authorities. The subcommittee held seven hearings on clean-fuel vehicles and related issues last year, at various locations around the state.

The Virginia NGV Working Group, comprised of natural gas utility representatives from around the state, prepared a white paper to suggest options for an NGV program in Virginia. Many of the group's recommendations were included in the enacted package of legislation.

Washington: In 1991, municipal and state legislation made significant strides in alternative fuels. King County Ordinance 9891 provides that at least 50% of the vehicles purchased in 1992 shall use alternative fuel and at least 75% in 1993; this may include the conversion of existing vehicles.

Ordinance 9892 waives the licensing fee from 1991-1996 for taxicabs and for-hire vehicles using alternative fuels.

Ordinance 9893 makes an appropriation of \$132,500 from the Public Works Fund and Motor Pool Fund to implement the Alternative Fuels Pilot Program.

The state Clean Air Bill (HB 1028) requires 30% of vehicles purchased on state contracts to use clean fuels after July 1, 1992, increasing 5% each subsequent year. Preference will be given to dedicated clean fuel vehicles, however, conversions may be used in a one to one ratio. Also, the law finds compressed natural gas fueling infrastructure development imperative and to be in the public interest.

In 1989, the Washington legislature enacted a law requiring the state's Department of Transportation to "consider" acquiring clean-fuel vehicles where they are feasible and economically justified.

West Virginia: The governor, by means of executive order, initiated a test group of state vehicles to be converted to use compressed natural gas. The executive order seeks to establish a series of natural gas refueling stations to be operational by September 30, 1991 for use by the converted vehicles.

Wisconsin: Wisconsin received federal funding approval for a program to assist municipalities in converting their fleets to utilize alternative fuels and displace gasoline use by 85%. Qualified local governments may receive up to \$30,000, or maximum of \$2,000 per vehicle, under the two-year program. The Energy Department has allocated \$150,000 for the program, funded by the Energy Overcharge Fund.

Governor Tommy G. Thompson has appointed a task force composed of cabinet members to monitor a state fleet alternative fuels pilot program and to develop state policy on the use of alternative fuels.

The Northeastern States: Eight northeastern states have agreed in principle to adopt stronger auto emissions standards, equivalent to those in California. The new standards would apply to model-year 1993 vehicles that enter commerce in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The plan was drafted by the Northeast States for Coordinated Air Use Management, but each state will develop its own program. New York and Massachusetts have already done so. Maine and Rhode Island may be next in line.

State and Local Groups: A number of organizations representing state and local governments or agencies have adopted policy statements supporting the increased use of natural gas, especially in vehicles, as a viable way to pursue America's environmental and energy security goals. Groups endorsing this policy include the National Governors Association, the National Association of State Energy Officials, the National League of

Cities, the Energy Council (formally the South/West Energy Council) and the National Conference of State Legislatures. The National Association of Regulatory Utility Commissioners (NARUC) has adopted a resolution to "further encourage the development and widespread use of natural gas vehicles."

**AMERICAN GAS ASSOCIATION
STATE AND LOCAL AFFAIRS SUBCOMMITTEE**

**KENNETH GAUDI, Manager, State Government Issues
at Peoples Natural Gas Co.; CHAIRMAN**

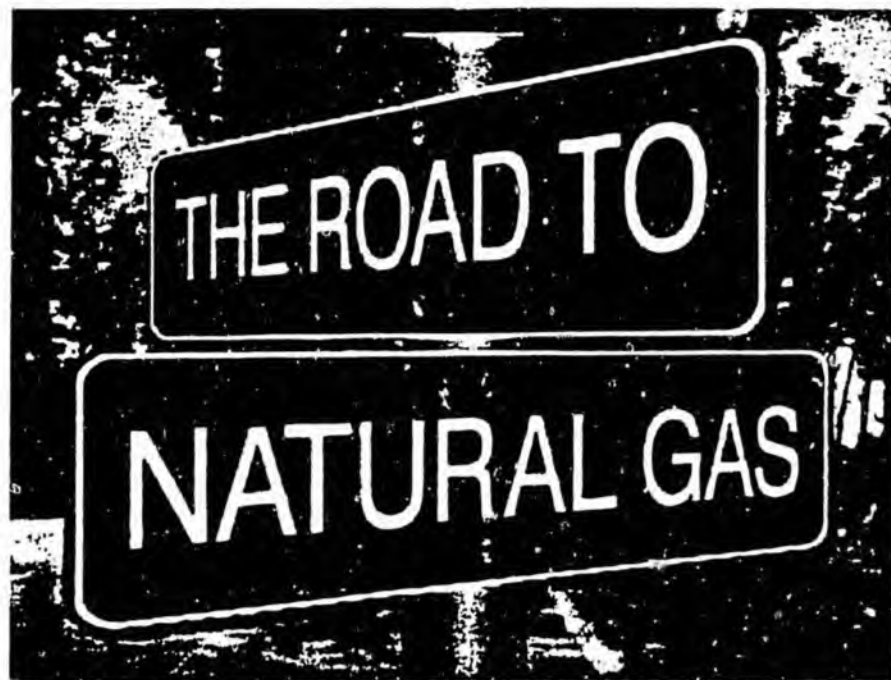
**ANDY MCGINN, Manager, State and Local Relations
at the American Gas Association, STAFF EXECUTIVE
703/841-8597**

October 1, 1991

**American Gas Association
1515 Wilson Blvd.
Arlington, VA 22209**

NGV

NATURAL GAS VEHICLES



NGV

The road to clean air.

The choice is clear. For transportation that's clean, affordable and safe, natural gas vehicles are the answer.

People all over the world recognize the advantages of natural gas as a vehicular fuel. It's **clean burning**: emits 85 percent less pollutants than gasoline. It's **affordable**: costs about 50 percent less than gasoline. It's proven to be **safe**: not only is natural gas itself safer than gasoline, the cylinders used to store it are sturdier than a gasoline tank. It **performs**: natural gas yields the same miles per gallon as gasoline, can travel at the same speed and about the same distance before refueling. And it's abundantly **available**: 93 percent of the gas we use in the U.S. is found right here, increasing our energy security.

These advantages are some of the reasons why more than 30,000 natural gas vehicles are currently in use across the United States, and close to a million around the world. And that's why some states are enacting legislation that mandates the use of cleaner fuels, like natural gas, for our nation's fleets.

The time is now, for Florida -- its leaders, businesses and people -
- to clean up our air. And the road is open.

The road to natural gas.

Air Quality

In Florida, six counties exceed the Environmental Protection Agency's Air Quality Standards: Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas. That means more than 3.5 million Floridians regularly breathe air that exceeds acceptable pollution levels.

Vehicles, and vehicle fueling infrastructure, are the sources of about two-thirds of carbon monoxide emissions. Diesel buses and trucks also emit particulates -- that black, sooty residue that can damage your lungs -- another serious component of air pollution. The vehicles we drive are responsible for 40 percent of the nation's smog.

Natural gas as a vehicle fuel can significantly reduce these emissions. Natural gas vehicles (NGVs) emit 99 percent less carbon monoxide, 65 percent less nitrous oxides, and 92 percent fewer reactive hydrocarbons than gasoline vehicles. And because natural gas is smokeless, particulate emissions from NGVs are virtually nonexistent.

As the quality of our air continues to deteriorate, our efforts to find cleaner ways to travel strengthen. President Bush's new Clean Air Act is an example of the type of legislation local governments are enacting to "clean up their act." Natural gas, as the cleanest burning fossil fuel, is a favored alternative.



Savings

Natural gas vehicles are less expensive to operate than gasoline vehicles.

In Florida the price per equivalent gallon of natural gas is about \$.55 cents. Compare that with the average cost of \$1.10 per gallon for gasoline, and the savings are obvious.

Because natural gas is such a clean fuel, maintenance costs are lower, too. The engines require less frequent tune-ups, spark plug changes, and last longer than gasoline engines do. Some customers say they can double the time span between tune-ups and still achieve maximum performance.

Converting a vehicle to run on compressed natural gas (CNG) generally costs \$2,000 - \$3,000, depending on the size of the vehicle and the total number of vehicles being converted.

Payback on the conversion varies with the number of miles driven annually, but is usually less than three years.

Price differential .50c (gasoline - CNG)				
Miles driven per vehicle, per yr.				
MPG	15,000	20,000	25,000	30,000
5	\$1,500	\$2,000	\$2,500	\$3,000
7.5	\$1,000	\$1,333	\$1,667	\$2,000
10	\$750	\$1,000	\$1,250	\$1,500
12.5	\$600	\$800	\$1,000	\$1,200
15	\$500	\$667	\$833	\$1,000
20	\$375	\$500	\$625	\$750

Safety

The unique properties of natural gas make it one of the safest vehicular fuels on the market today.

There are two reasons for this excellent safety record: the structural integrity of the NGV fuel system, and the physical qualities of the fuel itself.

The fuel storage system of an NGV is composed of steel or aluminum cylinders, which are much stronger than a gasoline tank. Because of this, the cylinders actually add to the structural integrity of the vehicle and help protect passengers in the event of a collision.

These cylinders are subject to rigorous abuse tests, such as pressure extremes, gunfire, heat extremes, collisions and fires, and have not failed.



NGV fuel systems are also a "closed loop", which prevents any spills or evaporative losses. Even if a leak did occur in an NGV system, the natural gas would dissipate into the atmosphere because it is lighter than air.

Natural gas itself has a high safety record, with an ignition temperature twice as high as gasoline, and a narrower range of flammability. This reduces the risk of spontaneous combustion. CNG is also neither corrosive nor toxic.

Studies have proven that injury rates were significantly lower for NGVs than for gasoline-powered vehicles. Of 434 million miles traveled by comparable NGVs and gasoline vehicles, there were 84 percent fewer injuries per mile in the NGVs.

Performance

When it comes to performance, natural gas vehicles rate high. Because CNG is already in a gaseous state, and has an octane rating of 130, NGVs are easier to start, in both hot and cold weather. NGVs experience less knocking, and no vapor locking. And they travel at speeds equivalent to a comparable gasoline-powered vehicle, at the same miles per gallon.

Converting a vehicle to run on CNG is simple. No major engine modifications are required, and vehicles can be converted to run on CNG only (dedicated) or on either CNG or gasoline (bi-fuel).

In a bi-fuel vehicle, a switch mounted on the dashboard allows the driver to change from CNG to gasoline if his supply is low and he's not near a filling station.

The CNG fuel tank is a steel or aluminum cylinder that can be mounted under a vehicle, in the bed or on top of a truck, or in the trunk of a car. When the vehicle is started, the CNG flows from the fuel cylinder through the master shut-off valve into a high pressure fuel line. The CNG from the fuel line enters a pressure regulator, where it is reduced from 3,000 pounds psi to 20 psi.

A solenoid valve then opens, and the CNG enters the engine's combustion chamber, where it is ignited to create power to drive the vehicle. Unlike gasoline, which must be vaporized before ignition, CNG enters the combustion chamber already in a gaseous state.

In a passenger car, two cylinders of CNG provide the equivalent of 10 gallons of fuel. Trucks and other larger vehicles can be equipped with more cylinders to provide a driving range of 300 miles.



Supply

Natural gas is in abundant supply. More importantly, 93 percent of that supply is right here in the United States, making natural gas the most dependable, secure and domestic energy source available.

Studies show the resource base of conventional natural gas supply in the lower 48 states alone is enough to meet demand for the next 50 years. When you include non-conventional sources of gas, and gas from other countries, we can increase our consumption and *still* have enough gas to meet the new demand for more than 140 years.

Increasing our use of natural gas for vehicles doesn't just clean up our air and save us money, it aids in energy security for our country. If just 5 percent of the nation's fleet vehicles were converted to compressed natural gas, the United States could decrease oil imports by 500,000 barrels annually, resulting in a dollar savings of \$4 billion a year.

Although the gas is abundantly available, the number of public filling stations is limited. Fleets normally have their own private fill stations, which two or more companies located conveniently can share for reduced costs.

Refueling of NGVs is done in either a quick fill, which takes about two to five minutes; or a timed fill, which allows vehicles to refuel overnight, when the vehicles are retired for the day.





Natural Gas Vehicle is published bimonthly by the American Gas Association, 1515 Wilson Blvd., Arlington, VA 22209. **Natural Gas Vehicle** is protected through a pending trademark registration in the U.S. Patent Office.

Natural Gas Vehicle's aim is to keep fleet owners and operators, vehicle equipment manufacturers and suppliers, government officials and other interested parties informed of important developments concerning market growth for natural gas-powered vehicles, thereby encouraging active participation in and support of the use of natural gas to operate vehicles.

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MARATHON continued from page 1

State Gas Co. provided the natural gas for the NGVs.

Commenting on the arrangement at an advance news conference, Boston Marathon legend Bill Rodgers said, "In the scores of marathons I've run in around the world, this is the first time the athletes will breathe fresh air and not have to endure dangerous vehicle exhaust emissions. From my experience as a front runner in past marathons, I can say that this is a long overdue and positive development."

"We were delighted with the idea," added Marathon Director Guy Morse of the Boston Athletic Association. "After 94 years," Morse said, "we'll all breathe a little easier knowing that our leading runners will be enjoying cleaner air directly in front of them throughout the entire race."

Other news conference participants included wheelchair athletes Jane Raymond-Hall and Louis Antonio, as well as Boston Gas President Chester R. Messer.

In a statement released at the news conference, A.G.A. President Michael Baly III congratulated Boston Gas and the organizers of the Boston Marathon for "giving the runners a break this year." Messer, noting that his company is converting its entire vehicle fleet over the next few years to operate on natural gas, expressed confidence that "natural gas will be 'out front' no matter who wins the Boston Marathon."

For additional information, call Frank A. Arricale, Boston Gas' director of public information, at 617/742-8400.

Advertisements promoting recent A.G.A. member company natural gas vehicle activities, including fuel station openings and a strong presence in the Boston Marathon, have appeared in *The Wall Street Journal*, *The Washington Post*, and *Tulsa World*, and are included in this issue of the *Vehicle*.

Executive Order Guides Federal Vehicle Buys

An executive order announced April 17 by President George Bush targets the federal government's procurement of alternative-fuel vehicles as a key ingredient of the new federal energy mandate.

The order, which focuses on conservation in federal buildings and facilities and on fuel savings in federal vehicle use, directs the U.S. Energy Secretary to ensure that the federal government purchases annually the "maximum number practicable" of alternative-fuel vehicles as required by the Alternative Motor Fuels Act of 1988. The law provides \$18 million for federal procurement of alternative-fuel vehicles. Bush's order seeks to have the "maximum number practicable" be original equipment produced by manufacturers, and seeks to initiate procurements in model year 1995.

In addition, the executive order calls for federal vehicle fuel efficiency by directing agencies operating fleets of 300 or more vehicles to reduce gasoline and diesel consumption by 10 percent by 1995, using 1991 as the baseline. Use of alternative-fuel vehicles will count toward the 10-percent reduction.

Under the order, federal procurement of alternative-fuel vehicles will be guided by requirements that life-cycle costing methods be incorporated in buying decisions, a provision designed to spur private industry to develop energy-efficient equipment.

The executive order, says Bush, "is an important component of the National Energy Strategy, and it demonstrates our commitment to a balanced approach for achieving an energy future that is secure, that is efficient, and that is environmentally sound."

NFIB Alaska

National Federation of
Independent Business March 18, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: HB 377

Dear Representative Donley:

On behalf of the 5292 members of NFIB/Alaska, I would like to express our appreciation for time and effort you have been devoting to the bill implementing the federal Clean Air Act Amendments of 1990.

The Department of Environmental Conservation has estimated this bill will effect 600 small businesses in Alaska that have not been previously regulated. There are several sections of HB 377 that are of particular concern to NFIB/Alaska because it gives the department additional authority not specifically required by the federal law. It gives them additional authority to: regulate more types of sources; set more stringent emission standards; regulate more kinds of air pollutants; and, to impose administrative penalties. NFIB/Alaska suggests that all sections giving them additional authority, beyond those prescribed in the federal standards, be deleted.

If required by the department, the bill allows them to set application deadlines earlier than 12 months. We suggest that the language giving them the authority to set shorter application deadlines be deleted.

When the federal administrator exempts a source, the bill allows the department to may(be) exempt the source. We suggest that the language giving them the authority to may(be) exempt the source be changed to require (shall) them to exempt the source.

As you know, the legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our members on a series of issues deemed critical to small business. A majority vote sets our policy and position on legislative issues. The following is the result of one of the questions on our 1991 poll:

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278



The Guardian of
Small Business

Representative Donley
March 18, 1992
Page: 2

Should legislation be passed to prohibit the Department of Environmental Conservation from imposing environmental standards and limitations that are stricter than federal standards?

61.1% Yes

33% No

5.9% Undecided

Also, caution needs to be exercised in drafting language for the fees in HB 377. Historically the Department of Environmental Conservation has been regulating mostly large corporations. By their own estimation, 600 small businesses that have not been previously regulated soon will be regulated. What may seem like a small or reasonable fee to the personnel at the department, or a large corporation could be very onerous to a small business owner. Language needs to be included in the bill that states: the fees are to be no more than absolutely necessary to meet the federal requirements for funding of the program.

Also, these fees are to be sufficient to cover the costs to develop and implement the program. The fees are not to significantly exceed the cost to develop and implement the program. The term "but not significantly exceed" is used twice on page 8, lines 3 and 25. What may be determined to "not significantly exceed" the costs to develop and implement the program by this administration may be viewed entirely differently by subsequent administrations. To help clarify this point, the language "do not significantly exceed" needs to be changed to "do not exceed" the cost.

From a "real world" perspective, the department has prepared some informational handouts but, this information is not very widely distributed to the public. Additionally, information on this issue is difficult to obtain from EPA. I have been calling the EPA Small Business Liaison person since early January attempting to obtain a copy of their booklet "A Guide for Small Business on the Clean Air Act Amendments of 1990." I recently received a note from EPA informing me the "publication is not expected until another month plus."

Hopefully since HB 377 contains the Small Business Assistance Program help for small businesses to comply with the law may be available. I recently sent a legislative update to our members and devoted 1/3 of it to this issue. To raise public awareness, it would be helpful if you or the department would hold a press briefing. Also, you and other legislators might want to consider including some information on this issue in your mailings to constituents.

Representative Donley
March 18, 1992
Page: 3

I appreciate having the opportunity to share with you some of the concerns of the small business community. I look forward to working with you on this and other issues of importance to small business owners.

Sincerely,

A handwritten signature in cursive script, appearing to read "Resa".

Resa Jerrel
State Director

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

TO THE

HOUSE JUDICIARY COMMITTEE

MARCH 18, 1992

ON

CSHB 377 (RES)

AN ACT RELATING TO AIR QUALITY CONTROL AND THE PREVENTION,
ABATEMENT, AND CONTROL OF AIR POLLUTION; RELATING TO CIVIL
AND CRIMINAL PENALTIES, DAMAGES, AND OTHER REMEDIES FOR AIR
QUALITY CONTROL VIOLATIONS; AMENDING THE DEFINITION OF
'HAZARDOUS SUBSTANCES'; RELATING TO USE OF THE OIL AND
HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND; RELATING TO
INSPECTION AND ENFORCEMENT POWERS OF THE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION; AND PROVIDING FOR AN EFFECTIVE
DATE.

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS FESA JERREL, AND I REPRESENT THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO COMMENT ON HB 377.

FOR SOME BACKGROUND INFORMATION: NFIB/ALASKA IS COMPRISED OF 5,292 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERSHIP ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

THE FOLLOWING IS THE RESULT OF ONE OF THE QUESTIONS ON OUR 1991 POLL:

SHOULD LEGISLATION BE PASSED TO PROHIBIT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM IMPOSING ENVIRONMENTAL STANDARDS AND LIMITATIONS THAT ARE STRICTER THAN FEDERAL STANDARDS?

61.1% YES 33% NO 5.9% UNDECIDED

ATTACHED IS A COPY OF OUR LETTER TO REPRESENTATIVE MOYER OUTLINING OUR CONCERNS AND LANGUAGE SUGGESTIONS FOR THE BILL. BRIEFLY, THE AREAS THAT NEED TO BE AMENDED ARE:

- SECTIONS THAT GO BEYOND THE REQUIREMENTS OF THE CLEAN AIR ACT AMENDMENTS TO 1990. THE SECTIONS THAT GIVE THEM ADDITIONAL AUTHORITY TO: REGULATE MORE TYPES OF SOURCES; SET MORE STRINGENT EMISSION STANDARDS; REGULATE MORE KINDS OF AIR POLLUTANTS; AND, TO IMPOSE ADMINISTRATIVE PENALTIES.
- THE SECTION THAT GIVES THEM AUTHORITY TO SET A SHORTER TIME LIMIT THAN 12 MONTHS FOR APPLICATION DEADLINES; AND,
- THE LANGUAGE THAT SAYS THEY "MAY" EXEMPT A SOURCE WHEN THE FEDERAL ADMINISTRATOR HAS EXEMPTED A SOURCE.

FINALLY, THE LANGUAGE FOR THE FEE STRUCTURE NEEDS TO BE CLEARLY SPELLED OUT. HISTORICALLY, THE DEPARTMENT HAS BEEN REGULATING MOSTLY LARGE CORPORATIONS. BY THEIR OWN ESTIMATION, 600 SMALL BUSINESSES THAT HAVE NOT BEEN PREVIOUSLY REGULATED, SOON WILL

BE REGULATED. WHAT MAY SEEM LIKE A SMALL OR REASONABLE FEE TO THE PERSONNEL AT THE DEPARTMENT, OR A LARGE CORPORATION COULD BE VERY ONEROUS TO A SMALL BUSINESS OWNER. LANGUAGE NEEDS TO BE INCLUDED IN THE BILL THAT STATES:

THE FEES ARE TO BE NO MORE THAN NECESSARY TO MEET THE FEDERAL REQUIREMENTS FOR FUNDING OF THE PROGRAM.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS VERY IMPORTANT BILL.

NFIB Alaska

National Federation of
Independent Business

March 16, 1992

The Honorable Tom Moyer
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: HB 377

Dear Representative Moyer:

On behalf of the 5292 members of NFIB/Alaska, I would like to express our appreciation for time and effort you have been devoting to the bill implementing the federal Clean Air Act Amendments of 1990.

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If required by the department, the bill allows them to set application deadlines earlier than 12 months. We suggest that the language giving them the authority to set shorter application deadlines be deleted.

When the federal administrator exempts a source, the bill allows the department to may(be) exempt the source. We suggest that the language giving them the authority to may(be) exempt the source be changed to require (shall) them to exempt the source.

As you know, the legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our members on a series of issues deemed critical to small business. A majority vote sets our policy and position on legislative issues. The following is the result of one of the questions on our 1991 poll:

State Office
9159 Skywood Lane
Juneau, AK 99801
(907) 789-4278



Representative Moyer
March 16, 1992
Page: 2

Should legislation be passed to prohibit the Department of Environmental Conservation from imposing environmental standards and limitations that are stricter than federal standards?

61.1% Yes

33% No

5.9% Undecided

Also, caution needs to be exercised in drafting language for the fees in HB 377. Historically the Department of Environmental Conservation has been regulating mostly large corporations. By their own estimation, 600 small businesses that have not been previously regulated soon will be regulated. What may seem like a small or reasonable fee to the personnel at the department, or a large corporation could be very onerous to a small business owner. Language needs to be included in the bill that states: the fees are to be no more than absolutely necessary to meet the federal requirements for funding of the program.

Also, these fees are to be sufficient to cover the costs to develop and implement the program. The fees are not to significantly exceed the cost to develop and implement the program. The term "but not significantly exceed" is used twice on page 8, lines 3 and 25. What may be determined to "not significantly exceed" the costs to develop and implement the program by this administration may be viewed entirely differently by subsequent administrations. To help clarify this point, the language "do not significantly exceed" needs to be changed to "do not exceed" the cost.

From a "real world" perspective, the department has prepared some informational handouts but, this information is not very widely distributed to the public. Additionally, information on this issue is difficult to obtain from EPA. I have been calling the EPA Small Business Liaison person since early January attempting to obtain a copy of their booklet "A Guide for Small Business on the Clean Air Act Amendments of 1990." I recently received a note from EPA informing me the "publication is not expected until another month plus."

Hopefully since HB 377 contains the Small Business Assistance Program help for small businesses to comply with the law may be available. I recently sent a legislative update to our members and devoted 1/3 of it to this issue. To raise public awareness, it would be helpful if you or the department would hold a press briefing. Also, you and other legislators might want to consider including some information on this issue in your mailings to constituents.

Representative Moyer

March 16, 1992

Page: 3

I appreciate having the opportunity to share with you some of the concerns of the small business community. I look forward to working with you on this and other issues of importance to small business owners.

Sincerely,

A handwritten signature in cursive script, appearing to read "Resa".

Resa Jerrel
State Director

Fax Transmittal Cover Sheet

To: Rep. Terry Martin, - AK House-Rep. Martin

From: Rollo Pool, ALASKA PULP CORP.

Fax Number: (907) 747-2268

Date: Sat, Mar 28, 1992 • 5:09 PM

Transmitting (2) pages, including cover sheet.

If there is difficulty with this transmission, please call: (907) 747-2268

Note:

Duplicate sent to House Judiciary Committee fax today.

ALASKA PULP CORPORATION
4600 SAWMILL CREEK RD
SITKA, AK 99835

3/28/92

TO: HOUSE JUDICIARY, ATTN: MR. TERRY MARTIN
FROM: Rollo Pool, Alaska Pulp, 747-2283

RE: INFORMATION REQUEST, CSS 377

*CS-Resource
for HB377*

On March 18, 1992, I was asked by the House Judiciary Committee to estimate the cost of the Clean Air Act (1990) to our company.

Our pulp mill in Sitka is looking at a new annual expense from around \$50,000 to over \$100,000 from this Act, depending on how some of the numbers and categories will be calculated and according to our current estimates.

Although not part of your request, I also want to add that the user-fee regulations now being circulated by ADEC for permits, approvals and inspections are estimated to cost us an additional \$150,000 per year. This is for one pulp mill (Sitka), one sawmill (Wrangell), two logging communities (Southeast Alaska) and includes fees for wastewater, hazardous waste, kitchens, air and other items.

TESTIMONY HB 377

Alaska Pulp Corporation, Sitka

Rollo Pool

March 18, 1992

House Judiciary Chairman and Committee:

Good afternoon. My name is Rollo Pool, and I am manager of public relations for the Alaska Pulp Corporation. We have manufacturing facilities in Sitka and Wrangell and manage two logging operations. We are the second largest private employer in Southeast Alaska.

We appreciate the opportunity to testify on this important bill.

The two main points that I wish to address today are consistency of regulations and cost.

I will address the latter first. One of the biggest hurdles we face as a company is keeping up with changing environmental regulations. It is extremely difficult for a business as complicated as ours to predict what the environmental climate will be—in terms of standards, technology and regulations—one, two or three years from now, and to predict with any certainty the cost of those regulations to our operations.

One thing that we don't feel that legislative bodies and government agencies factor into their regulatory changes is the impact of these costs—an industry's ability to pay for these items or the cost competitiveness of industries. Unfortunately, for us, the price our customers pay for our pulp and our lumber is not based on our internal costs for raw materials or on our manufacturing costs, which include the costs we bear from environmental regulation. The price we receive is formed by global patterns, such as the world supply and demand for these commodities. The world market, not Alaska Pulp, sets our selling prices.

Merely because we have another \$1 of cost per ton does not mean that we can raise the price of our product by a similar amount. The cost of any new regulation will make our bottom line lower. At times like today, when markets are soft, that additional \$1 per ton takes a toll. We feel it. We realize that costs, even environmental costs, are an inevitable part of doing business, but there is a point that costs drive a company out of the marketplace. I don't know if that point is with the Clean Air Act, in new water permits, national forest timber policies, or legislation that is being crafted as we speak.

Page 2
Pool/HB 377
March 18, 1992

There are very few guarantees in our business. One pulp mill in Washington is closing its doors for good at the end of March. Another pulp mill in that state is being considered for closure. These go along with two pulp mills from Finland and one each from Italy and Norway. They cite market conditions, regulations and the huge cost to upgrade and improve their environmental operations as reasons for closure.

Although the intentions of those tightening the laws, limits and controls of our businesses are well intentioned (cleaner air and water, less solid waste), there is little consideration for the cumulative effect that this and other bills have on industry and, more fundamentally, how they affect a company's ability to survive in uncaring world markets. When Alaskan laws are tougher than federal standards, it can and does create an unfair advantage for our industries to conduct business and to compete in world markets from this state. I might add that we compete with mills from many other countries that have far fewer environmental restrictions than we have in the United States.

The other issue that I wish to directly address today is one of consistency -- consistency between federal and state regulations. An analogy to what we experience is comparable to having laws that force drivers to drive down the left side of road on federal highways and down the right side on state roads. The pattern sets us up for a collision.

Last summer, during a safety check of our chlorine handling equipment, we discharged a slight amount of chlorine into the atmosphere at one of our facilities. The release was measured in ounces, and much less than the amount that triggers automatic reporting of this chemical under SARA Title III regulations for local emergency planning committees. Nevertheless, we reported the incident to the US Coast Guard which considered it part of normal, safety-check operations. The check did, after all, what it was designed to do. However, a local ADEC officials considered the incident large enough to issue us a warning on our reporting. We were told that any release of chlorine must be reported to ADEC, even 1 molecule, because that is the law. Obviously, there was a huge difference between state and federal regulators' impressions of this event. The state does not have *de minimus* standard for reporting of this and many other chemicals. We wish those standards or minimum reporting quantities were specified and were the same at both the state and federal levels, so that we can avoid reporting problems of minor releases.

We want one set of rules, one set of limits, one set of definitions.

Page 3
Pool/HB 377
March 18, 1992

A) CSS 377 EXCEEDS FEDERAL LAW

The bill, as it stands, it exceeds the federal requirements in many cases:

- 1) Allowing more sources and more pollutants to be regulated;
- 2) Allowing for more stringent air emission standards to be established;
- 3) Allowing for more stringent ambient air standards to be established.

B) ADMINISTRATIVE PENALTIES

Concerning administrative penalties, CS 377 goes beyond the intention of the federal law, allowing local ADEC officials to issue, essentially, \$10,000 traffic tickets at their own discretion. This is really unnecessary, when the federal law allows for civil penalties of up to \$100,000 for one violation and \$10,000 per day thereafter, and allows also for criminal penalties. Unless there are very strict boundaries drawn clearly around this issue, it can become a very misused and abused tool by local enforcement officials. In the case of our chlorine release, we could have been given a \$10,000 citation.

C) RISK ASSESSMENTS

This section permits the state to base its emission standards and limitation on risk assessments – or on available technology – rather than using federally specified standards and technology.

D) FUGITIVE EMISSIONS

We want to see the treatment of fugitive emissions consistent with federal definitions and requirements.

E) PERMIT REOPENERS

The Clean Air Act allows for reopening permits in certain cases. The state's bill takes this even further, authorizing reopening even when the new standard does not take effect until after the permit expires. This is a great example of overkill. Presently, we are operating under air permits that are good for only one year. We would like to see that period increased to five years, keeping the same reopener clauses as exist in federal law.

F) EXEMPTION OF SOURCES WHICH EPA EXEMPTS

We feel the bill should require the State to adopt federal exemptions.

G) PERMIT FEES

Fees should be limited to the limits set by federal law and should not exceed the direct costs of implementing federally-required regulations.

Our people are concerned that Alaska's Clean Air Bill should be consistent with and not exceed federal limits. We want one set of rules. Thank you for allowing us the opportunity to testify.

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4311

ANCHORAGE ASSEMBLY

March 24, 1992

Members of the Anchorage Caucus
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Anchorage Legislators:

We members of the Anchorage Assembly are asking for your support of amendments to HB 377 addressing two major problems: urban visibility and hydrocarbon pollution. We want State Clean Air Act requirements to be shaped to Alaska's northern conditions to protect the health of our citizens and the quality of our lives.

We are concerned about the urban haze that surrounds Anchorage when the air is calm, especially in the winter. Alaska's clear, blue skies and distant views are special, and should be saved for those who live here, and those who visit us.

Persons with lung conditions contact us saying that polluted air during haze events makes breathing difficult and threatens their health.

In addition, we share the concerns of the residents of Government Hill about hydrocarbons in the air from the nearby tank farm. Besides causing acute problems with burning eyes and throats, the hydrocarbons are known carcinogens, and must be controlled in an urban setting.

We are concerned that hydrocarbon pollution may also be a threat to citizens as they drive their cars in our cold temperatures, and in neighborhoods near busy roads.

Proposed amendments establish systems for both the haze and hydrocarbons, and require reports to the Legislature to determine the major components and sources of the haze and hydrocarbon pollution; assess health, safety and environmental effects; and develop program alternatives to prevent, abate and control haze and hydrocarbon pollution.

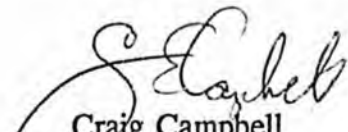
Members of the Anchorage Caucus

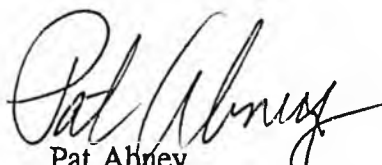
March 24, 1992

Page 2

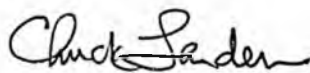
We hope you will help us clean Anchorage's air and protect the health of our citizens by supporting these amendments.

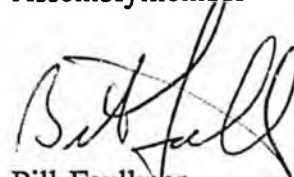
Sincerely,


Craig Campbell
Chair


Pat Abney
Assemblymember

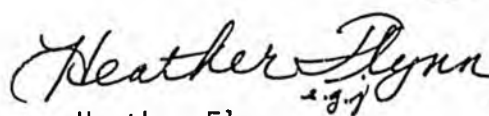

Dick Traini
Assemblyman

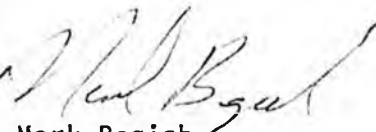

Chuck Landers
Assemblyman


Bill Faulkner
Assemblyman


Jim Barnett
Assemblyman

egj/DOCD/PA02


Heather Flynn
Assemblymember


Mark Begich
Assemblyman

CLEAN AIR FOR ALASKA
Proposed Amendments to HB 377
from the Clean Air Coalition
February 19, 1992

Contact: Cheryl Richardson TEL (907) 258-0071 FAX (907) 279-1858

The Clean Air Act Amendments of 1990 require the State of Alaska to revise our statutes to meet new Federal requirements, and H.B. 377 begins that process. The Clean Air Coalition offers three programs as amendments to H.B. 377 in order to tailor the bill to Alaska's unique northern climate, shorter daylight hours, and calm wintertime air that traps pollution around communities of all sizes.

THE NEED FOR ADDITIONAL PROTECTION

Unfortunately, our air is used as a free dump site. We allow substances into the air we no longer consider spilling on the ground or into the water.

Known air pollution in Anchorage and Fairbanks comes mostly from transportation. 90 percent of carbon monoxide comes from autos and monitored particle pollution comes from road dust. In smaller communities, sources are likely to include woodstoves, diesel generators, boats, and an occasional industrial facility.

Visibility is diminishing in Anchorage and Fairbanks, as urban haze increases, obscuring views of water and mountains, creating noxious odors, and causing respiratory problems in sensitive individuals. Visible air pollution damages Alaska's image as a clean wilderness destination for tourists.

Neighborhoods are concerned about hydrocarbon pollution from industrial sources which may increase cancer risk and cause headaches, dizziness and difficulties in breathing.

STATE LAW NEEDS TO BE CHANGED

At this time, Alaska has an unwritten policy to allow increases in numerous air pollutants so long as the pollutant does not violate a federal ambient (outdoor air) standard. There are ambient standards for only a few substances, and none for hydrocarbons or visibility. Evidence is growing that existing standards are not protecting the public's health.

Energy conservation could help reduce air pollution with incentives to burn less fuel, but Alaska has no comprehensive policy of conserving energy through direct programs or by increasing its cost.

Only a few pollutants are routinely measured in Alaska's cities; we can only guess about the levels of hazardous substances in our air.

The Clean Air Coalition proposes adding the following three programs to H.B. 377 to improve Alaska's air quality.

I. REDUCE AIR POLLUTION THROUGH ENERGY CONSERVATION

A. The State is committed to reducing air pollution in Alaska and will assist communities in maintaining clear visibility and clean air.

B. To reduce total emissions in the air, communities now violating a federal air quality standard will develop energy conservation plans and programs consistent with their comprehensive development plans. Cities will make concerted efforts to reduce travel by single occupant autos, will encourage shared travel by transit, trail, rail, and carpool, and will consider land use policies and trip reduction programs. Cities will also consider methods of reducing total emissions from woodstoves, home furnaces and municipal power plants.

C. All air pollution reduction programs shall have a public education component to inform citizens of the hazards of the pollution and measures they can take to clear the air.

II. CLEAR SKIES FOR ALASKAN CITIES

A. ESTABLISH STANDARDS FOR VISIBILITY

The State is committed to and supports development of visibility standards in both rural and urban areas. The State will work with communities to define citizen based visibility standards where requested by the local government.

B. MEASURE HAZE IN THE AIR

In order to reduce haze and demonstrate progress towards clean air, the State must continually measure haze.

C. IDENTIFY POLLUTANTS IN HAZE AND THEIR SOURCES

In order to solve the problems of haze and pollution, the State must identify the pollutants which make up the haze. The State shall study nitrogen oxides and nitrates, sulfur oxides and sulfates, soots from woodsmoke and diesel exhaust, automobile emissions and geological dust in addition to any other pollutants likely to contribute to the haze.

The State will determine the sources of haze, and the relative contribution each source makes to the haze.

D. DEVELOP PROGRAMS TO PREVENT HAZE POLLUTION

After determining the sources of haze pollution, the State must develop programs to reduce pollution and improve visibility.

The State will use air pollution models to predict increases in air pollution. Programs will be implemented to offset the impact of new sources and not allow emission increases. These sources may be stationary (power plants or factories) or mobile (cars, trucks, ships, or airplanes). Emission increases will not be allowed.

The haze prevention program will include a public education and public evaluation component.

III. MAKE AIR SAFE FROM HYDROCARBON POLLUTION

A. HEALTH BASED STANDARDS

While the State moves forward with Maximum Available Control Technology standards to control hydrocarbon pollution it will also develop health based standards for hydrocarbon levels in ambient (outdoor) air.

B. MONITOR HYDROCARBON LEVELS

The State shall determine the health hazards from hydrocarbons, both in neighborhoods near industrial sites, and at intersections with high traffic levels. A comprehensive monitoring system shall be implemented.

C. DEVELOP PROGRAMS TO REDUCE HYDROCARBONS

After determining the sources of hydrocarbon pollution, the State shall develop programs to reduce hydrocarbon levels.

The State shall model potential increases in hydrocarbon pollution. If a new source is likely to increase emissions, a program will be implemented to offset the impact of the new source and not allow emission increases. These sources may be stationary (tank farms, or factories) or mobile (cars, trucks, ships, or airplanes).

The hydrocarbon reduction program will have a public education and

evaluation component.

D. CONTINUED MONITORING FOR COMPLIANCE

To demonstrate progress in cleaning our air, the State shall maintain the hydrocarbon monitoring system, develop target pollution reductions, and make monitoring results available to the public.

Anchorage air quality in the '90's

Air pollution problems

Pollutants in Anchorage air have exceeded safe levels since they were first measured in 1973. Carbon monoxide and small particulates (dust and soot) continue to exceed federal standards, and on calm days the mountains around Anchorage are obscured by haze.

Inversions

Anchorage is in a "bowl" at the base of the Chugach Mountains along the upper reaches of Cook Inlet. These mountains can shelter us from winds which would clean out our urban air. Periodic winter "inversions" of warm air trap colder, more polluted air close to the ground, sometimes within 50 feet of ground level. By comparison, famous Los Angeles inversions are at about 1,500 feet⁷.

When an inversion exists during periods of heavy traffic, carbon monoxide levels can exceed federal ambient air quality standards. When inversions remain stable over several days, pollution builds within the limited volume of air trapped near the ground. Inversions can push polluted air closer to the ground as the temperatures drop, and carbon monoxide levels at midnight have exceeded levels at rush hour as the lowering height of the inversion compacts the polluted air. Municipal studies demonstrate that carbon monoxide levels are elevated in neighborhoods, not just on roadways during air pollution episodes⁴.

Anchorage shares an airshed with the Kenai Borough to the south and the Matanuska Susitna Borough to the north. During summer months wood smoke from land clearing or habitat enhancement outside the city has been dispersed from Talkeetna to Homer.

Haze

A brown haze cloaks Anchorage on calm winter days, and pale haze bleaches the horizon in the dryer months. Views of nearby mountains are obscured. While road dust has been documented as a pollutant and dust is a likely source for much of the pale haze, Anchorage has not yet identified the composition of its brown haze. Other northern cities have found their brown haze is made up of small particles from transportation, wood burning, other combustion sources, and dust.

Health effects of air pollution

Health effects of air pollutants depend on a combination of many factors — including age, health status, smoking habits, occupation, lifestyle, and the amount and length of exposure. But, in general we know these things about the major pollutants in Anchorage air:

Carbon monoxide is a colorless, tasteless, odorless, deadly poison. When breathed, it joins with red blood cells and deprives the body of needed oxygen. Individuals with heart and lung diseases are particularly vulnerable to elevated carbon monoxide levels in the air. Pregnant women and their babies are at risk for low birth weight and increased infant death. Symptoms of carbon monoxide poisoning usually develop in this order: headache, giddiness, nausea, weakness, occasional vomiting, loss of mental alertness, collapse and coma, finally death.

Particles can interfere with the body's immune system and irritate the eyes, nose, and throat, narrowing the upper airways during a pollution episode. They increase bronchitis, upper respiratory illnesses, and mortality from cardiac and respiratory disease. Small particulates (less than 10 microns or PM 10's), join with pollutants and carry carcinogens and other pollutants such as carbon monoxide, lead, and pesticides, directly into the lungs where they are deposited in body tissues³. PM 10's themselves also cause scarring of lung tissue.

Pollutants in Anchorage air have exceeded safe levels since they were first measured in 1973.



Carbon monoxide is a colorless, tasteless, odorless, deadly poison.

It is appropriate for the source of the pollution to pay for its clean-up, and in this case, vehicle user fees can finance a more energy efficient transportation system to transport people, goods and raw materials.



People are concerned about healthy air. Nationally, 73% of adults responded in 1988 that they were "very concerned" about air pollution. In Anchorage, 96% of respondents to a 1983 survey wanted air pollution reduced. The Anchorage Clean Air Coalition is an association of individuals, and health and environmental organizations advocating for healthful air quality. The coalition emphasizes public education, lobbying to maintain strong air quality standards, policies, and programs to reduce pollution.

To reduce carbon monoxide to safe levels, Anchorage can reduce auto trips while driving vehicles with cleaner operating engines. Oxygenated fuels and engines manufactured to burn fuel more efficiently in cold temperatures are expected to reduce carbon monoxide pollution in future years. But it will be difficult to accommodate anticipated population growth and peoples' increased reliance on the automobile, and still meet air quality standards in the future. In addition, there is growing concern over global warming, and transportation contributes thirty percent of the nation's carbon dioxide production.

Since vehicles produce most of the identified air pollutants, the coalition advocates programs to give people transportation choices beyond the automobile including improved rail, transit, shared rides, and safe bicycle and pedestrian facilities. Employers can sponsor trip reduction programs including rideshare, and can provide financial incentives for transit. Land use policies can contribute to more energy efficient transportation through greater residential and commercial density along roads designated as "transit corridors". Commercial development can be transit friendly with bus pullouts and shelters, and improved pedestrian access.

A national, state or local transportation fund can finance a comprehensive public transportation system with revenues from motor vehicle registration fees and fuel taxes. Only two states levy a gas tax lower than Alaska's. It is appropriate for the source of the pollution to pay for its clean-up, and in this case, vehicle user fees can finance a more energy efficient transportation system to transport people, goods and raw materials.

To reduce particles in Anchorage air, we first need to identify the sources of the particulates. Strategies for reducing pollution will probably include paving roads, prompt springtime cleanup of winter sanding materials, vegetation of cleared lands, reducing combustion, and more efficient burning of fuels. State and local governments can cooperate to develop strict open burning policies and we can encourage greater use of catalytic or secondary combustion wood stoves. Cold start standards for engines will help reduce some particulate pollution; diesels can also meet stricter standards.

Several questions for Anchorage remain unanswered in 1990

- A. What are carbon monoxide levels in roadside schools, homes and commercial buildings during winter inversions and carbon monoxide exceedences?
- B. What pollutants make up the dirty brown haze along the Chugach Mountains in the winter when snow covers the soils?
- C. How many vehicles can Anchorage accommodate on the road during inversion without exceeding healthy carbon monoxide standards?
- D. What level of transit service (frequency, distance from home/work place, comfort level) would attract enough drivers from their autos to maintain healthy air?
- E. How much would the highest level of transit service cost compared to the costs of constructing and operating additional lanes of roadway?

National and worldwide air pollution problems

Global warming may have begun. The six warmest years in the last 100 were 1988, 1987, 1983, 1981, 1980, and 1986. Greenhouse gases build in the earth's atmosphere and trap the sun's energy. Half of these gases are estimated to come from combustion of fossil fuels, and the remaining half from chlorofluorocarbons, agricultural practices and deforestation. We may see a dramatic warming of the earth in our lifetime with innumerable environmental changes such as melting of polar ice caps, rise of ocean levels, erosion of existing shorelines, shifts in weather patterns, and encroachments of deserts⁷.

Arctic haze is a long, thin opaque cloud observed during high altitude inversions from northernmost Alaska as far south as Montana. Observed since the mid-1970's, arctic haze is industrial pollution from western USSR, central Europe and perhaps the northeastern USA, which moves along inversions one to two kilometers above the earth in the troposphere. Its effects on the environment are not clearly understood, but will probably include changes in the amounts of solar radiation received underneath the cloud, and increased acidity levels of soils where the cloud is precipitated from the sky¹⁰.

Toxic pollutants from accidental discharges are a constant threat, especially as Anchorage is a hub of ocean, air, railroad and truck transport of commodities, chemicals, materials, fuels, and pesticides. In 1986, formaldehyde escaped from an improperly heated railroad tanker in Anchorage. Disaster was averted by removal of the tank car to the less populated locale of Crown Point, sixty miles south of Anchorage where winds were to disperse the gas. Crown Point was evacuated, and homes there remain unlivable.

Acid rain results from smoke stack industries producing sulfur dioxides and nitrogen oxides which combine with water to fall out of the sky as acid rain. This is a significant problem in the northeast United States and Canada, and parts of Europe where plant and waterlife is being destroyed. Oil and gas facilities on the North Slope of Alaska emit as much nitrogen oxides as Washington, D.C. each year. The effects of these emissions on soils, water, plants, or animals is not known, and the EPA has raised concerns that acidification of the tundra may result even if ambient air quality standards are being met⁸.

Indoor air pollution is perhaps the most life threatening air pollution in Alaska, especially when outdoor air pollution levels are high and combine with indoor pollutants to reach unhealthy levels. Some of our homes and buildings are not adequately ventilated, and we do not have standards to limit the levels of formaldehyde, gases from synthetic building materials, carbon monoxide, nitrogen oxides, sulfur oxides, cigarette smoke, microorganisms, allergens, or other pollutants.

High altitude ozone is a protective form of oxygen which shields us from the sun's ultraviolet radiation. Chlorofluorocarbons from aerosol cans, freezers, and air conditioners destroy this protective layer above the earth. A "hole" or thin spot in the earth's ozone is documented at the south pole of the earth. Ultraviolet radiation reaching populated areas could increase by five to twenty percent early in the 21st century, causing destruction of plankton, and dramatic increases in skin cancer. Even if the manufacturing of chlorofluorocarbons ceased today, the upper atmosphere's ozone depletion will continue for another century as existing chlorine molecules rise slowly from the earth and remain in the stratosphere to destroy ozone⁹.

Ground level ozone is a pollutant created by auto exhaust (nitrogen oxide and hydrocarbons) reacting in sunlight to create "smog". Communities with sunshine, warm temperatures, and high volume traffic create ozone which seriously irritates the eyes, mucous membranes, and the respiratory system.

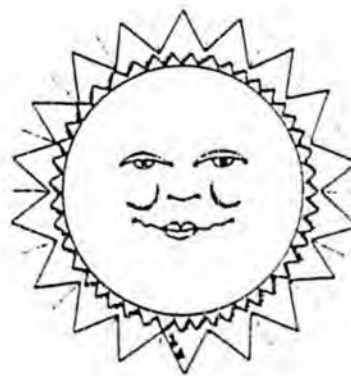
Nitrogen dioxide is a byproduct of combustion from automobiles, power plants, and furnaces. It is a reddish brown gas formed by the reaction of nitrogen oxide with sunlight and is corrosive and toxic to man. Unpolluted air has a relative high ratio of nitrogen oxide to nitrogen dioxide; that ratio reverses as sunlight and converts the nitrogen oxide into nitrogen dioxide in the middle of the day³.

Sulfur dioxide is a byproduct of oil and coal combustion from industrial or utility plant stacks. Sulfur dioxide and coexisting particulate pollutants have been repeatedly associated with increased respiratory disease and death rates.

We may see a dramatic warming of the earth in our lifetime...



Oil and gas facilities on the North Slope...emit as much nitrogen oxides as Washington, D.C. each year.



Anchorage carbon
monoxide levels climbed
to a five year high of
155% over federal
health standards in the
winter of 1989.



Produced by the
Anchorage Clean Air
Coalition, 1990.

Written by Cheryl Richardson, designed by
Marge Ann Gibson, Shooting Star Artworks,
with funding from the Alaska Conservation
Foundation. Printed with assistance of
Alaska Pipeline Service Company and the
State of Alaska Department of Environmental
Conservation.

Clean Air Act

The Clean Air Act sets national ambient air quality standards in all areas of the United States for six primary pollutants. First enacted in 1970, it has been amended seven times, and major revisions are being currently being considered by Congress.

The Environmental Protection Agency (EPA) enforces the Clean Air Act. State Implementation Plans (SIP's) are developed in areas which violate air quality standards. Within Alaska's 1982 SIP, Anchorage committed to reducing carbon monoxide by implementing four strategies: an auto inspection/maintenance program; a 300% increase in transit service; a car pool program; and traffic flow improvements such as signal synchronization.

Three of the four strategies were implemented, and the auto inspection/maintenance program is a recognized success, but transit service has been reduced by 40% since 1982, with proportionate declines in ridership.

Having leveled off in the late 1980's after auto inspection/maintenance was implemented, Anchorage carbon monoxide levels climbed again to a five year high of 155% over federal health standards in the winter of 1989. Anchorage is currently revising its air quality plan following an EPA order that the plan be revised to meet the carbon monoxide standard.

Do you need further information?

Here are agencies and organizations which work to improve air quality in Anchorage:

Alaska Health Project: provides the statewide "INDOOR AIRLINE" answering questions about indoor air quality, also informs and advises on occupational and environmental health issues. 431 W. 7th Avenue, Suite 101, Anchorage, AK 99501, phone 276-2864.

American Lung Association of Alaska: a voluntary non-profit health promotion organization working for clean air and against lung diseases, active against smoking. 605 Barrow Street, Anchorage, AK 99501, phone 276-5864.

Anchorage Clean Air Coalition: a citizen's group advocating for air quality sponsored by the American Lung Association of Alaska. 605 Barrow Street, Anchorage, AK 99501, phone 276-5864.

Anchorage Ridesha c, Municipality of Anchorage: Provides free carpool matching service for commuters from Anchorage and the Matanuska Susitna Valley. P.O. Box 196650, Anchorage, AK 99519-6650, phone 562-7665.

Municipality of Anchorage, Air Pollution Control Agency: monitors air for carbon monoxide and particulate levels, issues permits for local sources. P.O. Box 19-6650, Anchorage, AK 99519-6650, phone 343-4200.

State of Alaska, Department of Environmental Conservation: inspects permitted facilities, enforces state regulations, coordinates Anchorage and Fairbanks auto inspection maintenance programs, develops plans and procedures to reduce air pollution. 3601 C Street, Suite 1350, Anchorage, AK 99503, phone 563-6529.

U.S. Environmental Protection Agency: administers federal Clean Air Act provisions in Alaska, supervises air quality contracts of state and municipal governments. 701 C Street, Anchorage, AK 99501, phone 276-5083.

Bibliography

1. Air Pollution Primer, Rena Corman, American Lung Association, 1978.
2. "Air Quality Report to the Anchorage Metropolitan Area Transportation Study Policy Committee", Scott Janik, M.D., Medical Officer Municipality of Anchorage, August 7, 1986.
3. "Anchorage Air Quality Demographic and Altitudinal Survey" prepared by Marc Hellenenthal, State of Alaska, Department of Environmental Conservation, January 1983.
4. "Anchorage Neighborhood Carbon Monoxide Study", Anchorage Air Pollution Control Agency, Department of Health and Human Services, Municipality of Anchorage, September 1985.
5. "Climatology of High-Latitude Air Pollution as Illustrated by Fairbanks and Anchorage, Alaska", Sue Ann Bowling, Journal of Climate and Applied Meteorology, Vol. 23, No. 1, January 1986.
6. "Even with Action Today, Ozone Loss Will Increase", James Gleick, New York Times, March 20, 1988.
7. "Problems of Air Quality in Local Arctic and Sub-arctic Areas and Regional Problems of Arctic Haze", Carl S. Benson, published in Arctic Air Pollution, edited by B. Stonehouse, Cambridge University Press, 1986.
8. Oil in the Arctic: The Environmental Record of Oil Development on Alaska's North Slope, Trustees for Alaska, National Resources Defense Council, National Wildlife Federation, prepared by Lisa Speer, NRDC, and Sue Libenson, Trustees for Alaska, January, 1988.
9. State of the World 1990, a Worldwatch Institute Report on Progress Towards a Sustainable Society, Lester R. Brown, W.W. Norton & Company, 1990.
10. "Who's Polluting the Arctic?" Kenneth A. Rahn and Douglas H. Lowenthal, published in Arctic Air Pollution, edited by B. Stonehouse, Cambridge University Press, 1986.
11. Your Health and Air Pollution, American Lung Association and American Thoracic Society, 1980.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21 1991

MAY 28 1991

AIR & RADIATION
BRANCH
OFFICE OF
AIR AND RADIATION

SUBJECT: Guidance to States on Authority Necessary to Implement the Operating Permits Program in Title V of the Clean Air Act Amendments of 1990

FROM: William G. Rosenberg,
Assistant Administrator
for Air and Radiation

A handwritten signature in dark ink, appearing to read "William G. Rosenberg", is written over the typed name and title.

TO: Regional Administrators, Regions I - X

Attached is guidance EPA has prepared to help states determine the authority they must have to implement the new operating permit program mandated by Title V of the Clean Air Act Amendments of 1990. On April 23, 1991, EPA signed the proposal of its regulations specifying the details of an approvable Title V operating permit program. 56 Fed. Reg. 21712 (May 5, 1991). The attached guidance is designed to give the states a briefer overview of the Title V program requirements, and to serve as an initial "checklist" to focus states in their review of existing permitting authority. States should use this guidance in conjunction with EPA's proposal, and, ultimately, the final operating permit regulations due in November 1991.

Please circulate this guidance to your states and program offices. If you or your staffs have any questions concerning the guidance, please call Michael Trutna at FTS 629-5345 or (919) 541-5345 or Timothy Williamson at FTS 475-7499 or (202) 475-7499.

Attachment

cc: Air Division Directors, Regions I - X
Regional Counsels, Regions I - X
E. Donald Elliott, General Counsel
Raymond L. Ludwisczewski, Assistant Administrator,
Office of Enforcement
STAPPA/ALAPCO
National Governors Association
National Association of State Legislatures

AUTHORITY NECESSARY TO IMPLEMENT
THE OPERATING PERMITS PROGRAM IN
TITLE V OF THE CLEAN AIR ACT AMENDMENTS OF 1990

The operating permits program in title V of the Clean Air Act Amendments of 1990 poses a major challenge to State and local permitting authorities. By November 15, 1993, each State must submit to EPA for approval an operating permit program that meets the requirements of title V and of EPA's implementing regulations. EPA signed the proposal of those regulations on April 23, 1991, and must finalize the regulations by November 15, 1991. To accommodate States wishing to submit an approvable program as soon as possible, EPA is providing the following guidance to the States concerning the elements of a permitting program the States must have authority to implement.

Where the provisions of title V are unclear, the following guidance cannot necessarily predict how EPA will interpret the statute in its final regulations, and this guidance will take no position on potentially vague provisions. Moreover, this guidance in no way binds or constrains EPA in its subsequent rulemaking actions to implement title V. This guidance will present EPA's current understanding of the main requirements of title V for which the States must provide authority in support of their operating permit programs. For a complete discussion of EPA's proposal concerning the state's obligations, please refer to EPA's proposed regulation signed April 23, 1991, 56 Fed. Reg. 21712 (May 5, 1991). Nothing in this guidance supercedes or restricts that proposal.

This guidance lists the elements of a state program required in title V. It is not meant to dictate to a state or permitting authority how the state must authorize each element as a matter of state law. Some states may have the flexibility to implement many of these elements with administrative regulations without changing their applicable statutory authority; other states may need substantially revised statutory authority. In any case, the Governor must submit a legal opinion from the attorney general, attorney for those state air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate compact, stating that the laws of the state, locality, or compact provide adequate authority to carry out the program. Sec. 502(d)(1).

A. Program Coverage

Under section 502(a), fully approvable permitting programs must have authority to cover the following sources.

1. Acid Rain: Affected sources under the acid deposition provisions of Title IV;
2. Major sources: Defined as a stationary source or group

of stationary sources that are any of the following
(see sec. 501(2)):

- a. For air toxics sources under sec. 112, sources with the potential to emit 10 tons per year ("TPY") of any hazardous air pollutant or 25 TPY of any combination of hazardous air pollutants (see sec. 112(a)(1));
- b. For all major stationary sources as defined in section 302 of the Act, which are sources with the potential to emit 100 TPY of any pollutant (see sec. 302(j)); and
- c. For sources subject to the nonattainment area provisions of Title I, part D, sources in the following type of nonattainment area with the potential to emit the following amount of pollutants:

Ozone (VOC and NOx) (see secs. 182(c)-(e)
and 184(b)(2))

	<u>TPY</u>
Serious	50
Severe	25
Extreme	10
Transport (for VOC)	50

Carbon Monoxide (see sec. 187(c)(1))

Serious (due to stationary sources)	50

PM-10 (see sec. 189(b)(3))

Serious	70

3. NESHAP: Any other source, including an area source, subject to an hazardous air pollutant standard under sec. 112;
4. NSPS: Any source subject to new source performance standards under sec. 111;
5. PSD/NSR: Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, part C or the nonattainment area new source review program under Title I, part D; and
6. Any other stationary source in a category EPA

designates in whole or in part by regulation, after notice and comment.

EPA has proposed that states may defer all sources, except major sources and affected sources under the acid rain program, from the Title V program for a period not to exceed five years after approval of the operating permit program in the state.

B. Permit Program Content

All approvable programs must have authority for each of the following provisions.

1. Applications and Completeness: Requirements for permit applications, including standard applications forms and criteria for determining the completeness of applications (sec. 502(b)(1)).
2. Monitoring: Monitoring and reporting requirements (sec. 502(b)(2)).
3. Fees: A permit fee system (sec. 502(b)(3); see discussion below for more detail).
4. Program Support: Provisions for adequate personnel and funding to administer the program (sec. 502(b)(4)).
5. Permit Issuance: Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act (sec. 502(b)(5)(A)). Note that sources must be permitted whether or not they are in compliance with the applicable requirements of the Act or state law.
6. Reopening Permits: Authority to terminate, modify, or revoke and reissue permits "for cause," which is not further defined (sec. 502(b)(5)(D)), and a requirement to reopen permits in certain circumstances (see discussion below for more detail on permit reopening).
7. Enforcement: Authority to enforce permits, permit fees, and the requirement to obtain a permit, including:
 - a. Civil penalty authority in a maximum amount of not less than \$10,000 per day; and
 - b. "appropriate criminal penalties"Sec. 502(b)(5)(E).

8. EPA Veto: Authority to assure that no permit will issue if EPA timely objects to its issuance (sec. 502(b)(5)(F)).
9. Public Participation: Procedures for processing applications and public notice, including offering an opportunity for public comment, a hearing on applications (sec. 502(b)(6); see also the discussion on the permit issuance process, below).
10. Judicial Review: Opportunity for the applicant or anyone who participated in the public comment process on a permit to obtain judicial review in state court of the permit action (Sec. 502(b)(6)).
11. Suits for Delay: Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (see sec. 503 and the deadlines for permitting under acid deposition provisions in Title IV) shall be treated as a final permit action solely to allow judicial review by the applicant or anyone who participated in the public comment process to compel action on the application (sec. 502(b)(7)). States with provisions requiring a permit based on the application to issue "by default" as a result of the permitting authority's failure to act on the permit application must determine whether their procedures comply with all the requirements of title V, including public participation, permit review, and permit content. "Default" issuance is impermissible under title V.
12. Public Access to Information: Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of sec. 114(c) of the Act (sec. 502(b)(8)).
13. Access to Permit: The contents of the permit itself are not entitled to confidentiality protection (sec. 503(e)).
14. Operational Flexibility: Provisions to allow operational flexibility at the permitted facility (sec. 502(b)(10); see discussion below on operational flexibility).

C. Required Permit Provisions

Within each program, each permit must contain certain provisions, as follows:

1. **Permit Term:** A fixed term, not to exceed five years (sec. 502(b)(5)(B)). Permits for acid rain sources must have terms of five years, no more and no less (sec. 408(a)). Permits for solid waste incineration units shall have a term of up to 12 years, and shall be reviewed every 5 years after issuance. (sec. 129(e))
2. **Applicable Requirements:** Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable implementation plan and the sulfur dioxide allowance system under the acid rain program (sec. 504(a) and 408(a) and 408(d)). Note that the applicable implementation plan includes any applicable federal implementation plan.
3. **Schedule of Compliance:** A schedule of compliance, which is defined as a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with applicable requirements under the Act (sec. 504(a) and 501(3)). EPA has proposed to limit this requirement to permits for sources violating an applicable requirement under the Act.
4. **Compliance Determination:** Inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring and certification regulations EPA is authorized to promulgate under sections 504(b) and 114(a)(3) (sec. 504(c)).

D. Permit Fees

Any fee which title V requires a permitting authority to collect must be used solely to support the permit program. Sec. 502(b)(3)(C)(iii). The permit program must collect adequate permit fees to meet one of the following tests.

1. Program Support

An approvable permit program must require permittees to pay an annual fee (or equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. Sec. 502(b)(3)(A).

These fees must cover the costs of the following:

- a. Reviewing and acting upon any application;
- b. Implementing and enforcing the permit, including any permit issued before enactment of the Amendments, but not any court costs or other costs associated with an enforcement action;
- c. Emissions and ambient monitoring;
- d. Preparing generally applicable regulations or guidance;
- e. Modeling, analyses, and demonstrations; and
- f. Preparing inventories and tracking emissions.

Sec. 502(b)(3)(A)(i)-(vi). The fees should be sufficient to cover not only the salaries for the state and local personnel responsible for carrying out the activities listed above, but other indirect costs such as training, equipment, data management systems, and facilities.

2. Cost per Ton

The program must also collect an amount from all sources equal to at least \$25 per ton of each regulated pollutant (not including carbon monoxide), unless the state can demonstrate that a lesser amount will support the direct and indirect costs of the program. Sec. 502(b)(3)(B)(i), (ii), and (iv).

The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. Sec. 502(b)(3)(B)(iii).

This amount is to be increased each year according the Consumer Price Index. Sec. 502(b)(3)(B)(v).

E. Application and Permitting Process

An approvable program must provide for an application and permitting process containing the following provisions.

1. Application Submission and Due Date

Covered sources must submit an application within twelve months after the date EPA approves or promulgates a program applicable to that source. The permitting authority may designate an earlier date. Sec. 504(c).

The application must include a compliance plan as necessary and be signed by a responsible official, who must certify the accuracy of the information submitted. Sec. 503(c).

2. State Action on Initial Applications

For the initial round of permit applications, the permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed three years after approval or promulgation of the program. Sec. 503(c).

3. State Action on Subsequent Applications

After acting on the initial applications, the permitting authority must act on a completed application and issue or deny a permit within 18 months after receiving the complete application. Sec. 503(c).

4. Priority for New Construction Permits

The permitting authority is required to have reasonable procedures to grant priority to acting on permits for new construction or modifications. Sec. 503(c).

5. Neighboring State Review of Permits

The permitting authority is required to notify all states whose air quality may be affected and that are contiguous to the state permitting the facility of each permit application or proposed permit submitted to EPA for review. See next paragraph for EPA review. The authority must also notify each state within 50 miles of the applicant source. Sec. 505(a)(2).

The permitting authority must give all such states an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide written notice of its reasons to the state that submitted the recommendation and EPA. Sec. 505(a)(2).

6. EPA Review and State Response

The permitting authority must submit to EPA a copy of the following:

- a. The application for any permit, renewal, or modification, including the compliance plan as necessary, or any portion EPA determines it needs to review the application and permit effectively; and

- b. Each permit proposed to be issued and issued as a final permit.

Sec. 505(a)(1).

If EPA objects within 45 days after receiving either the proposed permit or the notice that the permitting authority has refused to adopt a neighboring state's recommendations for the permit, the permitting authority must respond in writing. Sec. 505(b)(1).

The permitting authority may not issue the permit if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA must modify, terminate, or revoke the permit, and the permitting authority must reissue it to meet EPA's objection. Sec. 505(b)(3). The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit. Sec. 505(c).

7. Permit Reopening

a. Automatic Reopening

Any approvable program must require that the permitting authority will revise all permits for major sources with terms of three or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. EPA proposes to interpret this term as the remaining term in a permit with an initial term greater than three years. Such revisions must be made using the notice and comment procedures for permit issuance, and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term. Sec. 502(b)(9).

b. Reopening for Cause

Any approvable program must require that the permitting authority may terminate, modify, or revoke permits for cause. Sec. 502(b)(5)(D).

8. Operational Flexibility

An approvable program must provide for changes within a permitted facility without requiring a permit revision. The changes may not be modifications under Title I of the Act and they may not exceed the total emissions or emission rates allowable under the permit. The facility must provide EPA and the permitting authority with written notification at least 7 days before the change, or a shorter time for emergencies. Sec. 502(b)(10).

E. Additional Elements of an Approvable Program

The following provisions are not mandatory for any approvable program, but are opportunities for flexibility in an approvable program, which a state may wish to accommodate in its program.

1. Single Permit: A permitting authority may issue one permit for a facility with multiple sources. Sec 502(c).
2. Temporary Sources: The authority may also issue one permit authorizing emissions from similar operations at multiple temporary locations. The permit must assure that the emissions from each location will comply with the Act, and require notice from the source owner or operator before each change in location. Sec. 504(e).
3. General Permits: The authority may, after notice and opportunity for a public hearing, issue a general permit covering numerous similar sources. General permits do not necessarily relieve source of the obligation to file permit applications. Sec. 504(d).
4. Permit Shield: If a source complies with its permit, the permit may provide that the source is deemed to comply with other applicable provisions of the Act if:
1. the permit includes the applicable requirements of the Act; or 2. the permitting authority made an explicit determination referred to in the permit that other provisions are not applicable to the source. EPA may limit the scope of this permit compliance protection by rule. Sec. 504(f).
5. Application Protection: A source which files a timely and complete application for a permit or a renewal will not be liable under title V for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided the delay in issuing the permit was not due to the applicant's failure to submit required or requested information. Sec. 503(d). States may choose to adopt similar application protection as a matter of state law.

F. Miscellaneous Provisions

1. Saving Clause

Permitting authorities are specifically authorized to

establish "additional permitting requirements not inconsistent with the Act." Sec. 506(a). There is a statement of the Conference Committee attempting to clarify this provision, explaining that a state may establish more stringent permitting requirements as long as they are not inconsistent with the national permitting requirements of the Act.

2. Acid Rain Permits

The permitting provisions of Title V shall apply to permits implementing the acid deposition provisions of Title IV, except as modified by Title IV. Sec. 506(b).

3. Hazardous Air Pollutant Permits

- a. Permitting authorities will be required to determine maximum achievable control technology (MACT) and to incorporate it into a new source permit. Sec. 112(g).
- b. Permitting authorities must also be able to determine MACT and impose it in a permit if EPA fails to promulgate a MACT standard. Sec 112(j).

4. Small Business Assistance

Section 507 of the Act requires the states to submit a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a state implementation plan revision within two years after enactment. This small business program is not a required element of a Title V permit program. The small business program is required, however, to offer certain assistance to qualified small businesses in obtaining permits. Therefore, states may wish to coordinate the development of the two programs

October 27, 1990

CONGRESSIONAL RECORD — SENATE

S 16963

HB 377

Mr. BAUCUS. Mr. President, I will ask unanimous consent that cost estimates of the National Clean Air Coalition, and the National Clean Air Fund be included in the RECORD.

Mr. President, the National Clean Air Coalition and the National Clean Air Fund recently released a report evaluating the costs and economic effects of the conference agreements of the Clean Air Act amendments.

The bill's original cost estimates have been reduced as a result of the conference agreements. Using the administration's cost estimate as a baseline, the total cost of titles I, II, and III will be \$7.5 billion rather than \$11.9 billion in 1995, and total costs are reduced by \$4.5 billion in 2005 from earlier estimates.

Mr. President, I ask unanimous consent that a copy of the draft report entitled "Clean Air Act Amendment Costs and Economic Effects: A Review of Published Studies" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CLEAN AIR ACT AMENDMENT COSTS AND ECONOMIC EFFECTS: A REVIEW OF PUBLISHED STUDIES

(Prepared for National Clean Air Coalition, National Clean Air Fund, Washington, DC)

(Prepared by E.H. Pechan & Associates, Inc., Springfield, VA)

OCTOBER 1990.

EXECUTIVE SUMMARY

This report analyzes a set of industry-sponsored studies of the cost and employment impacts of proposed amendments to the Clean Air Act (CAA). The Administration's cost estimates, as provided by the Environmental Protection Agency (EPA), are also analyzed.

While there is considerable uncertainty about the actual costs of implementing either Senate or House versions of the legislation, the industry-sponsored estimates are so high as to be implausible. The EPA cost estimates are within the range of likely implementation although they incorporate a number of assumptions which make them higher than a true "best estimates."

In many cases, discrepancies between industry-sponsored and EPA studies can be attributed to differences in assumptions. For example, both industry-sponsored and EPA studies assume that no new pollution-control

technologies will be developed as a result of the legislation. This assumption results in higher cost estimates than are likely to occur in practice since environmental legislation has typically had a "technology-forcing" effect, inspiring cost-effective pollution-control innovations never anticipated or quantified prior to legislative enactment. The industry-sponsored studies further assume that a significant share of U.S. manufacturing capacity will close as a result of the proposed amendments. Similar claims were made by industry prior to the passage of other environmental legislation, but passage caused no major impact on the U.S. economy.

The House and Senate versions of the legislation assign considerable discretion to the EPA Administrator. The industry studies essentially assume that the EPA Administrator will take the most extreme interpretations in terms of increasing costs. At the same time, these studies assume that no additional regulatory effort will occur on the part of EPA to improve air quality in the absence of new legislation. These two assumptions are inconsistent and do not reflect the last 20 years of administration of the Act.

EPA has not been aggressive in using its regulatory authority and has been slow to implement new regulations. The 1977 amendments and numerous court cases have forced EPA to more assertively interpret existing regulations. Many CAA amendment provisions are designed to initiate regulatory action in areas already addressed under current legislative authority. It is unlikely that either Senate or House amendments will change the overall approach to environmental regulation which has developed over the past 20 years.

EPA estimates the original Administration bill will cost \$19.5 billion. Table ES-1 summarizes EPA's estimates of the Senate and House bill costs, as well as the industry-sponsored "upper bound" estimate which includes the most stringent provisions from both Senate and House bills.¹ This table shows that slightly less than half of the EPA-estimated costs will be incurred by 1995 with the remainder of costs incurred by 2005. The industry-sponsored upper bound is almost two times the EPA estimate for the total cost of both Senate and House provisions added together.

The industry-sponsored estimates suffer from a number of major flaws:

In their analysis of the air toxics provision, the industry-sponsored studies exclude pollution-control technologies currently in place and, in essence, require that they be purchased again.

The industry-sponsored studies do not adjust their estimates to account for controls already required under existing legislation and regulations.

The industry-sponsored studies assume that the EPA Administrator will make every discretionary decision in a fashion adverse to industry interests regardless of cost. Such an approach is not consistent with the 20-year history of Federal clean air legislation.

Table ES-2 compares EPA-estimated costs with total Gross National Product (GNP) and with expenditures for other items on a per-household or per-capita basis. Even in 2005, the cost of the proposed legislation will be less per household than current average expenditures for tobacco products and alcoholic beverages. Table ES-2 also shows that the overall economic impact of the proposed legislation, spread over ten years, is

¹ Separate industry sponsored estimates for the Senate and House bills were not available.

less than the impact of the 30-cent-per-gallon increase in gasoline prices which has occurred over the past two months.

Industry-sponsored estimates of job impacts range from 20,000 jobs "almost surely lost" to over 2,000,000 jobs "at risk." Since the industry-sponsored jobs study relied heavily upon the industry-sponsored cost estimates, the jobs study shares the same weaknesses. The jobs analysis excludes potential employment gains likely to result from new legislation. It also ignores any possibility of adaptive behavior by sources affected by the legislation, such as product and/or raw material substitution. In addition, the jobs "at risk" figures represent total employment at all facilities which might be affected. The actual employment likely to be affected, if any, will be a small percentage of this figure. The "at risk" figures do not contribute any factual information to the public policy debate on this important issue.

TABLE ES-1.—CLEAN AIR ACT AMENDMENTS COST SUMMARY

(Billions of dollars per year)

	Senate bill	House bill	Industry "upper bound"
Year—1995*			
Manufacturing	7.0	6.8	13.4
Acid rain	0.8	0.8	5.2
Air toxics	1.1	1.1	18.2
Organized fuels and reformulated gasoline	2.9	3.2	16.4
Total	11.8	11.9	53.2
Year—2005*			
Manufacturing	14.7	13.0	47.7
Acid rain	3.9	4.3	8.5
Air toxics	6.7	7.5	34.7
Other	0.1	0.2	N/A
Total	25.4	25.4	90.0

* Clean Air Working Group study by Dorsey Technical Services

* Industry "near term"

* Industry "long term"

* Reformulated gasoline and organized fuels costs (only fuels only for Senate compromise) are included in manufacturing costs. EPA estimates Senate and House bills provisions costs at \$1.8 billion and \$2.9 billion respectively in 2005.

TABLE ES-2.—ESTIMATED CAA AMENDMENT AND OTHER EXPENDITURES

Expenditure category	Year	Monthly cost/industry	Monthly cost/capita	Percent of GNP
CAA amendments	1995	\$10	\$4	0.19
CAA amendments	2005	28	8	0.35
Tobacco products	1990	35	13	0.71
Alcoholic beverages	1990	51	20	1.04
Medical services	1990	75	18	1.50
Other investments	1990	43	20	0.39
Corporate price increase (August-October)	1990	21	11	0.34

2. INTRODUCTION

A. Background

Over the last several years, the United States Congress has considered revisions to the Clean Air Act (CAA or the Act). The Act, originally passed in 1970, was last amended in 1977. These newest revisions are designed to address deficiencies in existing CAA programs and attempt to solve air pollution problems which have arisen since the changes made to the CAA in 1977. Currently, separate versions of the legislation have been passed by the Senate and House. Both versions incorporate provisions which are somewhat different from those originally proposed by the Bush Administration. These three versions—Senate, House, and Administration—are complex and make projections into the future. Studies by EPA and by industry have analyzed the costs, benefits, and other impacts of these amendments.

It is inherently difficult to predict the future. Most attempts are, of necessity, grounded in knowledge of the past. Regulatory programs such as the proposed CAA Amendments, however, are designed to create and encourage discontinuities with the past. For example, technology-forcing provisions can channel research into areas which would not be productive in the absence of regulatory action. Environmental legislation and regulations are required to internalize the costs and disbenefits of environmental degradation. Two centuries of industrialization and development under conditions of limited constraints on the use of air, water, and other public goods have taken a noticeable toll on the quality of the environment in the United States. The public has shown an increasing awareness of these issues and a willingness to pay to address them. The costs of environmental pollution related to public health and welfare are difficult to identify and quantify. It is appropriate, particularly in a wealthy society, that the public be protected from the unseen and unknown hazards which can result from exposure to certain air pollutants.

B. Purpose and scope

The purposes of this report is to examine the plausibility and supportability of cost and job impacts made in the analyses of House and Senate proposed CAA Amendments. This report also examines these cost and job impacts as they relate to the overall economy and identifies key issues in CAA design and implementation that have not been discussed in EPA and industry studies.

The industry-sponsored studies generally show much higher costs and greater impacts than studies conducted by the EPA. The reasons for these differences are discussed in this report. We also point out those aspects of EPA cost estimates which may lead to over- or underestimates of costs. This study does not attempt to produce a new comprehensive estimate of costs; results of existing studies can be used to identify a range within which the actual costs likely lie.

II. CLEAN AIR ACT AMENDMENT COSTS

A. Overview

Table 1 outlines EPA estimates of the costs of the original Administration proposal, the version passed by the Senate, and the version passed by the House. Cost estimates range from \$19.5 billion to \$25.4 billion per year in 2005. Phase-in provisions of the legislation would result in lowered costs in earlier years.

Industry-sponsored cost estimates (performed under sponsorship of the Clean Air Working Group and the Business Roundtable) have been substantially higher than those estimated by EPA and other researchers. Table 2, for example, compares current EPA estimates with a March 1990 Clean Air Working Group study. Even at this point, industry-sponsored figures are higher than EPA's estimates.

Table 3 documents industry cost estimates of the Administration/Senate compromise (March 1990). Here the industry-sponsored figures skyrocket and diverge dramatically from EPA figures. The latest industry-sponsored estimate (July 1990) is an "upper bound" which combines the most stringent combination of Senate and House provisions. This estimate, also shown in Table 3, is \$90.9 billion per year, almost four times the EPA estimate for either Senate or House versions and almost two times the sum of both!

The more recent industry studies (July and March) provide little detail on how some major cost figures were obtained. It

appears that industry figures significantly exaggerate costs for the following major reasons:

All assumptions made in the industry analysis concerning legislative language and Administrative discretion favor higher cost assumptions. These assumptions fly in the face of twenty years of experience in the implementation of Federal clean air legislation.

In the analysis of air toxics provisions, no credits were given for controls already in place.

Extreme assumptions regarding Maximum Achievable Control Technology (MACT) requirements were made.

Costs of compliance with existing regulations were not subtracted from the totals ascribed to the CAA Amendments.

Several key quantitative factors which will influence the actual costs incurred in implementing the CAA Amendments are discussed below. Where possible, these factors have been quantified, although the complexity of some of the legislative provisions, the requirement to make significant assumptions regarding regulatory implementation, and the paucity of reliable data make it difficult to provide estimates with a high degree of confidence.

TABLE 1.—EPA CAA AMENDMENT COST ESTIMATES FOR 2005

(Billions of dollars per year)

Category	Administration	Senate	House
Air toxics	5.9	6.7	7.5
Manufacturing	9.5	14.7	13.4
Acid deposition	4.1	3.9	4.3
Other	0.0	0.1	0.2
Total	19.5	25.4	25.4

TABLE 2.—COMPARISON OF EPA AND INDUSTRY-SPONSORED COST ESTIMATES FOR THE ADMINISTRATION BILL

(Billions of dollars per year)

Cost element	Titles	EPA	CAWG (3.90)
Acid rain	Y	4.1	5.3
Manufacturing	I, II	10.0	9.6
Air toxics	III	4.7	7.1
Total		18.8	22.0

TABLE 3.—CAA AMENDMENT COST ESTIMATES PREPARED FOR THE CLEAN AIR WORKING GROUP

(Billions of dollars per year)

	CAWG 3/90 estimates (resident risk level)			CAWG 7/90
	10,000	100,000	1,000,000	
Air toxics	14.0	16.3	22.3	34.7
Reformulated gasoline	(1)	(1)	(1)	16.4
Manufacturing	14.6	14.6	14.6	28.7
Motor vehicles	9.3	9.3	9.3	10.6
Acid deposition	6.4	6.4	6.4	8.5
Total	44.3	46.6	52.6	90.9

¹ Included in manufacturing.

B. No amendment baseline

Even in the absence of revised CAA legislation, substantial controls will be required to meet and attain current standards. When considering the cost and other impacts of new legislation, it is necessary to estimate baseline impacts in the absence of new legislative authority. Industry studies have all failed to make these necessary corrections, and these corrections are highly significant for some areas in the bill, such as achievement of ambient ozone standards.

The Business Roundtable study fails to differentiate between costs associated with a CAA Amendment and those required to meet and attain the current National Ambient Air Quality Standards (NAAQS). Because CAA already requires the achievement of the ambient air quality standards, costs to meet these standards are properly assigned to the current law and not to the new bills. As an example, the industry estimated \$12 billion required to bring the South Coast Air Basin into attainment with the ozone NAAQS is properly associated with the South Air Quality Management District plan.

On July 31, 1990, EPA proposed a Federal plan to clean the air in the Los Angeles area. EPA's court-mandated plan is designed to build on local and state efforts to reduce air pollutant emissions. As designed, the South Coast Federal Implementation Plan (FIP) "would generally guarantee a constant rate of basinwide reductions from 1998 through 2010 by an incremental rollback of 6 percent per year." Both House and Senate bills require no more than a 3 percent per year reduction in VOC (volatile organic compound) emissions during this time period. Thus, it is very unlikely that CAA Amendments would be more costly in Los Angeles than the probable regulatory path without a new law.

In general, EPA's method of estimating current CAA costs versus CAA Amendment costs probably overstates the latter. Current policy costs include already promulgated New Source Performance Standards, lowest achievable emission rate (LAER) controls applied to new sources expected to be greater than 100-ton-per-year emitters, and non-Control Technique Guidelines (CTG) reasonably achievable control technology (RACT) controls applied to existing sources in ozone nonattainment areas.

Although difficult to perform, it is more reasonable to measure the incremental costs of the CAA Amendments against a baseline that includes measures likely to be adopted were the law not to change. For instance, measures EPA will implement under other legislation include VOC air emission controls for hazardous waste treatment storage and disposal facilities and for municipal landfills. National measures to control the emissions from these two categories account for almost \$2 billion of the \$10 billion EPA has estimated for VOC control in 2005. Similarly, the second stage of fuel volatility control rules is being proposed by EPA, and Reid vapor pressure (RVP) II is estimated to cost \$280 million in 2005. We believe that these rules will proceed whether or not the CAA is amended. Other similar arguments could be made to reduce the cost estimates provided for new CTGs and enhanced inspection and maintenance (I/M) programs. On its own, EPA will probably not propose as many new CTGs as indicated in the House and Senate bills; they will likely promulgate only half of the new CTGs called for in the bills.

Studies have shown that the I/M programs implemented in the late 1970s and early 1980s were not as effective as originally intended. Therefore, it has been suggested that enhancements to these programs are needed. Even without CAA Amendments, some nonattainment areas will make necessary adjustments to their I/M programs. (This is not to say that technology-forcing provisions are not needed; there has always been resistance to I/M in some areas.)

C. Comments on costs as stated by the administration

The Administration's cost estimates of House and Senate CAA Amendments

(shown in Table 1) cover direct costs and assume the availability of only current technology. The information released most recently by the Administration compares House and Senate bill costs with the original Administration bill. (The Administration proposal is not currently under Congressional consideration. It is noteworthy, however, because its cost estimate—\$19.5 billion—is lower than the cap the President has set for CAA Amendment costs.)

Ninety percent of the cost difference between the Administration proposal and the two bills are motor vehicle hardware or fuels costs, even assuming that the Phase II passenger car standards are never implemented. Fully 60 percent of the cost difference is estimated to result from higher fuel prices associated with reformulated gasoline or oxygenated fuels. Note that on Wednesday, October 3, 1990, the price of the November contract for crude oil increased \$3.37 a barrel to \$37.32. This one-day increase is equivalent to at least an 8-cent-per-gallon increase at the pump. This compares with the Administration estimate "that the reformulated gasoline and oxygenated fuel provisions in the House and Senate bills would . . . raise gasoline prices by at least 6 to 8 cents per gallon."

D. Limitations of existing cost analyses

1. The Role of Technology Innovation

The assumption that pollution control technology is static is not realistic when analyzing policies which are to become effective in the future. In the absence of regulatory requirements, pollution control technologies will only be developed for economic reasons, such as the recovery of solvents or by-products with substantial economic value. In most cases, however, pollution controls will only be installed when mandated. In such an environment, improvements in pollution control technology performance will only occur as a byproduct of efforts to improve cost-effectiveness.

Private research, development, and demonstration (RD&D) investments are generally only made for products which have an identified potential market. In the absence of regulation, there is essentially no demand for technology which achieves greater levels of pollution control than are required by law.

Unlike private industry, government-sponsored RD&D of pollution controls can be conducted without market demands. In this era of Federal, State, and local budget constraints, it is difficult to justify development of technologies with no specific applications.

The technology-forcing aspects of environmental standards have been, in general, highly effective in encouraging the development of either innovative control technology or material substitution and/or process change. In some cases, including the examples discussed below, technology forcing has led to reduced production costs and/or more efficient production methods, as well as pollution control benefits.

Technology Innovation in the auto industry

When reviewing cost estimates of new, unproven technologies, it is of interest to compare past estimates of automotive price increases due to pollution control with actual sticker price increases. Retrospective studies show that the ratio of estimated to actual sticker price increases (those attributable to pollution-control equipment) for 1973-1976 model year automobiles were as high as 2:1 for model years 1973-1974 and 2.3:1 for model years 1975 and 1976 (PHD, 1980). Generally, manufacturer cost estimates covered a wider range than those of EPA or other scientific organizations. This points

out the fallacy of using upper-end industry estimates as the basis for decisionmaking, especially in an industry where technological advances have generally reduced costs over time and provided ancillary benefits.

In motor vehicle emission control, the prominent technology advance was the catalyst. Two basic catalyst types have been developed—oxidation (CO and HC control only) and three-way (CO, HC, and NO_x control). For three-way catalysts to operate effectively, fuel-air ratios must be controlled much more precisely than is needed for oxidation catalyst systems. As a result, three-way catalysts have stimulated the development of improved air-fuel management systems, such as advanced carburetors, throttle body fuel injection systems, and electronic controls.

The net result of the technology-forcing aspects of the Federal motor vehicle control programs has been both reduced emissions and improved fuel economy. These dual objectives would not have been achieved had Congress limited its regulations to proven currently-available technologies.

Figures 1 and 2 summarize the trends over the last 12 years in passenger car pollution-control technologies and fuel injection installation, respectively. Virtually all passenger cars and light trucks are now equipped with catalysts—mostly three-way systems. During the 1980s, fuel injection installations increased dramatically; they are now in over 98 percent of 1989 models (MVMA, 1990).

These technological advances have lowered per vehicle air pollutant emissions and have improved fuel economy. Figure 3 shows fleet fuel economy changes for passenger cars over the past 12 years (Heavenrich, 1989).

Charts are not printed in the Record.

An EPA report (Cheng, 1983) makes the following statement about the relationship between fuel economy and exhaust emissions control:

"The relationship between fuel economy and exhaust emissions does not exist in isolation, but rather is intertwined with many other vehicle characteristics. These associated characteristics include, but are not limited to: driveability, performance, cost, octane requirement, production lead time, and fuel economy/exhaust emission relationships would include quantification of the concurrent interactions with these other vehicle characteristics."

Unfortunately, no such studies are available. Suffice it to say, though, that technological advances have enabled per vehicle emissions to be lowered while simultaneously improving fuel economy. Because fuel economy has improved partially because the average vehicle weight has decreased in the last 12 years, comparisons of fleet average fuel economy between model years must correct for vehicle weight reductions. Correcting for vehicle weight reductions (i.e., had they not occurred), fuel economy has improved by more than 40 percent compared with precontrolled cars.

Achieving Limitations on CFCs

Chlorofluorocarbons (CFCs) are regulated because of concern about their impact on stratospheric ozone. The potential for introducing substitutes for CFCs to reduce the risks of ozone depletion and global warming has been known for many years. For example, the DuPont Company stated in 1980 that high-priced substitutes could be created (EPA, 1989). Without regulation, however, there was no market for these alternative chemicals, and they were not produced.

In September 1987 a historic international agreement, the Montreal Protocol on Substances That Deplete the Ozone Layer, was

signed to provide a framework for global reductions in CFC emissions. The ratification of the protocol has prompted several CFC-producing companies to announce a total phase-out of CFC production by the end of the century. To meet this goal while minimizing the cost and time of studies, several CFC producers have formed consortia to share costs and expedite the testing process. Also, in pilot plants around the world, chemists and engineers are aggressively working to develop critical data that will allow them to design and build world-scale commercial facilities in record time to meet the needs of society as CFCs are phased out (Manzer, 1990).

DuPont has projected that a 30 percent reduction in the market for CFCs will occur through improved conservation measures. Another 30 percent will switch to less expensive, not in-kind replacements. The remaining 40 percent of the projected market, however, will still require fluorocarbon-based products (Manzer, 1990).

Currently, the most promising alternatives to replace CFCs are hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs). DuPont has mixed a newly developed compound called HCFC-124 along with two already available chemicals, HCFC-22 and HFC-152a. These mixtures are designed to replace the refrigerant CFC-12 while reducing the risk to the environment. The new compound has an ozone depletion potential that is only 3 percent of CFC-12. Also, these blends may not require modification of existing equipment unlike other substitutes (Science News, February 11, 1989). Another alternative, a blend of HCFC-123 and HCFC-141b called Genesolv 2010 by Asahi Glass, has been identified as the first potential substitute for the industrial degreaser, CFC-113. It has been found by the EPA to perform as well or better than CFC-113 while lessening the threat to the environment (Science News, February 3, 1990).

Organic emission controls

A number of examples can be provided of how technology forcing regulations and standards have improved the state-of-the-art of pollution control and have led to reduced control costs. Costs of incineration have been reduced in certain applications as the ability to recover heat input has improved. In some instances, 95 percent of heat input can be recovered. The result is near-zero operating costs, and operating costs are a large portion of the cost of incineration.

Similarly, through RACT and NSPS regulations, water-based inks and coatings have been developed that have higher solids and lower VOC contents than the materials they replaced. These water-based inks and coatings are much less expensive than add-on control equipment that might be installed to achieve the same control levels.

Improvements in transfer efficiencies in painting have moved from 30 percent to 60 percent in some industries. These improvements result in less material being available for evaporation. Such improvements were not possible 10 to 15 years ago before implementation of technology-forcing regulations.

What follows are case study examples of VOC control measure that have proven to be both very effective and less expensive than the continued use of VOC containing materials.

The boat building industry was faced with the need to reduce both VOC and styrene emissions. The source of the styrene was as a polymerizing agent in both the resin (the main body of the boat) and in the gelcoat (the outer skin of the boat). Working in conjunction with chemical companies, recent

advancements have lead to a resin which contains 50 percent less styrene than the industry standard, and a styrene free gelcoat. In addition to reducing air emissions, the new materials are stronger, provide a better finish, and are cheaper. In fact, one company who is testing these new materials feels that their use will reduce the cost of their specialty boats by 35 percent while producing a better quality product.

A medium sized label printer for the tea industry, and others, was faced with the choice of complying with regulations by means of add-on controls or by using water based inks. After significant initial problems, the ability to produce low VOC content ink has been established, and for the printer offers the advantage of quality products with no cost increase. An additional benefit was the reduction of workplace odors. This change was so noticeable that the printer's employees have stated that they greatly prefer the water based low VOC inks and will not return to using high VOC inks, regardless of circumstances.

An audit of a major military base indicated that there had been significant reductions in the use of VOC cleaning materials from previous audits. The reduction was attributable to the substitution of water based cleaning materials for solvent based materials. The base maintenance supervisor indicated that the water based material could perform almost all of the jobs of the solvent cleaners at a lower cost with no worry about worker exposure to fumes.

Simple Green, an all-purpose automotive and household cleanser, is a non-toxic, biodegradable product that can be used as a substitute for high VOC content degreasers. This cleanser was originally designed by Sunshine Makers, Inc. as a product to be used in the food market as a safe alternative to tri-sodium phosphate in removing tannic acid. This product is currently marketed primarily to households, constituting 80 percent of sales, as a remover of ink, oil, blood, and other stains from any washable surface. The industrial sector makes up the other 20 percent of sales, using Simple Green mainly as a degreaser.

Riker Laboratories in Northridge, California, has substituted a water-based solvent for an organic-based solvent when coating their medicine tables. The new solvent, combined with the installation of different spray equipment, has saved the company \$15,000 per year in solvent costs and has prevented an estimated 24 tons of air pollution per year (Institute, 1986).

The Hamilton Beach Division of Scovill, Inc., in Clinton, North Carolina, now recycles its trichloroethane solvent and saves 50 percent on solvent costs. The company has also experimented with substituting water-based cleaners for organic-solvent-based materials, thereby reducing use of organic solvents by 30 percent (Institute, 1986).

2. Estimating Acid Rain Control Costs

All of the major acid rain control studies cited in the CAA debate have assumed that reductions will be achieved predominantly through implementation of conventional control methods, switching to cleaner fuels, and installation of flue gas control equipment. Significant use of alternative technologies could result in reductions of anticipated costs as well as ancillary environmental benefits in areas such as emissions of greenhouse gases. For example, installation of combined-cycle units using high-efficiency turbines can result in substantially improved heat rates when compared with current technology steam generation units.

Pechan has recently analyzed both House and Senate acid rain provisions. These analyses have used the AIRCOST/PC model

and incorporate cases with and without interphase allowance banking. For cases in which no banking is included, Phase I costs are lower and overall costs are somewhat higher. The no-banking Phase I (1995-1999) annual costs range from \$0.9 to \$1.1 billion, and Phase II (2000-2009) annual costs range from \$3.1 to \$3.4 billion. If banking is assumed to be allowed, Phase I costs range from \$1.1 to \$1.5 billion and Phase II from \$2.8 to \$2.9 billion. These costs are based on assuming only traditional control methods—switching to low-sulfur coal and use of flue gas desulfurization. The cost of nitrogen oxide controls—approximately \$0.3 billion—must also be added. Thus, the latest maximum cost estimate is \$3.7 billion.

In January 1990, industry-sponsored studies reported a figure of \$5.3 billion; in July 1990, the figure was \$8.5 billion. The reason for the increase appears to be the assumption that the House bill NO_x provisions would cost \$2.5 billion. This figure is based on the supposition that the EPA Administrator would require additional technology over and above the low NO_x burners specified in the bill and that such technology would be substantially more expensive than the technology specifically identified in the bill. It is not clear that these provisions would lead to more stringent reductions than those obtainable from low NO_x burners since EPA has not taken any action to revise the current utility NO_x NSPS emission limit despite evidence that steam electric plants in other countries are achieving significantly lower emission rates.

3. Costs of VOC Emission Controls

Reformulated gasoline costs

Pechan has estimated the costs of the reformulated gasoline programs in the House and Senate bills in the year 2005 to range between \$0.5 billion and \$1.7 billion. House bill costs in this projection year are expected to be higher than those in the Senate bill, because the quantities of reformulated gasoline sales and the cost per gallon of producing the fuel described in the House bill are expected to be higher. For example, the incremental cost of the Senate bill mandated reformulated gasoline is estimated at 6.2 cents per gallon, while the House bill cost in 2005 is 8.6 cents per gallon.

The July 1990 analysis prepared for the CAWG estimates House bill reformulated gasoline costs to be \$16.4 billion, a number 10 times higher than our best estimate. The CAWG value assumes double the per-gallon cost of reformulated gasoline. More importantly, the value is based on the assumption that all nonattainment cities decide to use reformulated gasoline. Arguments can be made about the cost of reformulated gasoline, but the latter assumption is clearly misleading. Pechan's analyses have shown that of the 81 ozone nonattainment areas modeled, less than 20 are likely to continue to be nonattainment areas by 1995 under the provisions of the proposed House and Senate bills. Further, no reformulated gasoline is needed in 1995 to meet programs requirements.

Costs of Tier II controls

The Business Roundtable and CAWG cost estimates of the CAA Amendments include the costs of the Phase II or Tier II motor vehicle emission standards. Their cost estimates also assume the highest available estimate of the per-vehicle costs for meeting those standards. It is important to examine each of these assumptions in more detail in order to produce a more likely cost of the Tier II emission standards.

On the first point, EPA analysts indicate that Tier II standards will not likely be adopted. The House bill indicates that EPA,

with participation by the Office of Technology Assessment (OTA), will study whether additional reductions in emission from passenger cars and LDTs should be required. The Senate bill has a trigger that ties Tier II standard adoption to the number of ozone nonattainment areas around the year 2000.

When EPA was given similar discretion in the 1977 CAA Amendments, more stringent motor vehicle emission standards were not adopted. An appropriate example is Sec. 202 of P.L. 95-95 which charged EPA with conducting "a study of the public health implications of attaining an emission standards on oxides of nitrogen from light duty vehicles of 0.4 gram per mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare. The Administrator shall submit a report of such study to the Congress, together with recommendations not later than July 1, 1980." The closest EPA ever came to satisfying this requirement was a January 1981 Regulatory Analysis for proposed emission regulations for light-duty trucks and heavy duty engines. No specific mention of the 0.4 g/mile standard was made in this report, however.

Even if the Tier II emission standards are implemented, there is a wide range of possible costs of these limits. The main disagreement among researchers now is if catalysts are durable enough to last 100,000 miles. Catalyst manufacturers insist that they are. If so, the cost of the Tier II standards will be approximately \$125 per vehicle, which adds \$1.8 billion to the motor vehicle standard cost of the House and Senate bills in 2005; considerably lower than the CAWG/BRT estimate of \$10.6 billion for Tier II tailpipe standards.

The Manufacturer's of Emission Controls Association (MECA) has testified that improve catalyst durability is a major focus of auto emissions control research, and that great progress has been made. MECA has said that "We believe that (1) improvements in catalyst design, either in existence and under development, (2) utilization of multi-point fuel injection and other engine improvements, and (3) a declining presence of trace lead in unleaded gasoline make the prospects for developing durable systems excellent."

The California Air Resources Board (CARB) estimates that the cost of compliance with Tier II light-duty vehicle standards is \$125 compared with a car meeting the Tier I standards (CARB, 1989). CARB estimates that in order to meet a 0.2 gram per mile NO_x emission standard, all light duty vehicles (LDVs) will need improved catalysts which use more catalytic material. A small percentage (20 percent) of LDVs will add exhaust gas recirculation (EGR). To meet a 0.125 gram per mile HC standard, CARB estimates that 75 percent of LDVs will use improved catalysts which feature an electronically heated section that effective controls cold start HC and CO emissions. The 25 percent of cars not requiring an electrically heated catalyst will use improved fuel vaporizers or an improved start catalyst.

Some cars already meet the Tier II standards today in certification, and durability test results are promising. California has already noted one engine family that met the Tier II hydrocarbon standard at 40,000 miles—in use on California roads. In 1970, not a single car met or came anywhere close to the standards adopted by Congress for 1975, nor was the technology for doing so available. At that time, modern electronic control systems were not even envisioned by technology forecasters.

The CARB analysis notes that Tier II standards will not begin for 12 to 14 years. During this period, improvement in engines, electronics, and emission controls will occur, which will facilitate compliance with more stringent standards. As an example, improved vehicle electronics will allow more precise control of fuel injection and EGR.

Reducing emissions of toxic pollutants

The air toxics section of the latest industry-sponsored study was prepared by Denny Technical Services. It provides the result of the studies by Delta Management for the American Petroleum Institute (API), by Denny for the Chemical Manufacturers Association (CMA), and by Energy and Environmental Analysis, Inc. (EEA) for EPA. All comments are based on the information presented in the Denny report, since we did not have access to the original reports.

Both the API and CMA studies contain methodology drawbacks which appear to overstate the costs of compliance with the proposed Amendments. The more significant points are:

(1) Neither study accounts for the significant time period during which specific control requirements will be developed and resultant costs incurred. Costs associated with air toxic emission standards will be incurred over at least the next 10 years, and possibly over a much longer time period under certain provisions of the Senate Bill. Extending the period of time over which the costs are incurred will reduce the impact on industry.

Time reduces industry impacts for a number of reasons. Affected industries will have an opportunity to explore options available to them; such options typically include factor or product substitution (e.g., use of water-based solvents), other technological changes, and installation of control equipment. To the extent that installation of control equipment appears to be the most appropriate solution, vendors are likely to develop and market equipment to meet identified needs.

(2) There is no indication in the industry-sponsored studies that currently achieved control levels have been taken into account. In essence, this has the effect of assuming industry will have to reacquire all current control technology which is in place, a substantial amount¹. This has the effect of assuming that EPA under MACT requirements would require a source with a baghouse to install an additional baghouse, or a VOC source with an incinerator to add a second incinerator. Obviously, this grossly overstates costs. In many cases, existing control equipment can be upgraded at a much more modest cost. No nationwide data base exists, however, which can support adequate analysis of this factor. Similarly, in the API study, it appears that no consideration was given to the fact that refineries in nonattainment areas (a majority of capacity) have already installed much of the equipment which the study assumes will be required by MACT.

(3) The equipment life in the API study is based on the assumption that the operating permit section of the new amendments will require installation of new controls every 5 years. This is inconsistent with most interpretations of this section and has the effect of significantly overstating the annual cost of the controls.

(4) Both studies appear to assume that each and every source which meets the

emission criteria for toxics will be controlled to at least the MACT level. In fact, although it is unclear how many source types will be controlled, it is very likely that either EPA will determine that many source categories do not pose a risk to public health and do not have to be controlled or that sources will make a demonstration that they do not contribute a one in a million risk and will not be required to put on controls under this provision of the Act.

E. Impact of Compliance Costs on Consumers

1. General

Twenty-five billion dollars in estimated annual costs to implement either House or Senate bills (according to EPA studies) is a small portion of the current U.S. economy. This amount will constitute an even smaller share as the economy grows and in the future years in which the costs are actually incurred. Table 4 shows the costs of the CAA amendments in 1995 and 2005 in terms of average costs per household, average costs per capita, and percentage of overall GNP. To put these figures into context, the table also reports estimated current expenditures for alcoholic beverages, tobacco products, motion pictures, and other entertainment. The overall impact of gasoline price increases in the last two months is also reported.

In 2005, the proposed amendments are expected to cost the average household approximately \$20 per month (1990 dollars), assuming all costs are transferred to consumers. This impact, occurring fifteen years from now, is less than the cost impact of gasoline price increases over the past two months. It is also low relative to average current estimated expenditures for other products and/or activities.

While the figures in Table 4 include the entire cost of the proposed amendments, costs of some specific aspects of the program can be estimated separately, as discussed below.

2. Automobile Control Costs

The best estimate of the hardware costs of the House and Senate provisions on new car purchasers is \$4.08 per month. This figure is based on EPA's estimates of the per-vehicle costs (provided in Table 5) along with assumptions regarding costs of automobile financing². Costs of more intensive inspection and maintenance would add \$1.15 per year (or less than 10 cents per month) to this figure.

TABLE 4—ESTIMATED CAA AMENDMENT AND OTHER EXPENDITURES

Expenditure category	Year	Monthly cost household	Monthly cost capita	Percent of GNP
CAA amendments	1995	\$10	\$4	0.19
CAA amendments	2005	20	8	0.35
Toxic products	1990	35	13	0.71
Alcoholic beverages	1990	51	20	1.04
Motion pictures	1990	29	18	0.60
Other amusements	1990	43	20	0.89
Gasoline price increase (August-October)	1990	28	11	0.58

¹ According to Bureau of Economic Analysis surveys, industry capital investments in air pollution control hardware from 1975-1985 amounted to approximately \$88 billion (1990 dollars) (Commerce, 1988). Not all of this expenditure would be relevant to this type of pollution control requirement.

² According to the Motor Vehicle Manufacturers Association (MVMA, 1990), the average monthly payment on car loans for new cars in 1989 was \$291.50, with an average amount financed of \$12,000.

TABLE 5.—EPA Tier I Passenger Car Cost Estimates

Control measure	Passenger Car Per Vehicle Costs
RVP Phase II.....	\$1.20
Evaporative/running loss.....	3.80
VOC Tailpipe-extended useful life.....	36.00
Onboard VRS.....	10.00
NO _x tailpipe standards.....	115.00
Cold temperature CO.....	7.00
Total.....	173.00

¹ This cost applied to existing as well as new vehicles. All other costs.

In comparison, the cost of a AM/FM stereo sound system, ordered on 90 percent of U.S. built cars, ranges from \$3.69 to \$14.58 per vehicle per month. Costs of air conditioning, also ordered on approximately 90 percent of U.S. built cars, ranges from \$7.85 to \$24.17 per vehicle per month. Automatic transmission costs range from \$1.30 to \$19.43 per vehicle per month (Crain, 1990).

The most likely estimate assumes that Tier II standards would not be implemented and that the House provisions for cold temperature CO would be adopted. If the Senate cold temperature provisions and Tier II were required, the estimated monthly per-car costs would increase from \$3.04 to \$12.15 per month. Since Tier II requirements would not be effective until after the year 2000, the estimates of compliance given above are highly speculative.

3. Costs of Achieving Acid Rain Controls

A similar perspective can be provided for acid rain control costs. Since current annual electricity generation in the United States is over 2,500 terawatt hours, one mill per kilowatt-hour (kWhr) translates into over \$2.5 billion per year. Typical residential electricity rates were approximately 7.5 cents (75 mills) per kWhr in 1988 (EIA, 1989). Thus, the average costs of acid rain controls (on the order of 1-2 mills/kWhr) are low relative to total prices. Total estimated acid rain control costs (\$3.7 billion per year maximum) is small compared with total industry revenues of \$163.7 billion in 1988 (EIA, 1989).

Table 6 shows the estimated state-level impact of proposed acid rain controls on residential consumers. These figures are based on the Senate bill provisions and incorporate banking and trading effects. House bill results are similar. By 1995 (Phase I), typical residential customers in only three states (Indiana, Missouri, and Tennessee) would be facing increases of more than \$1.00 per month. By 2000, the maximum monthly residential increase is estimated to be \$2.60 per month in Ohio. In 1987, the typical monthly bill for Ohio residential customers was \$57.90. An annual real price increase for electricity of even 0.5 percent per year between 1987 and 2000 would result in an increase to the typical Ohio residential utility customers of \$4.20 per month, much higher than the impact from the proposed acid rain control program.

Average electricity prices for commercial customers are almost as high as those of residential customers (7.0 cents versus 7.5 cents/kWhr) (EIA, 1989). For industrial customers, average prices were somewhat lower at 4.7 cents in 1989 (EIA, 1989). Even for these customers, however, cost increases associated with acid rain control will be relatively modest as a percentage of current amount paid for electricity.

TABLE 6.—IMPACT OF PROPOSED ACID RAIN CONTROLS ON RESIDENTIAL ELECTRIC BILLS

State	(\$/month per month)		
	Average of (1987)	Increase for phase I	Increase for phase II
Alabama	\$45.10	\$0.30	\$0.50
Alaska	72.33	< .50	< .50
Arizona	65.49	< .50	< .50
Arkansas	41.65	< .50	< .50
California	38.86	< .50	< .50
Colorado	59.07	< .50	< .50
Connecticut	62.04	< .50	< .50
Delaware	73.70	0.30	0.90
District of Columbia	61.92	0.40	< .50
Florida	51.55	< .50	< .50
Georgia	64.07	0.40	0.70
Hawaii	61.39	1.10	2.70
Idaho	56.43	0.20	0.60
Illinois	58.70	0.00	< .50
Indiana	55.66	0.60	1.90
Iowa	74.78	< .50	< .50
Kansas	47.10	< .50	< .50
Kentucky	61.39	0.20	1.90
Louisiana	47.47	< .50	< .50
Maine	41.43	0.50	< .50
Maryland	45.41	0.00	< .50
Massachusetts	63.93	0.40	0.70
Michigan	60.80	1.50	1.50
Minnesota	49.78	< .50	< .50
Mississippi	49.68	< .50	< .50
Missouri	54.77	< .50	< .50
Montana	54.89	0.20	1.40
Nebraska	57.32	0.30	0.50
Nevada	45.71	< .50	< .50
New Hampshire	50.87	0.10	< .50
New Jersey	71.48	< .50	< .50
New Mexico	55.73	< .50	< .50
New York	57.90	1.00	2.30
North Carolina	56.71	< .50	< .50
North Dakota	48.34	< .50	< .50
Ohio	59.10	0.30	0.80
Oklahoma	47.90	< .50	< .50
Oregon	75.89	< .50	< .50
Pennsylvania	55.67	1.30	2.70
Rhode Island	64.58	0.10	< .50
South Carolina	65.57	< .50	< .50
South Dakota	48.81	< .50	< .50
Tennessee	46.44	< .50	< .50
Texas	68.88	< .50	< .50
Utah	48.76	< .50	< .50
Vermont	48.26	0.40	1.10
Virginia	44.67	0.00	< .50
Washington	41.38	< .50	< .50
West Virginia			
Wisconsin			
Wyoming			

F. Uncertainty of cost estimates

Any estimates of the cost impacts of complex legislation such as the CAA Amendments are likely to be subject to considerable uncertainty. The proposed legislation attempts to achieve a balance between statutory requirements and legislative flexibility. Of course, Congress retains the authority to modify the legislation in the future if the implementation does not proceed as envisioned. The dire consequences predicted by industry studies assume that almost all discretionary decisions by executive branch policymakers are adverse to industry. Such assumptions ignore the realities of the past 20 years of "strong" Federal initiatives to address air pollution problems. In reality, the executive branch has, if anything, been protective of industry to the extent that, in many areas, states (such as California) are taking more initiatives than the Federal government.

III. CAA EFFECTS ON EMPLOYMENT

A. Overview

A variety of additional effects of CAA Amendments are likely, some of which are beneficial to the economy and some of which are adverse. Industry studies have tended to dismiss benefits associated with pollution control and have instead concentrated on potential adverse effects, primarily job losses. In this chapter, some of the major effects of air pollution control are discussed.

B. Industry studies

The major industry-sponsored study of job impacts was the Hahn and Sieger report (Hahn, 1990). This study begins with the cost analysis performed for the BRT (Denny Technical Services, 1990a). The

study reports a range of impacts from 20,000 jobs "almost surely to be lost" to over 2,000,000 jobs "adversely affected and potentially lost."

In an economy with well over 100,000,000 jobs, the 20,000 figure translates to less than 0.2 percent of total employment. The 2,000,000 figure appears to represent the total employment at plants which may possibly be affected by CAA Amendment provisions. This figure represents less than two percent of the total U.S. work force. In essence, the Hahn study concludes that 2,000,000 people work at plants which, in some way, may be affected by various aspects of the CAA Amendments. Given the size of the economy and the assumptions of the study, the less-than-two-percent figure is actually fairly low since many of the facilities at which the 2,000,000 are employed may take no action as a result of implementation of the amendments.

Dire predictions have been offered before on the major job impacts of earlier environmental legislation. Most did not occur. In a dynamic economy, the only constant factor is change. Technological advances and changes have always resulted in temporary economic dislocations.

The methodology used in the industry-sponsored employment analysis does not take into account any of the important, dynamic factors of the U.S. economy. For example, concern over coal miners in the high-sulfur coal industry has been a key issue affecting acid rain control policy. None of the existing models or analyses, however, account for the ability of existing mines, many of which have already depreciated their entire capital investment, to reduce prices to levels only slightly above marginal production costs in order to continue to operate. Similar effects are bound to occur in other industries.

The regional employment effects reported in the industry-sponsored jobs study are more artifacts of data analysis than accurate forecasts. They completely ignore the competitive aspects of the U.S. economy discussed above.

The extreme nature of the assumptions in the industry-sponsored employment study become evident when focusing on paper industry figures. The study concludes that job losses will range from 73,000-86,000 and that fully half of industry capacity will close.

The jobs report executive summary states that results include consideration of the following:

An analysis of CAA-related cost increases relative to the ability to absorb increases.

Investigation of cost increases relative to other firms within each industrial sector.

Projection of "jobs-at-risk" relative to degree of competition.

In fact, none of these factors appears to be considered in the quantitative analysis results presented, despite the fact that the report authors admit their importance.

The analysis of toxic pollution control costs incorporates some estimates of per-plant-control costs, but the relevance and interpretation of the results presented is unclear. For example, a VOC control cost of \$29.2 million per plant is reported for "air transportation" and is characterized as "extremely high." If an "air transportation plant" is a major airport, however, a \$29.2 million cost would be relatively minor.

The discussion of permitting requirements and potential impacts on small businesses states that "U.S. job creation in the last decade has overwhelmingly been accomplished by small business." Later, the report concludes that "it is very likely that fewer small businesses will be started" and "this

will likely have an adverse effect on employment growth." While the report contends that permitting and monitoring expenses will significantly burden small businesses, the report does not bother to examine what percentage of small businesses and/or recently established small businesses are in the affected industries. The only information given, however, seems to conflict with the authors' conclusions. On page 3.16, the report indicates that "about 3.5 percent" of all small businesses are "potentially adversely affected" by all types of environmental regulations. The actual number affected by CAA amendment requirements would likely be only a portion of the 3.5 percent.

For the analysis of jobs lost or "at risk" relative to acid deposition control, the following additional problems were found:

Industries selected for analysis were those accounting for 0.5 percent or more of total industrial electricity demand. A more meaningful selection criteria would have used total electricity cost as a percentage of total value added. What is of interest is those industries which rely heavily on electricity in producing their products not those which, in the aggregate, simply happen to be major utility customers.

The cost impacts associated with acid deposition control used in the study appeared to be those for Phase II (beginning in 2000), but the impacts were assumed to occur only in those counties containing Phase I plants.

C. Employment benefits

Estimated decline in employment such as those presented in the Hahn/Steger study are highly speculative. It is clear, however, that a substantial environmental control industry has developed in the United States, and this growing industry is responsible for the creation of many jobs. In 1980, there were 79,000 environmental scientists employed in the labor force. That number increased to 116,000 by 1986 (Commerce, 1988). In this one category, almost 40,000 new jobs were created over a six-year period, and the creation of those jobs is directly linked to increasing interest in and expenditures for improving the environment.

REFERENCES

- Cheng (1983), Cheng, J.P., L.C. Landman, and R.D. Wagner, "A Study of the Relationship Between Exhaust Emissions and Fuel Economy," EPA/AA/CTAB/TA/83-2, May.
- Clean Air Working Group (1990), "Side-by-Side S.1630 Clean Air Act Amendments of 1990," July.
- Committee of Interstate and Foreign Commerce (1980), "Cost-Benefit Analysis: Wonder Tool or Mirage?," Committee Print 96-IFC 62, December.
- Crain Publications (1990), *Automotive News—1990 Market Data Book*, Detroit, MI.
- Commerce (1988), U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States 1988*, Washington, DC, U.S. Government Printing Office.
- Commerce (1990), U.S. Department of Commerce, Bureau of Economic Analysis, "BEA Regional Projections to 2040, Vol. 1: States", Washington, DC, U.S. Government Printing Office, June.
- Denny (1990a), Denny Technical Services, "Clean Air Act Legislation Cost Evaluation," report prepared for The Business Roundtable, January.
- Denny (1990b), Denny Technical Services, "Clean Air Act Legislation—Administration/Senate Compromise Bill Cost Comparison," March.
- Denny (1990c), Denny Technical Services, "Clean Air Act Legislation—House/Senate Side-by-Side Comparison," report prepared for Clean Air Working Group, July.
- EIA (1988), U.S. Department of Energy, Energy Information Administration, "Typical Electric Bills", DOE/EIA-0040(88), December.
- EIA (1989), U.S. Department of Energy, Energy Information Administration, "Electric Power Annual 1988", DOE/EIA-0348(88), December.
- EPA (1989), U.S. Environmental Protection Agency, "Policy Options for Stabilizing Global Climate", Draft Report to Congress, February.
- Hahn (1990), Hahn, R. and Steger W., "An Analysis of Jobs-at-Risk and Job Losses Resulting from the Proposed Clean Air Act Amendments," CONSAD Research Corporation, February.
- Heavenrich (1989), Heavenrich, R.M. and J.D. Murrell, "Light-Duty Automobile Technology and Fuel Economy Trends Through 1989," Technical Report, EPA/AA/CTAB/89-04, U.S. Environmental Protection Agency, Ann Arbor, MI, May.
- Institute (1988), Hulsing, D. et al., "Proven Profits From Pollution Prevention: Case Studies in Resource Conservation and Waste Reduction", Institute for Local Self-Reliance, Washington, DC.
- Manzer (1990), Manzer, L.E., *Science*, Vol 249, 31.
- MVMA (1990), *MVMA Motor Vehicle Facts & Figures '90*, Motor Vehicle Manufacturers Association of the United States, Inc., Detroit, MI.
- Pechan (1989), "Comparison of Acid Rain Control Bills," E.H. Pechan & Associates, Inc., report prepared for U.S. EPA, Office of Policy Analysis and OTA, November.
- Pechan (1990), "Ozone Nonattainment Analysis—A Comparison of Bills," E.H. Pechan & Associates, Inc., report prepared for U.S. EPA, Office of Air and Radiation, January.
- PHB (1980), Putnam, Hayes, and Bartlett, Inc., "Comparisons of Estimated and Actual Pollution Control Capital Expenditures for Selected Industries," report prepared for U.S. EPA, June.
- Science (1989), *Science News*, Vol 137, No. 5.
- Science (1990), *Science News*, Vol 135, No. 6.

ACRONYMS

API	American Petroleum Institute
BRT	Business Roundtable
CAA	Clean Air Act
CARB	California Air Resources Board
CANG	Clean Air Working Group
CFC	Chlorofluorocarbons
CMA	Chemical Manufacturers Association
CTC	Control Technique Guidelines
EIA	Energy and Environmental Analysis, Inc.
EGA	Exhaust gas recirculation
EPA	Environmental Protection Agency
FIP	Federal Implementation Plan
GMP	Gross Material Product
HC	Hydrocarbons
HOC	Hydrochlorofluorocarbons
HFC	Hydrofluorocarbons
I/M	Inspection and maintenance
LAI	Lowest achievable emission rate
LTV	Light duty vehicles
MACT	Maximum achievable control technology
MECA	Manufacturers of Emission Control Association
MVMA	Motor Vehicle Manufacturers Association
NAAQS	National Ambient Air Quality Standards
NSPS	New Source Performance Standards
OTA	Office of Technology Assessment
RACT	Reasonably achievable control technology
RD&D	Research, development, and demonstration
RVP	Reid vapor pressure
VOC	Volatile organic compounds

The Air Bill: HB 377, SB 383 The Air Bill: HB 377, SB 383 The Air Bill: HB 377, SB 383

Will Our Cars and Trucks Really Have to Meet California Pollution Standards?

NO—Neither the House Bill nor Senate Bill adopts California auto standards. California is the only state authorized to set their own motor vehicle pollution standards. Nationally, tailpipe standards are set by EPA. California standards are much tougher. There is absolutely no reason for these tough California standards in Alaska. A few east coast states are adopting the California rules but not the state of Alaska. The Alaska Air Quality Bill would not change our motor vehicle pollution standards!

Is the Air Bill More Stringent Than Required By The Clean Air Act ?

The Air Bill was drafted to meet only the minimum federal requirements. The bill mentions authority for DEC to set "ambient" or ground-level standards that could be tougher than federal standards or otherwise set standards for pollutants for which there is no federal standard. DEC has had this authority for the past 20 years. Existing statutes were incorporated where possible when the new bill was drafted.

Has this power ever been used ?

DEC has used this broader authority sparingly in years past. Only after a strong outcry from the citizens of north Kenai, following three years of evaluation and public review, was a public health standard set for ammonia gas. Now, once again in response to a strong citizen outcry about benzene vapors in the Government Hill area of Anchorage, the agency is considering adoption of new standards if voluntary actions to curtail the emissions are not adequate to safeguard public health. As a regulating public health agency, DEC's first mission is to protect public health.

If these DEC authorities are reduced, won't the federal rules protect us ?

Yes—the federal standards will protect Alaskans, but Alaskans have always been first to say: "Things are different in Alaska!" If this flexibility were removed from the Air Bill, DEC would not be able to respond to unique Alaska issues, such as ammonia in Kenai, to ensure health protection.

Why Not Let The Feds Do Air Permits in Alaska ?

The state can design the new air permit program to be more flexible to Alaska conditions. The Air Bill has many features, such as "general permits," to make the state permit more streamlined and responsive to Alaska's needs. Permit fees will be lower than federal fees, and our industries will not have to talk to an EPA staff person in Seattle.

Why a Bill This Year?

Passage of a bill this year is important to allow plenty of time for public involvement during development of the ensuing regulations. An advisory committee and task force will directly involve industry and all other affected parties. This will tailor the Clean Air Act's requirements to the needs and concerns of Alaskans.

ALASKA AIR STATUTES

REQUIRED & ESSENTIAL FEATURES

Exclusive Fund for Air Permit Program

Create Small Business Assistance Program

Create Advisory Panel

Provide Assistance to Larger Group

Modify Criminal Provisions and Fines

Construction Permits v. Operating Permits

Agency/Operator Emission Limits to Avoid Need for Permit

General Permits

Flexibility for Permit Fee Structure

Ability to Implement New Federal Rules in Permits

Reopening of Permits

Emission Limits Based on Health Risks or

Available Technology

Local Governments to be Implementing Partners

Administrative Penalties for Violations

Deter EPA Intervention

Public Involvement in Permits

Public Review of Permits

Appeal through Adjudication

Judicial Review

EPA Review

Public to Petition EPA

Retain & Update Existing Statutes



DEPARTMENT OF ENVIRONMENTAL CONSERVATION

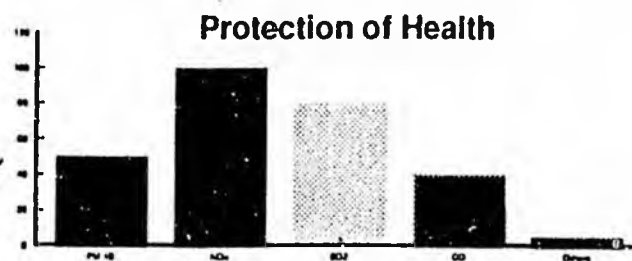
Air Quality Management



1990 AMENDMENTS to the CLEAN AIR ACT
and their IMPACTS on ALASKA



Mobile Sources
Vehicle Tailpipe Standards



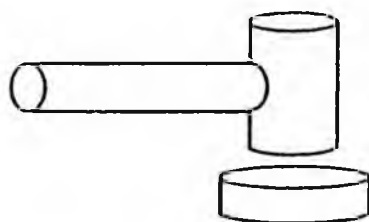
Ambient Air Quality Standards

State
Air
Quality
Control
Plan

Clean Air Act of 1970



**Clean up poor
Air Quality Regions**



Enforcement

Civil Penalties - \$10,000/day
Criminal Penalties - \$10,000/day

Stack Emission Limits



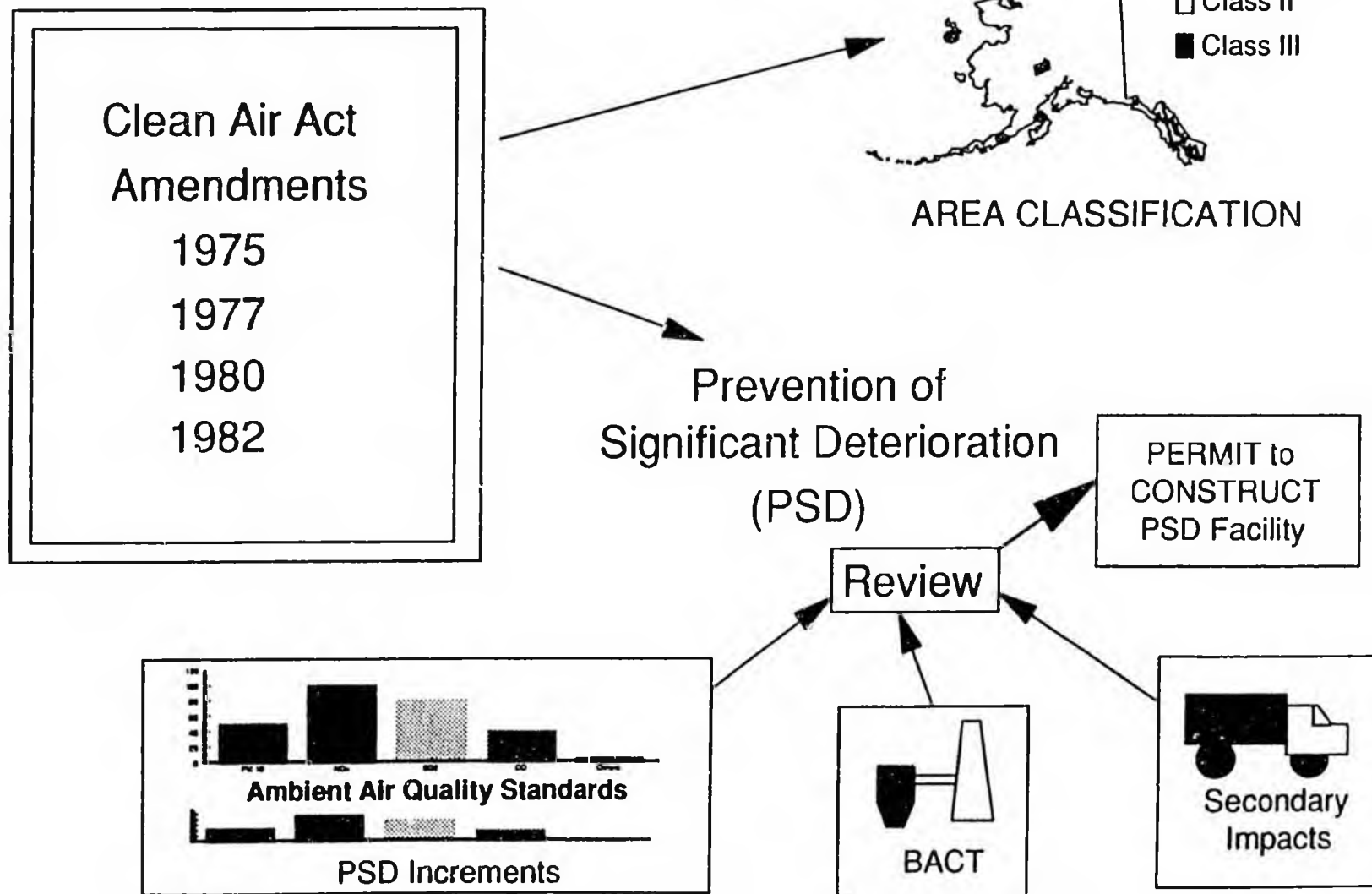
State Stack Emission Standards

Federal New Source Performance Standards

National Emission Standards for Hazardous Air Pollutants

PROGRAMS ADDED by AMENDMENTS

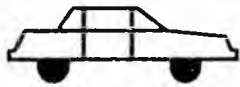
In addition to changes in previous components of the ACT



Components of the Clean Air Act Amendments of 1990

Title I	Provisions for Attainment and Maintenance of National Ambient Air Quality Standards
Title II	Provisions Relating to Mobile Sources
Title III	Hazardous Air Pollutants
Title IV	Acid Deposition Control *
Title V	Permits
Title VI	Stratospheric Ozone Protection
Title VII	Provisions Relating to Enforcement
Title VIII	Miscellaneous Provisions
Title IX	Clean Air Research
Title X	Disadvantaged Business Concerns
Title XI	Clean Air Employment Transition Assistance

* Alaska is exempt from Title IV Provisions



Mobile Sources

Cold Start
CO Standards
Inspections

CLEAN AIR ACT 1990 AMENDMENTS



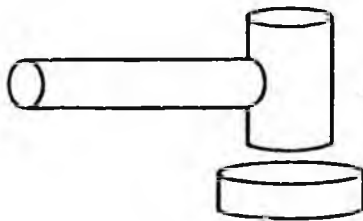
NON-ATTAINMENT
AREA CLASSIFICATION

List of
TOXIC AIR
POLLUTANTS

Clean Air Act
Amendments
Nov. 15, 1990

STATE
OPERATING
PERMIT
PROGRAM

Federal Emission Standards
State Emission Standards
New Source Performance Standards
Standards for Hazardous Air Pollutants
Early Reduction/MACT
Permit Fees
Voluntary Emission Limits
Certification of Compliance
Reporting & Monitoring Procedures
Ability to Reopen for Cause
Public Comment
EPA Review
Judicial Review of Actions



Enforcement

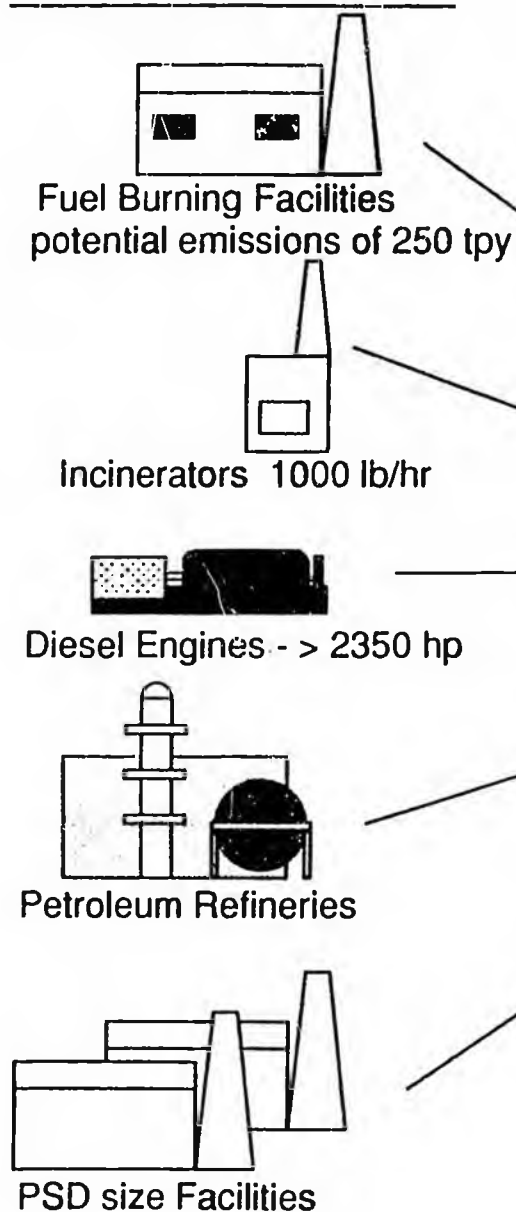
Civil Penalties - \$10,000/day
Criminal Penalties - \$10,000/day

Small Business
Assistance Program /
Pollution Prevention

**OPERATING
PERMIT
PROGRAM**

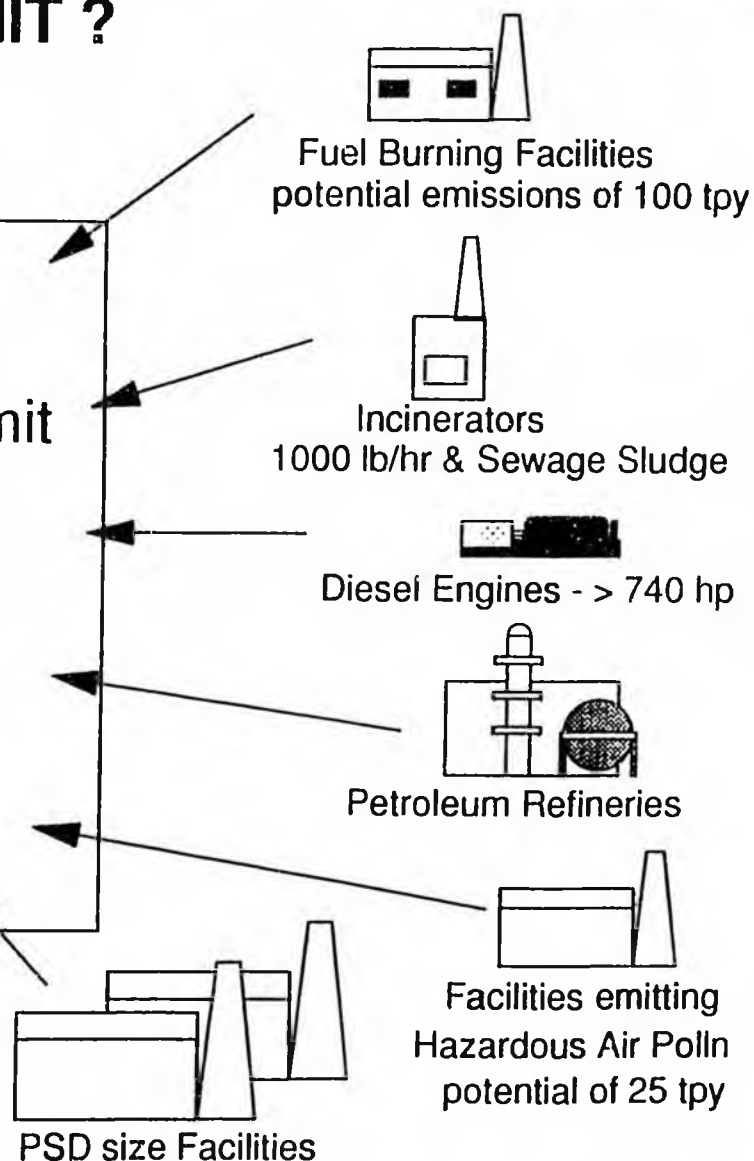
Title V

OLD CLEAN AIR ACT



WHO NEEDS AN AIR PERMIT ?

1990 CLEAN AIR ACT



PERMITS: WHO NEEDS THEM?

1991

Asphalt Plants

Incinerators rated larger than 1000 lb of waste per hour

Industrial processes with a design throughput greater than 5 tons per hour AND require an emission control device

Fuel burning equipment larger than 50 mm Btu/hr AND require an emission control device, such as a coal fired boiler which could burn 3 tons per hour

Fuel burning equipment larger than 100 mm Btu/hr, such as a natural gas fired boiler which could burn 1,667 cubic feet of gas per minute.

Petroleum refineries

Coal preparation facilities

Portland cement plants

Any facility subject review under the Prevention of Significant Deterioration (PSD) provisions, such as a new facility which could emit more than 250 tons per year of a regulated air contaminant, or an existing large facility which could emit more than 40 tons per year of a regulated air contaminant.

This includes facilities with stationary diesel equipment rated at more than 1700 kw or 2350 Horsepower, or could consume more than 45 gallons of diesel fuel per hour.

Any new or modified facility within 10 kilometers of Anchorage or Fairbanks which emits greater than 100 tons per year of carbon monoxide.

Any permittee which requests physical or operational limitations to provide emission offsets for facilities emitting carbon monoxide in Anchorage or Fairbanks.

Any permittee which requests physical or operational limitations to preclude review under PSD.

1993

Asphalt Plants

Incinerators rated larger than 1000 lb of waste per hour

Industrial processes with a design throughput greater than 5 tons per hour AND require an emission control device

Fuel burning equipment larger than 50 mm Btu/hr AND require an emission control device, such as a coal fired boiler which could burn 3 tons per hour

Fuel burning equipment larger than 100 mm Btu/hr, such as a natural gas fired boiler which could burn 1,667 cubic feet of gas per minute.

Petroleum refineries

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Any new or modified facility within 10 kilometers of Anchorage or Fairbanks which emits greater than 100 tons per year of carbon monoxide.

Any permittee which requests physical or operational limitations to provide emission offsets for facilities emitting carbon monoxide in Anchorage or Fairbanks.

Any permittee which requests physical or operational limitations to preclude review under PSD.

1993

ALL THE FACILITIES LISTED FOR 1991

All sewage sludge incinerators

All facilities with emissions greater than 100 tons per year. Examples: stationary diesel equipment larger than 740 Hp or 550 Kw, or stationary gasoline equipment rated at greater than 52 Hp or 39 Kw.

All facilities with emissions greater than 10 tons per year of any hazardous air contaminants listed by Congress, or 25 tons per year in aggregate.

All facilities which have equipment which must comply with specific federal New Source Performance Standards. In Alaska we have:

Boilers with a rated heat capacity greater than 10 mm Btu/hr

Facilities with petroleum storage vessels which store more than 40,000 gallons

Coal preparation plants

Grain elevators

Combustion turbines

Lime manufacturing plants

Metallic mineral processing plants

Dry cleaners with a total rated dryer capacity of 84 lb

Onshore natural gas processing plants

Gravel crushers

Bulk gasoline transfer facilities, with gasoline throughput of 20,000 gallons per day.

All facilities with equipment for which specific emission limits will be set by federal law.

Permit Contents

STATE AIR QUALITY
PERMIT TO OPERATE

Single Permit contains all State and Federal Requirements

Facility Location, Mailing address

Federal Emission Standards

State Emission Standards

New Source Performance Standards

Standards for Hazardous Air Pollutants

Early Reduction/MACT

★

Permit Fees

Voluntary Emission Limits

★

Small Business Assistance Provisions

★

Certification of Compliance

Reporting & Monitoring Procedures

★

Ability to Reopen for Cause

Public Comment

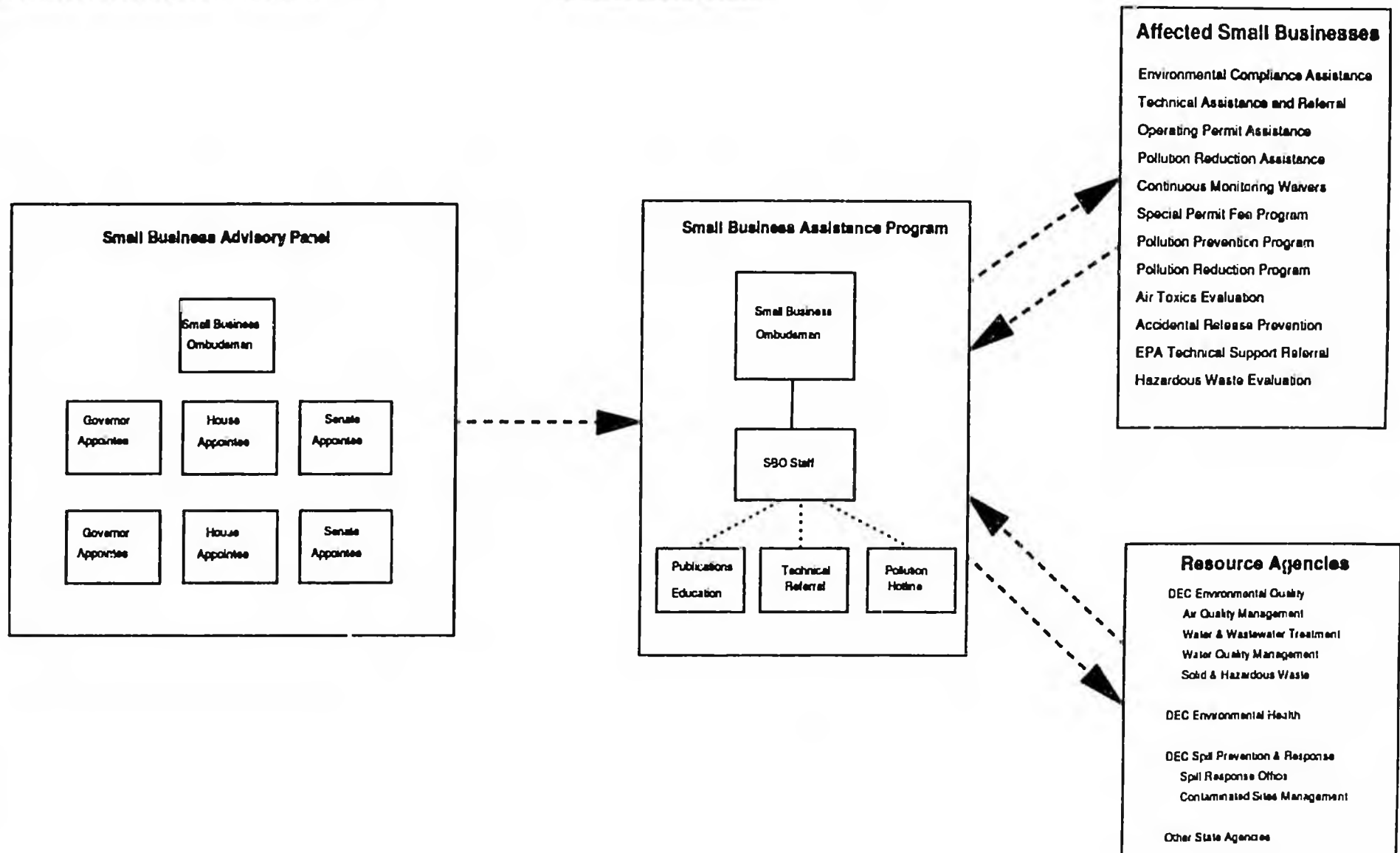
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EPA Review

★

Judicial Review of Actions

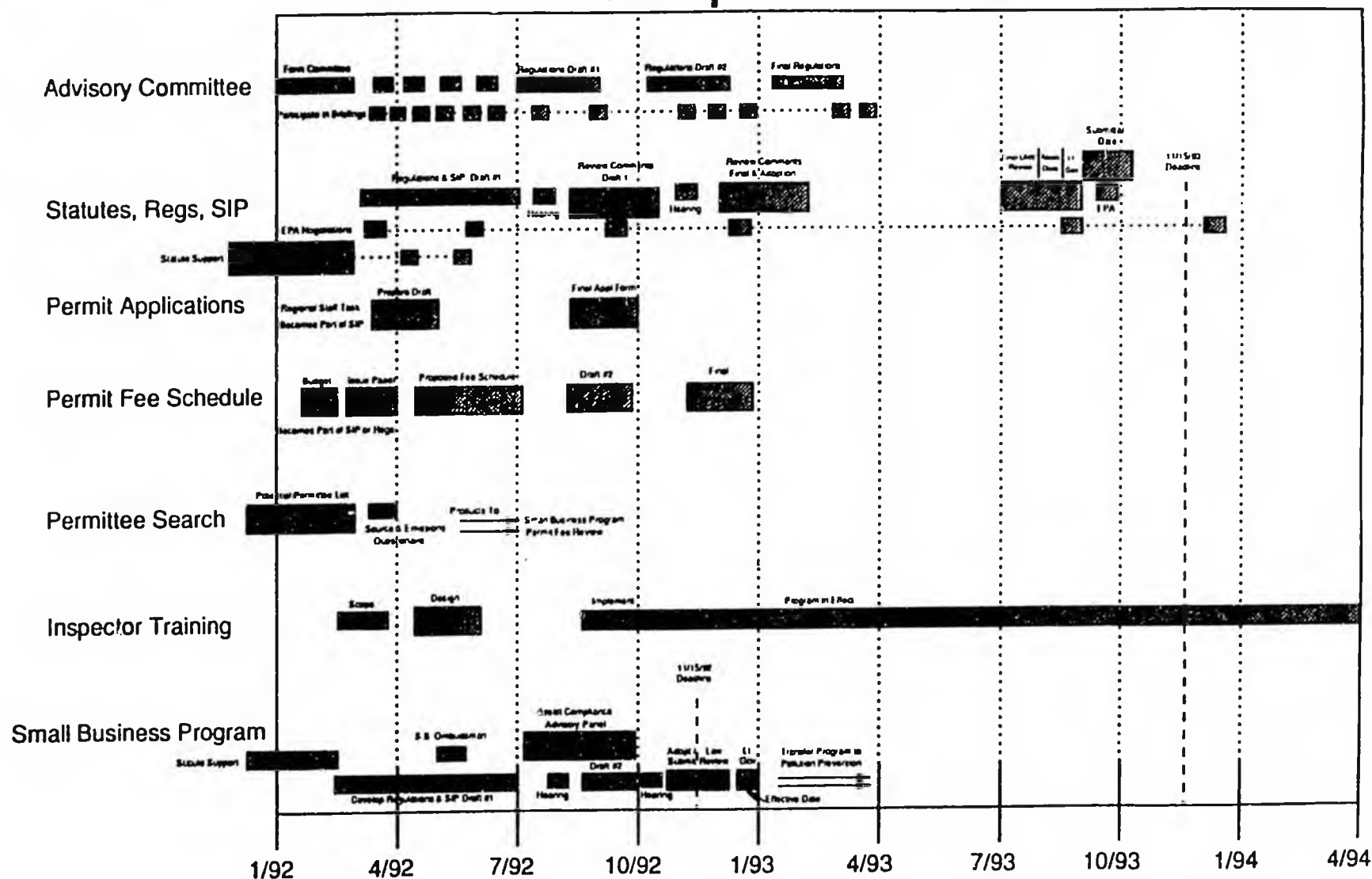
Small Business Assistance Program



STATUTORY NEEDS

- **Establish exclusive fund for Permit Fees and Air Program direct expenses**
- **Create Small Business Assistance Program**
- **Create Small Business Compliance Advisory Panel**
- **Increase Criminal Penalty Provisions and Fines**
- **Establish authority for General Permits**
- **Separate Construction Permits from Operating Permits**
- **Update Existing Statutes**

CAAA 90 Title V - State Operating Permit Program Development Phase



CLEAN AIR ACT

1990

TITLE III

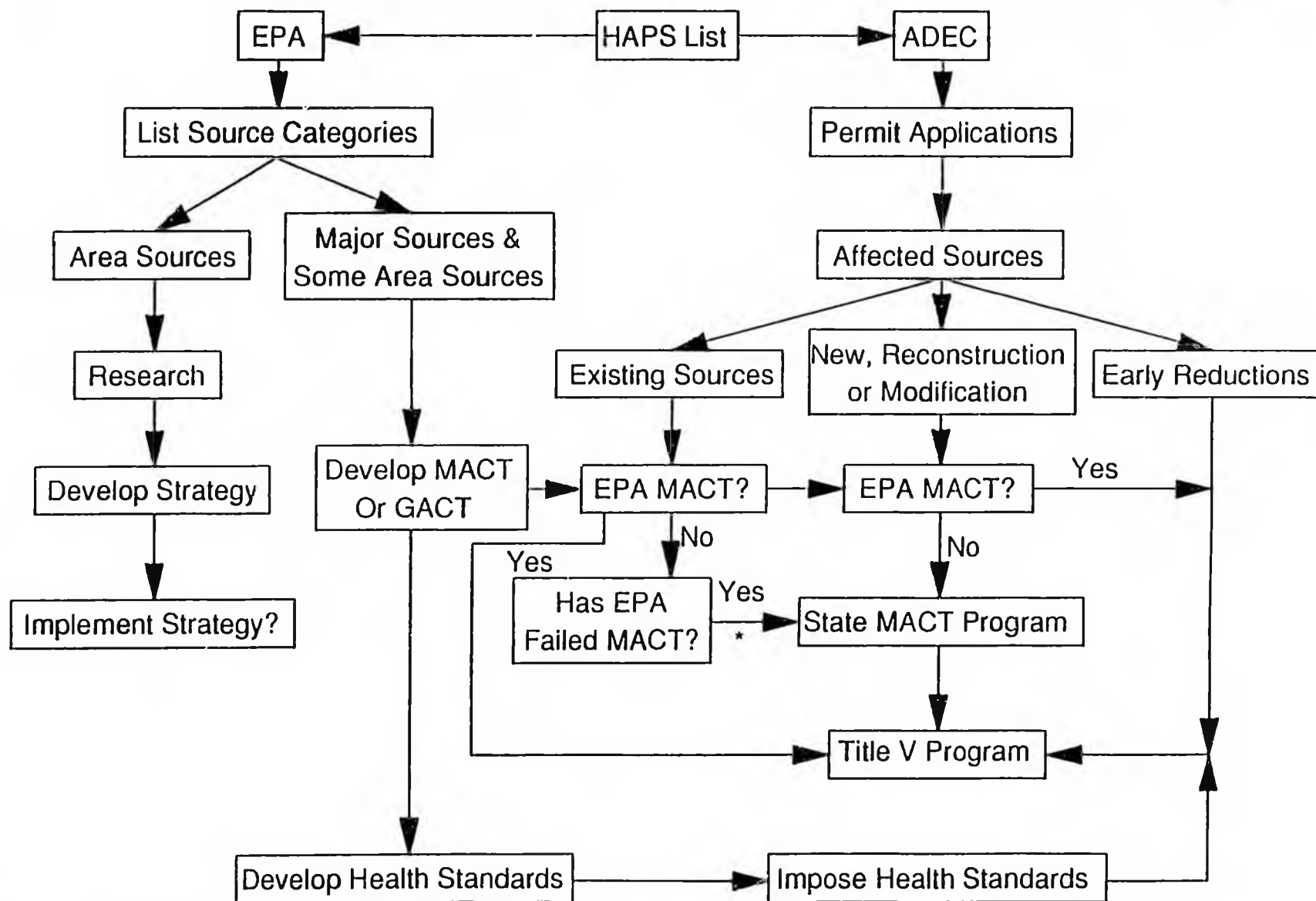
SECTION 112

HAZARDOUS AIR POLLUTANTS

**CLEAN AIR ACT. SECTION 112
HAZARDOUS AIR POLLUTANT ACRONYM LIST**

HAPS	Hazardous Air Pollutants; one or more of the 189 air pollutants listed in the Clean Air Act Amendments of 1990.
GACTION	Generally Available Control Technology
MACTION	Maximum Achievable Control Technology
PACION	Politically Achievable Control Technology
PICITION	Politically Impossible Control Technology
3M²	3 Month Moratorium

SECTION 112 (HAPS) REGULATORY FLOWCHART



* Equivalent Emission Limitation

CLEAN AIR ACT

1990

TITLE III

SECTION 112

HAZARDOUS AIR POLLUTANT LIST

**Clean Air Act. Section 112
Hazardous Air Pollutants (HAPS)**

<u>Chemical Name</u>	<u>CAS No.</u>	<u>Chemical Name</u>	<u>CAS No.</u>
Acetaldehyde	75070	Chloroprene	
Acetamide	60355	(Neoprene;	
Acetonitrile	75058	2=chloro-1,3butadiene)	126998
Acetophenone	98862	m-Cresol	108394
2-Acetylaminofluorene	53963	o-Cresol	95487
Acrolein	107028	p-Cresol	106445
Acrylamide	79061	Cresols/Cresylic acid	1319773
Acrylic Acid	79107	Cumene(Isopropylbenzene)	98828
Acrylonitrile	107131	D(2,4), salts and esters	94757
Allyl Chloride	107051	DDE	3547044
4-Aminobiphenyl	92671	Diazomethane	334883
Aniline	62533	Dibenzofurans	132649
o-Anisidine	90040	Dibromo-3-	
Asbestos	1332214	chloropropoanol(1,2)	96128
Benzene	71432	Dibutylphthalate	84742
Benzidene	92875	1,4-Dichlorobenzene(p)	10
Benzotrichloride	98077	3,3-Dichlorobenzidene	91941
Benzyl Chloride	100447	Dichloroethyl ether	
Biphenyl	192524	(Bis(2-chloroethyl)ether)	111444
Bis(2-ethylhexyl)phthalate	117817	1,3-Dichloropropene	542756
(DEHP)		Dichlorvos	62737
Bis(chloromethyl)ether	542881	Diethanolamine	111422
Bromoform	75252	N,N-Diethyl aniline	
1,3-Butadiene	106990	(N,N-Dimethylaniline)	121697
Calcium cyanamide	156627	Diethyl sulfate	64675
Caprolactam	105602	3,3-Dimethoxybenzidene	119904
Captan	133062	Dimethyl aminoazobenzene	60177
Carbaryl	63252	3,3-Dimethyl benzidene	119937
Carbon disulfide	75150	Dimethyl carbamoyl chloride	79447
Carbon tetrachloride	56235	Dimethyl formamide	68122
Carbonyl sulfide	463581	1,1-Dimethyl hydrazine	57147
Catechol	120809	Dimethyl phthalate	131113
Chloramben	133904	Dimethyl sulfate	77781
Chlordane	57749	4,6-Dinitro-o-cresol	
Chlorine	7782505	and salts	534521
Chloroacetic Acid	79118	2,4-Dinitrophenol	51285
2-Chloroacetophenone	532274	2,4-Dinitrotoluene	121142
Chlorobenzene	108907	1,4-Dioxane	
Chlorobenzilate	510156	(1,4-Diethyleneoxide)	123911
Chloroform	67663	1,2-Diphenylhydrazine	122667
Chloromethyl methyl ether	107302		

<u>Chemical Name</u>	<u>CAS No.</u>	<u>Chemical Name</u>	<u>CAS No.</u>
Epichlorohydrin (Chloro-2,3-epoxypropane(1))	106898	Methyl ethyl ketone (2-Butanone)	78933
1,2-Epoxybutane (1,2-Butylene oxide)	106887	Methyl hydrazine	60344
Ethyl acrylate	140885	Methyl iodide (Iodomethane)	74884
Ethyl benzene	100414	Methyl isobutyl ketone (Hexone)	108101
Ethyl carbamate (Urethane)	51796	Methyl isocyanate	624839
Ethyl chloride (Chloroethane)	75003	Methyl methacrylate	80626
Ethylene dibromide (1,2-Dibromomethane)	106934	Methyl tert butyl ether	1634044
Ethylene dichloride (1,2-Dichloroethane)	107062	4,4-Methylene bis (2-chloroaniline)	101144
Ethylene glycol	107211	Methylene chloride (Dichloromethane)	75092
Ethylene imine (Aziridene)	151564	Methylene diphenyl diisocyanate (MDI)	101688
Ethylene oxide	75218	4,4'-Methylenedianiline	101779
Ethylene thiourea	96457	Napthalene	91203
Ethylene dichloride (1,1,-Dichloroethane)	75343	Nitrobenzene	98953
Formaldehyde	50000	4-Nitrobiphenyl	92933
Heptachlor	76448	4-Nitrophenol	100027
Hexachlorobenzene	118741	2-Nitropropane	79469
Hexachlorobutadiene	87683	N-Nitroso-N-methylurea	684935
Hexachlorocyclopentadiene	77474	N-Nitrosodimethylamine	62759
Hexachloroethane	67721	N-Nitrosomorpholine	59892
Hexamethylene-1,6- diisocyanate	822060	Parathion	56382
Hexamethylphosphoramide	680319	Pentachloronitrobenzene (Quintobenzene)	82688
Hexane	110543	Pentachlorophenol	87865
Hydrazine	302012	Phenol	108952
Hydrochloric acid	7647010	p-Phenylenediamine	106503
Hydrogen flouride (Hydroflouric acid)	7664393	Phosgene	75445
Hydroquinone	123319	Phosphine	7803512
Isophorone	78591	Phosphorus	7723140
Lindane (all isomers)	58899	Phthalic anhydride	1336363
Maleic anhydride	108316	PCB's (Arochlors)	1336363
Methanol	67561	1,3-Propane sultone	1120714
Methoxychlor	72435	beta-Priolactone	57578
Methyl bromide (Bromomethane)	74839	Propionaldehyde	123386
Methyl chloride (Chloromethane)	74873	Propoxur (Baygon)	114261
Methyl chloroform (1,1,1-Trichloroethane)	71556	Propylene dichloride (1,2-Dichloropropane)	78875
		Propylene oxide	75569

<u>Chemical Name</u>	<u>CAS No.</u>	<u>Chemical Name</u>	<u>CAS No.</u>
1,2-Propylenimine (2-Methyl aziridine)	75558	m-Xylene	108383
Quinoline	91225	o-Xylene	95476
Quinone		p-Xylene	106423
(1,4-Cyclohexadienedione)	106514	Xylenes (mixed)	1330207
Styrene	100425	Antimony Compounds	-----
Styrene oxide	96093	Arsenic Compounds (inorganic including arsine)	-----
Tetrachlorodibenzo-p-dioxin (2,3,7,8)	1746016	Beryllium Compounds	-----
1,1,2,2-Tetrachloroethane	79345	Cadmium Compounds	-----
Tetrachlorethylene (Perchloroethylene)	127184	Chromium Compounds	-----
Titanium tetrachloride	7550450	Cobalt Compounds	-----
Toluene	108883	Coke Oven Emissions	-----
2,4-Toluene diamine (2,4-Diaminotoluene)	95807	Cyanide Compounds ¹	-----
2,4-Toluene diisocyanate	584849	Glycol ethers ²	-----
o-Toluidine	95534	Lead Compounds	-----
Toxaphene (Chlorinated camphene)	8001352	Manganese Compounds	-----
1,2,4-Trichlorobenzene	120821	Mercury Compounds	-----
1,1,2-Trichloroethane	79005	Mineral fibers ³	-----
Trichloroethylene	796016	Nickel Compounds	-----
2,4,5-Trichlorophenol	95954	Polycyclic Organic Matter ⁴	-----
2,4,6-Trichlorophenol	88062	Radionuclides (including radon) ⁵	-----
		Selenium Compounds	-----

¹X'CN where X=H' or any other group where formal dissociation may occur, for example, KCN or Ca(CN)₂.

²Includes mono- and di-ethers of ethylene glycol, diethyl glycol and triethyl glycol R-(OCH₂CH₂)_n-OR' where:

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or group which, when removed, yield glycol ethers with the structure:

R-(OCH₂CH)_n-OH. Polymers are excluded from the glycol category.

³Includes glass microfibers, glass wool fibers, rock wool fibers, and slag wool fibers, each characterized as "respirable" (fiber diameter less than 3.5 micrometers) and possessing an aspect ratio (fiber length divided by fiber diameter) greater than 3.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

⁵A type of atom which spontaneously undergoes radioactive decay.

<u>Chemical Name</u>	<u>CAS No.</u>
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354

CLEAN AIR ACT. SECTION 112
Some Source Categories and Subcategories
Located in Alaska

I. Industry Group -- Fuel Combustion

Category

1. Industrial External Combustion Boilers
2. Institutional External Combustion Boilers
3. External Combustion Space Heaters
4. Industrial Electric Generation Turbines
5. Industrial Reciprocating IC Engines
6. Commercial/Institutional Turbines
7. Commercial Reciprocating IC Engines
8. Process Heaters
9. Petroleum Industry Process Heaters
10. Oil and Gas Steam Generation
11. Industrial In-Situ Fuel Use
12. Prescribed Burning
13. Residential Boilers
14. Residential Wood Combustion - Fireplaces
15. Residential Wood Combustion - Woodstoves

II. Industrial Group -- Metallurgical Industry: Nonferrous Metals

Category Name

1. Primary Metals -- Miscellaneous
2. Lead Acid Battery Manufacturing

III. Industrial Group -- Mineral Products Processing and Use

Category Name

1. Asphalt Concrete Manufacture
2. Stone Quarries
3. Mining Operation -- Sand/Gravel
4. Metal Pipe Coating Asphalt/CoalTar
5. Asbestos Removal: Demolitions
6. Asbestos Removal: Renovations
7. Asbestos Waste Disposal: Demolitions
8. Asbestos Waste Disposal: Renovations
9. Construction: Spraying and Insulation
10. Asphalt Paving and Roofing Operations
11. Asphalt Processing
12. Mineral Dryers/Calciners
13. Ore Flotation

CLEAN AIR ACT. SECTION 112
Some Source Categories and Subcategories
Located in Alaska

IV. Industry Group -- Petroleum Refineries

Category Name

1. Petroleum Refining

V. Industry Group -- Petroleum and Gasoline Production and Marketing

Category Name

1. Oil and Gas Production
2. Gasoline/Petroleum Storage
3. Petroleum Marketing (With Bulk Terminals and Plants)
4. Natural Gas Storage/Transmission

VI. Industry Group -- Surface Coating Processes

Category Name

1. Surface Coating Operations -- General Solvent Uses
2. Auto and Light Duty Truck
3. Wood Furniture
4. Large Ship
5. Printing/Publishing
6. Architectural

VII. Industry Group -- Waste Treatment and Disposal

Category Name

1. Solid Waste Disposal -- Open Burning
2. Sewage Sludge Incineration
3. Municipal Landfills
4. Groundwater Cleaning
5. Hazardous Waste Incineration
6. Cooling Water Chlorination -- Steam Electric Generators
7. Wastewater Treatment Systems
8. Water Treatment Purification
9. Water Treatment -- Boilers

VIII. Industry Group -- Agricultural Chemicals Production and Use

Category Name

1. Fumigation Use
2. Parathion Use
3. Soil Fumigant Use
4. Space Fumigant Use
5. Substituted Phenyl Ureas Production

CLEAN AIR ACT. SECTION 112
Some Source Categories and Subcategories
Located in Alaska

IX. Industry Group -- Food and Agriculture Industry

Category Name

1. Coffee Roasting

X. Industry Group -- Polymers and Resins Production

Category Name

1. Polyurethane Foam

XI. Industry Group -- Production and Use of Inorganic Chemicals

Category Name

1. Chlorine
2. Fertilizer Formulation and Use
3. Fluorides
4. Hydrogen cyanide
5. Manganese chemicals
6. Phosphate fertilizers
7. Sodium cyanide production

XII. Industry Group -- Production of Synthetic Organic Chemicals

Category Name

1. Pulp & Paper Production
2. Sawmill Operations
3. Dry Cleaning (petroleum and chlorinated solvents)
4. Boat Building
5. Comfort cooling towers
6. Commercial sterilization facilities
7. Hospital sterilizers
8. Industrial cooling towers
9. Industrial process aids -- enhanced oil recovery
10. Jet fuel deicer use
11. Leather tanning
12. Paint removers use
13. Paints, coatings, and adhesives: manufacture and use
14. Photographic film processing

XIII. Industry Group -- Miscellaneous

Category Name

1. Wood preservation -- direct use

Note: This is not the complete list which was published by the U.S. EPA

CLEAN AIR ACT. SECTION 112 CONTROL STRATEGY DEFINITIONS

Maximum Achievable Control Technology (MACT)

NEW SOURCES

A degree of emissions reductions that is achieved in practice by the best controlled similar source, to be determined by the Administrator.

EXISTING SOURCES

A degree of emission reduction that shall not be less stringent than but may be more stringent than;

the average emission limitation achieved by the best performing 12% of the existing sources in categories with more than 30 sources; or

the average emission limitation achieved by the best performing 5 sources in categories with fewer than 30 sources.

Generally Available Control Technology (GACT)

An alternative degree of emissions reductions which can be established by the Administrator for **area sources**. GACT can be the same as MACT or less stringent.

Health and Environment Standards

An additional degree of emissions reduction developed after promulgation of MACT that is necessary to protect public health or prevent an adverse environmental effect.

Early Reductions

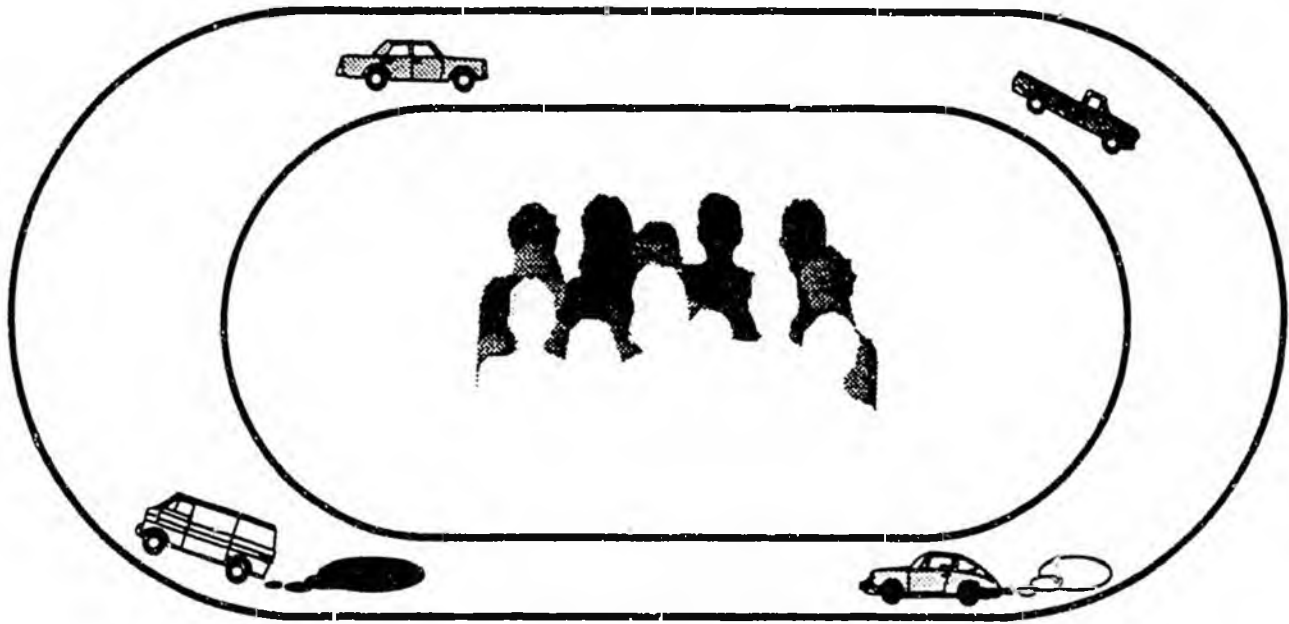
A program where a facility operator can receive a 6-year compliance extension to a MACT deadline, if the HAPS emission are reduced by 90% (95% in the case of HAPS which are particulates) before the proposal of a MACT standard.

Equivalent Emission Limitation

A degree of emission reductions established by a state air quality program which would be equivalent to what the Administrator would have developed as MACT, and implemented by the state after the Administrator has failed to promulgate the MACT standard on schedule.

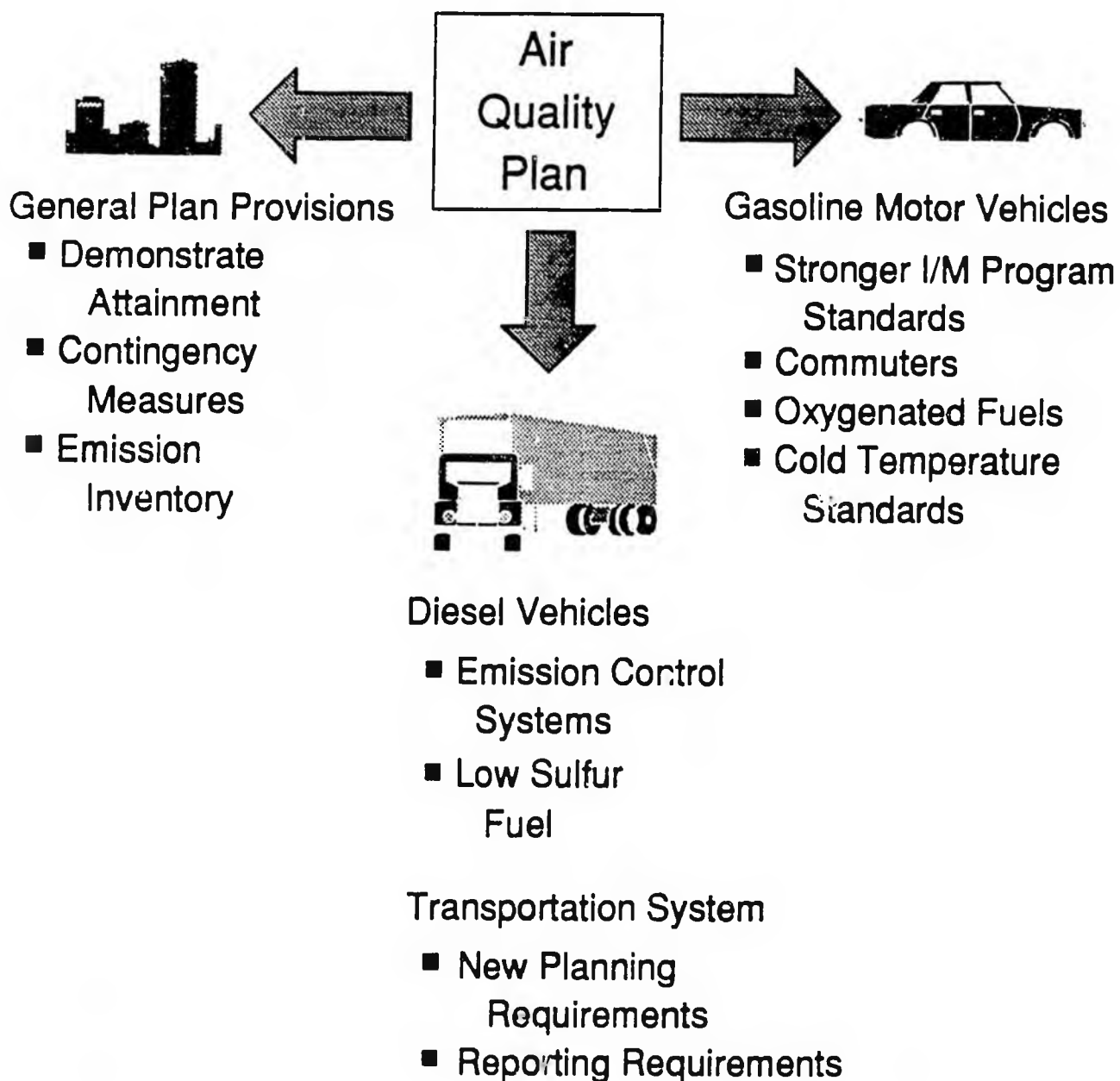
Title I & II

Charting A New Course



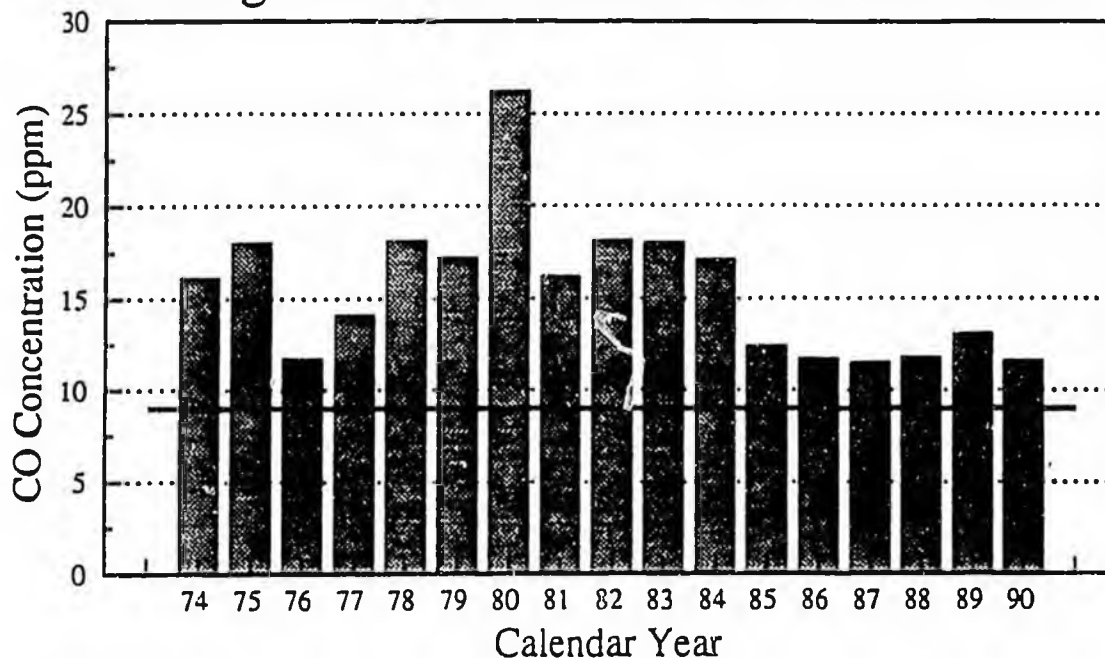
- Classification System
- Emission Reduction Targets
- Attainment Demonstrations
- Required Control Measures
- Provisions for Failures
- Federal Measures

Develop New Air Quality Plan

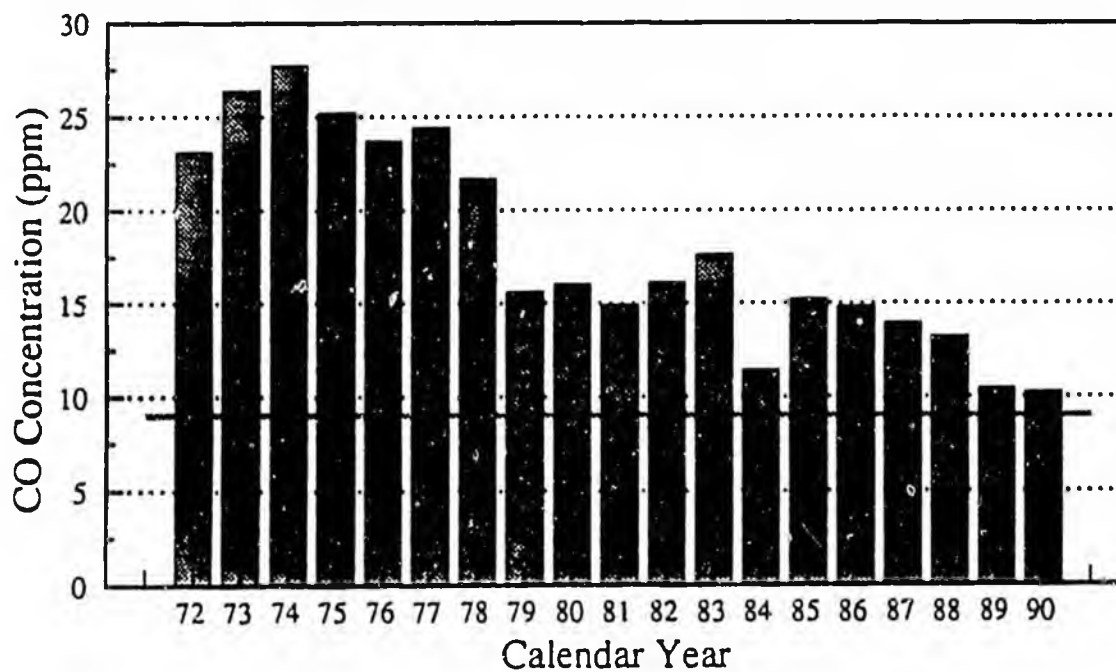


Where Do We Stand?

Anchorage Carbon Monoxide Concentrations



Fairbanks Carbon Monoxide Concentrations



Ambient Concentration National Health Standard

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**COMMENTS TO HOUSE RESOURCES COMMITTEE
ON CLEAN AIR
January 29, 1992**

**Steven A. Torok, Chief, State Operations Section
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office**

The Clean Air Act of 1970 was a legislative landmark for the United States in dealing with the environment, with the clear intent being clean air. The Act required EPA to establish national ambient air quality standards as opposed to regional air quality standards. In addition, the Act established a statutory deadline by which states had to comply with these standards. Congress also directed EPA to establish emission standards for new stationary sources. Despite the fact that the 1970 Act led to a reduction in sulfur oxides, volatile organic compounds, carbon monoxide, particulates and lead, we did not achieve the goals and intent of the Act. This is reflected in the facts: ninety-six cities have not attained the ambient ozone standard, forty-one cities exceed the carbon monoxide ambient standard, and seventy-two cities exceed the particulate matter standard. Due to controversy and legal challenges of the previous Act, EPA only established emission standards for seven hazardous air pollutants, out of a potential list of several hundred. In response to not meeting our goal of Clean Air, Congress passed the Clean Air Act Amendments on November 15, 1990.

The 1990 Clean Air Act Amendments are a significant departure from the previous Act. Over the past 20 years we have learned several things about what does and does not work and the new Act utilizes this knowledge and experience. The Act mandates cleaner fuels and cars to be built with lower emissions of pollutants. Technology based standards as opposed to risk based standards will be implemented to control air toxics which will control emissions from the entire plant and not just one chemical from the plant. Sulfur dioxide emissions from power plants are to be reduced by 10 million tons a year. Chlorofluorocarbons are to be phased out by the end of the decade. In summary, the goals of the Act when it is fully implemented by 2005 are: to remove 56 billion pounds of pollutants to the air each year, reduce emissions causing acid rain emission by 50%, reduce by 75% air toxic emissions, to have cleaner cars, fuels, factories, and power plants, and to assure that all the areas in the country meet the national ambient air quality standards.

The Act is organized into eleven Titles (next page). In order for Alaska to carry out the requirements of the Clean Air Act, specific state statutory authority will need to be provided to the Alaska Department of Environmental Conservation. Such legislation will need to address an operating permits program which incorporates enforcement authority.

CLEAN AIR ACT AMENDMENTS 1990

Title I	Provisions for Attainment and Maintenance of National Ambient Air Quality Standards
Title II	Provisions Relating to Mobile Sources
Title III	Hazardous Air Pollutants
*Title IV	Acid Deposition Control
Title V	Permits
Title VI	Stratospheric Ozone Protection
Title VII	Provisions Relating to Enforcement
Title VIII	Miscellaneous Provisions
Title IX	Clean Air Research
Title X	Disadvantaged Business Concerns
Title XI	Clean Air Employment Transition Assistance

* Not applicable to Alaska

1. How has Congress established the respective roles of the federal Environmental Protection Agency (EPA) and the state air agencies in providing healthy outside air quality?

In the Clean Air Act of 1970, Congress charged EPA with establishing national air quality standards to protect public health and welfare. These are concentrations of contaminants that cannot be exceeded and are to be applied uniformly throughout the country.

Congress recognized that sources and severity of pollution problems varied across the nation. Locally developed plans to achieve compliance with the standards were likely to be more cost-effective. Congress, therefore, delegated authority to the states to implement air quality programs.

EPA retains ultimate responsibility for clean air, though. Congress required that EPA develop and implement plans for areas that were not being controlled adequately by state plans or even to take over an entire state program.

2. What is Title V of the Clean Air Act Amendments of 1990?

Title V is an entirely new section that was added to the Clean Air Act (CAA) through the November 15, 1990 amendments. Its purpose is to ensure compliance with the diverse requirements of the CAA by compiling these complex requirements into a single, clear "operating permit" document for each of the affected stationary air pollution sources.

Alaska is fortunate to already have an operating permit program. The 1990 Amendments are quite prescriptive. Therefore, the Alaska program will need to be modified to meet all of the requirements mandated by Congress.

3. What sources are subject to Title V operating permits?

The 1990 Amendments require nearly all stationary sources of significant air emissions to apply for and obtain permits. This includes sources that:

- 1) emit or have the potential to emit more than 10 tons per year (tpy) of any hazardous air pollutant or a total of 25 tpy of any combination of hazardous air pollutant
- 2) have the potential to emit 100 tpy of any regulated air pollutant
- 3) are subject to a federal standard established by EPA under the authority of Sections 111 or 112 of the Clean Air Act
- 4) Any source requiring a permit prior to construction or modification. This would include such sources that have the potential to emit 250 tpy of any

regulated air pollutant or petroleum refineries that emit more than 100 tpy of any air pollutant

4. What fees are required by Title V?

Alaska must collect fees from the permitted sources sufficient to cover all direct and indirect costs *to develop* and *administer* the permit program to control affected sources. The 1990 Amendments presume that a minimum fee of \$25 per ton of emission is necessary to adequately fund the new program.

Costs include, but are not limited to, the following activities:

- reviewing the permit application
- enforcing the permit conditions
- emissions (stack) and ambient (outdoor) monitoring
- inspections
- developing necessary legislation, regulations, and guidance
- mathematical modeling analyses
- preparing emissions inventories
- development and administration of a small business assistance program
- information management such as tracking permit applications, compliance certification, and other data entry

5. How was the minimum fee of \$25 per ton of emission derived?

Through an indepth analysis of costs using data from state and local air agencies, EPA calculated that \$25 per ton of emission would be the minimum amount necessary to fund a program as extensive as that which is required by Title V.

The permit fees will need to support many new activities and a significant expansion of existing activities. New required activities include permitting of toxic air pollutant sources and a comprehensive small business assistance program to help the many smaller companies that will be regulated for the first time.

A state that submits a program that collects a smaller fee will have to demonstrate that the lesser amount will be adequate to support all the costs of the program. EPA economists would look very carefully at such a program.

EPA must collect fees if a state does not. Also, a source failing to pay its fee is penalized 50% of the fee amount, plus interest. Federally collected fees go to a special U.S. Treasury fund for permitting activities *not to the state*.

6. What are the timeframes for all these activities?

The Title V permit program is the mechanism that ties together all the diverse requirements of the 1990 Clean Air Act Amendments.

Here's the aggressive schedule for activities:

- November 1991

Within *one year*, EPA must promulgate operating permit regulations. On April 23, 1991 EPA proposed regulations for implementing this program with substantial state government assistance (appeared in Federal Register, May 10, 1991). Missed 11/15/91, but anticipate issuing final regulations by the end of January 1992.

- November 1992

Within *two years*, states must submit to EPA plans for a comprehensive small business assistance program.

- November 1993

Within *three years*, states must submit to EPA their permit program along with the attorney general's evaluation that the state has adequate legal authority to implement the program.

- November 1994

Within *one year* after receiving the program, EPA must approve or disapprove the state's program.

(The state has 180 days to revise and resubmit a program that has been disapproved.)

- November 1994

Industry must submit permit applications by this date.

- November 1997

Permits will be issued over no more than a three year period with at least 1/3 of the permits issued each year.

7. What consequences do the 1990 Amendments provide if a state fails to develop an adequate Title V permit plan?

If a state fails to submit an approvable program by November 1993, EPA *must* apply sanctions against the state within 18 months. If the state does not correct the deficiencies by November 1995, then EPA *must* administer the program including collecting permit fees.

In the past, Congress gave EPA some discretion in when to apply sanctions and when to administer a state program. The 1990 Amendments have taken away *much* of EPA's flexibility. In the case of the permit program, the 1990 Amendments clearly mandate that EPA *must* assure that an adequate program, either state-run or EPA-run, is in effect by 1995.

8. What are the sanctions?

The sanctions available to EPA are to withhold federal highway funds and/or to require new sources to provide 2 to 1 offsets (reduce pollution from existing sources at twice the amount that the new source will emit.) EPA *must* impose one or both of these sanctions within 18 months after November 1993. EPA *must* impose *both* sanctions by November 1995.

9. What would happen if EPA took over Alaska's permit program?

The permit program, including enforcement, would be run from EPA's Regional Office in Seattle. EPA would collect permit fees to pay for its program. Because the federal permittees would not be as familiar with Alaska's industries, the permits are likely to be less flexible and perhaps less responsive to the individual needs of each facility.

Alaska would not be preempted from continuing their own permit program. This could result in double permitting. EPA *and* Alaska could issue permits, collect fees, and conduct enforcement. This would lead to additional costs for industry as well as confusion and uncertainty.

Also, sanctions would have been imposed which could have a negative effect on Alaska's economic growth. EPA would continue to work with Alaska to develop an adequate state program. Eventually, Alaska could assume the permit program and the sanctions would be lifted. Alaska would then be responsible for enforcing and renewing permits that were originally written by EPA staff.

Summary of Consequences of Not Adopting an Approvable Operating Permit Program

A complete, fully-approvable operating permits program must be submitted to EPA by no later than November 15, 1993.

If an approvable program is not submitted by November 15, 1993, EPA may impose any one of the Clean Air Act's sanctions - either a prohibition on federal highway funds statewide or the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

If a permit program is not approved by May 15, 1995, EPA is required to impose the Clean Air Act's sanctions - specifically, a prohibition on federal highway funds statewide and the imposition of a 2-for-1 offset requirement for new or modified major stationary sources in nonattainment areas.

EPA is also authorized to withhold any federal air grant funds which would support permitting and enforcement activities.

If a full program is not approved by November 15, 1995, EPA is required to promulgate and run a federal permitting program. In this situation, sanctions on highway funds and offset requirements will continue and federal air grant funds will be withheld.

If EPA must run a permit program, EPA will charge fees adequate to pay for the cost of the federal program. Federal fees are likely to be much greater than state fees would be.

If EPA must run a permit program, permits will be issued in accordance to EPA regulations and standard procedures. Little consideration can be given to Alaska-specific concerns or needs.

Benefits of a State Program Instead of a Federal Program

State permitting program can be customized to best fulfill the state's needs and environmental policies (provided the minimum federal requirements are met).

State agencies are more in tune with local concerns and can respond better to both the regulated community and the public.

Good operating permits that adequately reflect a source's operating will be a benefit to the source, the state, and the public alike.

Permit revenues will greatly reduce the amount of state general funds needed to support the air program (i.e., the user fee concept).

ATTACHMENTS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 24 1991

OFFICE OF
AIR AND RADIATION

SUMMARY OF EPA PROPOSED OPERATING PERMIT RULE
UNDER THE CLEAN AIR ACT

On April 23, 1991, the Environmental Protection Agency (EPA) proposed a national air pollution control permit program, as required by the Clean Air Act Amendments of 1990. The entire text of the proposal will appear soon in the Federal Register. The public will have 60 days from the date of publication to comment on the proposal. EPA will take the public comments into consideration and issue the final rule in November 1991.

- o Signed into law by President Bush on November 15, 1990, the Clean Air Act Amendments of 1990 include a number of new programs to be implemented by the operating permit program, including an acid rain title that calls for an annual 10 million ton reduction in sulfur dioxide from 1980 levels; a performance-based standard equivalent to "maximum achievable control technology" for air toxics; and an "annual improvement" program for reducing ground-level ozone or "smog."
- o The most important procedural reform -- and arguably the most important of all the new provisions -- in the new Act is the operating permit program in Title V.
- o While the established State Implementation Plan remains the key strategic and planning document for States to use in meeting many air quality goals, the new permit program enhances air quality control by simplifying oversight and enforcement of a source's air pollution control requirements and generating income for States.
- o The new operating permits program makes the Clean Air Act more consistent with other environmental laws, like the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, all of which require permits. The new Clean Air Act's program is modelled after a similar program under the Clean Water Act's Federal National Pollution Discharge Elimination System (NPDES).

- o ~~Over 40 States already have their own laws~~ requiring operating permits for sources that emit pollution into the air. The new program under the Clean Air Act Amendments of 1990 will establish some national consistency by calling on all States to establish and operate a program requiring permits from sources affected under the new Act.
- o In April 1991 EPA signed proposed regulations that specify the minimum elements of a State operating permit program. EPA will issue those regulations in final form in November 1991.

THE TIMETABLE: HOW THE NEW OPERATING PERMIT PROGRAM WILL WORK

- o EPA has one year to issue the final regulations (by November 1991). Then each state has two years to submit to EPA a permit program that meets those regulatory requirements (by November 1993).
- o EPA then has one year to approve or disapprove the program (by November 1994).
- o EPA must levy sanctions against a state that does not submit or enforce a permit program.
- o All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the EPA-approved state program.
- o The state has three years after EPA approval to issue the first round of Title V permits.
- o After the first round of permits has been completed, state permitting authorities will then have 18 months from receipt of a new permit application to issue or deny a new or renewed permit.
- o EPA has 45 days to review each permit and to object to permits that violate the Clean Air Act. If EPA fails to object to a permit that violates the Act or the state implementation plan, citizens have 60 days to petition EPA. EPA must then explicitly grant or deny the permit within 60 days.
- o Judicial review of EPA's decision on a citizen's petition is available in the Federal Courts of Appeals.

BENEFITS OF THE PERMIT PROGRAM

- o Improved Enforcement President Bush promised that his clean air legislation would contain strong enforcement provisions and the new permitting program plays a key role in fulfilling

that promise. The program is the centerpiece for compliance with the entire Act.

- o Under the old Act, pollution control requirements were often ambiguous, incomplete, and scattered throughout numerous hard-to-find provisions of state implementation plans and federal regulations. In many cases applicable state implementation plans did not require sources to submit periodic compliance reports to EPA or the States.
- o The new program will ensure that all of a source's obligations with respect to the Clean Air Act will be contained in one permit document. Sources will file periodic reports identifying the extent to which it has complied with those obligations. These requirements will greatly enhance the ability of state agencies and EPA to track compliance and evaluate its air quality situation.
- o Also, public involvement in reviewing and commenting on draft permits and being able to petition EPA will result in improved enforcement of the Act.
- o More State Resources The new program will greatly augment a state's resources to administer air pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution permitting program.
 - o In the past inadequate state resources have sometimes hampered air pollution control efforts.
 - o Under the new Act States will levy an annual permit fee sufficient to cover all reasonable direct and indirect costs to develop and administer the permit program. That amount must be equal to at least \$25 per ton of each regulated pollutant (not including carbon monoxide), adjusted for inflation. The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. The program can reduce the required fee if it can demonstrate that a lesser amount will support the program.
 - o EPA expects that the permit fee program will raise some \$300 million per year on a nationwide basis. This will significantly increase the funding level of state air pollution control agencies.
 - o If EPA determines that a state's fee program is not approvable, or that a state is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Those fees

would be deposited in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

- o Streamlined Process to Revise Control Requirements. The new program lays the foundation for streamlining the process to revise control requirements for single sources of air pollution. In the past, revisions to a source's pollution control requirements would often require full rulemaking by both the States and EPA to change the state's implementation plan. This process sometimes took years, creating a great deal of uncertainty for the affected source. In the near term, States will still have to submit revised plans if they rely on more stringent permit limits to achieve improved air quality. Eventually, however, the new program proposes that the plans allow for single source revisions to be handled through the permit process that limits EPA to a 45 day review period.

A PUBLIC PROCESS: HOW EPA DEVELOPED THE PERMITS PROPOSAL

- o In order to meet the short timeframe provided in the Act for EPA to issue the final rules (12 months), EPA developed an unprecedented consultation process prior to proposal.
- o EPA conducted a series of preproposal roundtable discussions with representatives from state and local air pollution control agencies, industry, environmental groups, and other federal agencies. This has allowed EPA to address as many contentious issues as possible as early as possible in the regulatory process.
- o With insight from this process, the Agency has been able to construct creative solutions to many of the most complicated aspects of the permit regulations. Also, the process pioneered for this rulemaking illustrates an expedited method for identifying key outside group concerns and resolving internal EPA issues. A similar process is being used for the early reductions of toxic air emissions and is being planned for other rulemakings in the future.
- o This "roundtable discussion" process supplements, but in no way replaces, the formal notice and public comment process that has traditionally been used by EPA. We will, of course, take full public comment on the proposed rule.
- o The public will have 60 days to comment on the proposed rule. EPA will analyze those comments and intends to issue the final rule in November 1991.

THE OPERATING PERMITS PROPOSAL

- o The proposed package addresses concerns raised by state and local agencies, and industry and environmental groups on several key issues, including the scope of the program; flexibility of industry to make operational changes without revising its permit; the relationship between permits and the state implementation plans; the extent to which a source can rely on the permit as a complete statement of all its obligations under the Act (so-called "permit shield"); and other issues.
- o Program Scope: The program will require all major sources of air pollution to obtain an operating permit. The definition of "major" source varies within the Act's classification system for nonattainment areas. For example, while a source would have to emit 100 tons per year or more of ozone-producing volatile organic compounds to be considered a "major" source in most areas of the country, that definition tightens to 50 tons per year in urban areas designated as "serious," and 25 tons per year in those urban areas designated as "severe" under the Act. In the Los Angeles area, a 10 ton per year source of volatile organic compound emissions is considered a "major" source under the Act.

Likewise, the definition of major source under the air toxics provisions in Title III of the new Act defines major sources as those that emit 10 tons per year of any hazardous pollutant or 25 tons per year of a combination of hazardous pollutants.

EPA proposes to defer the applicability of most small (sources not defined as "major") sources for five years. This will help phase in the program in an orderly fashion, as well as reduce the administrative burden on many small businesses, as well as States that must implement the program.

EPA also proposes to define a "source" as all similar emission units under common control at the same plant site. This means that units within a contiguous area and which are in the same major group industrial classification will be considered in whether a source is defined as "major."

The Agency also proposes that a source be subject to the Title V permits requirements for emissions of all pollutants regulated under the Act, once the source is subject to the permit program for one pollutant. [Note: this is consistent with the way EPA has historically operated for construction permits issued under Title I of the Act.] The law does not allow EPA to restrict the applicability of permit requirements to the group of equipment within a plant emitting the particular pollutant for which the source is defined as "major."

- o Operational Flexibility: Title V requires the operating permit program to include provisions for allowing sources to make certain allowable operational changes without revising its operating permit. This requirement is an important factor for assuring that the program does not seriously hinder a source's ability to respond to market factors.

EPA proposes to establish a three-tiered process that tailors the amount of administrative review preceding a proposed change to the environmental effect of the change. These include:

- o Administrative permit amendments which include "typos," address and ownership changes, changes processed under the New Source Review provisions of the Act which have already had public notice and comment, certain changes to interim compliance plan milestones, and other changes having no effect on air quality. These changes can be handled by direct correspondence, copies of which would be supplied to EPA and placed in the public record.
- o Minor permit amendments which include changes to a permit that result in emission increases to the permit, but that do not trigger "modification" requirements under the Act. Sources making minor permit amendments would have to give at least seven days prior notice to the permitting authority and EPA before changing its operations. If the permitting authority does not object to the changes within 7 days, then the change would automatically be approved.
- o Permit modifications which involve significant changes to a source's operation. These changes would be subject to the complete permit review process.
- o Relationship between Permits and State Implementation Plans: Under the Act the permit will contain detailed source-specific requirements. As a result, state implementation plans will need to be less detailed in the future. EPA proposes to change its criteria for future state plans in a way that will allow more flexibility and avoid bureaucratic duplication between the plans and the permit program.
- o Permit Fees: EPA is encouraging States to consider actual, rather than allowable or potential, emissions as the basis for assessing permit fees owed by sources. The use of "actual" emissions will encourage pollution prevention to limit the size of the fee and will provide sources with more flexibility in their permits, while ensuring sufficient resources for the permit program.

- o Permit Shield: EPA is proposing to allow the "shield" (the extent to which an approved permit shields sources from other additional requirements under the Act) to apply to all applicable requirements so long as they are explicitly included in the permit or specifically found to be inapplicable in the permit. The shield does not apply to the acid rain provisions; nor does it shield a source from enforcement in conjunction with preexisting violations of the Act.
- o Federal Enforceability of State Requirements: Because the primary purpose of the Title V permit program is to assure that sources comply with all applicable federally-recognized requirements under the Act, States may not incorporate inappropriate state requirements into the Title V permits. Unless state requirements have been used to demonstrate compliance with state implementation plans, they should not be included in the permit; if they are, they will not be enforceable by EPA or by citizens under the Act's citizen suit provision.

KEY ISSUES FOR SMALL BUSINESS

- o For the first time ever, many small businesses will be required to obtain an approved operating permit for their emission requirements under the federal Clean Air Act.
- o Many small businesses will benefit from EPA's proposal to delay the permit program for 5 years for sources that are not defined as "major." Because of the time required for EPA to issue final rules and States to submit approved programs, this means that the program will not apply to "nonmajor" sources for 7 to 10 or more years. It is important to note, however, that this is not necessarily a blanket deferral for all small businesses. Some small businesses emit enough pollutants to qualify as a major source under the new, lower emissions thresholds mandated in the Act.
- o Separate and apart from this proposed regulation on operating permits, EPA is also setting up a program to help States meet their requirements under section 507 of the new Act. That section calls on States to establish a small business stationary source technical and environmental compliance assistance program. Among other things, these programs will help small businesses determine what requirements are applicable and provide information concerning compliance methods.
- o EPA also plans to encourage States to take advantage of the "general permits" provisions in section 504(d) of the Act when dealing with small business sources. This section allows the

permitting authority to issue a single permit covering numerous similar sources. This could be particularly helpful for different small businesses operating similar processes in a given area.

KEY ISSUES FOR STATES

- o Several States are already initiating efforts to review and modify their state legislative authority regarding the permit program. This is important so that the programs can be set up in a timely fashion. Over 40 States already have programs in place, and need to determine what changes must be made to make their programs (and possibly their legislative authorities) compatible with the new Clean Air Act. Those States without programs may need new legislative authority.
- o EPA's operating permits proposal contains rules that are designed to be flexible so that States can adapt their existing programs to minimum federal requirements.
- o One key benefit associated with the permit program is the fee that sources are required to pay to the permitting agency. The sooner the state program is up and running, the faster the States will be able to take advantage of the revenue-generating aspect of the permit program.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Summary Information on Title V Permit Fee Provisions

FROM: William Houck, *WH*
Senior Program Analyst
Office of Program Management Operations

TO: Regional Air Grant Coordinators
Regions I-X

At the recent national Air Grant Coordinators' meeting in Dallas we discussed the implications of the new Title V permit fee requirements on the role of the regional air grant coordinators (RGCs). At that time the RGCs expressed a common desire to take a more active role in tracking progress and assisting their states in the implementation of their Title V permit fee provisions.

Several regions indicated that many of their states were eager to begin development or modification of their permit fee provisions and requested that EPA provide more detailed guidance on the criteria it would use to determine the acceptability of a state's fee program. Indeed, over the last several months, this office has received several requests from states to assess the approvability of their draft enabling legislation or fee schedule design.

As you know, the proposed rule covering the Title V operating permit program was published in the Federal Register on May 10, 1991 (40 CFR 70; pp. 21712-21781). The public comment period closes July 9, 1991. The preamble accompanying the rule discusses numerous issues which might affect the fee aspects of a state's operating permit program. On some issues the Agency poses three or more alternatives for consideration. Therefore, it would be premature, if not problematic, to issue a guidance document on the elements of an acceptable permit fee program prior to the close of the public comment period.

It is not premature, however, to provide you with general information on the Title V fee provisions and an overview of central fee issues. This memo also apprises you of further efforts underway or proposed to develop more detailed guidance on Agency criteria to determine the acceptability of a state's permit fee program.

Attached are talking points prepared by this office and discussion papers prepared by the Northeast States for Coordinated Air Use Management (NESCAUM) and the National Governors' Association (NGA). The talking points outline general fee program requirements and discuss key fee issues in the preamble. The latter document, "In Brief- Development of State Permit Fee Programs Under the New Clean Air Act," resulted from two national workshops held for state and local officials in early 1991. The workshops were conducted by the National Governors' Association under a grant from the Office of Program Management Operations and incorporated input on key fee issues earlier identified by the joint EPA-State Title V workgroup.

As regards the development of Agency guidance, interest has been expressed in reactivating the permit fee subgroup in order to produce, or oversee the production of, a permit fee national program guidance document for regional and state use. The exact form of the guidance is still open to question (e.g., checklist, Q&As, how-to-workbook, etc.). At a minimum it would cover: (a) the criteria EPA would use in defining minimally acceptable permit fee program elements, (b) recommended legislative authority for fees, (c) describe how EPA would assess the adequacy of a state's determination of its program costs and fee schedule, and (d) articulate eligible and ineligible Title V activities.

Production of the guidance needs to be coordinated with the preparation of the response to comments for the fee aspects of the proposed Title V regulation and preamble. Mike Trutna and Kirt Cox have been approached about how best to accomplish this. To be of the most use the guidance would need to be completed and distributed very soon after the close of the comment period.

Currently myself, Steve Hitte, Bill Hamilton and Allen Basala of OAQPS and Carla Pierce of Region IV are interested in participating in this effort. If you or another representative of your region would like to participate in this effort please contact me as soon as possible at FTS 382-7754.

Attachments

cc: (w/o attachments)

Allen Basala, OAQPS
Air Branch Chiefs, Regions I-X
Rob Corry, Reg. VIII
Kirt Cox, OAQPS
Bill Hamilton, OAQPS

Steve Hitte, OAQPS
Jerry Kurtzweg, OPMO
Carla Pierce, Reg. IV
Paul Rasmussen, OPMO
Pat Reisback, Reg. VIII
Mike Shapiro, OAR
Mike Trutna, OAQPS
Tom Williams, OAQPS
Tim Williamson, OPAR

Title V Permit Fee General Information

Process

- o The procedural backbone of new CAA is Title V operating permit program. Each permit shall contain all requirements and emission limitations applicable to a source. This should enable EPA and states to more precisely track compliance and attainment progress rather than solely rely on SIP milestones. Title V effectively integrates the various titles of the Act.
- o One year after enactment EPA must publish final regulations (by 11/91). Three years after enactment states must submit their operating permit programs (11/93). EPA must act on the state submittal within one year (11/94). If EPA disapproves the state's program in whole or in part, the state has 180 days to correct any deficiencies or it may be subject to section 179 (b) sanctions (highway ban and 2 to 1 new construction offsets). EPA may also promulgate an operating permit program and charge fees in lieu of state action.
- o A covered source must submit an application within twelve months after the date EPA approves or promulgates a program applicable to that source. For the initial round of permit applications to be submitted, the state must act on at least 1/3 per year over a three year period.

Source Applicability

- o Affected sources include: major stationary sources as defined in section 302, and in nonattainment areas depending upon the area's severity, as defined in Title I, part D of the Act; section 111 NSPS sources; section 112 sources emitting any HAP with the potential to emit 10 TPY or multiple HAPs at 25 TPY; Title IV acid rain sources; any NESHAP source; PSD/NSR sources; and any other stationary source designated by final EPA rule.
- o EPA has proposed to allow a state to defer any source, except major sources and acid rain sources, from coverage under the program for a period not to exceed five years, from the point of program approval. EPA is proposing this in consideration of a possible permit processing overload on states in the initial years of the program. A deferral could not be granted, however, if it jeopardized SIP obligations.

Applicable Activities

- o The operating permit program is to be self-supporting by charging fees to all affected sources. Sources are meant to pay their fair share for services rendered by the permitting authority. Fees must cover all direct and indirect costs incurred by the permitting authority in developing and administering the permit program. Various estimates of the percentage of a state's total air program costs attributable to permitting-related activity have ranged from 50 to 75%.
- o In keeping with Congressional intent, EPA has taken a broad reading of the applicable activities covered by the statute. Fees collected must cover all indirect and direct costs incurred by the permitting authority, as well as other agencies incurring costs in the permitting process. This includes, for each source being permitted, all costs related to: permit program planning and development; permit processing and issuance; permit oversight and compliance (but not litigation); monitoring, modeling, analyses and demonstrations; preparing inventories and tracking emissions; related information management needs; SIP approval; administration and overhead; and section 507 small business assistance program costs.
- o States may also reasonably charge for that portion of the source's area-wide or network costs related to functions like ambient monitoring. States have requested that EPA provide more information on how these costs might be fairly apportioned and provide more specific information on what program activities EPA considers to appropriate for Title V cost recovery.
- o Title V fees cannot be assessed to mobile sources nor can Title V fees be expended on mobile source activity. Title V fee revenue can only be used to offset the costs related to permitting Title V sources. Fees cannot be used for other unrelated air work or other program purposes.

Fee Determination

- o The permit fee program requirements have been designed to accommodate a variety of state approaches (owing to the existence of numerous well-established state and local permit fee programs). State fee program schedules can be based on any one or a combination of factors (such as workload, cost accounting, level of actual or allowable emissions, arbitrary

levels per type of source or source category, risk, etc.). However, states must design or modify their fee schedules so that, at a minimum, they collect in the aggregate the equivalent of at least \$25 per ton per pollutant per year from each source, adjusted by the CPI for inflation each year (with 1990 as the base year), up to 4000 tons per year per pollutant per source.

- o Should a state choose the emissions-based fee approach outlined in Title V, it is not required to charge fees on pollutant emissions greater than 4000 tons per year per pollutant although it may choose to do so. Criteria pollutants (except CO) and air toxics, when regulated, are subject to these requirements. There is some question as to what "when regulated" means (i.e., upon enactment, upon EPA promulgation, upon state regulation in advance, etc.).
- o States may also charge different amounts per ton per pollutant or per source category as long as the "presumptive norm" amount (total actual emissions of affected sources x CPI-adjusted cost per ton) is collected in the aggregate.
- o The \$25 per ton "presumptive norm" approach is meant to be a benchmark to enable EPA to determine the adequacy of a state's program. EPA believes that this fee rate should assure the minimum level of support necessary for a state. EPA is basing its analysis on actual emissions. Beyond using this as a test for adequacy, states may opt for this approach as their fee schedule or may submit their own form of fee schedule as noted above. EPA only requires that the state program collect, in the aggregate, at least the equivalent \$25 per ton amount, adjusted for inflation. If a state submits a program designed to recover less than this amount it must undergo more detailed EPA scrutiny to determine its approvability. EPA has yet to define how rigorous a demonstration it will require in these circumstances.
- o No Title V source can be exempted from paying a fee without the Administrator's approval. Due to considerations of undue economic impact some small business sources are likely to receive some relief from the fee requirements. This could take the form of a reduced fee, a nominal fee or a fee waiver.
- o Affected sources failing to pay their fee will be subject to additional fines and penalties pursuant to section 502(b)(3)(C)(ii).

Fee Program Administration

- o Only the permitting authority and other agencies contributing to the permitting effort, can receive the benefits of the fee collection. Fees should go to those agencies incurring the permitting costs. Ideally a state should have a fund set up to receive its permit fee revenue and the permitting authority should be able to directly draw upon the fund to cover documented Title V permitting-related expenses. EPA is taking comment on whether it would be acceptable if permitting agencies were to receive a guarantee of corresponding general fund reimbursement in lieu of direct receipt of fees in those situations where a state's constitution prohibits the permitting authority from directly receiving fee revenue.
- o Some state or local agencies may also incur permitting costs though another agency issues the permit. In other instances, local agencies may exercise a portion of the permitting authority for their jurisdiction or for particular source categories. EPA is proposing that memoranda of agreement be reached by all affected agencies outlining responsibilities and reimbursements before a state submits its program to EPA for approval.
- o Some states may need additional administrative and legislative authority in order to have their Title V program approved. This ideally includes the permitting agency's ability to: charge, collect and expend fees as well as to administratively modify fee schedules and retain or rebate any fee surplus from year to year.
- o In designing or modifying their fee programs states need to pay particular attention to balancing workload demands and staffing requirements.
- o States are urged to : (1) design a fee program which is supported by a variety of fee approaches in order to avoid falling prey to an economic downturn experienced by any one particular source category or industry, (2) be sensitive to issues of fee equity among sources and source categories. It has also been suggested that, as appropriate and as needed, states use the opportunity presented by Title V to comprehensively revise their overall user fee program requirements.
- o In the past, using estimated emissions, EPA has estimated that Title V can generate \$300-350 million in fees nationwide in its initial years. This is a conservative estimate covering

about 9,000 sources. As more sources become subject to the Title V requirements (estimated to be as many as 34,000) recovered costs could be higher. By way of contrast, the section 105 grant program is currently funded at about \$160 million with states estimated to contribute another \$220 million. To successfully implement the Clean Air Act could ultimately cost twice the 1990 level of federal and nonfederal expenditures. As noted earlier various estimates of the percentage of total air program costs attributable to permitting-related activity have ranged from 50 to 75%.

- o While the existence of a section 507 technical assistance program for small businesses affected by the Act is not a condition for approval of a state's operating permit program, Title V permit fees must pay for the development and operation of a such a program.

Data Management

- o EPA and the states are also investigating what permit and program data should be collected and what type of data management system should be developed. Howard Wright (FTS 629-5584) of OAQPS' National Air Data Branch is heading a workgroup to resolve these questions.

State and Local Agency Concerns

- o Some issues of concern raised by state and local officials in the recent EPA-NGA sponsored workshops on permit fee program development (and raised in EPA's proposed part 70 rule and preamble) are:
 - the likelihood that the state legislature will withdraw significant general fund revenue support when permit fees take affect;
 - how to cover program development or ramp-up costs incurred by a state (Note: EPA, in addition to targeting \$11 million in section 105 funds over the last two years for permit program development, has suggested: two-stage fees- a registration fee plus the actual permit fee; floatation of state bonds; additional section 105 grants; a one-time state legislative general fund investment to be reimbursed with interest as fees are later generated; etc.);

- the ability of state to use surplus fee revenue for purposes other than Title V activity;
 - many existing state and local programs rely upon fee revenue from the small sources that EPA has suggested be deferred from program applicability for up to five years;
 - local agency concern about states' usurpation of their authority and sources of program support;
 - the ability to attract and retain qualified staff (EPA has suggested a reinvigoration of the state assignee program) as well as needed training; and
 - the relationship of permit fees to section 105 grants (Note: EPA has asked for comments on extending the maintenance of effort concept to fees).
- o States have requested additional Title V assistance in the form of: model legislation, additional resources, guidance on what criteria EPA will use to determine an acceptable program, training, and overall assistance from EPA regional offices.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

THE CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY MATERIALS

U.S. EPA
November 15, 1990

CLEAN AIR ACT AMENDMENTS OF 1990

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The Clean Air Act Amendments of 1990

In June 1989 President Bush proposed sweeping revisions to the Clean Air Act. Building on Congressional proposals advanced during the 1980s, the President proposed legislation designed to curb three major threats to the nation's environment and to the health of millions of Americans: acid rain, urban air pollution, and toxic air emissions. The proposal also called for establishing a national permits program to make the law more workable, and an improved enforcement program to help ensure better compliance with the Act.

By large votes, both the House of Representatives (401-21) and the Senate (89-11) passed Clean Air bills that contained the major components of the President's proposals. Both bills also added provisions requiring the phaseout of ozone-depleting chemicals, roughly according to the schedule outlined in international negotiations (Revised Montreal Protocol). The Senate and House bills also added specific research and development provisions, as well as detailed programs to address accidental releases of toxic air pollutants.

A joint conference committee met from July to October 1990 to iron out differences in the bills and both Houses overwhelmingly voted out the package recommended by the Conferees. The President received the Bill from Congress on November 14, 1990 and signed it on November 15, 1990.

Several progressive and creative new themes are embodied in the Amendments; themes necessary for effectively achieving the air quality goals and regulatory reform expected from these far-reaching amendments. Specifically the new law:

- o encourages the use of market-based principles and other innovative approaches, like performance-based standards and emission banking and trading;
- o provides a framework from which alternative clean fuels will be used by setting standards in the fleet and California pilot program that can be met by the most cost-effective combination of fuels and technology;
- o promotes the use of clean low sulfur coal and natural gas, as well as innovative technologies to clean high sulfur coal through the acid rain program;
- o reduces enough energy waste and creates enough of a market for clean fuels derived from grain and natural gas to cut dependency on oil imports by one million barrels/day;
- o promotes energy conservation through an acid rain program that gives utilities flexibility to obtain needed emission reductions through programs that encourage customers to conserve energy.

With these themes providing the framework for the Clean Air Act amendments and with our commitment to implement the new law quickly, fairly and efficiently, Americans will get what they asked for: a healthy, productive environment, linked to sustainable

economic growth and sound energy policy.

**Title I: Provisions for Attainment
and Maintenance of National Ambient
Air Quality Standards**

Although the Clean Air Act Of 1977 brought about significant improvements in our Nation's air quality, the urban air pollution problems of ozone (smog), carbon monoxide (CO) and particulate matter (PM-10) persist. Currently, over 100 million Americans live in cities which are out of attainment with the with the public health standards for ozone.

The most widespread and persistent urban pollution problem is ozone. The causes of this and the lesser problem of carbon monoxide (CO) and particulate matter (PM-10) pollution in our urban areas are largely due to the diversity and number of urban air pollution sources. One component of urban smog - hydrocarbons - comes from automobile emissions, petroleum refineries, chemical plants, dry cleaners, gasoline stations, house painting and printing shops. Another key component - nitrogen oxides - comes from the combustion of fuel for transportation, utilities and industries.

While there are other reasons for continued high levels of ozone pollution, such as growth in the number of stationary sources of hydrocarbons and continued growth in automobile travel, perhaps the most telling reason is that the remaining sources of hydrocarbons are also the most difficult to control. These are the small sources - generally those that emit less than 100 tons of hydrocarbons per year. These sources, such as auto body shops and dry cleaners, may individually emit less than 10 tons per year, but collectively emit many hundreds of tons of pollution.

The Clean Air Act Amendments of 1990 create a new, balanced strategy for the Nation to attack the problem of urban smog. Overall, the new law reveals the Congress's high expectations of the states and the Federal government. While it gives states more time to meet the air quality standard - up to 20 years for ozone in Los Angeles -, it also requires states to make constant formidable progress in reducing emissions. It requires the Federal government to reduce emissions from cars, trucks, and buses; from consumer products such as hair spray and window washing compounds; and from ships and barges during loading and unloading of petroleum products. The Federal government must also develop the technical guidance that States need to control stationary sources.

The new law addresses the urban air pollution problems of ozone (smog), carbon monoxide (CO), and particulate matter (PM-10). Specifically, it clarifies how areas are designated and redesignated "attainment." It also allows EPA to define the boundaries of "nonattainment" areas: geographical areas whose air quality does not meet Federal air quality standards designed to protect public health.

The new law also establishes provisions defining when and how the federal government can impose sanctions on areas of the country that have not met certain conditions.

For the pollutant ozone, the new law establishes nonattainment area classifications ranked according to the severity of the areas's air pollution problem. These classifications are marginal, moderate, serious, severe and extreme. EPA assigns each nonattainment area one of these categories, thus triggering varying requirements the area must comply with in

order to meet the ozone standard.

As mentioned, nonattainment areas will have to implement different control measures, depending upon their classification. Marginal areas, for example, are the closest to meeting the standard. They will be required to conduct an inventory of their ozone-causing emissions and institute a permit program. Nonattainment areas with more serious air quality problems must implement various control measures. The worse the air quality, the more controls areas will have to implement.

The new law also establishes similar programs for areas that do not meet the federal health standards for the pollutants carbon monoxide and particulate matter. Areas exceeding the standards for these pollutants will be divided into "moderate" and "serious" classifications. Depending upon the degree to which they exceed the carbon monoxide standard, areas will be required to implement programs introducing oxygenated fuels and/or enhanced emission inspection programs, among other measures. Depending upon their classification, areas exceeding the particulate matter standard will have to implement either reasonably available control measures (RACM) or best available control measures (BACM), among other requirements.

Title II: Provisions Relating to Mobile Sources

While motor vehicles built today emit fewer pollutants (60% to 80% less, depending on the pollutant) than those built in the 1960s, cars and trucks still account for almost half the emissions of the ozone precursors VOCs and NOx, and up to 90% of the CO emissions in urban areas. The principal reason for this problem is the rapid growth in the number of vehicles on the roadways and the total miles driven. This growth has offset a large portion of the emission reductions gained from motor vehicle controls.

In view of the unforeseen growth in automobile emissions in urban areas combined with the serious air pollution problems in many urban areas, the Congress has made significant changes to the motor vehicle provisions on the 1977 Clean Air Act.

The Clean Air Act of 1990 establishes tighter pollution standards for emissions from automobiles and trucks. These standards will reduce tailpipe emissions of hydrocarbons, carbon monoxide, and nitrogen oxides on a phased-in basis beginning in model year 1994. Automobile manufacturers will also be required to reduce vehicle emissions resulting from the evaporation of gasoline during refueling.

Fuel quality will also be controlled. Scheduled reductions in gasoline volatility and sulfur content of diesel fuel, for example, will be required. New programs requiring cleaner (so-called "reformulated" gasoline) will be initiated in 1995 for the nine cities with the worst ozone problems. Other cities can "opt in" to the reformulated gasoline program. Higher levels (2.7%) of alcohol-based oxygenated fuels will be produced and sold in 41 areas during the winter months that exceed the federal standard for carbon monoxide.

The new law also establishes a clean fuel car pilot program in California, requiring the phase-in of tighter emission limits for 150,000 vehicles in model year 1996 and 300,000 by the model year 1999. These standards can be met with any combination of vehicle technology and cleaner fuels. The standards become even stricter in 2001. Other states

can "opt in" to this program, though only through incentives, not sales or production mandates.

Further, twenty-six of the dirtiest areas of the country will have to adopt a program limiting emissions from centrally-fueled fleets of 10 or more vehicles beginning as early as 1998.

Title III: Air Toxics

Toxic air pollutants are those pollutants which are hazardous to human health or the environment but are not specifically covered under another portion of the Clean Air Act. These pollutants are typically carcinogens, mutagens, and reproductive toxins. The Clean Air Act Amendments of 1977 failed to result in substantial reductions of the emissions of these very threatening substances. In fact, over the history of the air toxics program only seven pollutants have been regulated.

We know that the toxic air pollution problem is widespread. Information generated from The Superfund "Right to Know" rule (SARA Section 313) indicates that more than 2.7 billion pounds of toxic air pollutants are emitted annually in the United States. EPA studies indicate that exposure to such quantities of air toxics may result in 1000 to 3000 cancer deaths each year.

The Clean Air Act of 1990 offers a comprehensive plan for achieving significant reductions in emissions of hazardous air pollutants from major sources. Industry reports in 1987 suggest that an estimated 2.7 billion pounds of toxic air pollutants were emitted into the atmosphere, contributing to approximately 300-1500 cancer fatalities annually. The new law will improve EPA's ability to address this problem effectively and it will dramatically accelerate progress in controlling major toxic air pollutants.,

The new law includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants within one year after the new law is passed. The list of source categories must include: 1) major sources emitting 10 tons/year of any one, or 25 tons/year of any combination of those pollutants; and, 2) area sources (smaller sources, such as dry cleaners).

EPA then must issue "Maximum Achievable Control Technology" (MACT) standards for each listed source category according to a prescribed schedule. These standards will be based on the best demonstrated control technology or practices within the regulated industry, and EPA must issue the standards for forty source categories within two years of passage of the new law. The remaining source categories will be controlled according to a schedule that ensures all controls will be achieved within 10 years of enactment. Companies that voluntarily reduce emissions according to certain conditions can get a six year extension from meeting the MACT requirements.

Eight years after MACT is installed on a source, EPA must examine the risk levels remaining at the regulated facilities and determine whether additional controls are necessary to reduce unacceptable residual risk.

The new law also establishes a Chemical Safety Board to investigate accidental releases

of extremely hazardous chemicals. Further, the new law requires EPA to issue regulations controlling air emissions from municipal, hospital and other commercial and industrial incinerators.

Title IV: Acid Deposition Control

As many know, acid rain occurs when sulfur dioxide and nitrogen oxide emissions are transformed in the atmosphere and return to the earth in rain, fog or snow. Approximately 20 million tons of SO₂ are emitted annually in the United States, mostly from the burning of fossil fuels by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The new Clean Air Act will result in a permanent 10 million ton reduction in sulfur dioxide (SO₂) emissions from 1980 levels. To achieve this, EPA will allocate allowances in two phases permitting utilities to emit one ton of sulfur dioxide. The first phase, effective January 1, 1995, requires 110 powerplants to reduce their emissions to a level equivalent to the product of an emissions rate of 2.5 lbs of SO₂/mmBtu x an average of their 1985-1987 fuel use. Plants that use certain control technologies to meet their Phase I reduction requirements may receive a two year extension of compliance until 1997. The new law also allows for a special allocation of 200,000 annual allowances per year each of the 5 years of phase I to powerplants in Illinois, Indiana and Ohio.

The second phase, becoming effective January 1, 2000, will require approximately 2000 utilities to reduce their emissions to a level equivalent to the product of an emissions rate of 1.2 lbs of SO₂/mm Btu x the average of their 1985-1987 fuel use. In both phases, affected sources will be required to install systems that continuously monitor emissions in order to track progress and assure compliance.

The new law allows utilities to trade allowances with their systems and/or buy or sell allowances to and from other affected sources. Each source must have sufficient allowances to cover its annual emissions. If not, the source is subject to a \$2,000 /ton excess emissions fee and a requirement to offset the excess emissions in the following year.

Nationwide, plants that emit SO₂ at a rate below 1.2 lbs/mmBtu will be able to increase emissions by 20% between a baseline year and 2000. Bonus allowances will be distributed to accommodate growth by units in states with a statewide average below 0.8 lbs/mmBtu. Plants experiencing increases in their utilization in the last five years also receive bonus allowances. 50,000 bonus allowances per year are allocated to plants in 10 midwestern states that make reductions in Phase I. Plants that repower with a qualifying clean coal technology may receive a 4 year extension of the compliance date for Phase II emission limitations.

The new law also includes specific requirements for reducing emissions of nitrogen oxides, based on EPA regulations to be issued not later than mid-1992 for certain boilers and 1997 for all remaining boilers.

Title V: Permits

The new law introduces an operating permits program modelled after a similar

program under the Federal National Pollution Elimination Discharge System (NPDES) law. The purpose of the operating permits program is to ensure compliance with all applicable requirements of the Clean Air Act and to enhance EPA's ability to enforce the Act. Air pollution sources subject to the program must obtain an operating permit, states must ~~develop and implement the program, and EPA must issue permit program regulations,~~ review each state's proposed program, and oversee the state's efforts to implement any approved program. EPA must also develop and implement a federal permit program when a state fails to adopt and implement its own program.

This program--in many ways the most important procedural reform contained in the new law--will greatly strengthen enforcement of the Clean Air Act. It will enhance air quality control in a variety of ways. First, adding such a program updates the Clean Air Act, making it more consistent with other environmental statutes. The Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide, and Rodenticide Act all require permits. The 1977 Clean Air laws also requires a construction permit for certain pollution sources, and about 35 states have their own laws requiring operating permits.

The new program clarifies and makes more enforceable a source's pollution control requirements. Currently, a source's pollution control obligations may be scattered throughout numerous hard-to-find provisions of state and federal regulations, and in many cases, the source is not required under the applicable State Implementation Plan to submit periodic compliance reports to EPA or the states. The permit program will ensure that all of a source's obligations with respect to its pollutants will be contained in one permit document, and that the source will file periodic reports identifying the extent to which it has complied with those obligations. Both of these requirements will greatly enhance the ability of Federal and state agencies to evaluate its air quality situation.

In addition, the new program will provide a ready vehicle for states to assume administration, subject to federal oversight, of significant parts of the air toxics program and the acid rain program. And, through the permit fee provisions, discussed below, the program will greatly augment a state's resources to administer pollution control programs by requiring sources of pollution to pay their fair share of the costs of a state's air pollution program.

Under the new law, EPA must issue program regulations within one year of enactment. Within three years of enactment, each state must submit to EPA a permit program meeting these regulatory requirements. After receiving the state submittal, EPA has one year to accept or reject the program. EPA must levy sanctions against a state that does not submit or enforce a permit program.

Each permit issued to a facility will be for a fixed term of up to five years. The new law establishes a permit fee whereby the state collects a fee from the permitted facility to cover reasonable direct and indirect costs of the permitting program.

All sources subject to the permit program must submit a complete permit application within 12 months of the effective date of the program. The state permitting authority must determine whether or not to approve an application within 18 months of the date it receives the application.

EPA has 45 days to review each permit and to object to permits that violate the Clean

Air Act. If EPA fails to object to a permit that violates the Act or the implementation plan, any person may petition EPA to object within 60 days following EPA's 45-day review period, and EPA must grant or deny the permit within 60 days. Judicial review of EPA's decision on a citizen's petition can occur in the Federal court of appeals.

Title VI: Stratospheric Ozone and Global Climate Protection

The new law builds on the market-based structure and requirements currently contained in EPA's regulations to phase out the production of substances that deplete the ozone layer. The law requires a complete phase-out of CFCs and halons with interim reductions and some related changes to the existing Montreal Protocol, revised in June 1990.

Under these provisions, EPA must list all regulated substances along with their ozone-depletion potential, atmospheric lifetimes and global warming potentials within 60 days of enactment.

In addition, EPA must ensure that Class I chemicals be phased out on a schedule similar to that specified in the Montreal Protocol -- CFC's, halons, and carbon tetrachloride by 2000; methyl chloroform by 2002 -- but with more stringent interim reductions. Class II chemicals (HCFC's) will be phased out by 2030. Regulations for class I chemicals will be required within 10 months, and Class II chemical regulations will be required by December 31, 1999.

The law also requires EPA to publish a list of safe and unsafe substitutes for Class I and II chemicals and to ban the use of unsafe substitutes.

The law requires nonessential products releasing Class I chemicals to be banned within 2 years of enactment. In 1994 a ban will go into effect for aerosols and non-insulating foams using Class II chemicals, with exemptions for flammability and safety. Regulations for this purpose will be required within one year of enactment, to become effective two years afterwards.

Title VII: Provisions Relating to Enforcement

The Clean Air Act of 1990 contains a broad array of authorities to make the law more readily enforceable, thus bringing it up to date with the other major environmental statutes.

EPA has new authorities to issue administrative penalty orders up to \$200,000, and field citations up to \$5000 for lesser infractions. Civil judicial penalties are enhanced. Criminal penalties for knowing violations are upgraded from misdemeanors to felonies, and new criminal authorities for knowing and negligent endangerment will be established.

In addition, sources must certify their compliance, and EPA has authority to issue administrative subpoenas for compliance data. EPA will also be authorized to issue compliance orders with compliance schedules of up to one year.

The citizen suit provisions have also been revised to allow citizens to seek penalties against violators, with the penalties going to a U.S. Treasury fund for use by EPA for compliance and enforcement activities. The government's right to intervene is clarified and citizen plaintiffs will be required to provide the U.S. with copies of pleadings and draft settlements.

Other Titles

The Clean Air Act Amendments of 1990 continue the federal acid rain research program and contain several new provisions relating to research, development and air monitoring. They also contain provisions to provide additional unemployment benefits through the Job Training Partnership Act to workers laid off as a consequence of compliance with the Clean Air Act. The Act also contains provisions to improve visibility near National Parks and other parts of the country.

CLEAN AIR ACT AMENDMENTS OF 1990

SUMMARY OF KEY TITLES

**U.S. EPA
November 15, 1990**

Title I - Nonattainment

- o Divides cities into six categories for ozone (3 yrs. - marginal, 6 yrs. moderate, 9 yrs serious, 15 - 17 yrs severe, 20 yrs extreme) and 2 categories for Carbon monoxide.
- o % Reduction: Applies to ozone only. Moderate areas and above must achieve 15% VOC reduction within 6 years of enactment. For serious and above, average of 3% VOC per year thereafter until attainment. Annual VOC and NOx reductions as needed to attain. The 15% and 3% is from an adjusted baseline and all reductions except those from existing FMVCP, gasoline volatility, RACT and I/M fixups are creditable. Possible exemption from % reduction based on technological feasibility, if SIP adopts measures similar to those in next higher category and if all feasible measures are adopted in the first 6 years. NOx substitution possible after 6 years.
- o Prescribed Measures: Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit. All ozone nonattainment areas correct existing RACT rules and I/M programs. Moderate areas add basic I/M, Stage II and RACT on new and existing CTG and 100 ton non-CTG sources, and make an attainment demonstration. Serious areas add enhanced I/M, RACT on 50 ton non-CTG sources, a fleet vehicle program in areas of 250,000 and up, TCMs needed to offset vehicle growth, special rules for source modifications, and photochemical modeling attainment demonstration. Severe areas add RACT for 25 ton VOC non-CTG sources and provisions requiring adoption of TCMs, if necessary to meet progress requirements and employer trip reduction provisions. Extreme areas add RACT on 10 ton sources, eliminate feasibility exemption from 15% and 3%, add NOx reductions from clean fuels or advanced technology, have peak hour traffic controls; can get SIP approved based on anticipated new technology.
- o Federal Measures: EPA issues 11 new CTGs plus CTGs for aerospace coatings, shipbuilding and repair; marine vessels rule and consumer products rules. Requires an ACT for 25 ton NOx and VOC sources.
- o Sanctions: Grace period of 18 months to cure planning failure. Then must apply 1 of 2 sanctions (modified highway ban or 2:1 offset). Air grants are available. There are Existing construction bans remain, but no new ones.
- o Federal Implementation Plans (FIPs): Within 2 years of state failure to develop an adequate SIP, mandatory attainment FIPs required.
- o Transport: Sets up 11-state NE transport commission. Requires transport states to adopt RACT for existing and new CTGs, RACT on major (50-ton) non-CTG sources, enhanced I/M in MSAs above 100,000 and Stage II or equivalent. No opt-out of VOC measures. Major NOx sources meet same requirements as major VOC sources unless EPA finds no benefit.
- o CO and PM-10: Wintertime oxygenated fuels in all CO areas >9.4 ppm. Areas >12.7 ppm add VMT forecast, enhanced I/M and demonstrate attainment. Serious CO areas add TCMs as in severe ozone areas. PM-10 areas initially designated nonattainment must attain by 12/94 (possible extension to 2001). Moderate areas adopt RACM; serious areas add BACM. Serious CO and PM-10 areas adopt measures to achieve 5% reduction per year effective upon failure to attain.

Title II - Mobile Sources

- o Tailpipe Standards: Cars and light trucks: Tier I is 0.25 NMHC, 3.4 CO and 0.4 NOx. Possible Tier II is 0.125 NMHC, 1.7 CO and 0.2 NOx. Tier I phased in 1994-1996. Effectiveness of Tier II in 2004 depends on EPA study of need, feasibility, and cost-effectiveness. Useful life extended to 100,000 miles for most emission standards.
- o Cold Temperature CO: Phase-in beginning in 1994 of 10 gpm at 20 degrees F for cars. A 3.4 gpm standard takes effect in 2002 if 6 or more cities are in CO nonattainment in mid-1997.
- o Clean Fuels: In 1998 all centrally-fueled fleets in 26 areas must buy 30% of the new vehicles that meet standards of 0.075 gpm VOC and 0.2 NOx; no toxic standards. If such vehicles are not being offered for sale in California the program is delayed possibly until 2001. Purchase requirements increase to 70% in 3rd year.

In 1996, 150,000 clean fuel cars are required to be sold in California; increasing to 300,000 per year by 1999. These cars must meet a standard of 0.125 gpm VOC. Phase 2 begins in 2001 with cars meeting fleet-type standards. Other cities can opt-in to program.
- o Reformulated Gasoline: Beginning in 1995 reformulated gasoline is required in the 9 worst ozone areas; minimum oxygen content (2.0%), benzene (1.0%), aromatics (25%), VOCs and toxics reductions (15%, up to 20-25% in 2000). Cities can opt-in.
- o Oxyfuels: Beginning in 1992, gas in 41 CO areas must have 2.7% oxygen level in winter months.
- o Urban Buses: Delays diesel particulate standard from 1991 to 1993. Beginning in 1994 all buses must meet a PM standard of 0.05 g/hphr (if not feasible EPA will set at 0.07). Based on performance EPA may implement a low polluting bus program in larger cities.
- o Refueling: After consultation with DOT on safety issues, EPA required to promulgate onboard controls. Stage II requirements vary by classification.
- o Volatility: 9 psi in most of the country beginning 1992; EPA can set lower levels in warmer areas, but cannot require any standard below 9 psi in attainment areas.
- o Desulfurization: Diesel fuel highway use limited to 0.05% sulfur by weight.
- o Air Toxics: Based on a study of mobile source-related toxics, EPA will regulate, at a minimum, emissions of benzene and formaldehyde.
- o Non-road Engines: Based on a study, EPA may regulate any category of non-road engines that contribute to urban air pollution. At a minimum, EPA must control locomotive emissions.
- o Lead in Gasoline: As of January 1, 1996, lead banned from use in motor vehicle fuel.

Title III - Air Toxics

- o List of Pollutants and Source Categories: Law lists 189 hazardous air pollutants. One year after enactment EPA lists source categories (industries) which emit one or more of the 189 pollutants. In 2 years, EPA must publish a schedule for regulation of the listed source categories.
- o Maximum Achievable Control Technology (MACT): MACT regulations are emission standards based on the best demonstrated control technology and practices in the regulated industry. MACT for existing sources must be as stringent as the average control efficiency or the best controlled 12% of similar sources excluding sources which have achieved the LAER within 18 months prior to proposal or 30 months prior to promulgation. MACT for new sources must be as stringent as the best controlled similar source. For all listed major point sources, EPA must promulgate MACT standards - 40 source categories plus coke ovens within 2 years and 25% of the remainder of the list within 4 years. An additional 25% in 7 years and the final 50% in 10 years.
- o Residual Risk: Eight years after MACT standards are established (except for those established 2 years after enactment), standards to protect against the residual health and environmental risks remaining must be promulgated, if necessary. The standards would be triggered if more than one source in a category exceeds a maximum individual risk of cancer of 1 in 1 million. These residual risk regulations would be based on current CAA language that specifies that standards must achieve an "ample margin of safety".
- o Accidental Releases: Standards to prevent against accidental release of toxic chemicals are required. EPA must establish a list of at least 100 chemicals and threshold quantities. All facilities with these chemicals on site in excess of the threshold quantities would be subject to the regulations which would include hazard assessments and risk management plans. An independent chemical safety board is established to investigate major accidents, conduct research, and promulgate regulations for accidental release reporting.
- o Other Issues: A study of area source emissions and a strategy to reduce the cancer incidence from these emissions by 75% is required. Regulation of source categories accounting for 90% of the emissions of the 30 most hazardous area source pollutants. Coke ovens can receive an extension of the residual risk standards until 2020 in exchange for compliance with stringent emission standards. Air toxics regulations of utilities will be based on the results of toxic emissions studies. A study of deposition to the Great Lakes, Lake Champlain, Chesapeake Bay and coastal waters will determine whether additional regulation is needed. Regulations are required for all types of municipal waste combustors and an exclusion for facilities which burn 30% or less municipal waste.

Title IV - Acid Rain

- o **S02 Reduction:** A 10 million ton reduction from 1980 levels, primarily from utility sources. Caps annual utility S02 emissions at approximately 8.9 million tons by 2000.
- o **Allowances:** S02 reductions are met through an innovative market-based system. Affected sources are allocated allowances based on required emission reductions and past energy use. An allowance is worth one ton of S02 and it is fully marketable. Sources must hold allowances equal to their level of emissions or face a \$2000/excess ton penalty and a requirement to offset excess tons in future years. EPA will also hold special sales and auctions of allowances.
- o **Phase I:** S02 emission reductions are achieved in two phases. Phase I allowances are allocated to large units of 100 MW or greater that emit more than 2.5 lb/mmBtu in an amount equal to 2.5 lb/mmBtu x their 1985-87 energy usage (baseline). Phase I must be met by 1995 but units that install certain control technologies may postpone compliance until 1997, and may be eligible for bonus allowances. Units in Illinois, Indiana or Ohio are allotted a pro rata share of an additional 200,000 allowances annually during Phase I.
- o **Phase II:** Phase II begins in 2000. All utility units greater than 25 MW that emit at a rate above 1.2 lbs/MMBtu will be allocated allowances at that rate x their baseline fuel consumption. Cleaner plants generally will be provided with 20% more allowances than would have been received based on their baseline consumption. 50,000 bonus allowances are allocated to plants in 10 midwestern states that make reductions in Phase I.
- o **NOx:** Utility NOx reductions will help to achieve a 2 million ton reduction from 1980 levels. Reductions will be accomplished through required EPA performance standards for certain existing boilers in Phase I, and others in Phase II. EPA will develop a revised NOx NSPS for utility boilers.
- o **Repowering:** Units repowering with qualifying Clean Coal Technologies receive a 4 year extension for Phase II compliance. Such units may be exempt from New Source Review requirements and New Source Performance Standards.
- o **Energy Conservation & Renewable Energy:** These projects may be allocated a portion of up to 300,000 incentive allowances.
- o **Clean Coal Technologies (CCT):** Certain CCT demonstration projects may be exempt from NSPS, NSR, and Title I nonattainment requirements.
- o **Monitoring:** Requires continuous emission monitors or an equivalent for S02 and NOx and also requires opacity and flow monitors.

Title V - Operating Permits

- o Within 3 years of enactment, States must develop operating permit programs. EPA reviews for approval based on regulatory guidelines EPA issues within one year of enactment.**
- o Permits will apply to major sources covered under Title I, as well as sources covered by other titles of the Act.**
- o All sources subject to the program must submit permit applications to the state within 1 year of the effective date (i.e., date of EPA approval) of the state program. The state must establish a schedule for acting on initial permit applications which assures that at least a third of these submitted applications will be acted upon annually for 3 years.**
- o The state must issue permits for a term of up to five years. Permits must include all Clean Air Act requirements applicable to the source. They must also include a schedule of compliance and applicable monitoring and reporting requirements.**
- o Sources must pay permit fees to cover the costs of the permitting program.**
- o EPA must veto a permit if it does not comply with any applicable Clean Air Act requirements.**
- o The public may sue to compel EPA to perform nondiscretionary duty if EPA fails to veto a permit that does not comply with the Act. Such cases are reviewable in the Federal Court of Appeals.**
- o Once issued, the permit replaces the otherwise applicable requirements specifically identified in the permit, but EPA may require that the permit be reopened for cause. A permit with a term of 3 or more years must be reopened if new requirements applicable to the source are promulgated.**
- o EPA may impose sanctions if a state fails to resubmit an approvable permit program after EPA has determined the initial submittal is deficient.**

Title VI - Stratospheric Ozone & Global Climate Protection

- o **Listing:** EPA must list specified ozone depleting substances with their ozone-depletion potential, chlorine/bromine loadings, atmospheric lifetimes and global warming potentials within 60 days after enactment. EPA to add to list at least every 3 years substances meeting specified criteria.
- o **Phase-out:** Phase-out dates are similar to Montreal Protocol for Class I (2000 for CFC, halon and carbon tetrachloride; 2002 for methyl chloroform), but with more stringent interim reductions. Class II (HCFC) substances phased out by 2030. Regulations for Class I required within 10 months, Class II by 12/31/99.
- o **Exchange:** Requires a net environmental benefit from trades of allowances to produce controlled substances. Regulations required within 10 months after enactment.
- o **Recycling/Use Limits:** Restricts use and emissions to LAER, requires maximum recycling and safe disposal for CFC refrigerants within 2 years, all other class I and II substances within 4 years. Illegal to vent class I or II refrigerants after 7/1/92. Prohibition on venting any environmentally harmful substitute refrigerant after 5 years.
- o **Mobile Air Conditioners:** Mandatory recycling after 1/1/92. Certification of equipment and personnel. Ban on small containers (except certified personnel).
- o **Nonessential Products:** Bans nonessential products that result in releases of class I substances within 2 years. Beginning 1994, ban use of class II substances in aerosols and non-insulating foams, with exemptions for flammability and safety. Regulation 1 year after enactment, effective after 2 years.
- o **Labeling:** Mandatory warning labels on all containers of products made with and containing class I or class II substances (depending, in some cases, on availability of safe alternatives). Regulations required within 18 months after enactment, effective 30 months after. In case of labeling, requirements applicable to containers of Class I and II substances and to products containing Class I substances. All products must be labeled by 2015.
- o **Safe Alternatives:** Requires prior notice of sale of new and existing chemicals for significant new use as substitute. EPA to publish list of safe and unsafe uses of substitutes for Class I and II as identified. Gives authority to restrict the use of unsafe substitutes. Rules required within 2 years after enactment.
- o **Procurement:** Requires all Federal Agencies to amend their procurement regulations to maximize the use of safe alternatives for Class I and II substances. Regulations required within 18 months after enactment, effective 30 months after.
- o **Methane:** EPA to publish 5 reports to Congress within 2 years, and 1 follow-up report within 4 years.

Title VII - Enforcement

- o **Enhances Enforceability:** Makes the CAA more easily enforceable and consistent with recent environmental statutes, like the Clean Water Act and the Resource Conservation and Recovery Act. A broad array of new enforcement authorities, from "traffic tickets" to criminal felonies, are provided to better match the penalty to the severity of the violation. However, some changes also limit enforcement in new ways.
- o **Violations:** Criminal violations are upgraded from misdemeanors to felonies, consistent with other environmental statutes.
- o **New Criminal Sanctions:** Will be added for knowing endangerment and negligent endangerment in connection with air toxics.
- o **Penalties:** EPA may issue administrative penalty orders up to \$200,000 and field citations for minor violations up to \$5,000, rather than taking every violation to court. EPA may issue administrative subpoenas. Sources may challenge assessments in administrative hearings and District Court.
- o **Scope:** Duration and scope of emergency orders are expanded. Authority to issue administrative compliance orders to sources is expanded to authorize schedules of up to 1 year.
- o **Restrictions:** Definitions of the terms "operator" and "person", which immunize many potential violators from enforcement, are restricted.
- o **Citizen suit:** Provisions are revised to allow courts to assess penalties as well as enjoin violations. The money will go to a special U.S. Treasury fund. Money may be designated for air compliance activities, or mitigation projects. District Courts are given jurisdiction over suits against EPA for unreasonable delay.
- o **Oversight:** Effective federal oversight of citizen suits is provided through additional notification requirements.
- o **Punishment:** The ability to prove and adequately punish ongoing and recurring violations is strengthened because the burden of proof is on the defendant for the purpose of determining penalty liability once the government shows that a violation has occurred. Once a violation has been proven, any credible evidence is admissible to show that the violation continued.
- o **Contractors:** Listing authority (by which violators are barred from receiving government contracts, grants and loans) is revised so that all criminal convictions result in debarment. EPA is not explicitly allowed to use contractors for inspection purposes.

Title VIII - Miscellaneous Provisions

- o Outer Continental Shelf (OCS): Program to control air pollution from sources on the Outer Continental Shelf. Sources within 25 miles of shore required to meet the same standards as onshore areas. Exemptions possible if the Administrator finds that compliance is technologically infeasible or will cause an unreasonable threat to health and safety. States adjacent to OCS sources may implement and enforce requirements if approved by the Administrator. Within 3 years of enactment the Secretary of the Interior will conduct a study of areas adjacent to Texas, Louisiana, Mississippi and Alabama, examining the impacts of emissions from Outer Continental Shelf activities.
- o Establishment of program to monitor and improve air quality in regions along the border between the United States and Mexico: Program effective through July 1, 1995. Monitoring conducted to determine the sources of pollutants for which NAAQS have been established. The information will be used to aid in the process of attainment for sources out of compliance with the NAAQS. The Administrator can negotiate with Mexican representatives to reduce the level of airborne pollutants and achieve NAAQS in regions along the U.S./Mexico border. Each year the Administrator will give an annual report to Congress concerning the status of the program and the progress of reaching attainment in border regions.
- o Visibility: Each year, for 5 years, \$ 8 million will be allocated to conduct studies which will identify and evaluate sources and source regions of both visibility impairment and Class I regions. Research includes expansion of monitoring in Class I areas, assessment of sources affecting visibility, adaptation of regional air quality models and studies of atmospheric chemistry and physics pertaining to visibility. 24 months after enactment, Administrator will conduct an assessment of how the Clean Air Act Amendments are affecting Class I areas. The Administrator can establish Visibility Transport Regions if two or more affected states petition the Administrator that the interstate transport of air pollutants is negatively affecting visibility in Class I areas. In conjunction with the transport region, a commission shall be designated. The Commission will evaluate data, studies and information pertaining to adverse impacts on visibility. Based on the evaluation, action may be taken to remedy any negative impacts. The Administrator shall establish a Grand Canyon Visibility Transport Commission within 12 months of enactment.
- o International Border Areas: Provides that an implementation plan or revision shall be approved by the Administrator if it meets all of the Act's requirements except attainment of NAAQS because of emissions emanating from outside the United States. States that can prove that they cannot meet ozone, CO or PM-10 attainment levels by the applicable deadline because of emissions from outside of the U.S. shall not be penalized.
- o Other Key Provisions: - Grants For Support of Air Pollution Planning and Control Programs, Section 808 - Renewable energy and energy Conservation incentives and Section 817 - The Role of Secondary Standards.

Title IX - Clean Air Research

- o Monitoring and modeling: Research calls for improved methods and techniques for measuring individual air pollutants and complex mixtures, and for addressing urban and regional ozone. Maintenance of a national monitoring network to assess the status and trends of air emissions, deposition, air quality, surface water quality, forest conditions, and visibility is required.
- o Health effects: EPA will study the short and long-term health effects associated with exposure to air pollutants and develop methods to assess risks from these pollutants. An interagency task force, led by EPA, will coordinate the research. EPA is required to prepare environmental health assessments for all listed hazardous air pollutants.
- o Ecosystem: Studies for improving our understanding of ecosystem effects from individual and multiple air pollutants, including the effects of air pollution on water quality, forests, biological diversity, and other terrestrial and aquatic systems exposed to air pollutants.
- o Accidental Releases: Research calls for improvements in predictive models and response technology for accidental releases of dense gases. EPA will oversee the research using the Department of Energy's Liquefied Gaseous Fuels Spill Test Facility for the experimental work.
- o Pollution Prevention and Emissions Control: Research is required to develop technologies and strategies for air pollution prevention from stationary and area sources.
- o Acid Precipitation Research Program: Continuation of research by an intra-agency task force. It will review the status of research activities conducted to date and submit to Congress a revised plan that identifies key research gaps and establishes a program to address current and future research priorities. EPA is required to sponsor specialized acid deposition studies and to have the results of its research efforts included in Task Force reports.
- o Clean alternative fuels: Research directs EPA to identify, characterize and predict air emissions and other potential environmental effects associated with alternative fuels. EPA is required to determine the risks and benefits to human health and the environment relative to those from gasoline.
- o Other Studies: Coordinate research with appropriate Federal agencies. Study of control technologies used in other industrialized countries. A six million dollar research effort on the effects of acid deposition on waters in the Adirondack region.

Title XI - Clean Air Employment Transition Assistance

- o Job Partnership Training Act (JTPA):** Amends Title III of the Job Partnership Training Act. An additional \$50 million per year for 1991-1995 allocated to JTPA Title III to assist dislocated workers, the majority of who will likely be high sulfur coal miners, dislocated because of implementation of the acid rain title.
- o Funding:** Ninety-five percent of the funding will go to the worker assistance programs and the remaining five percent will be used to administer the title. The Department of Labor will administer the program. Regulations must be developed within 180 days of the bill's passage.
- o Benefits:** In addition to the benefits currently available to dislocated workers through JTPA Title III, people will be able to receive job search allowances, relocation assistance, needs related payments and extended monetary assistance. Extended monetary assistance will be available to dislocated workers who have exhausted their unemployment insurance benefits as long as their are in qualified training or educational programs.
- o Difference from Current Program:** Currently, JTPA Title III can provide the benefits mentioned above. But, because of constraints in the way the program is operated, these benefits are not provided frequently. Title XI ensures that dislocated workers, if eligible, receive benefits.
 - The intent for providing further monetary assistance, in the form of needs related payments, is so that workers, who are adjusting to a career change and are enrolled in training or educational programs that exceed the period of time for which they receive Unemployment Insurance (UI), are able to complete training or education with further monetary assistance.
- o Eligibility:** Payments will be awarded to a dislocated worker, if he is enrolled in training or an educational program, and either he or a member of his family has an income level below the state poverty income level. Payments will be equivalent to either the amount a person was receiving from their UI, or enough so as to bring the person up to the poverty level.

CLEAN AIR ACT AMENDMENTS OF 1990

GLOSSARY OF TERMS

**U.S. EPA
November 15, 1990**

Acid Deposition ("Acid Rain"). -- A complex chemical and atmospheric phenomenon that occurs when emissions of sulfur and nitrogen compounds and other substances are transformed by chemical processes in the atmosphere, often far from the original sources, and then deposited on earth in either a wet or dry form. The wet forms, popularly called "acid rain," can fall as rain, snow, or fog. The dry forms are acidic gases or particulates.

Air Toxics. -- Any air pollutant for which a national ambient air quality standard (NAAQS) does not exist (i.e. excluding ozone, carbon monoxide, PM-10, sulfur dioxide, nitrogen dioxide) that may reasonably be anticipated to cause cancer, developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations or other serious or irreversible chronic or acute health effects in humans.

Aromatics. -- A type of hydrocarbon, such as benzene or toluene, added to gasoline in order to increase octane. Some aromatics are toxic.

Attainment Area. -- An area considered to have air quality as good as or better than the National Ambient Air Quality Standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others.

Best Available Control Measure (BACM). -- A term used in the House bill referring to the "best" measures (according to EPA guidance) for controlling small or dispersed sources of particulate matter, such as roadway dust, woodstoves, and open burning.

Carbon Monoxide (CO). -- A colorless, odorless gas which is toxic because of its tendency to reduce the oxygen-carrying capacity of the blood.

Clean Coal Technology. -- Any technology not in widespread use as of the date of enactment of the Clean Air Act amendments which will achieve significant reductions in pollutants associated with the burning of coal.

Clean Fuels. -- Blends and/or substitutes for gasoline fuels. These include compressed natural gas, methanol, ethanol, and others.

Coke Oven. -- An industrial process which converts coal into coke, which is one of the basic materials used in blast furnaces for the conversion of iron ore into iron.

Cold Temperature CO. -- A standard for automobile emissions of carbon monoxide (CO) to be met at a low temperature (i.e., 20 degrees F.). Conventional catalytic converters are less efficient upon start-up at low temperatures.

Control Techniques Guideline (CTG). -- Guidance documents issued by EPA which define reasonably available control technology (RACT) to be applied to existing facilities that emit certain threshold quantities of air pollutants; ~~they contain information both on the economic and technological feasibility of available techniques.~~

CFCs (Chlorofluorocarbons). -- A family of inert, nontoxic, and easily-liquefied chemicals used in refrigeration, air conditioning, packaging, insulation, or as solvents or aerosol propellants. Because CFCs are not destroyed in the lower atmosphere they drift into the upper atmosphere where the chlorine is released and destroys ozone.

CFC-12. -- A chlorofluorocarbon with a trademark name of Freon, commonly used in refrigeration and automobile air conditioning.

Emission Control Diagnostics. -- Computerized devices placed on vehicles to detect malfunction of emissions controls and notify the owner of the need for repair.

Enhanced Inspection & Maintenance (Enhanced I&M). -- An improved automobile inspection and maintenance program that includes, as a minimum, increases in coverage of vehicle types and model years, tighter stringency of inspections and improved management practices to ensure more effectiveness. This may also include annual, computerized, or centralized inspections; under-the-hood inspections to detect tampering with pollution control equipment; and increased repair waiver cost. The purpose of Enhanced I&M is to reduce automobile emissions by assuring that cars are running properly.

Federal Implementation Plan (FIP). -- Under current law, a federally implemented plan to achieve attainment of an air quality standard, used when a State is unable to develop an adequate plan. Under the Senate bill, a plan containing control measures developed and promulgated by EPA in order to fill gaps in a State Implementation Plan (SIP).

Gasoline Volatility. -- The property of gasoline whereby it evaporates into a vapor. Gasoline volatility is measured in pounds per square inch (psi), with a higher number reflecting more gasoline evaporation. Gasoline vapor is a volatile organic compound (VOC).

Halons. -- A family of compounds containing bromine used in fighting fires, whose breakdown in the atmosphere depletes stratospheric ozone.

HCFs. -- Chlorofluorocarbons that have been chemically altered by the addition of hydrogen, and which are significantly less damaging to stratospheric ozone than other CFCs.

Inspection & Maintenance (I&M). -- A program providing for periodic inspections of motor vehicles to ensure that emissions of specified pollutants are not exceeding established limitations.

Low NOx Burners. -- One of several combustion technologies used to reduce emissions of NOx.

Maximum Achievable Control Technology (MACT). -- Emissions limitations based on the best demonstrated control technology or practices in similar sources to be applied to major sources emitting one or more of the listed toxic pollutants.

Montreal Protocol. -- An international environmental agreement to control chemicals that deplete the ozone layer. The protocol, which was renegotiated in June 1990, calls for a phase-out of CFCs, halons, and carbon tetrachloride by the year 2000, a phase-out of chloroform by 2005, and provides financial assistance to help developing countries make the transition from ozone-depleting substances.

NOx (Nitrogen Oxides). -- Chemical compounds containing nitrogen and oxygen; reacts with volatile organic compounds, in the presence of heat and sunlight to form ozone. It is also a major precursor to acid rain. Nationwide, approximately 45 percent of NOx emissions come from mobile sources, 35 percent from electric utilities, and 15 percent from industrial fuel combustion.

Onboard Controls. -- Devices placed on vehicles to capture gasoline vapor during refueling and then route the vapors to the engine when the vehicle is started so that they can be efficiently burned.

Oxygenated Fuels. -- Gasoline which has been blended with alcohols or ethers that contain oxygen in order to reduce carbon monoxide and other emissions.

Ozone. -- A compound consisting of three oxygen atoms, that is the primary constituent of smog. It is formed through chemical reactions in the atmosphere involving volatile organic compounds, nitrogen oxides, and sunlight. Ozone can initiate damage to the lungs as well as damage to trees, crops, and materials. There is a natural layer of ozone in the upper atmosphere which shields the earth from harmful ultraviolet radiation.

PM-10. -- A new standard for measuring the amount of solid or liquid matter suspended in the atmosphere ("particulate matter"). Refers to the amount of particulate matter over 10 micrometers in diameter. The smaller PM-10 particles penetrate to the deeper portions of the lung, affecting sensitive population groups such as children and people with respiratory diseases.

Reasonably Available Control Measures (RACH). -- A broadly defined term referring to technologies and other measures that can be used to control pollution; includes Reasonably Available Control Technology and other measures. In the case of PM-10, it refers to approaches for controlling small or dispersed source categories such as road dust, woodstoves, and open burning.

Reasonably Available Control Technology (RACT). -- An emission limitation on existing sources in non-attainment areas, defined by EPA in a Control Techniques Guideline (CTG) and adopted and implemented by States.

Reformulated Gasoline. -- Gasoline with a different composition from conventional gasoline (e.g., lower aromatics content) and that results in the production of lower levels of air pollutants.

Repowering. -- The replacement of an existing coal-fired boiler with one or more clean coal technologies, in order to achieve significantly greater emission reduction relative to the performance of technology in widespread use as of the enactment of the Clean Air Act amendments.

Residual Risk. -- The quantity of health risk remaining after application of the MACT (Maximum Achievable Control Technology).

Sanctions. -- Actions taken against a State or local government by the Federal government for failure to plan or to implement a SIP. Examples include withholding of highway funds and a ban on construction of new sources.

Stage II Controls. -- Systems placed on service station gasoline pumps to control and capture gasoline vapors during automobile refueling.

State Implementation Plan (SIP). -- Documents prepared by states, and submitted to EPA for approval, which identifies actions and programs to be undertaken by the State and its subdivisions to implement their responsibilities under the Clean Air Act.

Sulfur Dioxide (SO₂). -- A heavy, pungent, colorless air pollutant formed primarily by the combustion of fossil fuels. It is a respiratory irritant, especially for asthmatics and is the major precursor to the formation of acid rain

Transportation Control Measures (TCMs). -- Steps taken by a locality to adjust traffic patterns (e.g., bus lanes, right turn on red) or reduce vehicle use (ridesharing, high-occupancy vehicle lanes) to reduce vehicular emissions of air pollutants.

Vehicle Miles Travelled (VMT). -- A measure of both the volume and extent of motor vehicle operation; the total number of vehicle miles travelled within a specified geographical area (whether the entire country or a smaller area) over a given period of time.

Volatile Organic Compounds (VOCs). -- A group of chemicals that react in the atmosphere with nitrogen oxides in the presence of heat and sunlight to form ozone; does not include methane and other compounds determined by EPA to have negligible photochemical reactivity. Examples of VOCs include gasoline fumes and oil-based paints.

CLEAN AIR ACT AMENDMENTS OF 1990
LEGISLATIVE CHRONOLOGY

U.S. EPA
November 15, 1990

LEGISLATIVE CHRONOLOGY OF EVENTS – CLEAN AIR ACT AMENDMENTS

- o **JUNE 12, 1989** – President Bush announces the Administration's clean air proposal which comprehensively addresses three areas of environmental concern: acid deposition, toxic air pollution, and urban air quality
- o **JULY 21, 1989** – the legislative language interpreting the President's proposal is submitted to Congress
- o **JULY 27, 1989** – the Administration's bill is introduced by House Energy and Commerce Committee Chairman John Dingell (D-MI) as H.R. 3030 with 146 cosponsors (eventually 166); the measure is subsequently referred to the Energy and Commerce Committee
- o **AUGUST 3, 1989** – the Administration's bill is introduced in the Senate by Senator John Chafee (R-RI) as S. 1490 with 24 cosponsors (eventually 25); the measure is subsequently referred to the Senate Environment and Public Works Committee
- o **SEPTEMBER 13, 1989** – Health and Environment Subcommittee of the House Energy and Commerce Committee holds first of 11 mark-ups on H.R. 3030 that continue through October 11, 1989
- o **OCTOBER 11, 1989** – Health and Environment Subcommittee of House Energy and Commerce held their final mark-up of the Administration's bill (H.R. 3030); the measure, as amended, is sent to full Committee by a 21 - 0 vote
- o **OCTOBER 26, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works begins process of marking-up clean air legislation
- o **NOVEMBER 14, 1989** – Environmental Protection Subcommittee of Senate Environment and Public Works votes to include an Acid Rain title which is based on the Administration's original proposal; the Subcommittee had no further action on S. 1630
- o **NOVEMBER 16, 1989** – Senate Environment and Public Works votes out a Clean Air bill (S. 1630) by a 15 - 1 margin
- o **JANUARY 23, 1990** – Floor debate begins in the U.S. Senate
- o **FEBRUARY 1, 1990** – a group of bipartisan Senators begin meeting with Administration officials in a month-long, closed door negotiation session on amendments to S. 1630; during which, Senate floor debate is put on hold
- o **MARCH 5, 1990** – Senator George Mitchell announces agreement with the Administration on several key aspects of clean air; this measure is the product of the Administration and bipartisan Senate negotiations during February and served as the vehicle for Senate floor deliberation (it would eventually become S. 1630)
- o **MARCH 14, 1990** – Energy and Power Subcommittee of House Energy and Commerce reports H.R. 3030 out to full committee; the Subcommittee had jurisdiction over the alternative fuels and acid rain provisions in the bill, but the Chairman decided not to mark-up / amend their measure

- o MARCH 14, 1990 – House Committee on Energy and Commerce begins public mark-up of H.R. 3030
- o APRIL 3, 1990 – the Senate votes out the Clean Air Act Amendments of 1990; the measure was passed by a vote of 89 - 11. The following Senators voted against final passage of the bill: Byrd, Rockefeller, Simon, Dixon, McClure, Symms, Garn, Glenn, Helms, Nickles, and Wallop.
- o MAY 17, 1990 – House Committee on Energy and Commerce reports H.R. 3030 out of committee by a vote of 42 - 1; the measure then moved to the entire House of Representatives
- o MAY 17, 1990 – House Committee on Public Works and Transportation and the House Committee on Ways and Means were given sequential referral of certain aspects of H.R. 3030; both committees report the bill out on May 21, 1990
- o MAY 17, 1990 – House Committee on Ways and Means receives sequential referral of H.R. 3030 for a period ending no later than May 21, 1990
- o MAY 23, 1990 – the House of Representatives votes to pass a new Clean Air Act by a vote of 401 - 21
- o JUNE 6, 1990 – the Senate announces their conferees for the Clean Air Act Amendments of 1990, they are as follows: Senators Quentin Burdick (D-ND), Daniel Patrick Moynihan (D-NY), George Mitchell (D-ME), Max Baucus (D-MT), John Chafee (R-RI), Alan Simpson (R-WY), David Durenberger (R-MN) as well as Lloyd Bentsen (D-TX) and Bob Packwood (R-OR) of the Finance Committee for the fee-related provisions only, all other conferees are Senate Environment and Public Works Committee members
- o JUNE 28, 1990 – the House of Representatives announces their conferees for the Clean Air Act Amendments of 1990 – the list includes 138 House Members overall with representation from seven committees, the six committees other than the Energy and Commerce will have jurisdiction over their individual areas
- o July 13, 1990 – House and Senate Clean Air Conferees hold their first joint conference. During the first session, the conferees selected Senator Max Baucus (D-MT) as the Conference Chairman
- o October 22, 1990 – House and Senate Clean Air Conferees reach final agreement on Clean Air reauthorization and thus conclude conference negotiations
- o October 26, 1990 – The House of Representatives considers the conference report and passes the measure with a 401 - 25 roll call vote
- o October 27, 1990 – The Senate considers the conference report and passes the measure with an 89 - 10 roll call vote
- o November 13, 1990 – S. 1630, "The Clean Air Act Amendments of 1990," is submitted to the President
- o November 15, 1990 – The President signs the Clean Air Act Amendments

CLEAN AIR ACT

Talking Points--11/15/90

What does it do?

Reauthorizes and re-energizes efforts to achieve and maintain healthy air quality in our cities.

How?

Work for all levels of government, industry and individuals.

Federal

- Strong controls on power plants, automobiles.
- Set standards, deadlines, develop guidelines.
- Provide monetary and technical assistance.
- Sanctions and Federal plans if state/locals fail.
- Won't guarantee achievement of healthy air quality (State/local role essential).

State and local government

- Tailor programs and add measures necessary to accomodate their unique situations.
- Develop and enforce plans to achieve the air quality goals.

Individuals

- In spite of improvements in pollution control technology, growth is outstripping our ability to make improvments in air quality.
- Much of the pollution remaining derives from us collectively as individuals; in the way we use automobiles and woodstoves, consume energy and use products, and dispose of waste.
- We will be called upon to support new pollution control programs and do our part to modify our behavior somewhat to achieve the clean air goals.
- Take the less painful steps now to avoid the need to take more drastic measures in the future to avoid serious, growth-related air pollution problems.

SALIENT FEATURES OF THE CLEAN AIR ACT

Strikes at three major problems

- Urban air pollution
- Toxic air pollutants
- Acid rain

Five major themes

- Early actions to reduce pollution
- Steady progress toward healthy air quality
- Tailors stringency of programs to severity of problem
- Encourages cleaner fuels and innovative technology
- Uses market based approaches to allow flexibility in how achieve emission reductions and air quality goals

Urban air pollution

Federal programs

- New car emission standards:
 - Reduce hydrocarbons by 35%
 - Reduce NOx by 60%
 - (40% of vehicles by 1994, 100% by 1998)
- Reformulated gas in 9 cities by 1995
 - 15% lower VOC and toxics by 1995
 - 20-25% lower by 2000
- Oxygenated fuels (2.7% O2) by 1992 in all CO areas
- 100,000 mile emission warranties
- On board diagnostics
- On board vapor recovery by 1995 if safe per DOT
- Clean fuel busses by 1994
- Sanctions and incentives

State and local programs

- ~~Continue and improve I/M~~
- Add stage II vapor recovery programs at large service stations
- Clean fueled fleet vehicles in serious ozone areas
- 4% per year emission reductions
- Adopt controls on point sources per national guidelines
- Adopt additional control measures needed to attain standards

(There is also a clean fuel vehicle pilot program for California.)

Air Toxics

- Addresses 189 toxic chemicals
- 250 source categories subject to regulation
- Standards promulgated in 10 years (41 categories in 2 years)
- Standards require Maximum Achievable Control Technology
- Tighter standards required 8 years after initial promulgation if residual risk greater than 1-in 1 million
- Controls on area sources such as dry cleaners
- Provisions for preventing accidental releases

Chemical Safety Board investigates accidents
Facilities assess hazards and prevention steps

- New controls on municipal, commercial, hospital incinerators

Acid Rain

- Requires 10 million ton/year reduction in SO₂, 2 million ton/year reduction in NO_x
- Federally operated allowance marketing system in Phase I, State operated in Phase II

Permits

- Requires state operating permit programs and fees
- Fee minimum of \$25 per ton of pollutant (except CO). Will raise substantial revenues for state and local agencies to carry out their air pollution control programs
- Compliance with permit is equivalent to compliance with applicable provisions of the Clean Air Act.

Federal Enforcement

- Allows use of administrative penalties
- Upgrades criminal penalties from misdemeanors to felonies for knowing violations
- Allows field citations for minor violations
- Allows collection of penalties in citizen suits
- Improves ability to use emergency orders for substantial endangerment

Chronology

President Bush proposes administration bill	June 12, 1989
Senate passes bill (89 - 11)	April 3, 1990
House passes bill (401 - 21)	May 23, 1990
Conference committee agreement	July 13, 1990
Senate passes conference bill	October 27, 1990
House passes conference bill	

State-Federal Issue Brief



101ST CONGRESS IN REVIEW

THE CLEAN AIR ACT AMENDMENTS OF 1990

by

Nancy A. New
Committee Director
Environment and Natural Resources

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101st Congress in Review

The Clean Air Act Amendments of 1990

Nancy New
Committee Director
Environment and Natural Resources

I. EXECUTIVE SUMMARY

After nearly a decade of contentious and often stalemated debate, the 101st Congress overwhelmingly authorized a sweeping reform of the law which governs air quality, the Clean Air Act. The new amendments, over 700 pages long, combine with the original law enacted in 1970 and last amended in 1977.

Over 100 million people, or 40 percent of the U.S. population, currently live in areas of the country with "dirty air." The new law aims to improve air quality in major metropolitan areas which now violate health-based standards. It intends to halve the emissions that cause acid rain, and seeks to control both the routine and accidental release of toxic air pollutants into the atmosphere by reducing emissions by up to 75 percent.

Tighter controls will be levied against existing industries, businesses, and smaller polluters. Annual reductions in levels of pollution emitted will be instituted and additional controls imposed on mobile sources, thus spreading the burden of emission reduction among several sectors.

State and local agencies will be responsible for primary implementation of the new Clean Air Act even though much of their activity will not commence until the federal government issues rules, regulations, and guidance documents. State legislatures must take specific action to revise substantially state air pollution permit programs. The new law's success depends on expanded permit programs and an accompanying fee program. Legislatures must also authorize specific pollution control strategies, such as new or improved motor vehicle emissions inspection and Maintenance programs (I/M) and adoption of Stage II Vapor Recovery for capturing refueling vapors. In addition, under the new law, states can participate in clean-fueled vehicle programs if authorized by state legislatures. State legislatures will also need to review and upgrade current state penalties for violations of the Clean Air Act.

II. BACKGROUND

A nationwide framework for controlling air pollution was first adopted in 1970 as the Clean Air Act (P.L. 91-604) with significant amendments added in 1977 (P.L. 95-95) and 1990 (P.L. 101-549). The Clean Air Act (CAA) delegates primary

responsibility for air pollution control to state and local governments, but also requires major technical and financial leadership from the federal government. State and local agencies are required to conduct inventories of air pollution emissions, and prepare pollution control plans. They must also adopt and enforce regulations, issue permits, inspect facilities, monitor air quality to ensure steady progress and carry out other responsibilities. Some of the major responsibilities of the U. S. Environmental Protection Agency (EPA) are to set national health-based standards for ozone, carbon monoxide and other pollutants, to develop guidelines for use of technologies to control emissions from stationary and mobile sources, and to approve state and local control plans, and to oversee their implementation.

III. CONGRESSIONAL ACTION

Legislation dealing with separate parts of the Clean Air Act has been reviewed every year since 1981. In 1987 legislation dealing with the three major issues of ozone and carbon monoxide nonattainment, acid rain, and air toxics was introduced and eventually combined into one comprehensive approach to air pollution control. Since 1987, reauthorization of the Clean Air Act has dominated the agendas of the relevant environmental subcommittees and full committees.

Historically, the legislation has been a hostage of the politics dominating the specific committees and leadership of Congress. For example, the legislation would be referred to the House Subcommittee on Health and the Environment, chaired by Congressman Henry Waxman, long-time health advocate, representing Los Angeles, California, the area with the nation's worst air pollution. Although the legislation would sometimes be reported out of the subcommittee, it would end up stalled in the full Energy and Commerce Committee, chaired by Congressman John Dingell representing Detroit and a constituency heavily reliant on the auto industry.

In the Senate, the Subcommittee on Environmental Protection chaired by Senator George Mitchell of Maine, a longstanding advocate of clean air legislation, and the full Committee on Environment and Public Works chaired by then-Senator Robert Stafford of Vermont, were more receptive to stronger measures contained in the legislation. Thus, legislation progressed as far as the Senate floor several times. However, then-Majority Leader Robert Byrd of West Virginia had serious reservations about acid rain provisions, and refused to schedule floor debate. When Senator Mitchell became Majority Leader in 1989, the prospects for Senate passage increased.

A third major factor in the stalemate was lack of leadership from the Executive Branch. Prospects improved when, in 1989, President Bush announced support for a major rewrite of the Clean Air Act and proposed his own version. Many observers agree that this initiative from the White House helped create an atmosphere in which most players realized they needed to start dealing or be left out of the negotiations that most likely would bring about reauthorization.

Table 1 outlines some of the major milestones in the Clean Air Act reauthorization process. The Clean Air Act, Public Law 101-549, was signed November 15, 1990.

IV. SUMMARY OF MAJOR ISSUES

The Clean Air Act Amendments of 1990 contain 11 titles, including major sections on nonattainment, mobile sources, air toxics, acid rain, permits, stratospheric ozone depletion, and enforcement.

NONATTAINMENT (TITLE I)

The first major title of the new amendments addresses areas of the country that do not meet federal health-based standards ("nonattainment" areas). 96 areas in the country exceed the standards for ozone and 41 areas exceed the standards for carbon monoxide.

Ozone Nonattainment

Lower atmospheric ozone, or urban smog, causes adverse health effects resulting from exposure. However, ozone in the upper stratosphere is desirable because it forms a protective layer against unwanted ultraviolet radiation. Chlorofluorocarbons (CFCs) destroy the stratospheric ozone. The nonattainment sections of the law refer to lower atmospheric ozone.

Control of urban smog is complicated by the fact that sources do not emit ozone per se, they emit chemicals such as volatile organic compounds (VOCs--also referred to as hydrocarbons) and oxides of nitrogen (NO_x) that react in sunlight to form ozone. Thus, ozone problems tend to be the worst on hot, sunny, summer days. Industries, businesses, motor vehicles and products such as gasoline, paints and solvents release VOCs, while NO_x are a result of fuel combustion and are generated by both mobile and stationary sources.

Categories: Under the new law, ozone nonattainment areas are classified into one of five categories, depending on the degree to which they exceed the standard. The categories are marginal, moderate, serious, severe, and extreme. There are categorical deadlines ranging from three to twenty years by which the standard must be attained. If an area fails to reach the standard, it is reclassified into the next category where tougher control requirements exist. All requirements for lower categories also apply in stricter categories.

Table 2 outlines major requirements of the five ozone nonattainment categories.

Table 3 lists the areas likely to be classified into each category.

Sanctions: Sanctions will apply if an area fails to try to meet the standards either by not planning or by not implementing a plan. Sanctions are mandatory and include withholding of highway funds or requiring that existing sources reduce emissions by twice the amount a new source would emit ("offsets"). This could effectively become a construction ban. EPA also has discretion to withhold grants to state and local pollution control agencies.

Progress towards attainment: All ozone nonattainment areas must demonstrate regular emission reductions, with all categories except marginal areas required to achieve a 15 percent reduction in VOCs within the first six years. Serious, severe,

and extreme areas must achieve additional annual reductions of three percent of emissions after the first six years.

Controls on Smaller Polluters: Increasingly smaller sources of pollution will be regulated in more heavily polluted areas. At present, sources that annually emit over 100 tons of pollution must apply certain controls. As categories become stricter, and deadlines approach, controls are required on sources that emit 50 tons per year, then 25 tons per year, then 10 tons per year.

Interstate Transport of Pollution: A Northeast Interstate Transport Region is created, with provisions to establish others. In this region are: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia and Northern Virginia (the DC metropolitan area). All areas within the region, including those which comply with air pollution standards, must regulate smaller sources of pollution than are now controlled, adopt enhanced Inspection and Maintenance (I/M) programs to regulate motor vehicle emissions, and adopt all federally recommended controls. A process is established to require additional controls, where necessary.

Federal Implementation Plans: The new law retains the current provision requiring the federal government to issue a federal plan for controlling air pollution if a state or locality fails to do so.

Other control measures: Some areas are required to install Stage II Vapor Recovery controls, a system of hoses and nozzles to collect vapors escaping into the atmosphere when refueling vehicles. (Stage I Vapor Recovery is already mandatory for all nonattainment areas. Stage I recovers fumes from refueling storage tanks at gas stations.) After study by the EPA and Department of Transportation, cannisters to collect refueling emissions must be installed on vehicles, and some areas will be allowed to drop the Stage II controls. All nonattainment areas will have to implement a motor vehicle emissions I/M program, with some areas required to design a more advanced program.

Carbon Monoxide Nonattainment

41 metropolitan areas are not in compliance with carbon monoxide (CO) standards. Approximately 80 percent of the CO problems are caused by vehicles (mobile sources), the focus of control strategies. Because carbon monoxide pollution results from incomplete combustion of fuel, it tends to be the worst during cold seasons when vehicles require warm-up periods before operating at peak efficiency.

Categories: Areas are classified according to the degree to which they are out of attainment, similar to the ozone nonattainment categories. Controls will vary according to the category. Enhanced I/M programs, demonstrating that an area is regularly reducing emissions at levels to reach attainment, adoption of transportation control measures, and implementation of oxygenated fuels programs are likely control strategies.

Table 4 outlines control measures required for the two carbon monoxide categories.

Table 5 lists the areas likely to be classified into each category.

Oxygenated fuels: All carbon monoxide nonattainment areas are required to use some level of oxygenated fuels. Under these programs, additives such as ethanol or MTBE, a derivative of natural gas, are blended with gasoline to increase oxygen content. This helps fuel burn with fewer harmful emissions.

Other controls: Some other controls required in carbon monoxide nonattainment areas are enhanced I/M programs and clean-fuel programs. Transportation control measures such as high occupancy vehicle programs, improved public transit, parking fees and restrictions, and tolls to discourage driving during peak hours may be implemented. See Title II of the new legislation for additional controls on mobile sources that ultimately improve air quality in carbon monoxide nonattainment areas.

Particulate Matter

Particulate matter from urban dust, residential wood burning, forestry, and agricultural practices has increasingly been recognized as a key contributor to this country's polluted air. Therefore, provisions are included in the new law to control "fine" particulate matter, referred to as PM-10. Similar to the ozone and carbon monoxide control strategies, categories are established, deadlines imposed for reaching air quality standards, and some control methods outlined. More planning and program design to control PM-10, however, is left to the states than with ozone and carbon monoxide control programs.

MOBILE SOURCE CONTROLS (TITLE II)

The Clean Air Act Amendments of 1990 include major new provisions for the control of vehicular tailpipe emissions. This spreads the burden for reducing pollution between both stationary and mobile sources. Major provisions include:

Vehicle Tailpipe Emission Standards: These standards are to be implemented in two phases. During the first phase ("Tier I"), cars and light duty trucks must meet standards currently in effect in California. For cars, this means an approximate 30 percent cut of VOCs and a 60 percent cut in NO_x. In addition, vehicles must meet these standards over 10 years or 100,000 miles (the vehicle's "useful life") versus the current 5 year or 50,000 mile requirement. However, they will only be subject to recall for 7 years or 75,000 miles if they fail to meet intermediate standards.

The phase-in of tier I standards occurs over a three year period ending with total compliance in model year 1996. The second phase of stricter standards ("Tier II") will be implemented only if the EPA conducts a study that finds the second set of standards necessary, technologically feasible, and cost effective. However, if no study is conducted, stricter tailpipe standards automatically go into effect beginning January 1, 2003.

Table 6 outlines Tier I and Tier II tailpipe standards and deadlines.

Onboard Control of Refueling Emissions: By November 15, 1991, the EPA and Department of Transportation must consult on the safety of onboard cannisters, and the EPA must then issue regulations governing phase-in of these cannisters. A three year phase-in period begins in the fourth year after the regulation is issued. Once

onboard cannisters are in widespread use, some Stage II Vapor Recovery requirements may be waived.

Carbon Monoxide Emissions at Cold Temperatures: Vehicles tend to emit the greatest amount of carbon monoxide when started in cold temperatures. Therefore the federal test procedure for vehicles must now be revised to reflect "real life" starting conditions (both cold and warm weather starts). Vehicles must now be able to meet standards even when started and operated at temperatures of 20 degrees Fahrenheit. These standards will be phased-in between 1994 and 1996. A second more stringent phase may be implemented at the end of the century if six or more areas still violate the CO standard.

Evaporative Emissions: In summer, gasoline in vehicles tends to evaporate at a faster rate than in winter. EPA will limit allowable levels of these emissions, by regulation.

Warranties: Current law requires manufacturers to provide warranties for emission control related equipment. Under the new law, the warranty period is extended to 8 years or 80,000 miles (from 5 years or 50,000 miles) for major specific emission control equipment such as the catalytic converter, the electronic emissions control unit, the onboard diagnostic system and some other devices. These warranties become effective for model year 1995. For most other parts, the warranty period is shortened to 2 years or 24,000 miles (from 5 years or 50,000 miles).

Fuel Volatility: Volatility is the ease with which a liquid evaporates, thus causing air emissions. Lowering fuel volatility decreases resultant emissions. EPA must develop regulations to require that gasoline meet lower volatility limits during the "high ozone" season (summer). Some states have already done this. Stricter limits may be applicable for nonattainment areas.

Reformulated Gasoline: By the end of one year, EPA must have developed rules that outline cleaner gasoline requirements. Some specifics of this formula are outlined in the Act. Fuels must be certified to achieve, by 1995, reductions in emissions of VOCs and air toxics of 15 percent lower than the level occurring with normal "baseline" gasoline. Emissions must be 25 percent lower than "baseline" by the year 2000.

The nine worst ozone nonattainment areas must use only certified fuels after January 1, 1995. This represents approximately 25 percent of the market. Other nonattainment areas can also choose to participate in this program. However, their participation may be delayed if sufficient domestic capacity does not exist to provide the fuel.

Oxygenated Fuels: All moderate carbon monoxide nonattainment areas (approximately 38) must use oxygenated fuels by November 1992 (minimum oxygen content of 2.7 percent oxygen by weight). Serious carbon monoxide nonattainment areas must also use oxygenated fuels, but those fuels must contain a higher level of oxygen (no less than 3.1 percent oxygen by weight). The most widely discussed oxygenated fuels are the gasoline/ethanol blend (gasohol), the gasoline/methanol blend, the gasoline/MTBE (Methyl Tertiary Butyl Ether) blend, and the gasoline/ETBE (Ethyl Tertiary Butyl Ether) blend.

Clean-Fueled Vehicles: "Clean" fuels include diesel; ethanol; hydrogen; liquified petroleum gas; methanol; natural gas; other alcohols, including mixtures with 85

percent or more alcohol by volume; power sources such as electricity; and reformulated gasoline.

By November 1992, the EPA must promulgate regulations governing clean-fuel vehicle standards for fleets of 10 or more vehicles (capable of central fueling). By 1998, all centrally-fueled fleets in 26 areas (all serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide nonattainment areas) must purchase at least 30 percent of their fleet to meet California standards. If such vehicles are not being offered for sale in California, the program is delayed until model year 2001. Over three years, the purchase percentage must go up to 70 percent of new cars and trucks added to the fleet.

Table 7 outlines the clean-fueled vehicles standards.

California Pilot Test Program: A program to be developed for California will demonstrate the effectiveness of clean-fueled vehicles to control ozone pollution. At a minimum, the program will require that 150,000 clean-fueled vehicles be produced, sold and distributed each year from 1996 through 1998. Beginning with 1999, that number must rise to 300,000. EPA must report to Congress by June 30, 1998 on program effectiveness.

Serious, severe, and extreme ozone nonattainment areas are authorized to opt-in to the program, with EPA required to develop an incentive program. However, no provisions are included to require production, sale or distribution of vehicles in these areas, and no penalties apply to manufacturers in these areas who fail to supply the vehicles or fuel necessary for program workability.

Urban buses: Particulate matter standards are established for buses used in urban mass transit programs. These standards require a 50 percent reduction (by 1994) from the levels that are now allowed.

TOXIC AIR POLLUTION (TITLE III)

The new law lists 189 chemicals that must be regulated and includes a procedure for EPA to add or delete chemicals from the list. Eight chemicals are currently regulated. EPA must set technology-based standards for all industries, utilities and other sources emitting these pollutants in major quantities. Of the 189 listed pollutants, EPA must issue regulations on at least 41 of them within the first two years. The required technologies must be installed on polluting sources within 10 years.

After applying the specified technologies, additional controls may be required if the existing controls do not protect public health with an "ample margin of safety" (term used in Clean Air Act Amendments of 1990.) EPA is required to conduct a study to help define "ample margin of safety." The additional mandatory controls must be phased-in over a 15 - 25 year period from the new law's enactment date.

EPA is required to set standards to control air emissions from municipal, hospital, commercial and industrial incinerators. Cost, health impacts, environmental impacts and energy requirements must be factored to determine the maximum level of emissions reductions required by the standards. The law also prohibits EPA from regulating ash from municipal solid waste incinerators for two years. This latter

issue is likely to be included in the reauthorization of the Resource Conservation and Recovery Act during the 102nd Congress.

ACID DEPOSITION CONTROL (TITLE IV)

Basic provisions of this section require major reductions in the amount of sulfur dioxide (SO₂) and nitrous oxides (NO_x) by the year 2000 through a phased-in control program. In addition, market-based forces are employed to help balance the burdens of the control program.

Reduction of Emissions: SO₂. By the year 2000, utility power plants must reduce their sulfur dioxide emissions by 10 million tons per year from 1980 levels. A cap is imposed on annual emissions after 2000 so that total emissions can be no more than 8.9 million tons per year.

Reduction of Emissions: NO_x. Starting in 1995, utilities must reduce nitrous oxides by two million tons per year from 1980 levels.

Allowances: Marketable "allowances" help implement SO₂ reductions. Utilities receive allowances based on how much they must reduce their emissions and on their past energy use. (An allowance is equal to one ton of emissions.) Utilities must have enough allowances "banked" to cover the level of emissions they will have. If they have more emissions than allowances, they must purchase additional allowances from a utility somewhere else that has more allowances than emissions. Allowances are implemented in two phases, with 10 midwestern states receiving bonus allowances in Phase II if they have made reductions in Phase I. Additional allowances are granted to utilities that use energy conservation to reduce emissions ahead of schedule, construct renewable energy power plants, or purchase electricity from such plants.

Cost Sharing: No specific cost sharing provisions, such as emission fees or electricity taxes, were included in the bill even though it contains the system of allowances.

Clean Coal Technology: If a power plant chooses to install clean coal technology, it will be given a 4 year extension to meet the emissions deadlines. Some facilities that adopt clean coal technology programs will be released from meeting certain other air quality standards. Clean coal technology is defined as any technology, not currently in widespread use, that significantly reduces emissions of sulfur dioxide and nitrous oxides during the use of coal for the generation of electricity, process steam, or industrial products.

PERMITS (TITLE V)

This part of the Clean Air Act is considered by many to be the area of greatest impact on states. As a result of this Title, major pollution sources (and some others) must obtain operating permits issued by state and local agencies. Permits become the tool to ensure compliance with requirements from many other sections of the new law. Until now, there has been been no federal requirement for permits, although 35 states currently require permits for many sources of air pollution.

Under the new law, states are required to establish and operate extensive permit programs to allow only certain amounts of pollution to enter the atmosphere. Emissions above those levels are prohibited. The federal law also requires that states charge a fee for permits and that the fee be sufficient to cover the administrative costs of the permit program. The law sets the minimum fee at \$25 per ton of pollutant emitted (or an aggregate sum for all emissions that is equivalent to \$25 per ton). States are given flexibility to decide how much to charge which types of polluters. The fee must be adjusted annually relative to the Consumer Price Index. Extensive state recordkeeping is necessary to prove to EPA that all funds collected by this levy are spent only on the permit program. Any other expenditure is considered a violation of the law.

Since these monies may be spent only on the air pollution permit program, states will need to set up dedicated funds, as recommended in the law, or guarantee to EPA that channeling the monies through general revenue funds does not diminish monies that go to the program. The new legislation envisioned this fee as a dependable long-term funding source for air pollution control. Permit programs and associated costs comprise the majority of state air program costs (at least 70 percent in some cases), but other air program costs still need to be funded through Section 105 grants from EPA and corresponding state matching funds, as well as some additional state general revenue.

Some examples of fees used by state or local air agencies include:

- o Auto registration fees;
- o Indirect source programs such as requiring employer-based ridesharing plans be approved by the agency, with a fee charged;
- o Annual operating fees;
- o Permit fees for new sources; and
- o Emissions fees.

States must establish a collection system for the fees if one does not exist. This could be accomplished through the air agency, or some other appropriate agency designated by the legislature, so long as all benefits from those monies accrue to the air program.

State legislative action may be needed to ensure a state has the authority to:

- o Set and collect fees;
- o Retain those fees;
- o Roll the fees over at the end of the year if unexpended or guarantee application of those fees to the permit program in the next year;
- o Revise the fee schedule;
- o Expend the money,
- o Issue permits with a fixed term of no more than 5 years; and

- o Enforce the law, including civil and criminal penalties.

Table 8 contains a preliminary outline of issues state legislatures may need to address as a result of requirements in the Permit Title of the new federal Clean Air Act. In the next few months, EPA and state and local air pollution control agencies will examine and refine this list.

The transition to the new program with all the promised benefits will not be easy. First, EPA has until November 15, 1991, one year from enactment, in which to issue final regulations to govern state permit programs. During this time EPA must also issue numerous other major regulations for other sections of the law. Draft regulations are expected in late March or early April. Prior to final issuance of the regulations, there will be a public comment period.

States then have two years (until November 15, 1993) to submit an approvable program to EPA. If a state fails to develop or enforce an acceptable program, EPA can impose sanctions (withholding of highway funds and offsets) or collect the fees, keep the money, and run the state program. If after 18 months the state has not developed its plan, sanctions are mandatory. If after two years the state has not acted, the federal government must implement the program.

There may be strategies to help states smooth the transition. For example, states may be able to receive partial or interim authorization for the permit program, that allows the fee system to operate and fund the program while the final permit program is being developed. Ironically, many states may not have money or manpower to develop a new permit program sufficiently to achieve interim approval. The EPA and states continue to discuss options to ease the transition. NCSL will provide state legislators with additional information as it becomes available.

Finally, the new law gives EPA the authority to veto or require changes in any permits issued by a state. The permit would then be revised and resubmitted prior to final approval.

STRATOSPHERIC OZONE DEPLETION (TITLE VI)

Depletion of upper atmosphere ozone increases exposure to harmful ultraviolet radiation. Provisions of the Clean Air Act are designed to eliminate major causes of that depletion: chlorofluorocarbons (CFCs) and their substitutes, hydrochlorofluorocarbons (HCFCs). These provision are compatible with, and in some cases stricter than, the Montreal Protocol, a major international agreement to control production and use of these compounds.

Lists: By January 15, 1991, EPA must develop two lists: Class I substances including chlorofluorocarbons (and a few other major chemicals) and Class II substances including hydrochlorofluorocarbons, the substitutes most likely to be used during the transition to CFC-free products. EPA must review these lists at least every three years and add substances as appropriate.

Phase-Out: Production of the five most destructive CFCs will be phased-out by the year 2000, along with some other chemicals on the Class I list. Production levels of Class II substances will be frozen in the year 2015. New uses for these substances will be limited by 2015, except for their use as refrigerants which will be restricted in

2020. Production of HCFCs will be banned in 2030. This phase-out schedule for CFCs is stricter than that in the Montreal Protocol, and the Protocol does not provide for mandatory HCFC phase-out. There are some exemptions and deadline extensions outlined in the new law.

EPA can require faster phase-out schedules if EPA determines it is necessary to protect health or the environment, if it is scientifically practical, or if the Montreal Protocol is tightened.

Recycling and Disposal: By 1992, refrigerants from motor vehicle air conditioners must be recycled. Furthermore, anyone servicing these air conditioners must be properly trained and certified. By July 1992, EPA must set standards for disposal of Class I and Class II substances, including motor vehicle air conditioner refrigerants. Venting of these substances during appliance repair or maintenance is prohibited.

State Preemption: For two years after enactment, the bill preempts state and local governments from enforcing requirements on the design of new or recalled household and commercial appliances if those requirements are to protect the stratospheric ozone layer.

Other provisions: Three years from enactment (November 15, 1993), non-essential uses of CFCs and HCFCs will be banned. This includes uses such as noise horns, party streamers, cleaning fluids for noncommercial photo and electronic equipment and other consumer products. EPA must promote development of safe substitutes for ozone-depleting substances. Warning labels must be instituted on products containing or made with ozone-depleting substances.

ENFORCEMENT (TITLE VII)

Provisions in the new law attempt to make the Clean Air Act more enforceable and provide a better match between violation and penalty. However, some new restrictions on enforcement were added. New, expanded enforcement authority includes the ability to issue a ticket on the spot for violations of the act, and to increase criminal violations to felonies from misdemeanors.

OTHER TITLES (VIII THROUGH XI)

Other titles of the Act include miscellaneous provisions which address, among other things, air pollution from activities on the Outer Continental Shelf and visibility; clean air research; disadvantaged business concerns; and clean air employment transition assistance.

V. STATE LEGISLATIVE ACTION

State and local agencies will be responsible for primary implementation of the new Clean Air Act, even though much of their activity cannot commence until the federal government issues rules, regulations and guidance documents. State legislatures must work closely with environmental protection agencies and air pollution control programs to ensure adequate and consistent progress to implement and enforce the new law.

Several major areas which require specific legislative action in the immediate future include:

~~Permit programs and fees:~~ Major new programs must be created and funded while current programs must be upgraded. State legislatures must act quickly to authorize fee programs to keep the federal government from stepping in, collecting the monies and running the programs. (See also Section on Permits.)

Authorization of specific pollution control strategies: Programs such as motor vehicle emission I/M programs and Stage II Vapor Recovery, must be authorized by the state legislature. Failure to comply with mandated requirements may result in sanctions which include loss of highway funds and restrictions on building new facilities.

Alternative Fuels, Clean-Fueled Vehicles: Under the new law, states may choose to participate in clean-fueled vehicle programs. State legislatures must authorize that participation.

Enforcement: State legislatures must review current state penalties for violations of the Clean Air Act and upgrade them as directed in the new law.

VI. FURTHER INFORMATION

Further information about the Clean Air Act may be obtained from Nancy A. New, Committee Director for Environment and Natural Resources, in the NCSL Washington Office (202/624-5400). In addition, the following documents may prove helpful:

1. *Clean Air Act Amendments of 1990*. Conference Report to Accompany S. 1630. Report 101-952. Available from the Government Printing Office, 710 North Capitol Street N.W., Washington, DC 20410. Phone: 202/275-2091. Price: \$11. (This is the actual legislative language of the amendments.)

2. *Summary of the Clean Air Act Amendments of 1990*. Prepared by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). November 21, 1990. S. William Becker, Executive Director. Available from NCSL Washington Office or by contacting STAPPA/ALAPCO at 202/624-7864.

3. *The Clean Air Act Amendments of 1990*. Summary Materials. U.S. Environmental Protection Agency. November 15, 1990. Approximately 20 pages; includes glossary, one page title summaries.

4. *Clean Air Act Amendments of 1990*. Detailed Summary of Titles. U.S. Environmental Protection Agency. November 30, 1990. Approximately 150 pages; includes a detailed summary of all titles.

5. *Implementation Strategy for the Clean Air Act Amendments of 1990*. U.S. Environmental Protection Agency. January 15, 1991.

Items 3, 4, and 5 above may be obtained by contacting the U.S. Environmental Protection Agency, Office of Air and Radiation, ANR-443, 401 M Street, SW, Washington, D.C. 20460. Phone: 202/382-7400.

6. *Air Pollution: Air Quality Implications of Alternative Fuels.* U.S. General Accounting Office. July 1990. GAO/RCED-90-143. Available by contacting the U.S. General Accounting Office, 700 4th Street N.W., Room 1000, Washington, D.C. Phone: 202/275-6241.

APPENDIX

TABLE 1.

Legislative History of The Clean Air Act Reauthorization

1989

January to
April

H.R. 2323 introduced by Congressman Henry Waxman (California) regarding Nonattainment.

H.R. 1496 introduced by Congressman Gerry Sikorski (Minnesota) regarding Acid Rain.

H.R. 2585 introduced by Congressman Mickey Leland (Texas) regarding Air Toxics.

H.R. 4 introduced by Congressman John Dingell (Michigan) regarding Air Toxics.

S. 816 introduced by Senator David Durenberger (Minnesota) regarding Air Toxics.

May 23

House Subcommittee on Health and the Environment held hearings on nonattainment bills. National Conference of State Legislatures testified.

June 12

President Bush announced the Administration's comprehensive clean air proposal addressing nonattainment, air toxics and acid deposition.

July 27

House Energy and Commerce Committee Chair John Dingell (Michigan) introduced the Administration's proposal as H.R. 3030 with almost 140 co-sponsors.

August 3

Ranking Republican of the Senate Environment Committee, John Chafee (Rhode Island), introduced the Administration's proposal as S. 1490.

September 13

Health and the Environment Subcommittee of House Energy and Commerce Committee began series of 11 markup hearings that ran through October 11.

September 14

Senator Max Baucus (Montana), Chair of the Senate Environmental Protection Subcommittee, and Senator George Mitchell (Maine) introduced S. 1630 on nonattainment.

September 27

Senate Subcommittee on Environmental Protection held hearings on nonattainment. National Conference of State Legislatures testified.

October 2	Historical agreement on tailpipe standards reached in House Subcommittee. Agreement bound House members through Conference.
October 11	House Subcommittee sent marked up H.R. 3030 to full Committee by a vote of 21-0.
October 19	Senate Environmental Protection Subcommittee adopted air toxics legislation with a vote of 11 to 0.
October 26	Environmental Protection Subcommittee of Senate Environment and Public Works Committee began markup of clean air legislation. Approved nonattainment language by vote of 10-0.
November 7	Senate Subcommittee voted 7-6 to report motor vehicle provisions.
November 14	Subcommittee finished work on legislation; voted 13-0 to report language on acid rain.
November 16	Senate Environment and Public Works Committee sent Clean Air bill to full Senate by vote of 15-1. Bill now numbered S. 1630; S. Rpt. 101-228.
<u>1990</u>	
January 23	Senate began floor debate on S. 1630.
February 1	Select group of Senators began closed door negotiations with Administration on amendments to S. 1630; floor debate suspended.
March 5	Senator Mitchell announced agreements reached in negotiations; floor debate resumed.
March 14	House Energy and Commerce Committee began markup of H.R. 3030.
April 3	After voting on more than 130 amendments over two and a half months, Senate passed The Clean Air Act Amendments of 1990 by a vote of 89-11.
April 5	House Energy and Commerce Committee passed marked up H.R. 3030 by a vote of 42-1.
May 17	House Public Works and Transportation Committee and House Ways and Means Committee given sequential referral after Energy & Commerce Committee filed report.
May 21	Bill was reported out of Public Works and Ways and Means and sent to full House floor.

May 23	House passed The Clean Air Act Amendments of 1990 by a vote of 401-21 after many last minute compromises and a single day of action on amendments.
June 6	Senate announced its 9 conferees.
June 28	House announced its 138 conferees, with many specific jurisdictional restrictions.
July 13	First meeting of Conferees. Senator Max Baucus (D-Montana) selected as Conference Chairman. House members selected John Dingell as leader of House delegation.
August 3	Conferees reached agreement on stratospheric ozone depletion.
September 14	Conferees reached agreement on Title I. (provisions governing nonattainment), and on permits.
September 14 to October 10	Conferees wrestled with provisions of Title II, mobile sources and fuels. Adopted provisions on October 10.
October 22	Conferees reached final agreement on reauthorization of the Clean Air Act.
October 26	House adopted Conference Report by a vote of 401-25.
October 27	Senate adopted Conference Report by a vote of 89-10.
November 15	The President signed S. 1630, The Clean Air Act Amendments of 1990, Public Law 101-549.

TABLE 2.

Requirements for Ozone Nonattainment Categories

(Current National Ambient Air Quality Standard is 0.120 parts per million. This is a daily maximum one-hour average.)

Marginal Ozone Nonattainment Areas

- o Includes areas that are up to 15% over the current standard*
- o Have three years to meet the standard
- o Must require an emissions inventory with periodic updates as part of the revised State Implementation Plan (SIP)
- o Must require basic motor vehicle emissions Inspection and Maintenance (I/M) programs where currently required
- o Must have a permit program for new and modified sources of pollution
- o Must have Reasonably Available Control Technology (RACT) installed on stationary sources.

Moderate Ozone Nonattainment Areas

All requirements applicable to marginal areas apply in addition to the following:

- o Includes areas that are 15% up to 33% over the current standard*
- o Have six years to meet the standard
- o Must achieve at least a 15% reduction in emissions of volatile organic compounds over a six year period
- o Must adopt RACT on all major sources of pollution (those emitting at least 100 tons per year)
- o Install Stage II Vapor Recovery in the area (this requirement ceases after EPA publishes regulations for adoption of on-board vapor recovery devices)
- o Adopt a basic I/M program throughout the area whether or not I/M was required before
- o Require reduction in emission levels of 1.15 units for every 1 unit of new emissions allowed for a new or modified source (this concept is called "offsets").

Serious Ozone Nonattainment Areas:

All requirements applicable to moderate areas apply in addition to the following:

- o Includes areas that are 33% up to 50% above the standard*
- o Have nine years to meet the standard
- o Define major sources as those emitting at least 50 tons per year
- o Must achieve an annual 3 percent reduction in volatile organic compounds after six years (this is in addition to the 15 percent over 6 years required in moderate areas)
- o Must institute an enhanced I/M program in areas with a population of 100,000 or more (including computerized emissions analyzers, annual testing programs, centralized programs, and other requirements)
- o Must adopt transportation control measures if actual emissions from vehicle miles traveled exceed the predictions in the state plan
- o Must implement offsets at a rate of 1.2 to 1
- o Adopt, in some serious areas, a clean-idle vehicle program.

Severe Ozone Nonattainment Areas:

All requirements applicable to serious areas apply in addition to the following:

- o Includes areas that are 50% up to 133% above the standard*
- o Have 15 years to meet the standard (some severe areas will receive 17 years)
- o Major sources are defined as emitting at least 25 tons per year
- o Must identify, adopt and enforce transportation control measures and strategies that will reduce overall vehicular emissions
- o Must require employers with 100 or more employees to increase the average vehicle occupancy during peak periods by 25 percent and to reduce the overall number of trips
- o Require offsets at a rate of 1.3 to 1
- o Imposes a fee per ton of emissions if area fails to reach attainment by deadline.

Extreme Ozone Nonattainment Areas:

All requirements applicable to severe areas apply in addition to the following:

- o Includes areas that are 133% or more above the standard*
- o Have 20 years to meet the standard
- o Major sources are defined as emitting at least 10 tons per year
- o Offset rates are 1.5 to 1
- o Require clean-fuel be burned in stationary sources emitting more than 25 tons per year of nitrogen oxides
- o Require adoption of transportation control measures during heavy traffic hours
- o Imposes a fee per ton of emissions if area fails to reach attainment by deadline.

* Actual values are listed in the legislation.

TABLE 3.

Ozone Nonattainment Areas by Category (Preliminary Listing)

(1987 - 89 data)

EXTREME (1 area)

20-year deadline extension

Los Angeles, Anaheim-Riverside, CA

SPECIAL SEVERE (4 areas)

17-year deadline extension

Baltimore, MD

Chicago, IL-IN-WI

Houston, TX

New York, NY-NJ-CT

SEVERE (4 areas)

15-year deadline extension

Milwaukee, WI

Muskegon, MI

Philadelphia, PA-NJ-DE-MD

San Diego, CA

SERIOUS (16 areas)

9-year deadline extension

Atlanta, GA

Bakersfield, CA

Baton Rouge, LA

Beaumont, TX

Boston, MA-NH

El Paso, TX

Fresno, CA

Hartford, CT

Huntington, WV-KY-OH

Parkersburg, WV-OH

Portsmouth, NH-ME

Providence, RI

Sacramento, CA

Sheboygan, WI

Springfield, MA

Washington, DC-MD-VA

MODERATE (33 areas)
6-year deadline extension

Atlantic City, NJ
Bowling Green, KY
Charleston, WV
Charlotte, NC
Cincinnati, OH-KY-IN
Cleveland, OH
Dallas, TX
Dayton, OH
Detroit, MI
Edmonson, Co., KY
Grand Rapids, MI
Greensboro, NC
Jefferson Co., NY
Kewaunee Co., WI
Knox Co., ME
Louisville, KY-IN
Memphis, TN-AR-MS
Miami, FL
Modesto, CA
Nashville, TN
Pittsburgh, PA
Portland, ME
Raleigh, NC
Reading, PA
Richmond, VA
Salt Lake City, UT
San Francisco, CA
St. Louis, MO-IL
Santa Barbara, CA
Smyth Co., VA
Toledo, OH
Visalia, CA
Worcester, MA

MARGINAL (42 areas)
3-year deadline extension

Albany, NY
Allentown, PA
Altoona, PA
Birmingham, AL
Buffalo, NY
Canton, OH
Columbus, OH
Erie, PA
Essex Co., NY
Evansville, IN-KY
Fayetteville, NC
Greenbrier Co., WV
Greenville, SC

Hancock Co., ME
Harrisburg, PA
Indianapolis, IN
Jacksonville, FL
Johnson City, TN-VA
Johnstown, PA
Kansas City, MO-KS
Knoxville, TN
Lake Charles, LA
Lancaster, PA
Lewiston, ME
Lexington, KY
Lincoln Co., ME
Livingston Co., KY
Manchester, NH
Montgomery, AL
Norfolk, VA
Owensboro, KY
Paducah, KY
Poughkeepsie, NY
Scranton, PA
South Bend, IN
Stockton, CA
Sussex Co., DE
Tampa, FL
Tulsa, OK
Waldo Co., ME
York, PA
Youngstown, OH

TABLE 4.

Requirements for Carbon Monoxide Nonattainment Categories

(Current National Ambient Air Quality Standard is nine parts per million measured as an eight hour standard.)

Moderate Carbon Monoxide Nonattainment Areas

- o Areas that exceed the standard by up to 82%*
- o Have until December 31, 1995 to reach the standard
- o Must submit a plan including an emissions inventory
- o Areas which exceed standard by 41 percent must also include information in the plan that indicates predictions of vehicle miles traveled (VMT)
- o Must also develop contingency plan that goes into effect automatically if vehicle miles traveled exceed the prediction or if the area fails to attain by the deadline
- o Inspection & Maintenance (I/M) programs are required similar to marginal ozone nonattainment areas
- o Require enhanced I/M programs in some parts of moderate CO nonattainment areas
- o Require oxygenated fuels during high CO portions of the year.

Serious Carbon Monoxide Nonattainment Areas

All requirements applicable to moderate CO nonattainment areas apply in serious areas, as well as the following:

- o Areas that exceed the standard by more than 82 percent*
- o Have until December 31, 2000 to reach the standard
- o Require clean-fuel vehicles for fleets
- o Require implementation of an oxygenated fuels program
- o Mandatory implementation of transportation control measures
- o Must achieve annual reductions in CO emissions ("milestones")
- o Failure to achieve reductions will result in mandatory economic incentive and transportation control programs
- o Require controls on sources emitting at least 50 tons per year.

* Actual values are listed in the legislation.

TABLE 5.

Carbon Monoxide Nonattainment Areas by Category
(Preliminary Listing)
(1988-89 data)

SERIOUS (3 areas)

December 31, 2000 deadline for attainment

Los Angeles-Anaheim-Riverside, CA
Steubenville, OH-Weirton, WV
Winnebago, Co., WI

MODERATE (38 areas)

December 31, 1995 deadline for attainment

Albuquerque, NM
Anchorage, AK
Baltimore, MD
Boston-Lawrence-Salem, MA-NH
Chico, CA
Cleveland-Akron-Lorain, OH
Colorado Springs, CO
Denver-Boulder, CO
Duluth, MN
El Paso, TX
Fairbanks, AK
Fort Collins-Loveland, CO
Fresno, CA
Greensboro-Winston Salem-H. Point, NC
Hartford-New Britain-Middletown, CT
Josephine Co., OR
Klamath Co., OR
Las Vegas, NV
Medford, OR
Memphis, TN-AR-MS
Minneapolis-St. Paul, MN
Missoula Co., MT
Modesto, CA
New York, NY-NJ-CT
Philadelphia, PA-NJ-DE
Phoenix, AZ
Portland, OR
Provo-Orem, UT
Raleigh-Durham, NC
Reno, NV
Sacramento, CA
San Diego, CA
San Francisco-Oakland-San Jose, CA
Seattle-Tacoma, WA
Spokane, WA

Stockton, CA
Syracuse, NY
Washington, DC-MD-VA

TABLE 6.
Motor Vehicle Standards
in The Clean Air Act Amendments of 1990

Cars and Light Trucks
Standards in grams per mile (gpm)

Current

(Certification and in-use for 5 years/50,000 miles)

Hydrocarbons (Total HC)	0.41 gpm
Carbon Monoxide (CO)	3.4 gpm
Nitrogen Oxides (NO _x)	1.0 gpm

New Law - "Tier I"

(Certification starting in 1994,
in-use phased-in between 1996 & 1998)

	<u>50,000 miles</u>	<u>100,000 miles*</u>
Nonmethane Hydrocarbons (NMHC)	0.25 gpm	0.31 gpm
Carbon Monoxide (CO)	3.4 gpm	5.2 gpm
Nitrogen Oxides (NO _x)	0.4 gpm	0.6 gpm

*An "intermediate" in-use standard (used for all recall decisions up to 7 years/75,000 miles) of 0.32 NMHC, 5.2 CO and 0.4 NO_x will be phased-out between 1994 and 1998.

"Tier II"

(Standards go into effect in 2004 only
if EPA does not act to stop them)

Nonmethane Hydrocarbons (NMHC)	0.125 gpm
Carbon Monoxide (CO)	1.7 gpm
Nitrogen Oxides (NO _x)	0.2 gpm

TABLE 7.

Clean-fueled Vehicles Standards
(in grams per mile-gpm)

PHASE I. Standards to take effect in model year 1996.

<u>Pollutant</u>	<u>50,000-mile standard</u>	<u>100,000-mile standard</u>
Light-duty vehicles (LDV), and light-duty trucks (LDT) weighing up to 3,750 pounds, loaded vehicle weight (LVW), and up to 6,000 pounds gross vehicle weight rating (GVWR).		
Nonmethane Organics (NMOG)	0.125 gpm	0.156 gpm
Carbon Monoxide (CO)	3.4 gpm	4.2 gpm
Nitrogen Oxides (NO _x)	0.4 gpm	0.6 gpm
Formaldehyde (HCHO)	0.015 gpm	0.018 gpm
Particulate Matter (PM)*	----	0.08 gpm
*(diesel fueled vehicles only)		

<u>Pollutant</u>	<u>50,000-mile standard</u>	<u>100,000-mile standard</u>
LDV and LDT weighing more than 3,750 pounds lvw and up to 5,750 pounds lvw, and up to 6,000 pounds gvwr.		
NMOG	0.160 gpm	0.2 gpm
CO	4.4 gpm	5.5 gpm
NO _x	0.7 gpm	0.9 gpm
HCHO	0.018	0.023 gpm
PM*	----	0.08 gpm

PHASE II.

Standards to take effect in model year 2001. After 1997 and prior to 2001, if such vehicles are offered for sale in California, the standards become effective.

<u>Pollutant</u>	<u>50,000-mile standard</u>	<u>100,000-mile standard</u>
LDV and LDT up to 3,750 pounds lvw and up to 6,000 pounds gvwr.		
NMOG	0.075 gpm	0.090 gpm
CO	3.4 gpm	4.2 gpm
NO _x	0.2 gpm	0.3 gpm
HCHO	0.015 gpm	0.018 gpm
PM*	----	0.08 gpm

Pollutant

50,000-mile standard

100,000-mile standard

LDV and LDT weighing more than 3,750 pounds lw and up to 5,750 pounds lw and up to 6,000 pounds gvwr.

NMOG	0.1 gpm	0.13 gpm
CO	4.4 gpm	5.5 gpm
NO _x	0.4 gpm	0.5 gpm
HCHO	0.018 gpm	0.023 gpm
PM*	----	0.08 gpm

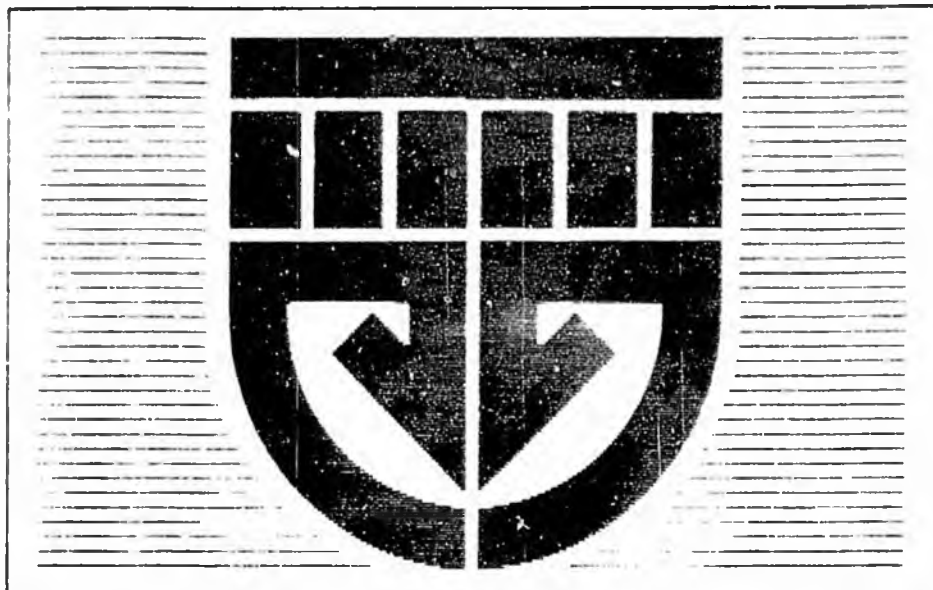
TABLE 8.

State Legislative Authority Needed for Air Pollution Permit Programs (Title V)
(Preliminary listing)

- o Authority to charge and collect fees equivalent to \$25 per ton--Section 502(b) (3); 502(b) (3) (B) (i)
- o Ability to increase annual permit fees proportional to annual increases in the Consumer Price Index--Section 502(b) (3) (B) (v)
- o Permit fees must be used solely to cover costs of state and local program--Section 502(b) (3) (C) (iii)
- o Authority to require permitted sources to monitor and to report--Section 502(b) (2)
- o Authority to issue renewable operating permits, permits must be renewable every five years or less--Section 502(b) (5) (A); 502(b) (5) (B)
- o Ability to incorporate enforceable conditions into operating permits--Section 502(b) (5) (C)
- o Ability to terminate, modify, or revoke and reissue operating permits for cause--Section 502(b) (5) (D)
- o Authority to enforce permit conditions, fee requirements, and requirement to obtain a permit--Section 502(b) (5) (E)
- o Authority to collect civil penalties of at least \$10,000 per day per violation and "appropriate" criminal penalties--Section 502(b) (5) (E)
- o Authority to not issue a permit if EPA objects to its issuance--Section 502(b) (5) (F)
- o Ability to provide public notice including the opportunity for public comment and hearing--Section 502(b) (6)
- o Opportunity for judicial review in State court of the final permit--Section 502(b) (6)
- o Ability of persons of standing to obtain judicial review for the failure of the permitting authority to act on a permit application--Section 502(b) (7)
- o Authority to make available to the public permit applications, compliance plans, permits and monitoring or compliance reports--Section 502(b) (8)
- o Ability to incorporate new standards into a permit with three or more years remaining before renewal--Section 502(b) (9)

- o Ability to allow some changes to occur within a permitted facility without requiring a permit revision--Section 502(b) (10)
- o Ability to obtain entry and inspect permitted sources to assure compliance--Section 502(c)
- o No automatic/default permit issuance (i.e., if State fails to act)
- o Ability to permit a source in violation
- o Ability to incorporate Federal Implementation Plan (FIP) provisions into a permit.

Source: State and Territorial Air Pollution Program
Administrators/Association of Local Air Pollution Control
Officials



State-Federal Issue Brief

National Conference
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