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Lauterbach  
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**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:  
Referred:

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. 36.30.09. 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 which the Department of Transportation and Public  
18 Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall procure only an  
19 alternative-fueled vehicle if an alternative-fueled vehicle is available from an original equipment  
20 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.

1 (d) The department shall ensure that permits issued, modified, amended, or renewed  
2 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.  
3 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control  
4 plan.

5 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
6 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
7 from some or all of the requirements of this chapter.

8 Sec. 46.14.205. FACILITIES REQUIRING PERMITS. (a) Before constructing,  
9 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain  
10 a construction permit from the department if the facility is any one of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
29 this chapter, the owner and operator, a person who participated in the public comment process,  
30 or a person with standing under state or federal law to obtain administrative or judicial review  
31 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 (d) The department shall charge and collect a processing fee of \$100 from a person who  
28 applies for a permit under this chapter if the department determines that the permit applied for  
29 is not required.

30 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department  
31 shall adopt regulations that provide for the assessment of a penalty of up to 50 percent of the fee

1 established under AS 46.14.250(b) against the owner and operator of a facility if the owner and  
2 operator fail to timely pay a fee lawfully imposed under this chapter. The department may also  
3 assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is  
4 due under this chapter and is unpaid.

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

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

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

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

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

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

3 (2) the permit contains a material mistake;

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

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

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

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

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

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

1 requirements of law before or at the time of permit issuance.

2 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
3 and operator have submitted a timely and complete application for a permit or a permit renewal,  
4 as applicable, but final action has not been taken on the application, the owner's and operator's  
5 failure to have an operating permit is not a violation of this chapter unless the delay in final  
6 action was due to the failure of the owner and operator to timely submit information required or  
7 requested to process the application. An owner and operator required to have an operating permit  
8 under this chapter are not in violation of the operating permit program established under this  
9 chapter before the date on which the owner and operator are required to submit an application  
10 under AS 46.14.220.

### 11 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

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

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

30 (d) If the department adopts regulations requiring the maintenance of air pollution control  
31 systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle

1 subject to those regulations may not be issued a certificate of inspection unless the required air  
2 pollution control system or mechanism has been inspected in accordance with the standards,  
3 testing techniques, and instructions furnished by the department and the motor vehicle has been  
4 found to meet those standards. A valid certificate of inspection for the emission control system,  
5 if required by the department, must be presented to the Department of Public Safety before that  
6 department may register a motor vehicle.

7 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

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

11 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program  
12 shall

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

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

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

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

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

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

29 (7) provide small business facility operators with a list of auditors available for  
30 auditing the operation of the facility or, if possible, and at the request of a facility owner or  
31 operator, audit a facility to evaluate compliance with this chapter and regulations adopted under

1 this chapter; an audit under this paragraph may not be regarded as an inspection or investigation;

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

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

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

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

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

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

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

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

30 (b) The panel consists of

31 (1) two members, who are not owners or representatives of owners of small

1 business stationary sources, selected by the governor to represent the general public;

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

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

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

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

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

17 (c) The compliance advisory panel shall

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

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

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

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

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

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

31 ARTICLE 5. LOCAL PROGRAMS.

1           Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
2 approval of the department, a municipality with a population of 1,000 or more may establish and  
3 administer within its jurisdiction a local air quality control program that is consistent with all or  
4 part of the department's air quality program as established under this chapter. A first or second  
5 class borough may administer an air quality control program approved by the department under  
6 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional  
7 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
8 an air quality control program approved by the department under this subsection only in a service  
9 area formed under AS 29.35.490(b) or (c).

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

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

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

19           (2) local air contaminant sources; or

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

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

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

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

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

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

31           (e) A local air quality control program shall provide for the exemption of a locally

1 registered motor vehicle from motor vehicle emission requirements adopted under AS 46.14.300  
2 if the motor vehicle is not used within the program's jurisdiction.

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

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

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

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

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

1 and municipality or the local air quality district.

2 (d) A municipality or local air quality district that has had its cooperative agreement  
3 terminated may resume, with the department's approval, a local air quality control program if the  
4 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan  
5 required by the department.

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

13 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality  
14 district with a local air quality control program may apply for, receive, administer, and spend  
15 state or federal aid for the control of air emissions or the development and administration of the  
16 program if an application is first submitted to and approved by the department. Subject to  
17 available money appropriated by the legislature, the department shall approve an application if  
18 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
19 the requirements of this chapter.

#### 20 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

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

31 (2) the records

1 (A) relate to production figures, sales figures, processes, or production  
2 techniques of the owner and operator, or

3 (B) consist of meteorological or ambient air quality data collected by the  
4 owner or operator to support a permit application or amendment.

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

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

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

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

1 subsection for good cause.

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

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

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

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

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

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

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

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

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

30 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
31 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))

1 for state participation in the emission control permit program; and

2 (2) appropriations to the fund.

3 (b) The money deposited into the clean air protection fund under (a)(1) of this section  
4 may be used solely to cover the reasonable direct and indirect costs, including court costs and  
5 attorney fees, required to support the permit program under this chapter, and those activities of  
6 the small business assistance program that are directed at facilities subject to this chapter.

7 Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,  
8 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or  
9 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this  
10 chapter, shall be deposited in the general fund.

#### 11 ARTICLE 7. GENERAL PROVISIONS.

12 Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

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

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

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

19 Sec. 46.14.990. DEFINITIONS. In this chapter,

20 (1) "air contaminant" means a regulated air contaminant or a hazardous air  
21 contaminant;

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

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

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

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

- 1 (6) "commissioner" means the commissioner of environmental conservation;
- 2 (7) "construct" or "construction" means to fabricate, erect, or install, or to make  
3 a physical change, that would result in emissions;
- 4 (8) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings  
5 in a facility from which an air contaminant could be emitted;
- 6 (9) "department" means the Department of Environmental Conservation;
- 7 (10) "emission" means a release of one or more air contaminants to the  
8 atmosphere;
- 9 (11) "emission limitation" and "emission standard" mean a requirement established  
10 by the department or the federal administrator, other than an ambient air quality standard, that  
11 limits the quantity, rate, or concentration of emission of an air contaminant, including a  
12 requirement relating to the operation or maintenance of a source to ensure continuous emission  
13 reduction, and design, equipment, work practice, or operational standard adopted under this  
14 chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);
- 15 (12) "equivalent emission limitation" means
- 16 (A) a limitation for hazardous air contaminants established by the federal  
17 administrator or the commissioner on a case-by-case basis that is equivalent to the  
18 limitation that would apply to a source or facility if an emission standard had been  
19 adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)); or
- 20 (B) if the criteria of the early reduction program established in 42 U.S.C.  
21 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that  
22 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));
- 23 (13) "facility" means one or more structures, buildings, installations, or properties  
24 upon which a source or sources are located, that are contiguous or adjacent, and that are owned  
25 or operated by the same person or by persons under common control;
- 26 (14) "federal administrator" means the administrator of the United States  
27 Environmental Protection Agency;
- 28 (15) "fugitive emissions" means emissions of an air contaminant that are not  
29 emitted from a contaminant outlet;
- 30 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
31 7412(b) (Clean Air Act, sec. 112(b));

- 1 (17) "local air quality control program" means a program authorized under  
2 AS 46.14.500 to implement some or all of the provisions of this chapter;
- 3 (18) "major facility" means a facility with the potential to emit at least  
4 (A) 100 TPY of a regulated air contaminant;  
5 (B) 10 TPY of a hazardous air contaminant; or  
6 (C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;
- 7 (19) "modification" or "modify" means to make a change or a series of changes  
8 in operation, or any physical change or addition to a facility or source that increases the actual  
9 emissions of an air contaminant;
- 10 (20) "operator" means a person or persons who direct, control, or supervise a  
11 facility or source that has the potential to emit an air contaminant to the atmosphere;
- 12 (21) "owner" means a person or persons with a proprietary or possessory interest  
13 in a facility or source that has the potential to emit an air contaminant to the atmosphere;
- 14 (22) "person" has the meaning given in AS 01.10.060 and also includes a  
15 municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments,  
16 agencies, instrumentalities, units, and corporate authorities of the state;
- 17 (23) "potential to emit" means the maximum quantity of a release of an air  
18 contaminant, considering a facility's physical or operational design, based on continual operation  
19 of all sources within the facility for 24 hours a day, 365 days a year, reduced by the effect of  
20 pollution control equipment and approved state or federal limitations on the capacity of the  
21 facility's sources or the facility to emit an air contaminant, including restrictions on hours or rates  
22 of operation and type or amount of material combusted, stored, or processed; "potential to emit"  
23 does not include
- 24 (A) a one-time, accidental release of an air contaminant; or  
25 (B) fugitive emissions, unless the facility is subject to AS 46.14.205(a)(2);
- 26 (24) "register" or "registration" means vehicle registration under AS 28.10;
- 27 (25) "regulated air contaminant" means  
28 (A) a material, compound, or element for which a national or state  
29 ambient air quality standard has been adopted;  
30 (B) oxides of nitrogen;  
31 (C) a volatile organic compound; and

1 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
2 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

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

5 (B) is a small business concern as defined in 15 U.S.C. 631 (Small  
6 Business Act); and

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

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

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

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

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

16 \* Sec. 6. AS 28.10.423 is amended to read:

17 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
18 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
19 required to be inspected under an emission control program established under AS 46.14.300 or  
20 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
21 as the registration fee.

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

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

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

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

29 (1) provide transportation systems;

30 (2) provide water pollution control;

31 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -

1 46.03.230];

2 (4) license day care facilities;

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

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

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

7 (1) provide transportation systems;

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

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

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

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

15 (6) provide water pollution control;

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

18 (8) provide for economic development;

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

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

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

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

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

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

31 (b) A second class borough may by ordinance exercise the following powers on an

1 areawide basis:

2 (1) provide transportation systems;

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

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

6 (4) provide water pollution control;

7 (5) license day care facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (f) A person who violates or causes or permits to be violated a provision of

1 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a  
2 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued  
3 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum  
4 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,  
5 nor more than \$10,000 for each day after that on which the violation continues, and that shall  
6 reflect, when applicable,

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

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

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

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

17 \* Sec. 15. AS 46.03.765 is amended to read:

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

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

28 (a) A person who violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or  
29 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, [OR] AS 46.09, or  
30 AS 46.14, or violates or disregards an order, permit, or other determination of the department  
31 made under the provisions of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14, respectively,

1 and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the  
2 environment of the state is liable to the state for damages.

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

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

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

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

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

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

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

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

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

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

28 (a) When, in the opinion of the department, a person is violating or is about to violate  
29 a provision of this chapter, [OR] AS 46.04, or AS 46.14, or a regulation or lawful order of the  
30 department, or a permit or certificate, or a term or condition of a permit or certificate issued by  
31 the department under this chapter, [OR] AS 46.04, AS 46.14, the department may notify the

1 person of its determination by personal service or certified mail. The determination and notice  
2 do not constitute an order under AS 46.03.820.

3 \* Sec. 20. AS 46.03.875 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

15 \* Sec. 27. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
16 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

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

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

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

25 \* Sec. 31. AS 46.14.010, 46.14.020, 46.14.200(a) and (c) - (e), 46.14.205(a)(1) - (3) and (5),  
26 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,  
27 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 -  
28 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  
29 take effect immediately under AS 01.10.070(c).

30 \* 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,  
31 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 4 of this Act, take effect November 15,

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1 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 statues. 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.

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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.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO CSHB 377 (RES)

Revision Date: \_\_\_\_\_  
Title: Alaska Air Permit Statutes

Department Affected: Environmental Conservation  
BRU: Division of Environmental Quality

Sponsor: Representative Tom Moyer  
Requestor: Resources Committee

Component: Air Quality Management

COMPONENT SERIAL NO. 

|   |   |   |   |
|---|---|---|---|
| 1 | 4 | 2 | 8 |
|---|---|---|---|

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 Quality

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

Approved by Commissioner: James Alford for Don Sanders  
 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     |
| <b>Incremental costs</b>     |        |         |         |        |       |       |
| 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  |
| <b>Total Cost Projection</b> | 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    |
| <b>Total Funds</b>             | 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<br>ENVIRONMENTAL ENGINEER III |                    | No. of Positions<br>5 | Range / Step<br>19A | Barg. Unit<br>GG             |
| Time Status<br>Full-Time                     | Staff Months<br>49 | Location<br>Various   |                     | Election District<br>Various |
| <b>TYPE OF EXPENDITURE</b>                   |                    | <b>Amount</b>         |                     |                              |
| Salary                                       |                    | 182.6                 |                     |                              |
| Benefits                                     |                    | 78.4                  |                     |                              |
| Premium Pay                                  |                    |                       |                     |                              |
| Other  |                    |                       |                     |                              |
| <b>Total Personal Services</b>               |                    | 261.0                 |                     |                              |
| Travel                                       |                    | 32.0                  |                     |                              |
| Contractual                                  |                    | 24.0                  |                     |                              |
| Commodities                                  |                    | 10.0                  |                     |                              |
| Equipment                                    |                    | 25.0                  |                     |                              |
| Other  |                    |                       |                     |                              |
| <b>Total Cost</b>                            |                    | 352.0                 |                     |                              |
| <b>FUNDING SOURCE FOR TOTAL COST</b>         |                    |                       |                     |                              |
| Federal Receipts                             | 1002               |                       |                     |                              |
| G.F. Match                                   | 1003               |                       |                     |                              |
| General Fund                                 | 1004               |                       |                     |                              |
| IA Receipts                                  | 1007               |                       |                     |                              |
| CIP Receipts                                 | 1061               |                       |                     |                              |
| Other  | PROGRAM RECEIPTS   | 352.0                 |                     |                              |
|  |                    |                       |                     |                              |
|  |                    |                       |                     |                              |

**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 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.

**Request For  
New Position**

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

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Revised Date: \_\_\_\_\_

|   |                    |   |                     |                              |
|---|--------------------|---|---------------------|------------------------------|
| Position Title<br>ENVIRONMENTAL ENGINEER II |                    | No. of Positions<br>4   | Range / Step<br>17A | Org. Unit<br>GG              |
| Time Status<br>Full-time                    | Staff Months<br>24 | Location<br>Various   |                     | Election District<br>Various |
| <b>TYPE OF EXPENDITURE</b>                  |                    | <b>Amount</b>   |                     |                              |
| 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   |                     |                              |
| <b>FUNDING SOURCE FOR TOTAL COST</b>        |                    |   |                     |                              |
| Federal Receipts                            | 1002               |   |                     |                              |
| G.E. Match                                  | 1003               |   |                     |                              |
| General Fund                                | 1004               |   |                     |                              |
| LA Receipts                                 | 1007               |   |                     |                              |
| CIP Receipts                                | 1061               |   |                     |                              |
| Other                                       | PROGRAM RECEIPTS   | 163.2   |                     |                              |
|   |                    | <b>Justification</b><br><br>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.<br><br>The Environmental Engineer IIs will assist senior staff to: <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants,</li> <li>and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol> |                     |                              |

## Request For New Position

AGENCY Environmental Conservation  
BRU Environmental Quality  
COMPONENT Air Quality Management

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Revised Date: \_\_\_\_\_

|  |                   |                       |   |                             |
|--|-------------------|-----------------------|---|-----------------------------|
| Position Title<br>ENVIRONMENTAL ENGINEER I |                   | No. of Positions<br>1 | Range / Step<br>15A   | Org. Unit<br>GG             |
| Time Status<br>Full-Time                   | Staff Months<br>3 | Location<br>Juneau    |   | Election District<br>Juneau |
| <b>TYPE OF EXPENDITURE</b>                 |                   | <b>Amount</b>         | <b>Justification</b>  |                             |
| Salary                                     |                   | 6.2                   | <p>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.</p> <p>The Environmental Engineer I will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants, and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol> |                             |
| Benefits                                   |                   | 2.6                   |   |                             |
| Premium Pay                                |                   |                       |   |                             |
| Other                                      |                   |                       |   |                             |
| Total Personal Services                    |                   | 9.5                   |   |                             |
| Travel                                     |                   | 3                     |   |                             |
| Contractual                                |                   | 2                     |   |                             |
| Commodities                                |                   | 1                     |   |                             |
| Equipment                                  |                   | 5                     |   |                             |
| Other                                      |                   |                       |   |                             |
| Total Cost                                 |                   | 20.5                  |   |                             |
| <b>FUNDING SOURCE FOR TOTAL COST</b>       |                   |                       |   |                             |
| Federal Receipts                           | 1002              |                       |   |                             |
| G.F. Match                                 | 1003              |                       |   |                             |
| General Fund                               | 1004              |                       |   |                             |
| IA Receipts                                | 1007              |                       |   |                             |
| CIP Receipts                               | 1061              |                       |   |                             |
| Other                                      | PROGRAM RECEIPTS  | 20.5                  |   |                             |

**Request For  
New Position**

AGENCY Environmental Conservation

BRU Environmental Quality

COMPONENT Air Quality Management

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Revised Date: \_\_\_\_\_

|   |                   |   |                     |                              |
|---|-------------------|---|---------------------|------------------------------|
| Position Title<br>ENVIRONMENTAL SPECIALIST II |                   | No. of Positions<br>2   | Range / Step<br>16A | Barg. Unit<br>GG             |
| Time Status<br>Full-time                      | Staff Months<br>6 | Location<br>Various   |                     | Election District<br>Various |
| <b>TYPE OF EXPENDITURE</b>                    |                   | <b>Amount</b>   |                     |                              |
| 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  |                     |                              |
| <b>FUNDING SOURCE FOR TOTAL COST</b>          |                   |   |                     |                              |
| Federal Receipts                              | 1002              |   |                     |                              |
| G.F. Match                                    | 1003              |   |                     |                              |
| General Fund                                  | 1004              |   |                     |                              |
| I-A Receipts                                  | 1007              |   |                     |                              |
| CIP Receipts                                  | 1061              |   |                     |                              |
| Other   | PROGRAM RECEIPTS  | 54.9  |                     |                              |
|   |                   | <p><b>Justification</b></p> <p>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.</p> <p>The Environmental Specialist IIs will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop revised regulations, recognizing small business concerns</li> <li>2. identify and assist new permittees</li> <li>3. develop standardized permit applications</li> <li>4. prepare draft permits</li> <li>5. provide assistance and information to permit applicants</li> <li>6. develop the small business and pollution prevention programs</li> <li>7. training regional and district permit liaisons</li> <li>8. conduct inspections and compliance certifications</li> <li>9. develop regulations to minimize release of hazardous air pollutants, and</li> <li>10. establish a quality control/quality assurance audit program.</li> </ol> |                     |                              |

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|   |                    |  |                     |                              |
|---|--------------------|--|---------------------|------------------------------|
| Position Title<br>CLERK TYPIST III        |                    | No. of Positions<br>2.5  | Range / Step<br>08A | Barg. Unit<br>GG             |
| Time Status *                             | Staff Months<br>15 | Location<br>Various  |                     | Election District<br>Various |
| <b>TYPE OF EXPENDITURE</b>                |                    | <b>Amount</b>  |                     |                              |
| Salary                                    |                    | 27.9   |                     |                              |
| Benefits                                  |                    | 13.2   |                     |                              |
| Premium Pay                               |                    |  |                     |                              |
| Other                                     |                    |  |                     |                              |
| Total Personal Services                   |                    | 41.1   |                     |                              |
| Travel                                    |                    | 0  |                     |                              |
| Contractual                               |                    | 5  |                     |                              |
| Commodities                               |                    | 2.5  |                     |                              |
| Equipment                                 |                    | 15   |                     |                              |
| Other                                     |                    |  |                     |                              |
| Total Cost                                |                    | 63.6   |                     |                              |
| <b>FUNDING SOURCE FOR TOTAL COST</b>      |                    |  |                     |                              |
| Federal Receipts                          | 1002               |  |                     |                              |
| G.E. Match                                | 1003               |  |                     |                              |
| General Fund                              | 1004               |  |                     |                              |
| I-A Receipts                              | 1007               |  |                     |                              |
| CIP Receipts                              | 1061               |  |                     |                              |
| Other                                     | PROGRAM RECEIPTS   | 63.6   |                     |                              |
| <p>* Full-time (2)<br/>Part-time (.5)</p> |                    |  |                     |                              |
|   |                    | <p><b>Justification</b></p> <p>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.</p> <p>The two full-time and one part-time Clerk Typist IIIs will assist senior staff to:</p> <ol style="list-style-type: none"> <li>1. develop procedures to track permit applications</li> <li>2. prepare information packets for potential permittees</li> <li>3. issue and receive standardized permit applications</li> <li>4. prepare permit documentation and correspondence</li> <li>5. provide assistance and information to permit applicants</li> <li>6. operate small business and pollution prevention hotlines</li> <li>7. develop correspondence tracking systems, and</li> <li>8. develop and maintain permit and permit application files.</li> </ol> |                     |                              |

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|  |                   |                       |                     |                             |
|--|-------------------|-----------------------|---------------------|-----------------------------|
| Position Title<br>ACCOUNTING CLERK II  |                   | No. of Positions<br>1 | Range / Step<br>09A | Barg. Unit<br>GG            |
| Time Status<br>Full-Time   | Staff Months<br>3 | Location<br>Juneau    |                     | Election District<br>Juneau |
| <b>TYPE OF EXPENDITURE</b>   |                   | <b>Amount</b>         |                     |                             |
| Salary   |                   | 6.3                   |                     |                             |
| Benefits   |                   | 2.4                   |                     |                             |
| Premium Pay  |                   |                       |                     |                             |
| Other  |                   |                       |                     |                             |
| Total Personal Services  |                   | 8.7                   |                     |                             |
| Travel   |                   | 0                     |                     |                             |
| Contractual  |                   | 2                     |                     |                             |
| Commodities  |                   | 1                     |                     |                             |
| Equipment  |                   | 5                     |                     |                             |
| Other  |                   |                       |                     |                             |
| Total Cost   |                   | 16.7                  |                     |                             |
| <b>FUNDING SOURCE FOR TOTAL COST</b>   |                   |                       |                     |                             |
| Federal Receipts   | 1002              |                       |                     |                             |
| G.F. Match   | 1003              |                       |                     |                             |
| General Fund   | 1004              |                       |                     |                             |
| I-A Receipts   | 1007              |                       |                     |                             |
| CIP Receipts   | 1061              |                       |                     |                             |
| Other  | PROGRAM RECEIPTS  | 16.7                  |                     |                             |
| Justification  |                   |                       |                     |                             |
| <p>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.</p> <p>The Accounting Clerk II will assist senior staff by:</p> <ol style="list-style-type: none"> <li>1. developing procedures for permit fees and assessments</li> <li>2. preparing information packets for potential permittees</li> <li>3. developing uniform accounting procedures for permit fees</li> <li>4. preparing permit documentation and correspondence</li> <li>5. providing assistance and information to permit applicants</li> <li>6. tracking small business and pollution prevention funds</li> <li>7. implementing report and audit procedures, and</li> <li>8. developing standardized managerial summaries of fund activity.</li> </ol> |                   |                       |                     |                             |

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|  |                   |                       |                     |                             |
|--|-------------------|-----------------------|---------------------|-----------------------------|
| Position Title<br>PARALEGAL ASSISTANT II |                   | No. of Positions<br>1 | Range / Step<br>16A | Barg. Unit<br>GG            |
| Time Status<br>Full-time                 | Staff Months<br>9 | Location<br>Juneau    |                     | Election District<br>Juneau |
| <b>TYPE OF EXPENDITURE</b>               |                   | <b>Amount</b>         |                     |                             |
| 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                  |                     |                             |
| <b>FUNDING SOURCE FOR TOTAL COST</b>     |                   |                       |                     |                             |
| Federal Receipts                         | 1002              |                       |                     |                             |
| G.F. Match                               | 1003              |                       |                     |                             |
| General Fund                             | 1004              |                       |                     |                             |
| IA Receipts                              | 1007              |                       |                     |                             |
| CIP Receipts                             | 1061              |                       |                     |                             |
| Other                                    | PROGRAM RECEIPTS  | 46.5                  |                     |                             |
|  |                   |                       |                     |                             |
|  |                   |                       |                     |                             |

**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 procedure 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.

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|   |                   |                       |                     |                             |
|---|-------------------|-----------------------|---------------------|-----------------------------|
| Position Title<br><b>ADMINISTRATIVE ASSISTANT II</b>  |                   | No. of Positions<br>1 | Range / Step<br>14A | Marg. Unit<br>GG            |
| Time Status<br>Full-time  | Staff Months<br>9 | Location<br>Juneau    |                     | Election District<br>Juneau |
| <b>TYPE OF EXPENDITURE</b>  |                   | <b>Amount</b>         |                     |                             |
| Salary  |                   | 24.1                  |                     |                             |
| Benefits  |                   | 9.9                   |                     |                             |
| Premium Pay   |                   |                       |                     |                             |
| Other   |                   |                       |                     |                             |
| Total Personal Services   |                   | 34.0                  |                     |                             |
| Travel  |                   | 0                     |                     |                             |
| Contractual   |                   | 2                     |                     |                             |
| Commodities   |                   | 1                     |                     |                             |
| Equipment   |                   | 5                     |                     |                             |
| Other   |                   |                       |                     |                             |
| Total Cost  |                   | 42.0                  |                     |                             |
| <b>FUNDING SOURCE FOR TOTAL COST</b>  |                   |                       |                     |                             |
| Federal Receipts  | 1002              |                       |                     |                             |
| G.E. Match  | 1003              |                       |                     |                             |
| General Fund  | 1004              |                       |                     |                             |
| I-A Receipts  | 1007              |                       |                     |                             |
| CIP Receipts  | 1061              |                       |                     |                             |
| Other   | PROGRAM RECEIPTS  | 42.0                  |                     |                             |
|   |                   |                       |                     |                             |
| Justification   |                   |                       |                     |                             |
| <p>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.</p> <p>The Administrative Assistant II will:</p> <ol style="list-style-type: none"> <li>1. supervise procedures to track permit applications and fees</li> <li>2. implement reporting and auditing procedures</li> <li>3. issue standardized permit applications</li> <li>4. supervise and audit permit documentation procedures</li> <li>5. provide assistance and information to permit applicants</li> <li>6. assure uniform accounting procedures for permit fees</li> <li>7. coordinate program support functions, and</li> <li>8. provide standardized managerial summaries of program activity.</li> </ol> |                   |                       |                     |                             |

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|   |                   |                       |                     |                             |
|---|-------------------|-----------------------|---------------------|-----------------------------|
| Position Title<br><b>SMALL BUSINESS OMBUDSMAN</b> |                   | No. of Positions<br>1 | Range / Step<br>22A | Barg. Unit<br>GG            |
| Time Status<br>Full-time                          | Staff Months<br>8 | Location<br>Juneau    |                     | Election District<br>Juneau |
| <b>TYPE OF EXPENDITURE</b>                        |                   | <b>Amount</b>         |                     |                             |
| Salary  |                   | 41.7                  |                     |                             |
| Benefits  |                   | 14.6                  |                     |                             |
| Premium Pay                                       |                   |                       |                     |                             |
| Other   |                   |                       |                     |                             |
| Total Personal Services                           |                   | 56.3                  |                     |                             |
| Travel  |                   | 5                     |                     |                             |
| Contractual                                       |                   | 2                     |                     |                             |
| Commodities                                       |                   | 1                     |                     |                             |
| Equipment   |                   | 5                     |                     |                             |
| Other   |                   |                       |                     |                             |
| Total Cost  |                   | 69.3                  |                     |                             |
| <b>FUNDING SOURCE FOR TOTAL COST</b>              |                   |                       |                     |                             |
| Federal Receipts                                  | 1002              |                       |                     |                             |
| G.E. Match  | 1003              |                       |                     |                             |
| General Fund                                      | 1004              |                       |                     |                             |
| IA Receipts                                       | 1007              |                       |                     |                             |
| CIP Receipts                                      | 1061              |                       |                     |                             |
| Other   | PROGRAM RECEIPTS  | 69.3                  |                     |                             |
|   |                   |                       |                     |                             |
|   |                   |                       |                     |                             |
|   |                   |                       |                     |                             |

**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 Small Business Ombudsman will lead senior staff in:

1. developing revised regulations, recognizing small business concerns
2. identifying and assisting small business permittees
3. developing standardized permit applications
4. preparing pollution prevention assistance programs
5. providing assistance and information to permit applicants
6. supervising the small business and pollution prevention programs
7. training regional and district small business liaisons
8. reporting to the Small Business Compliance Advisory Panel
9. developing regulations for release of hazardous air pollutants, and
10. establishing a quality control/quality assurance audit program.

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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. \*

**SIXTH PROPOSED AMENDMENT**

**Sec. 46.14.840(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

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.

file copy

7-LS1624G  
Lauterbach  
2/12/92

CS FOR HOUSE BILL NO. 377 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to 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. PURPOSE. The purpose of this Act is to bring the state into compliance with the 1990  
9 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes in state law are  
10 necessary to allow the state to continue to have primary management of air quality in the state and to  
11 retain federal approval of the state's air quality control program in order to ensure the continued receipt  
12 of federal highway and air pollution control money. The federal Environmental Protection Agency must  
13 prohibit the approval of highway projects and highway grants, and may withhold air pollution control

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

2 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

3 CHAPTER 14. AIR QUALITY CONTROL.

4 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

5 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the  
6 department may adopt regulations under this chapter as necessary to prevent, abate, control, or  
7 identify air pollution due to emissions, including regulations setting emission standards,  
8 performance standards, and limitations. The standards and limitations may be based on risk  
9 assessments or on available technology and may be for the state as a whole or may vary from  
10 area to area in recognition of local conditions.

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

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

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

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

28 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

29 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
30 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a  
31 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an

1 order or other determination of the department under this chapter.

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

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

7 (d) If the federal administrator exempts a source from the requirements of 42 U.S.C.  
8 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source  
9 from some or all of the requirements of this chapter.

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

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

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

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

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

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

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

30 (1) a stationary source, including an area source, subject to federal new source  
31 performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission

1 standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or  
2 (2) another stationary source designated by the federal administrator or the  
3 department, by regulation.

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

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

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

12 (3) procedures for

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

14 (B) processing and reviewing an application; and

15 (C) providing public notice, including opportunity for public comment and

16 hearing;

17 (4) standard permit conditions, including conditions for

18 (A) emission standards and limitations;

19 (B) monitoring, recordkeeping, and reporting;

20 (C) inspection and entry;

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

22 (E) annual certification of compliance; and

23 (F) excess emission or process deviation reporting;

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

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

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

31 (b) The absence of, or the department's failure to adopt, a regulation under this section

1 does not relieve a person from compliance with a permit issued under this chapter and with other  
2 provisions of law, including emission control requirements.

3 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy  
4 of the state to have a program to prevent, abate, control, and identify air pollution that complies  
5 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under  
6 those laws.

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

10 (c) The department shall ensure that permits issued, modified, amended, or renewed  
11 under this chapter comply with the emission limitations and other requirements of the state air  
12 quality control plan.

13 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
14 and operator of a facility required to have an operating permit under this chapter shall submit the  
15 required application and monitoring, reporting, and quality assurance plan no later than 12  
16 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time  
17 if required by the department.

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

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

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

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

31 (c) Failure by the department to act within the time limits established in or under (a) or

1 (b) of this section shall be treated as a final agency action, but only for purposes of judicial  
2 review to require that action be taken by the department.

3 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
4 this chapter, the owner and operator, a person who participated in the public comment process,  
5 or a person with standing under state or federal law to obtain administrative or judicial review  
6 of a permit action under this chapter may request an adjudicatory hearing under the department's  
7 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party  
8 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of  
9 Appellate Procedure.

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

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

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

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

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

6           (b) The department shall adopt, by regulation, a fee schedule based upon the type of  
7 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
8 classifications; and other factors reflecting the cost of administering the emission control permit  
9 program under this chapter. Fees must be sufficient to cover, but not significantly exceed, the  
10 reasonable direct and indirect costs required to develop and implement the permit program and  
11 the federally mandated aspects of the small business assistance program established in this  
12 chapter. For purposes of this subsection, "costs" include expenditures for

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

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

1 section.

2 (d) The department shall charge and collect a processing fee of \$100 from a person who  
3 applies for a permit under this chapter if the department determines that the permit applied for  
4 is not required.

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

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

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

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

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

31 (c) Proceedings to reopen a permit shall follow the same procedure as for initial permit

1 issuance and affect only those parts of the permit for which the department had cause to reopen  
2 under this section.

3 Sec. 46.14.270. TERMINATION, MODIFICATION, AMENDMENT, OR  
4 REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the  
5 permittee, the department may terminate, modify, amend, or revoke and reissue a construction  
6 or operating permit if the department finds that

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

9 (2) the permit contains a material mistake;

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

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

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

17 Sec. 46.14.275. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION  
18 AND REISSUANCE OF PERMITS. The department shall take measures practicable and  
19 otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal  
20 administrator of permits issued by the department under this chapter.

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

31 Sec. 46.14.285. PERMIT AS SHIELD. (a) Compliance with an operating permit issued

1 under this chapter is considered to be compliance with the operating permit program established  
2 under this chapter.

3 (b) Nothing in this section alters or affects

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

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

8 Sec. 46.14.290. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
9 and operator have submitted a timely and complete application for a permit or a permit renewal,  
10 as applicable, but final action has not been taken on the application, the owner's and operator's  
11 failure to have an operating permit is not a violation of this chapter unless the delay in final  
12 action was due to the failure of the owner and operator to timely submit information required or  
13 requested to process the application. An owner and operator required to have an operating permit  
14 under this chapter are not in violation of the operating permit program established under this  
15 chapter before the date on which the owner and operator are required to submit an application  
16 under AS 46.14.220.

17 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

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

1 operating condition.

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

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

13 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

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

17 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The small business assistance program  
18 shall

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

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

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

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

29 (5) ensure that small business facilities receive notice of their rights under this  
30 chapter in a manner and form that ensures adequate time for the facilities to evaluate compliance  
31 methods and to evaluate applicable proposed or final regulations adopted or standards issued

1 under this chapter or 42 U.S.C. 7401 - 7671q (Clean Air Act);

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

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

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

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

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

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

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

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

26 Sec. 46.14.420. POWER TO LIMIT PROGRAM. After consultation with the federal  
27 administrator and the administrator of the United States Small Business Administration, and after  
28 providing notice and opportunity for public hearing, the department may exclude from the scope  
29 of the small business assistance program established in AS 46.14.410 a category or subcategory  
30 of small business facilities that the department finds to have sufficient technical and financial  
31 capabilities to meet the requirements of this chapter and federal law without the assistance

1 provided under AS 46.14.400 - 46.14.430.

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

5 (b) The panel consists of

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

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

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

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

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

17 (A) of this paragraph;

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

22 (A) of this paragraph.

23 (c) The compliance advisory panel shall

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

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

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

30 (4) make periodic reports to the administrator concerning the compliance of the  
31 small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction

1 Act), 5 U.S.C. 601 (Regulatory Flexibility Act), and 5 U.S.C. 504 (Equal Access to Justice Act);

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

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

#### 6 ARTICLE 5. LOCAL PROGRAMS.

7 Sec. 46.14.500. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
8 approval of the department, a municipality with a population of 1,000 or more may establish and  
9 administer within its jurisdiction a local air quality control program that is consistent with all or  
10 part of the department's air quality program as established under this chapter. A first or second  
11 class borough may administer an air quality control program approved by the department under  
12 this subsection on an areawide basis and is not subject to the restrictions for acquiring additional  
13 areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer  
14 an air quality control program approved by the department under this subsection only in a service  
15 area formed under AS 29.35.490(b) or (c).

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

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

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

25 (2) local air contaminant sources; or

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

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

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

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

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

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

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

9 (f) A municipality or a local air quality district administering a program under this  
10 section shall administer its local air quality control program according to this chapter, regulations  
11 adopted under this chapter, and its cooperative agreement under (d) of this section, except that  
12 a municipality's or local air quality district's program may be more stringent than the program  
13 administered by the department if the municipality or district has additional legal authority  
14 authorizing additional requirements.

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

18 Sec. 46.14.510. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a  
19 local air quality district has an approved air quality control program under AS 46.14.500 and the  
20 department determines that the program is being implemented in a manner that fails to prevent  
21 or control air pollution in the jurisdiction to which the program applies, the department shall give  
22 written notice, setting out its determination, to the municipality or local air quality district.  
23 Within 45 days after giving written notice, the department shall conduct a public hearing on the  
24 matter.

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

1 (c) If the municipality or local air quality district fails to take corrective action within  
2 the time period set by the department under (b) of this section, the department shall terminate  
3 the cooperative agreement and resume management of the program in the affected jurisdiction.  
4 If the municipality or the local air quality district partially remedies, to the department's  
5 satisfaction, the deficiencies found in the determination, the department shall amend the  
6 cooperative agreement to reflect a modified allocation of responsibilities between the department  
7 and municipality or the local air quality district.

8 (d) A municipality or local air quality district that has had its cooperative agreement  
9 terminated may resume, with the department's approval, a local air quality control program if the  
10 municipality or district agrees to comply with AS 46.14.500 and with any corrective action plan  
11 required by the department.

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

19 Sec. 46.14.520. STATE AND FEDERAL AID. A municipality or local air quality  
20 district with a local air quality control program may apply for, receive, administer, and spend  
21 state or federal aid for the control of air emissions or the development and administration of the  
22 program if an application is first submitted to and approved by the department. Subject to  
23 available money appropriated by the legislature, the department shall approve an application if  
24 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
25 the requirements of this chapter.

26 ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

31 Sec. 46.14.810. CONFIDENTIALITY OF RECORDS. Records and information, other

1 than emission data, in the department's possession and control are considered confidential records  
2 if

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

6 (2) the records

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

9 (B) consist of meteorological or ambient air quality data collected by the  
10 owner or operator to support a permit application or amendment.

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

17 Sec. 46.14.830. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The  
18 department may assess an administrative penalty against a person who violates, or causes, or  
19 allows to be violated a provision of this chapter, a regulation adopted under this chapter, or a  
20 term or condition of an order, permit, or approval of the department under this chapter.

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

31 (c) If a penalty is assessed under this section, the department shall provide the assessment

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

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

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

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

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

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

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

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

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

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

5 (1) fees, penalties, and interest collected by the department under AS 46.14.250  
6 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))  
7 for state participation in the emission control permit program; and

8 (2) appropriations to the fund.

9 (b) The money deposited into the clean air protection fund under (a)(1) of this section  
10 may be used solely to cover the reasonable direct and indirect costs, including court costs and  
11 attorney fees, required to support the permit program under this chapter, and those activities of  
12 the small business assistance program that are directed at facilities subject to AS 46.14.205.

13 Sec. 46.14.850. SPECIAL ACCOUNT. An administrative penalty, and any interest,  
14 attorney fees, and costs collected under AS 46.14.830, and any civil penalties, assessments, or  
15 damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to this  
16 chapter, shall be deposited in the general fund.

#### 17 ARTICLE 7. GENERAL PROVISIONS.

18 Sec. 46.14.900. LIMITATION OF POWERS. This chapter does not

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

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

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

25 Sec. 46.14.990. DEFINITIONS. In this chapter,

26 (1) "air contaminant" means a regulated air contaminant or a hazardous air  
27 contaminant;

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

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

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

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

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

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

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

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

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

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

21 (12) "equivalent emission limitation" means

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

26 (B) if the criteria of the early reduction program established in 42 U.S.C.  
27 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established under that  
28 subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

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

1 (14) "federal administrator" means the administrator of the United States  
2 Environmental Protection Agency;

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

5 (16) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C.  
6 7412(b) (Clean Air Act, sec. 112(b));

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (25) "regulated air contaminant" means

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

5 (B) oxides of nitrogen;

6 (C) a volatile organic compound; and

7 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
8 7411 - 7412 (Clean Air Act, sec. 111 - 112);

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

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

11 (B) is a small business concern as defined in 15 U.S.C. 631 (Small  
12 Business Act); and

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

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

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

17 \* Sec. 3. AS 28.10.041(a)(10) is amended to read:

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

22 \* Sec. 4. AS 28.10.423 is amended to read:

23 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
24 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
25 required to be inspected under an emission control program established under AS 46.14.300 or  
26 46.14.500 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
27 as the registration fee.

28 \* Sec. 5. AS 29.35 is amended by adding a new section to read:

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

1 \* Sec. 6. AS 29.35.200(b) is amended to read:

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

4 (1) provide transportation systems;

5 (2) provide water pollution control;

6 (3) provide air pollution control in accordance with AS 46.14.500 [AS 46.03.140 -  
7 46.03.230];

8 (4) license day care facilities;

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

10 \* Sec. 7. AS 29.35.210(a) is amended to read:

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

13 (1) provide transportation systems;

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

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

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

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

21 (6) provide water pollution control;

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

24 (8) provide for economic development;

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

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

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

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

31 (13) contain, clean up, or prevent a release or threatened release of oil or a

1 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,  
2 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is  
3 consistent with a regional master plan prepared by the Department of Environmental  
4 Conservation under AS 46.04.210.

5 \* Sec. 8. AS 29.35.210(b) is amended to read:

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

8 (1) provide transportation systems;

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

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

12 (4) provide water pollution control;

13 (5) license day care facilities.

14 \* Sec. 9. AS 37.05.146(4) is amended by adding a new subparagraph to read:

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

16 \* Sec. 10. AS 44.46.025(a) is amended to read:

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

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

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

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

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

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

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

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

1 \* Sec. 11. AS 44.62.330(a)(44) is amended to read:

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

5 \* Sec. 12. AS 46.03.760(f) is amended to read:

6 (f) A person who violates or causes or permits to be violated a provision of  
7 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a  
8 permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued  
9 under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum  
10 to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation,  
11 nor more than \$10,000 for each day after that on which the violation continues, and that shall  
12 reflect, when applicable,

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

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

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

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

23 \* Sec. 13. AS 46.03.765 is amended to read:

24 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation  
25 of this chapter, AS 46.04, [OR] AS 46.09, AS 46.14, or of a regulation, a lawful order of the  
26 department, or permit, approval, or acceptance, or term or condition of a permit, approval, or  
27 acceptance issued under this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14. In actions brought  
28 under this section, temporary or preliminary relief may be obtained upon a showing of an  
29 imminent threat of continued violation, and probable success on the merits, without the necessity  
30 of demonstrating physical irreparable harm. The balance of equities in actions under this section  
31 may affect the timing of compliance, but not the necessity of compliance within a reasonable

1 period of time.

2 \* Sec. 14. AS 46.03.780(a) is amended to read:

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

9 \* Sec. 15. AS 46.03.790(a) is amended to read:

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

12 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,  
13 a regulation or order of the department, or a permit, approval, or acceptance, or a term or  
14 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]  
15 AS 46.09, or AS 46.14;

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

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

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

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

29 \* Sec. 16. AS 46.03.790 is amended by adding a new subsection to read:

30 (h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.14  
31 and described in (a) of this section, a defendant who is not an organization may be sentenced to

1 pay a fine of not more than \$10,000 for each separate offense.

2 \* Sec. 17. AS 46.03.850(a) is amended to read:

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

9 \* Sec. 18. AS 46.03.875 is amended to read:

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

14 \* Sec. 19. AS 46.03.890(b) is amended to read:

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

18 \* Sec. 20. AS 46.08.075(a) is amended to read:

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

28 \* Sec. 21. AS 46.08.900(6) is amended to read:

29 (6) "hazardous substance" means an element or compound that, when it enters into  
30 the atmosphere or into or on the surface or subsurface land or water of the state, presents an  
31 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 in an amount of 10 gallons  
 5 or less;

6 \* Sec. 22. AS 46.09.900(4) is amended to read:

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

14 \* Sec. 23. AS 46.35.200(4)(A) is amended to read:

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

17 \* Sec. 24. AS 46.35.200(8) is amended to read:

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

21 \* Sec. 25. AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
 22 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.

23 \* Sec. 26. REGULATIONS. The Department of Environmental Conservation may adopt regulations  
 24 as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority, to implement  
 25 changes made by this Act. Regulations adopted under this section may not take effect until the enabling  
 26 statute takes effect under sec. 27 or sec. 28 of this Act.

27 \* Sec. 27. AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210,  
 28 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.270, 46.14.280, 46.14.300,  
 29 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520, 46.14.800 - 46.14.850,  
 30 46.14.900, and 46.14.990, enacted by sec. 2 of this Act, and secs. 1 and 3 - 26 of this Act take effect  
 31 immediately under AS 01.10.070(c).

1 \* Sec. 28. AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.260,  
2 46.14.265, 46.14.275, 46.14.285, and 46.14.290, enacted by sec. 2 of this Act, take effect November 15,  
3 1993.

Red indicates changes reflected in CS HB 3771

CU

7-GS2001.A

SENATE BILL NO. 383

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/3/92  
Referred: Resources, Finance

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; relating to use of the oil and hazardous substance release  
+ additions to title to reflect amendments to AS 46.03.890(b), AS 46.08.90c  
4 response fund; and providing for an effective date." and AS 46.09.900(4)

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

6 \* Section 1. PURPOSE. The purpose of this Act is to bring the state into compliance with 1990  
7 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671. <sup>Changes in state law a</sup> ~~Compliance~~ necessary  
8 to allow Alaska to continue to have primary management of air quality in Alaska and to retain federal  
9 approval of Alaska's air quality control program to ensure the receipt of federal highway <sup>and air pollution con</sup> money.

10 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

11 CHAPTER 14. AIR QUALITY CONTROL.

12 ARTICLE 1. CLASSIFICATIONS AND STANDARDS

13 Sec. 46.14.010. REGULATION AUTHORITY; EMISSION CONTROL STANDARDS.

14 (a) After public hearing, the department may adopt regulations under this chapter as necessary

1 to prevent, abate, control, or identify air pollution due to emissions, including regulations setting  
2 emission standards, performance standards, and limitations. The standards and limitations may  
3 be based on risk assessments or on available technology, and may be for the state as a whole or  
4 may vary from 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 AND REPORTING. (a) The department, by  
10 regulation, may classify facilities or sources that, in the department's determination, are likely  
11 to cause or contribute to air pollution, according to the levels and types of emissions and other  
12 characteristics that relate to air quality. The department may make a classification under this  
13 subsection applicable to the state as a whole or to a designated area of the state. The department  
14 shall base the classifications on consideration of health, economic, and social factors; sensitivity  
15 of the receiving environment; and physical effects on property.

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

## 22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR  
24 OPERATION. (a) It is unlawful to construct, install, modify, reconstruct, or establish a facility  
25 subject to AS 46.14.205(a), except in compliance with the construction permit, and any order or  
26 other determination of the department under this chapter.

27 (b) It is unlawful for a person to operate a major facility or a facility that contains one  
28 or more of the sources listed at AS 46.14.205(b) except in compliance with the operating permit,  
29 and any 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.

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

4 Sec. 46.14.205. PERMIT APPLICABILITY. (a) Before constructing, installing,  
5 modifying, reconstructing, or establishing a facility, the owner and operator shall first obtain a  
6 construction permit from the department if that facility meets any of the following criteria:

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

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

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

13 (4) an existing facility, otherwise meeting the criteria in (1), (2), or (3) of this  
14 subsection, for which a modification is proposed that would increase actual emissions of a  
15 regulated air contaminant to an amount equal to or greater than the annual emission quantity set  
16 out in regulations adopted under AS 46.14.010;

17 (5) a new facility that has the potential to emit greater than 10 TPY of a  
18 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air  
19 contaminants.

20 (b) The owner and operator of a facility shall obtain an operating permit from the  
21 department if the facility is defined as a major facility under this chapter or if the facility  
22 contains one or more of the following sources:

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

26 (2) any other stationary source designated by the administrator or the department,  
27 by regulation.

28 Sec. 46.14.210. EMISSION CONTROL PERMIT REGULATIONS. (a) The department,  
29 at minimum, shall adopt regulations to address the following elements of the emission control  
30 permit program:

31 (1) a standard permit application form that, at a minimum, complies with the

1 requirements of federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec.  
2 502(b));

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

6 (3) procedures for

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

8 (B) processing and reviewing an application; and

9 (C) providing public notice, including opportunity for public comment and

10 hearing;

11 (4) standard permit conditions, including, at a minimum, conditions for

12 (A) emission standards and limitations;

13 (B) monitoring, recordkeeping, and reporting;

14 (C) inspection and entry;

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

16 (E) annual certification of compliance; and

17 (F) excess emission or process deviation reporting;

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

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

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

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

27 Sec. 46.14.215. STATE PLAN. <sup>(a) Policy statement added.</sup>  
28 ~~(b)~~ The department shall act for the state in any  
29 negotiations relative to the state air quality control plan developed under 42 U.S.C. 7401 - 42  
30 U.S.C. 7671. The department may adopt regulations necessary to implement the state plan.

31 ~~(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 state air

1 quality control plan.

2 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner  
3 and operator of a facility required to have an operating permit under this chapter shall submit the  
4 required application and monitoring, reporting, and quality assurance plan no later than 12  
5 months after the date on which the facility becomes subject to the requirements of AS 46.14.200,  
6 or at an earlier time if required by the department.

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

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

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

14 (b) Notwithstanding (a) of this section, the department may establish a phased schedule  
15 for acting on operating permit applications submitted on or before November 15, 1994. A phased  
16 schedule must assure that at least one-third of the applications submitted on or before November  
17 15, 1994 will be acted on by the department during each of the three years after November 15,  
18 1994. On or before November 15, 1997, the department shall act on all applications received  
19 on or before November 15, 1994.

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

23 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under  
24 this chapter, the owner and operator, any person who participated in the public comment process,  
25 or a person with standing under state or federal law to obtain administrative or judicial review  
26 of a permit action under this chapter, may request an adjudicatory hearing in accordance with the  
27 department's adjudicatory hearing procedures. After the issuance of an adjudicatory hearing  
28 decision, any party to the hearing may obtain judicial review of that decision as provided in  
29 Alaska Supreme Court Rules of Civil Procedure.

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

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

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

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

21           Sec. 46.14.250. PAYMENT OF FEES AND FEE STRUCTURE. (a) The owner and  
22 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the  
23 applicable fees set out in the fee structure adopted by the department under (b) of this section.  
24 The owner and operator shall pay the fees to the department or to the public entity designated  
25 by the department.

26           (b) The department shall adopt, by regulation, a fee structure based upon the type of  
27 facilities; the quantities, types or toxicity of air contaminants emitted; the emission source  
28 classifications; and other factors reflecting the cost of administering the emission control permit  
29 program under this chapter. Fees must be sufficient to cover the reasonable, direct and indirect  
30 costs required to develop and implement the permit program and the small business assistance  
31 program established in this chapter. For purposes of this subsection, "costs" include expenditures

1 for

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

3 (2) preparing guidance on the permit program;

4 (3) reviewing and acting upon a permit application;

5 (4) implementing and enforcing the terms and conditions of a permit, excluding  
6 court costs and attorney fees;

7 (5) monitoring of emissions and ambient air quality;

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

10 (7) preparing inventories and tracking of facility emissions;

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

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

14 (10) reviewing and acting upon plans and other information submitted under  
15 AS 46.14.200.

16 (c) The fee structure adopted under (b) of this section shall be amended as necessary to  
17 assure that the fees cover the reasonable costs authorized by (b) of this section.

18 Sec. 46.14.255. PENALTY AND INTEREST FOR NONPAYMENT. The department  
19 shall adopt regulations as necessary to allow the assessment of a penalty of up to 50 percent of  
20 the fee established under AS 46.14.250(b) against the owner and operator of a facility if the  
21 owner and operator fail to timely pay a fee lawfully imposed under this chapter. The department  
22 may also assess interest against the owner and operator, computed in accordance with  
23 AS 45.45.010(a), after a fee is due under this chapter and is unpaid.

24 Sec. 46.14.<sup>840</sup>~~250~~ CLEAN AIR PROTECTION FUND, ~~SPECIAL ACCOUNT~~. (a) There  
25 is established the clean air protection fund. The fund consists of

26 (1) all fees, penalties, and interest collected by the department under AS 46.14.250  
27 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))  
28 for state participation in the emission control permit program; and

29 (2) appropriations to the fund.

30 money deposited into the (b) The clean air protection fund under (a)(1) of this section may be used solely to cover the reasonable, direct and  
31 indirect costs, including court costs and attorney fees, required to support the permit program

1 under this chapter, and those activities of the small business assistance program that are directed  
2 at facilities subject to AS 46.14.205.

3 Sec. 46.14.850. SPECIAL ACCOUNT.

4 ~~An administrative penalty, and any interest, attorney fees, and costs collected under~~  
5 ~~AS 46.14.295, and any civil penalties, assessments, or damages collected under AS 46.03.760 or~~  
6 ~~46.03.790 as a result of a violation relating to this chapter, shall be deposited in the general fund.~~

7 ~~The annual estimated balance in the account maintained by the commissioner of administration~~  
8 ~~under AS 37.05.142 may be used by the legislature to make appropriations to the department for~~  
9 ~~the purpose of carrying out activities under this chapter.~~

unnecessary

10 Sec. 46.14.265. DURATION OF OPERATING PERMITS. (a) An operating permit  
11 under this chapter is issued for a fixed term established by the department, but in no case may  
12 the term exceed five years after the date of issue.

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

16 Sec. 46.14.270. REOPENING OF PERMITS. (a) A permit issued under this chapter  
17 is subject to review and reopening by the department based on the determination of the  
18 administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671 (Clean Air  
19 Act).

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

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



1 (b) Nothing in this section alters or affects

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

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

6 Sec. 46.14.<sup>290</sup>~~292~~ TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner  
7 and operator have submitted a timely and complete application for a permit, or a permit renewal,  
8 as applicable, but final action has not been taken on the application, the owner's and operator's  
9 failure to have an operating permit is not a violation of this chapter unless the delay in final  
10 action was due to the failure of the owner and operator to timely submit information required or  
11 requested to process the application. An owner and operator required to have an operating permit  
12 under this chapter are not in violation of the operating permit program established under this  
13 chapter before the date on which the owner and operator are required to submit an application  
14 under AS 46.14.220.

15 Sec. 46.14.<sup>830</sup>~~295~~ ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The  
16 department may assess an administrative penalty against a person who violates, or causes, or  
17 allows to be violated a provision of this chapter; a regulation adopted under this chapter; or a  
18 term or condition of an order, permit, or approval of the department under this chapter.

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

29 (c) ~~(d)~~ If a penalty is assessed under this section, the department shall provide the assessment  
30 notice to the person affected, by personal service or by certified mail, return receipt requested.  
31 An administrative penalty assessed under this section becomes a final agency action 30 days after

1 service or mailing of the assessment notice unless an administrative hearing is requested by the  
2 person against whom the penalty is assessed. Failure to request an administrative hearing within  
3 30 days after service or mailing of the assessment notice constitutes a waiver of that person's  
4 right to an administrative hearing. The department may extend the time periods specified in this  
5 subsection for good cause shown.

6 (d) ~~(d)~~ If an administrative hearing is requested, the department shall grant a hearing and  
7 conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing,  
8 the department may modify, rescind, or affirm the administrative penalty; that action is a final  
9 agency action.

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

15 (f) ~~(f)~~ Action under this section by the department does not limit or otherwise affect the  
16 authority of the department to enforce this chapter, or to recover damages, restoration expenses,  
17 investigation costs, court costs, attorney fees, and other necessary expenses. The court shall set  
18 off against a judicial penalty subsequently awarded under AS 46.03.760, any amount ordered to  
19 be paid under this section by the same person for the same offense.

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

23 (h) ~~(h)~~ If a person fails or refuses to pay an administrative penalty assessed under this section  
24 after the penalty has become a final agency action, the department may take appropriate steps  
25 to bring an action to collect the penalty. If the department prevails in court, the court shall order  
26 the person to pay

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

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

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

1 ARTICLE 3. MOTOR VEHICLE POLLUTION CONTROL PROGRAM.

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

8 (b) Unless otherwise exempted by law, a person shall maintain in operating condition any  
9 element of the air pollution control system or mechanism of a motor vehicle if the department  
10 adopts regulations requiring that such a system or mechanism be maintained in or on the motor  
11 vehicle. Failure to maintain such a system or mechanism in operating condition subjects the  
12 motor vehicle's registration to suspension or cancellation. That motor vehicle is not again  
13 eligible for registration until the owner or operator obtains a certification from the department,  
14 based on a demonstration that the air pollution control system or mechanism is restored to  
15 operating condition.

16 (c) The department shall consult with the Department of Public Safety regarding  
17 implementation of the motor vehicle pollution control program. *DPS to cooperate.*

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

26 ARTICLE 4. SMALL BUSINESS ASSISTANCE PROGRAM.

27 Sec. 46.14.400. DEVELOPMENT OF PROGRAM. There is established in the  
28 department a small business assistance program. The program shall be made a part of the state  
29 air quality control plan under AS 46.14.215.

30 Sec. 46.14.410. SCOPE OF PROGRAM. (a) The ~~department shall implement the small~~  
31 business assistance program ~~as part of the program established under AS 46.06.021 by~~

*shall*

1 (1) collecting, coordinating, and disseminating information on methods and  
2 technologies that will assist small business facilities to comply with this chapter and regulations  
3 adopted under this chapter;

4 (2) encouraging lawful cooperation among small business facilities and other  
5 persons to facilitate compliance with this chapter and regulations adopted under this chapter;

6 (3) providing small business facilities with information on pollution prevention  
7 and accidental release detection and prevention, including information on alternative technologies,  
8 process changes, products, and methods of operation that help reduce air pollution;

9 (4) assisting small business facilities in determining applicable requirements and  
10 in receiving permits under this chapter in a timely and efficient manner;

11 (5) assuring that small business facilities receive notice of their rights under this  
12 chapter in a manner and form as to assure adequate time for the facilities to evaluate compliance  
13 methods and to evaluate applicable proposed or final regulations adopted or standards issued  
14 under this chapter or 42 U.S.C. 7671(Clean Air Act);

15 (6) informing small business facilities of their obligations under this chapter and  
16 under regulations adopted under this chapter;

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

22 (8) assisting in the development and implementation of modified work practices  
23 or technical changes to processes to facilitate compliance with this chapter and regulations  
24 adopted under this chapter;

25 (9) coordinating with the federal small business stationary source technical and  
26 environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air  
27 Act, sec. 507(b));

28 (10) collecting and making available guidance prepared by the federal small  
29 business stationary source technical and environmental compliance assistance program;

30 (11) at the request of a facility owner or operator, referring questions concerning  
31 compliance with this chapter, or with a regulation adopted or permit issued under this chapter.

1 to air quality management personnel of the department; and

2 (12) designating a person to serve as a ~~small business ombudsman, to act as~~  
3 liaison between small businesses and air quality management personnel of the department.

4 (b) If the legislature appropriates additional money from the general fund for purposes  
5 of the small business assistance program, the department may provide the services listed in (a)  
6 of this section to facilities that do not meet the definition of a small business facility under  
7 AS 46.14.900, but are subject to the requirements of this chapter.

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

15 Sec. 46.14.430. COMPLIANCE ADVISORY PANEL. (a) There is established in the  
16 department a compliance advisory panel.

17 (b) ~~The panel shall consist of seven persons appointed by the governor.~~ The panel  
18 members shall serve without compensation, but are entitled to travel expenses and per diem as  
19 authorized for state employees. ~~The members serve at the pleasure of the governor.~~

20 ~~(c) The panel consists of~~

21 ~~(1) two persons to represent the general public; these members may not be owners~~  
22 ~~or representatives of owners of small business facilities;~~

23 ~~(2) one person who is an owner or a representative of an owner of a small~~  
24 ~~business facility covered under this chapter; this person shall be appointed from a list of three~~  
25 ~~names selected by the majority leadership of the state House of Representatives or, if no majority~~  
26 ~~exists, then the list shall be selected by the Speaker of the House;~~

27 ~~(3) one person who is an owner or a representative of an owner of a small~~  
28 ~~business facility covered under this chapter; this person shall be appointed from a list of three~~  
29 ~~names selected by the minority leadership of the state House of Representatives or, if no minority~~  
30 ~~exists, then the list shall be selected by the Speaker of the House;~~

31 ~~(4) one person who is an owner or a representative of an owner of a small~~

1 business facility covered under this chapter; this person shall be appointed from a list of three  
2 names selected by the majority leadership of the state Senate or, if no majority exists, then the  
3 list shall be selected by the President of the Senate;

4 (5) one person who is an owner or a representative of an owner of a small  
5 business facility covered under this chapter; this person shall be appointed from a list of three  
6 names selected by the minority leadership of the state Senate or, if no minority exists, the list  
7 shall be selected by the President of the Senate;

8 ~~(6) one person selected by the commission~~

9 (d) The governor shall either appoint a person from a list submitted under (c)(2) - (5) of  
10 this section, or reject all names on the list and request that a new list be submitted.

11 (e) The compliance advisory panel shall

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

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

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

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

21 (5) review information designed to assist small business facilities in complying  
22 with this chapter to assure that the information is understandable by the layperson; and

23 (6) have the small business <sup>liaison</sup> ~~ombudsman~~ assist the panel in the development and  
24 dissemination of panel reports and advisory opinions.

25 *NEW ARTICLES. = LOCAL PROGRAMS.*  
*ARTICLE 5. GENERAL PROVISIONS.*

26 <sup>800</sup> ~~500~~ Sec. 46.14.510. PUBLIC RECORDS. Except as provided in AS 46.14.510, permits,  
27 permit applications, emissions and monitoring reports, compliance reports, certifications, and  
28 monitoring, reporting, and quality assurance plans in the department's possession and control are  
29 available to the public for inspection and copying.

30 <sup>810</sup> ~~510~~ Sec. 46.14.510. CONFIDENTIALITY OF RECORDS. Records and information, other  
31 than emission data, in the department's possession and control are considered confidential records

1 if

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

5 (2) the records

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

8 (B) consist of meteorological or ambient air quality data collected by the  
9 owner or operator. *to support a permit application or amendment*

10 <sup>Suo</sup> Sec. 46.14.520. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the  
11 approval of the department, a home rule or general law municipality with a population of 1,000  
12 or more may establish and administer within its jurisdiction a local air quality control program  
13 that is consistent with all or part of the department's air quality program as established under this  
14 chapter. A first or second class borough may administer an air quality control program, approved  
15 by the department under this subsection, on an areawide basis and is not subject to the  
16 restrictions for acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A  
17 third class borough may administer an air quality control program, approved by the department  
18 under this subsection, only in a service area formed in accordance with AS 29.35.490(b) or (c).

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

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

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

28 (2) local air contaminant sources; or

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

30 (d) A municipality or a local air quality district seeking department approval for a local  
31 air quality control program shall enter into a cooperative agreement with the department. The

1 cooperative agreement shall include provisions specifying

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

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

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

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

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

12 (f) A municipality or a local air quality district administering a program under this  
13 section shall administer its local air quality control program according to this chapter and  
14 regulations adopted under it, and its cooperative agreement under (d) of this section, except that  
15 a municipality's or local air quality district's program may be more stringent than the program  
16 administered by the department if the municipality or district has additional legal authority  
17 authorizing additional requirements.

18 (g) A decision, order, permit, or other determination made or issued in accordance with  
19 a local air quality control program is considered to be a decision, order, permit, or other  
20 determination of the department.

21 ~~Sec. 46.14.520~~<sup>510</sup> INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a  
22 local air quality district has an approved air quality control program under AS 46.14.520, and if  
23 the department determines that the program is being implemented in a manner that fails to  
24 prevent or control air pollution in the jurisdiction to which the program applies, the department  
25 shall give written notice, setting out its determination, to the municipality or local air quality  
26 district. Within 45 days after giving written notice, the department shall conduct a public hearing  
27 on the matter.

28 (b) If, after the hearing, the department upholds the determination made in the written  
29 notice, the department shall provide the municipality or local air quality district with a written  
30 finding setting out the nature of the deficiencies and a description of the necessary action to be  
31 taken in order for the program to prevent or control air pollution. The department shall provide

1 its finding to the municipality or district within 45 days after the closure of the public hearing  
2 record. The department shall set a reasonable period of time for the municipality or local air  
3 quality district to take corrective action in response to the department's finding.

4 (c) If the municipality or local air quality district fails to take corrective action within  
5 the time period set by the department under (b) of this section, the department shall terminate  
6 the cooperative agreement and resume management of the program in the affected jurisdiction.  
7 If the municipality or the local air quality district partially remedies, to the department's  
8 satisfaction, the deficiencies found in the determination, the department shall amend the  
9 cooperative agreement to reflect a modified allocation of responsibilities between the department  
10 and municipality or the local air quality district.

11 (d) A municipality or local air quality district that has had its cooperative agreement  
12 terminated may resume, with the department's approval, a local air quality control program if the  
13 municipality or district agrees to comply with AS 46.14.520 and with any corrective action plan  
14 required by the department.

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

22 Sec. 46.14.<sup>520</sup>~~540~~ STATE AND FEDERAL AID. A municipality or local air quality  
23 district with a local air quality control program may apply for, receive, administer, and spend  
24 state or federal aid for the control of air emissions or the development and administration of the  
25 program if an application is first submitted to and approved by the department. Subject to  
26 available money appropriated by the legislature, the department shall approve an application if  
27 it is consistent with the terms and conditions of the applicable cooperative agreement and meets  
28 the requirements of this chapter.

29 Sec. 46.14.<sup>900</sup>~~550~~ LIMITATION OF POWERS. *This chapter does* ~~AS 46.14.010 - 46.14.540~~ do not

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

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

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

5 Sec. 46.14.<sup>320</sup>~~500~~. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless  
6 specifically indicated otherwise, the responsibilities of this chapter and of regulations adopted  
7 under this chapter are imposed on the owner and the operator of a facility subject to this chapter.  
8 If the owner and operator of the facility are separate persons, only one person is required to  
9 discharge a specific responsibility. Both persons are liable for noncompliance with the  
10 requirements of this chapter or of regulations adopted under this chapter.

11 Sec. 46.14.<sup>390</sup>~~500~~. DEFINITIONS. In this chapter

12 (1) "administrator" means the administrator of the United States Environmental  
13 Protection Agency;

14 (2) "air contaminant" means a regulated air contaminant or a hazardous air  
15 contaminant;

16 (3) "ambient air" means that portion of the atmosphere, external to buildings, to  
17 which the general public has access;

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

20 (5) "area source" means a source of fugitive emissions;

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

26 (7) "commissioner" means the commissioner of the Department of Environmental  
27 Conservation;

28 (8) "construct" or "construction" means to fabricate, erect, or install, or to make  
29 a physical change, that would result in emissions;

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

1 (10) "department" means the Department of Environmental Conservation.

2 (11) "emission" means a release of one or more air contaminants to the  
3 atmosphere;

4 (12) "emission limitation" and "emission standard" mean a requirement established  
5 by the department or the administrator that limits the quantity, rate, or concentration of emission  
6 of an air contaminant, including any requirement relating to the operation or maintenance of a  
7 source to assure continuous emission reduction, and any design, equipment, work practice, or  
8 operational standard adopted under this chapter or 42 U.S.C. 7401 - 7671 (Clean Air Act), but  
9 does not include ambient air quality standards;

10 (13) "equivalent emission limitation" means

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

15 (B) if the criteria of the early reduction program established in 42 U.S.C.  
16 7412(i)(5) (Clean Air Act, sec. 112(i)(5)) are met, a limitation established in accordance  
17 with that subsection and with 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5));

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

21 (15) "fugitive emissions" means those emissions of an air contaminant that are  
22 not emitted from a contaminant outlet;

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

25 (17) "local air quality control program" means a program authorized under  
26 AS 46.14.520 to implement some or all of the provisions of this chapter,

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

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

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

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

31 (19) "modification" or "modify" means to make a change or a series of changes

1 in operation, or any physical change or addition to a facility or source which increases the actual  
2 emissions of an air contaminant;

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

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

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

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

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

16 (23) "register" or "registration" means vehicle registration in accordance with  
17 AS 28.10;

18 (24) "regulated air contaminant" means

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

21 (B) oxides of nitrogen;

22 (C) a volatile organic compound; and

23 (D) a pollutant that is addressed by a standard adopted under 42 U.S.C.  
24 7411 - 7412 (Clean Air Act, sec. 111 - 112);

25 (25) "small business facility" means a facility that

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

27 (B) is a small business concern as defined in 15 U.S.C. 631 (Small  
28 Business Act); and

29 (C) emits less than 100 tons per year of all regulated air contaminants;

30 (26) "source" means a device, process, activity, or equipment that causes, or could  
31 cause, a release of an air contaminant;

1 (27) "TPY" means tons per year.

2 \* Sec. 3. AS 28.10.041(a)(10) is amended to read:

3 (10) the vehicle is subject to a state-approved [LOCAL] emission inspection  
4 program adopted [BY MUNICIPAL ORDINANCE] under AS 46.14.300 or 46.14.520  
5 [AS 46.03.210], and the vehicle does not meet the standards of that program, unless the vehicle  
6 uses a fuel source that does not primarily emit carbon monoxide;

7 \* Sec. 4. AS 28.10.423 is amended to read:

8 Sec. 28.10.423. EMISSION CONTROL INSPECTION PROGRAM FEES. In addition  
9 to the annual registration fee specified in AS 28.10.421, a \$1 fee is imposed upon every vehicle  
10 required to be inspected under an emission control program established under AS 46.14.300 or  
11 46.14.520 [AS 46.03.210]. This fee shall be collected at the same time and in the same manner  
12 as the registration fee.

13 \* Sec. 5. AS 29.35 is amended by adding a new section to read:

14 Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may  
15 establish a local air quality control program as provided in AS 46.14.520 only if the municipality  
16 has obtained the consent of its governing body through an ordinance authorizing the participation.

17 \* Sec. 6. AS 29.35.200(b) is amended to read:

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

20 (1) provide transportation systems;

21 (2) provide water pollution control;

22 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140  
23 - 46.03.230];

24 (4) license day care facilities;

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

26 \* Sec. 7. AS 29.35.210(a) is amended to read:

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

29 (1) provide transportation systems;

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

- 1 (3) license, impound, and dispose of animals;
- 2 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
- 3 collection and disposal;
- 4 (5) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 5 - 46.03.230];
- 6 (6) provide water pollution control;
- 7 (7) participate in federal or state loan programs for housing rehabilitation and
- 8 improvement for energy conservation;
- 9 (8) provide for economic development;
- 10 (9) provide for the acquisition and construction of local service roads and trails
- 11 under AS 19.30.111 - 19.30.251;
- 12 (10) establish an emergency services communication center under AS 29.35.130;
- 13 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
- 14 vehicles and operators;
- 15 (12) engage in activities authorized under AS 29.47.460;
- 16 (13) contain, clean up, or prevent a release or threatened release of oil or a
- 17 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
- 18 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
- 19 consistent with a regional master plan prepared by the Department of Environmental
- 20 Conservation under AS 46.04.21 `.

21 \* Sec. 8. AS 29.35.210(b) is amended to read:

22 (b) A second class borough may by ordinance exercise the following powers on an

23 areawide basis:

- 24 (1) provide transportation systems;
- 25 (2) license, impound, and dispose of animals;
- 26 (3) provide air pollution control in accordance with AS 46.14.520 [AS 46.03.140
- 27 - 46.03.230];
- 28 (4) provide water pollution control;
- 29 (5) license day care facilities.

\* Sec. 9. amends AS 37.05.146(4) to add clean air protection fund.

\* Sec. 10. AS 44.46.025(a) is amended to read:

- 31 (a) The Department of Environmental Conservation may adopt regulations that prescribe

1 reasonable fees, and establish procedures for the collection of the fees, to cover the direct costs  
2 of the following services provided by the department:

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

5 (2) the emission control permitting program and the motor vehicle pollution  
6 control program under AS 46.14, [AIR QUALITY PERMITS UNDER AS 46.03.140 AND  
7 46.03.160]; *add indirect costs reference*

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

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

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

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

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

14 \* Sec. <sup>11</sup> ~~N.~~ AS 44.62.330(a)(44) is amended to read:

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

18 \* Sec. <sup>12</sup> ~~N.~~ AS 46.03.760(f) is amended to read:

19 (f) A person who violates or causes or permits to be violated a provision of AS 46.03.250  
20 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval,  
21 or acceptance, or term or condition of a permit, approval, or acceptance issued under  
22 AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be  
23 assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor  
24 more than \$10,000 for each day after that on which the violation continues, and that shall reflect,  
25 when applicable,

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

31 (2) reasonable costs incurred by the state in detection, investigation, and attempted

1 correction of the violation:

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

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

5 \* Sec. <sup>13</sup>~~N~~. AS 46.03.765 is amended to read:

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

15 \* Sec. <sup>14</sup>~~N~~. AS 46.03.780(a) is amended to read:

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

22 \* Sec. <sup>15</sup>~~N~~. AS 46.03.790(a) is amended to read:

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

25 (1) violates a provision of this chapter, AS 46.04, [OR] AS 46.09, or AS 46.14,  
26 a regulation or order of the department, or a permit, approval, or acceptance, or a term or  
27 condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, [OR]  
28 AS 46.09, or AS 46.14;

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

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

5 (4) makes a false statement, representation, or certification in an application,  
6 notice, record, report, permit, or other document filed, maintained, or used for purposes  
7 of compliance with AS 46.14 or a regulation adopted by the department under AS 46.14;

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

11 \* Sec. ~~15~~<sup>16</sup> AS 46.03.790 is amended by adding a new subsection to read:

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

15 \* Sec. ~~16~~<sup>17</sup> AS 46.03.850(a) is amended to read:

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

22 \* Sec. ~~17~~<sup>18</sup> AS 46.03.875 is amended to read:

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

27 \* Sec. ~~18~~<sup>19</sup> AS 46.03.890(b) is amended to read:

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

31 \* Sec. ~~19~~<sup>20</sup> AS 46.08.075(a) is amended to read:

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

10 \* Sec. ~~20~~<sup>21</sup> AS 46.08.900(6) is amended to read:

11 (6) "hazardous substance" means

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

20 \* Sec. ~~21~~<sup>22</sup> AS 46.09.900(4) is amended to read:

21 (4) "hazardous substance" means

22 (A) an element or compound that, when it enters into the atmosphere, or  
23 into or on the surface or subsurface land or water of the state, presents an imminent and  
24 substantial danger to the public health or welfare, or to fish, animals, vegetation, or any  
25 part of the natural habitat in which fish, animals, or wildlife may be found; or

26 (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 -  
27 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of  
28 1980); "hazardous substance" does not include uncontaminated crude oil or  
29 uncontaminated refined oil;

30 \* Sec. ~~22~~<sup>23</sup> AS 46.35.200(4) is amended to read:

31 (4) "permit" means each of the following licenses, permits or authorizations

1 required to be obtained from a state agency before constructing or operating a project in the state,  
2 or any other license, permit or authorization which may be designated by the commissioner:

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

5 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;

6 (C) burning permit during fire season - AS 41.15.050, 11 AAC 92.010;

7 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;

8 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;

9 (F) brine or other salt water waste disposal permit - AS 31.05.030, 11  
10 AAC 22.250;

11 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;

12 (H) tidelands right-of-way or easement permit - AS 38.05.820, 11 AAC  
13 62.810;

14 (I) authorization for tidelands transportation - AS 38.05.110, 11 AAC  
15 76.205;

16 (J) tide and submerged lands prospecting permit - AS 38.05.250;

17 (K) mineral and geothermal prospecting permits - AS 38.05.145;

18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;

19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;

20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;

21 (O) permit to appropriate water - AS 46.15.040, 11 AAC 72.050;

22 (P) permit for use of timber or materials - AS 38.05.110, 11 AAC 76.185;

23 (Q) special material use permit - AS 38.05.115, 11 AAC 76.540;

24 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;

25 (S) limited personal use permit - AS 38.05.820, 11 AAC 62.820;

26 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;

27 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;

28 (V) miscellaneous state land use permit - AS 38.05.035, 11 AAC 96.010;

29 (W) anadromous fish protection permit - AS 16.05.870, 5 AAC 95.100.

30 (X) critical habitat area permit - AS 16.20.520 - 16.20.530;

31 (Y) state game refuge land permit - AS 16.20.050 - 16.20.060;

1 (Z) state park incompatible use permit - AS 41.21.020, 11 AAC 18.010;  
2 (AA) pesticides permit - AS 46.03.320, 18 AAC 90;  
3 (BB) surface oiling permit - AS 46.03.740, 18 AAC 75;  
4 (CC) encroachment permit - AS 19.25.200;  
5 (DD) utility permit - AS 19.25.010;  
6 (EE) driveway permit - AS 19.05.020, 17 AAC 10.020;  
7 (FF) access roads permit - AS 41.21.020, 11 AAC 18.020;  
8 (GG) right-of-way and easement permits - AS 38.05.850, 11 AAC 58.200;  
9 \* Sec. 24. ~~amends~~ <sup>amends</sup> reference to local programs in AS 46.35.200(8)  
10 \* Sec. ~~23.25~~ AS 46.03.140, 46.03.150, 46.03.160, 46.03.170, 46.03.180, 46.03.190, 46.03.210,  
11 46.03.220, 46.03.225, 46.03.230, and 46.03.245 are repealed.  
12 \* Sec. ~~24~~ <sup>26</sup> REGULATIONS. The Department of Environmental Conservation may adopt regulations  
13 as authorized under AS 46.14, enacted by sec. 2 of this Act, and other statutory authority, to implement  
14 changes made by this Act. Regulations adopted under this section may not take effect until the enabling  
15 statute takes effect under sec. ~~25~~ <sup>27</sup> or sec. ~~26~~ <sup>28</sup> of this Act.  
16 \* Sec. ~~25~~ <sup>27</sup> AS 46.14.010, 46.14.020, 46.14.200(a), (c), and (d), 46.14.205(a)(1) - (4), 46.14.210,  
17 46.14.215, 46.14.225, 46.14.230, 46.14.235, 46.14.250, 46.14.255, 46.14.260, 46.14.275, 46.14.285,  
18 46.14.295, 46.14.300, 46.14.400, 46.14.410, 46.14.420, 46.14.430, 46.14.500, 46.14.510, 46.14.520,  
19 46.14.530, 46.14.540, 46.14.550, 46.14.560, and 46.14.900, created by sec. 2 of this Act, and secs. 1 and  
20 3 - 24 of this Act take effect immediately under AS 01.10.070(c).  
21 \* Sec. ~~26~~ <sup>28</sup> AS 46.14.200(b), 46.14.205(a)(5) and (b), 46.14.220, 46.14.240, 46.14.245, 46.14.265,  
22 46.14.270, 46.14.280, 46.14.290, and 46.14.292, created by sec. 2 of this Act, take effect November 15,  
23 1993.

References all  
changed to reflect  
CS's renumbering and  
reorganization of sections

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. Sub-section (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 adjudatory 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 deterrent 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 45.14.950 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.

# Alaska State Legislature

REPRESENTATIVE  
MARK BOYER

VICE CHAIRMAN  
HOUSE FINANCE COMMITTEE

FAIRBANKS

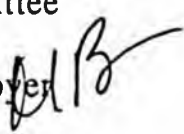
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JUNEAU

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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 maintains 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] *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"



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 377

APPROVED:

*[Signature]*

TITLE: Air Pollution Control Program

DATE:

February 11, 1992

This position paper addresses only those amendments to HB 377 dealing with alternative fuel vehicles. The department is interested in the utilization of alternative fueled vehicles. Never-the-less, it is vital that we proceed in a manner that does not render our fleet operation uneconomical or inefficient. The current amendments to CS HB 377 that would mandate the purchase of alternative fuel-vehicles would be disruptive and expensive.

In assessing alternative fuels there are numerous pros and cons associated with each fuel option. What works in Juneau may not work in Fairbanks. A trade-off in overall range may be acceptable to a maintenance vehicle but not to a Public Safety vehicle. In CO non-attainment areas, some alternative fuels emit CO at levels nearly equal to gasoline-fired vehicles, thus environmental benefits may be illusionary. Manufactured vehicles are just beginning to become available with alternative fuel engines and fuel storage systems. To achieve a full range of light trucks, vans and sedans for our users we may have to resort to after-market conversions. Though readily available, such conversions will add substantially to the cost of the vehicles. Very few alternative fuels are available at the retail level on a statewide basis, thus management of fleet assets among various locations will be complicated as will using alternative fueled vehicles on long-distance trips.

Because of these various complicating factors, the rapid, mandatory introduction of alternative fuel vehicles will hinder rather than foster the large-scale conversion of vehicles to alternative fuels.

For example, CNG (compressed natural gas) appears to be the leading contender for an Alaskan fleet. The state has abundant NG resources, the fuel has ultra-low emissions, it works very well in extreme cold, and manufacturers are beginning to offer CNG-fired vehicles off the assembly

*For Further Information contact Katy McHugh at 465-3900.*

**BILL NO:** HB 377

**TITLE:** Air Pollution Control Program

**DATE:** February 11, 1992

line. But there are very few retail CNG distributors in the southcentral portion of the state where NG is widely used, and no current availability in other areas of the state. Thus an appropriate strategy would be to start in Anchorage and gradually widen the network of retail CNG "quick fill" centers. The proposed amendment, would likely cause us to resort to LPG-fired (liquified petroleum gas) vehicles, because such fuel is more readily available, further delaying the day when CNG becomes more widely used.

For some of our fleet customers, even solving the fuel availability issue would not address all of the drawbacks. Aside from the unavailability of fueling centers, a typical CNG vehicle has about one-half to two-thirds the driving range as compared to gasoline. In sedans, the fuel storage subtracts from the available trunk space. All of these problems would make CNG a poor choice for Trooper vehicles at this time.

Recent preliminary discussions have been held between the Department of Environmental Conservation (DEC) and this department on the merits of alternative fuels. In general, we believe that state government can serve a very useful role in "jump starting" the use of alternative fuels, in particular by working toward the expansion of retail alternative fuel distributors.

In order to achieve this goal we would ask that the legislation instead direct the two agencies to report back with a proposed alternative fuel fleet conversion strategy. Such a strategy would address such basic questions and issues as:

- Where should alternative fuels be used initially and where shouldn't they?
- What are the best methods of getting private sector retail outlets?
- What elements of the fleet are best suited to conversion?
- What fuel or fuels are the best choice for Alaska circumstances?
- What investments are needed initially, and how to reuse those investments in order to expand the geographic coverage of alternative fuels.
- Timetable and budget requirements.

We offer this as a constructive choice, for we firmly believe that the large-scale conversion of our automotive fleet needs a clear strategy which makes sense for the fleet managers, fleet customers, and ultimately all Alaskan vehicle owners. We urge you amend the legislation to allow us the time to develop such a strategy.

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.

- 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

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 noncompliance 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**

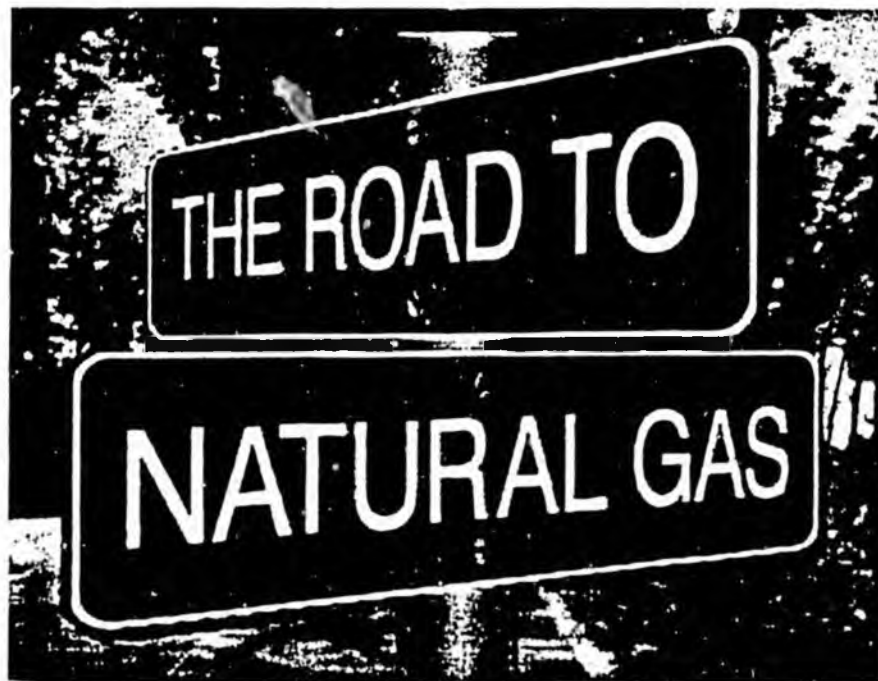
**ANDY MCGINN, Manager, State and Local Relations  
at the American Gas Association, STAFF EXECUTIVE  
703/841-8597**

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' 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.

| <b>Price differential .50c<br/>(gasoline - CNG)</b> |               |               |               |               |
|---|---------------|---------------|---------------|---------------|
| Miles driven per vehicle, per yr.                   |               |               |               |               |
| <b>MPG</b>  | <b>15,000</b> | <b>20,000</b> | <b>25,000</b> | <b>30,000</b> |
| 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.



## 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*.



**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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## 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."

FISCAL NOTE

Revision Date: 01/24/92  
Title: Air Pollution Control Program

Department Affected: DOT&PF  
BRU: Statewide Engineering & Operations Standards  
Component: Engeer. & Operations Stand.  
Component Serial Number: 547

Sponsor: Moyer  
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING               | FY92 | FY93 | FY94 | FY95 | FY96 | FY97 |
|-------------------------|------|------|------|------|------|------|
| PERSONAL SERVICES       | 0    | 0    | 0    | 0    | 0    | 0    |
| TRAVEL                  | 0    | 0    | 0    | 0    | 0    | 0    |
| CONTRACTUAL             | 0    | 0    | 0    | 0    | 0    | 0    |
| SUPPLIES                | 0    | 0    | 0    | 0    | 0    | 0    |
| EQUIPMENT               | 0    | 0    | 0    | 0    | 0    | 0    |
| LAND & STRUCTURES       | 0    | 0    | 0    | 0    | 0    | 0    |
| GRANTS, CLAIMS          | 0    | 0    | 0    | 0    | 0    | 0    |
| MISCELLANEOUS           | 0    | 0    | 0    | 0    | 0    | 0    |
| <b>TOTAL OPERATING:</b> | 0    | 0    | 0    | 0    | 0    | 0    |

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

|                       |   |   |   |   |   |   |
|-----------------------|---|---|---|---|---|---|
| GENERAL FUNDS         | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS         | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER                 | 0 | 0 | 0 | 0 | 0 | 0 |
| <b>TOTAL FUNDING:</b> | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

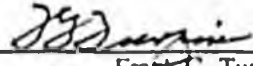
See second page.

Prepared by: Roger W. Allington, Director

Phone: 465-2951

Division: Engineering and Operations Standards

Date: January 24, 1992

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 24, 1992

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

ANALYSIS (cont. from page 1):

This bill empowers the Department of Environmental Conservation with sufficient authority to ensure that Alaska complies with the requirements of the Clean Air Act Amendments of 1990 (CAA). From a transportation agency's perspective, we have a strong interest in seeing that the Department of Environmental Conservation ensure that Alaska's air quality programs are in compliance with the CAA. Specifically, our interest is the penalty provisions contained in the CAA which target sanctions on federal-aid highway funding if a state is found by the Environmental Protection Agency to have an inadequate enforcement program. With Alaska now receiving over \$200 million annually in federal-aid highway funding, this penalty is a strong incentive.

# **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**

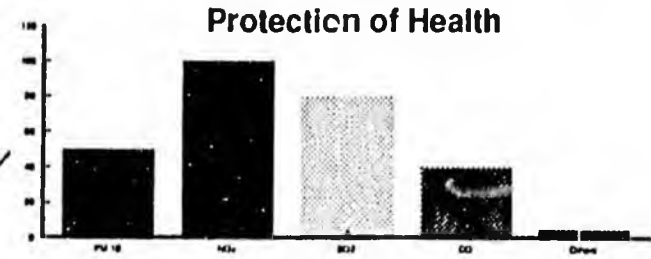


**1990 AMENDMENTS to the CLEAN AIR ACT**  
**and their IMPACTS on ALASKA**



### Mobile Sources

Vehicle Tailpipe Standards



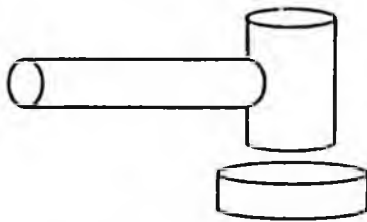
### Ambient Air Quality Standards

State  
Air  
Quality  
Control  
Plan

# Clean Air Act of 1970



Clean up poor  
Air Quality Regions

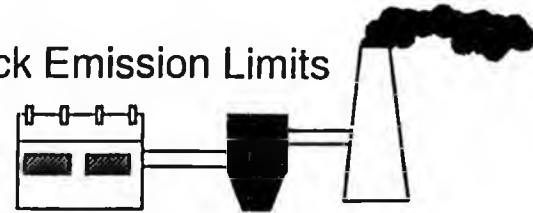


### Enforcement

Civil Penalties - \$10,000/day

Criminal Penalties - \$10,000/day

Stack Emission Limits



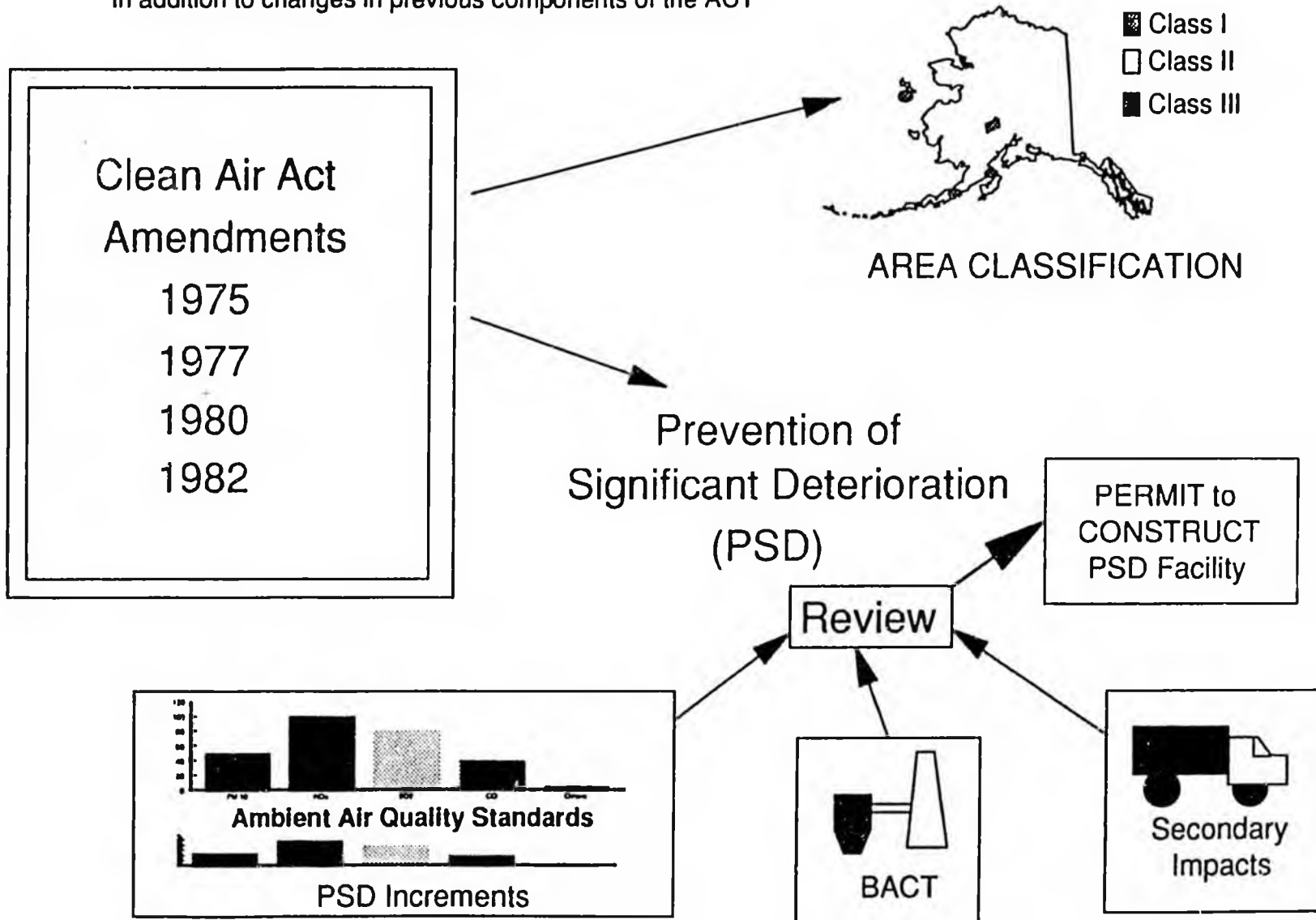
State Stack Emission Standards

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**

|                   |  |
|-------------------|--|
| <b>Title I</b>    | <b>Provisions for Attainment and Maintenance of<br/>National Ambient Air Quality Standards</b> |
| <b>Title II</b>   | <b>Provisions Relating to Mobile Sources</b>   |
| <b>Title III</b>  | <b>Hazardous Air Pollutants</b>  |
| <b>Title IV</b>   | <b>Acid Deposition Control *</b>   |
| <b>Title V</b>    | <b>Permits</b>   |
| <b>Title VI</b>   | <b>Stratospheric Ozone Protection</b>  |
| <b>Title VII</b>  | <b>Provisions Relating to Enforcement</b>  |
| <b>Title VIII</b> | <b>Miscellaneous Provisions</b>  |
| <b>Title IX</b>   | <b>Clean Air Research</b>  |
| <b>Title X</b>    | <b>Disadvantaged Business Concerns</b>   |
| <b>Title XI</b>   | <b>Clean Air Employment Transition Assistance</b>  |

\* Alaska is exempt from Title IV Provisions



### Mobile Sources

Cold Start  
CO Standards  
Inspections

# CLEAN AIR ACT 1990 AMENDMENTS



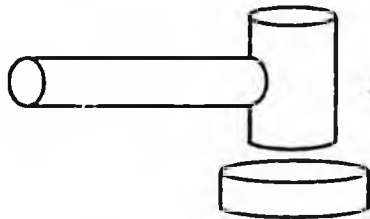
NON-ATTAINMENT  
AREA CLASSIFICATION

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

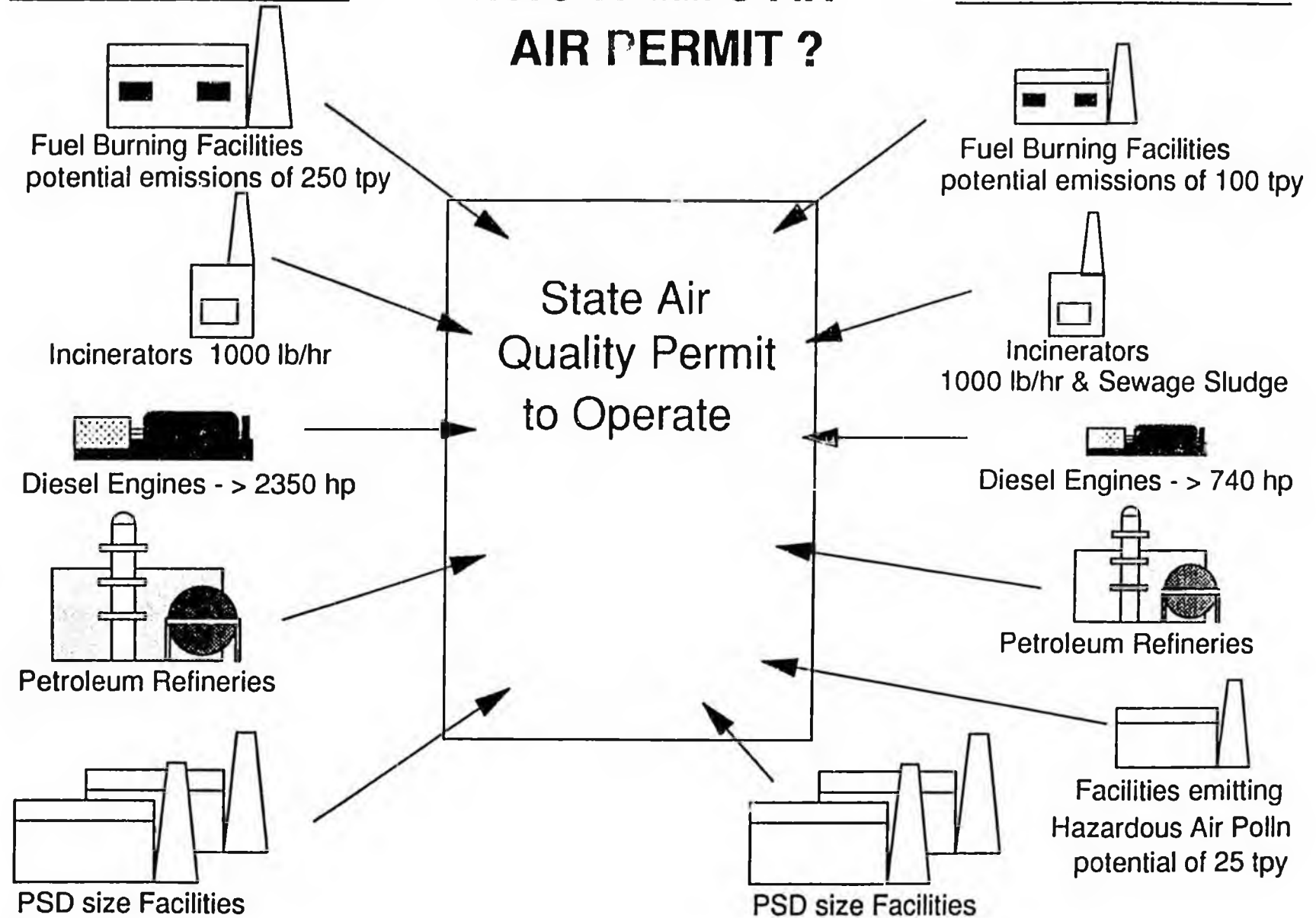
**OPERATING  
PERMIT  
PROGRAM**

**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

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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

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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

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

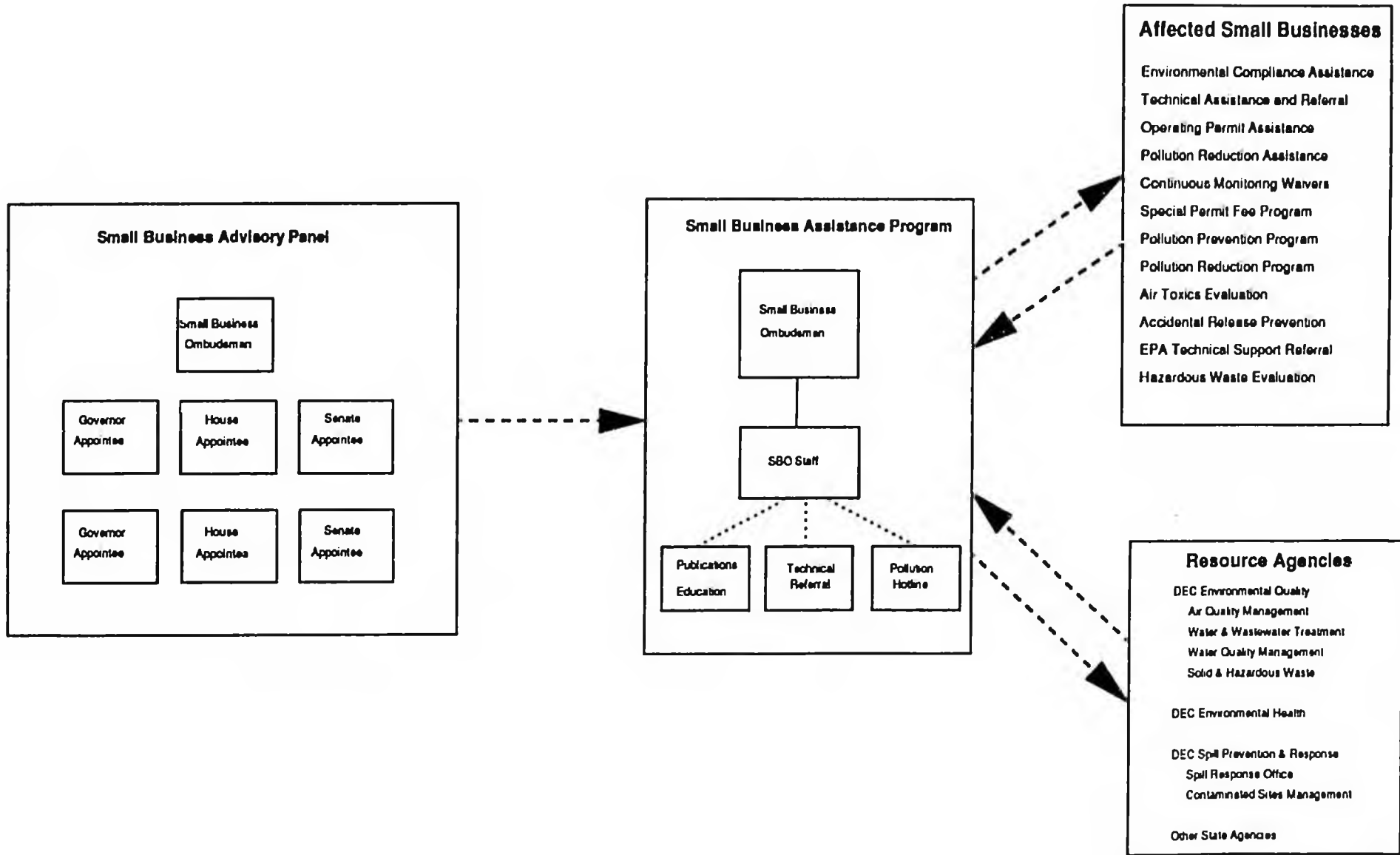
\* Ability to Reopen for Cause

Public Comment

\* EPA Review

\* Judicial Review of Actions

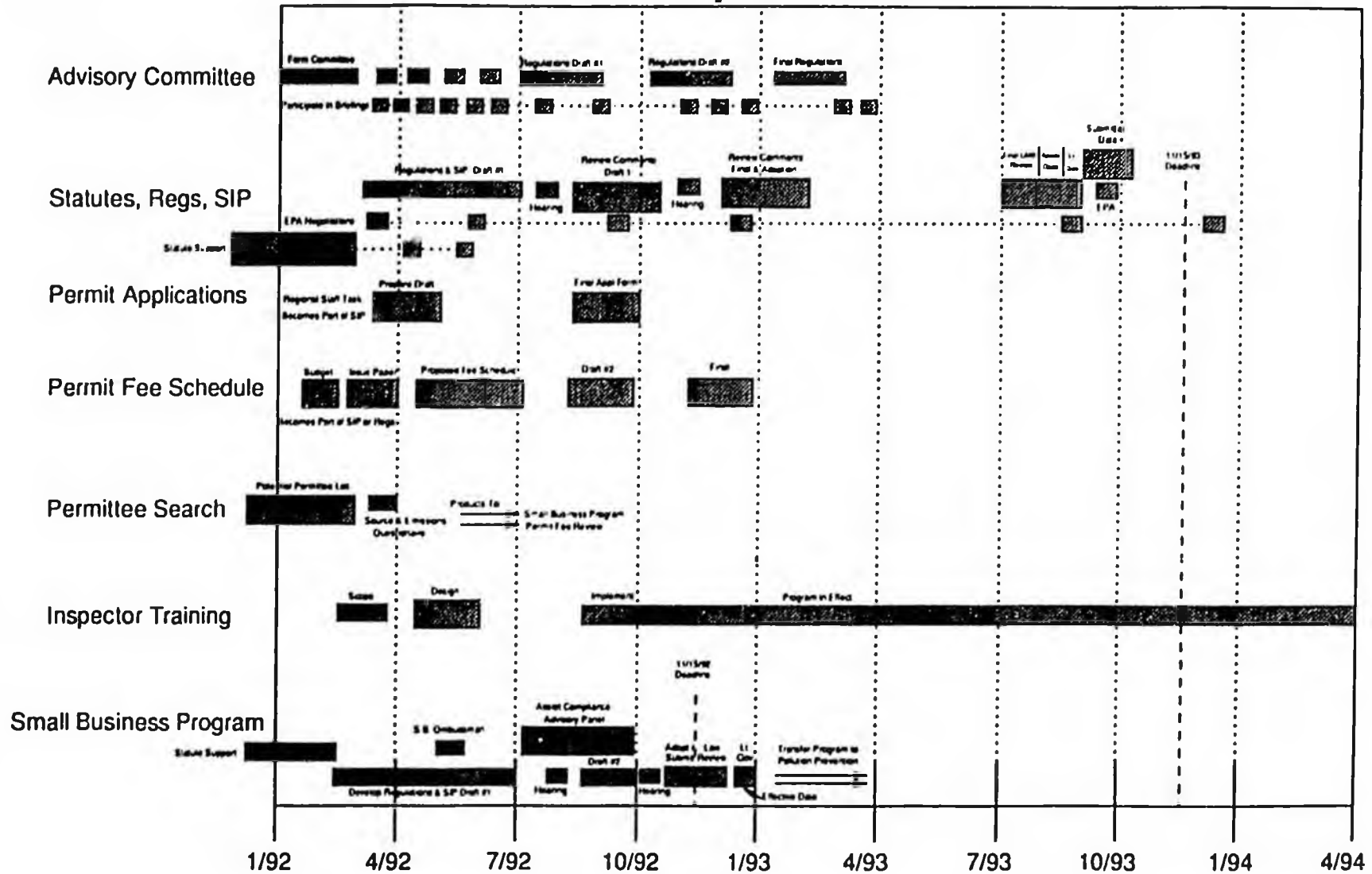
# Small Business Assistance Program



# **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**

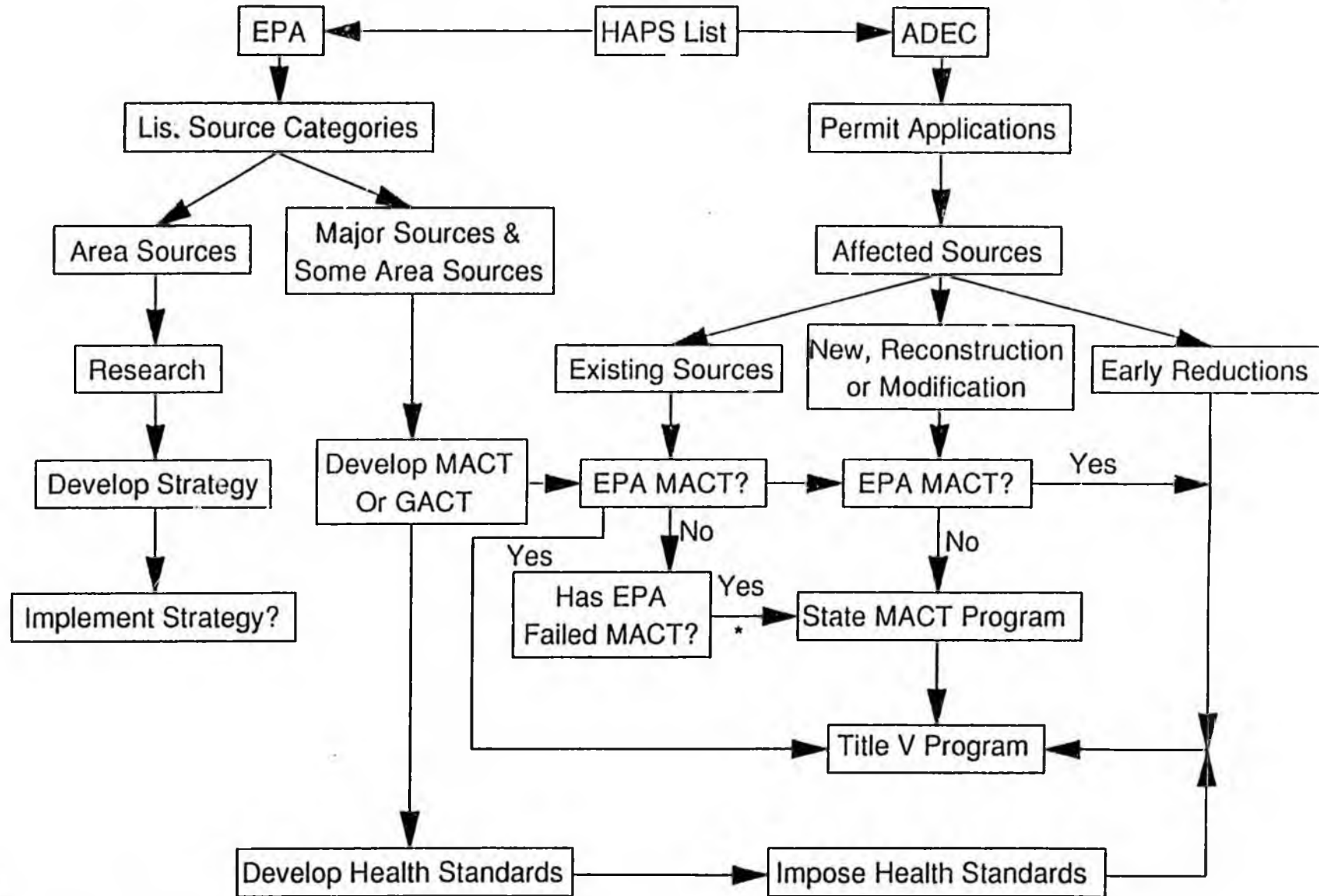
**SECTION 112**

**HAZARDOUS AIR POLLUTANTS**

**CLEAN AIR ACT. SECTION 112  
HAZARDOUS AIR POLLUTANT ACRONYM LIST**

|                       |   |
|-----------------------|---|
| <b>HAPS</b>           | Hazardous Air Pollutants; one or more of the 189 air pollutants listed in the Clean Air Act Amendments of 1990. |
| <b>GACT</b>           | Generally Available Control Technology  |
| <b>MACT</b>           | Maximum Achievable Control Technology   |
| <b>PACT</b>           | Politically Achievable Control Technology   |
| <b>PICT</b>           | Politically Impossible Control Technology   |
| <b>3M<sup>2</sup></b> | 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;                  |                |
| Ace'onitrile               | 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            | 92071          | 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-Dietyl aniline          |                |
| 1,3-Butadiene              | 106990         | (N,N-Dimethylaniline)       | 121697         |
| Calcium cyanamide          | 156627         | Diethyl sulfate             | 64675          |
| Caprolactam                | 105602         | 3,3-Dimethoxylbenzidene     | 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<br>(Chloro-2,3-epoxypropane(1)) | 106898         | Methyl ethyl ketone<br>(2-Butanone)           | 78933          |
| 1,2-Epoxybutane<br>(1,2-Butylene oxide)         | 106887         | Methyl hydrazine                              | 60344          |
| Ethyl acrylate                                  | 140885         | Methyl iodide<br>(Iodomethane)                | 74884          |
| Ethyl benzene                                   | 100414         | Methyl isobutyl ketone<br>(Hexone)            | 108101         |
| Ethyl carbamate (Urethane)                      | 51796          | Methyl isocyanate                             | 624839         |
| Ethyl chloride (Chloroethane)                   | 75003          | Methyl methacrylate                           | 80626          |
| Ethylene dibromide<br>(1,2-Dibromomethane)      | 106934         | Methyl tert butyl ether                       | 1634044        |
| Ethylene dichloride<br>(1,2-Dichloroethane)     | 107062         | 4,4-Methylene bis<br>(2-chloroaniline)        | 101144         |
| Ethylene glycol                                 | 107211         | Methylene chloride<br>(Dichloromethane)       | 75092          |
| Ethylene imine (Aziridene)                      | 151564         | Methylene diphenyl<br>diisocyanate (MDI)      | 101688         |
| Ethylene oxide                                  | 75218          | 4,4'-Methylenedianiline                       | 101779         |
| Ethylene thiourea                               | 96457          | Napthalene                                    | 91203          |
| Ethylene dichloride<br>(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-<br>diisocyanate              | 822060         | Parathion                                     | 56382          |
| Hexamethylphosphoramide                         | 680319         | Pentachloronitrobenzene<br>(Quintobenzene)    | 82688          |
| Hexane  | 110543         | Pentachlorophenol                             | 87865          |
| Hydrazine                                       | 302012         | Phenol  | 108952         |
| Hydrochloric acid                               | 7647010        | p-Phenylenediamine                            | 106503         |
| Hydrogen flouride<br>(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          |
| Metnyl bromide<br>(Bromomethane)                | 74839          | Propionaldehyde                               | 123386         |
| Metnyl chloride<br>(Chloromethane)              | 74873          | Propoxur (Baygon)                             | 114261         |
| Methyl chloroform<br>(1,1,1-Trichloroethane)    | 71556          | Propylene dichloride<br>(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<br>(2-Methyl aziridine)   | 75558          | m-Xylene  | 108383         |
| Quinoline                                   | 91225          | o-Xylene  | 95476          |
| Quinone<br>(1,4-Cyclohexadienedione)        | 106514         | p-Xylene  | 106423         |
| Styrene                                     | 100425         | Xylenes (mixed)                                   | 1330207        |
| Styrene oxide                               | 96093          | Antimony Compounds                                | -----          |
| Tetrachlorodibenzo-p-dioxin<br>(2,3,7,8)    | 1746016        | Arsenic Compounds<br>(inorganic including arsine) | -----          |
| 1,1,2,2-Tetrachloroethane                   | 79345          | Beryllium Compounds                               | -----          |
| Tetrachlorethylene<br>(Perchloroethylene)   | 127184         | Cadmium Compounds                                 | -----          |
| Titanium tetrachloride                      | 7550450        | Chromium Compounds                                | -----          |
| Toluene                                     | 108883         | Cobalt Compounds                                  | -----          |
| 2,4-Toluene diamine<br>(2,4-Diaminotoluene) | 95807          | Coke Oven Emissions                               | -----          |
| 2,4-Toluene diisocyanate                    | 584849         | Cyanide Compounds <sup>1</sup>                    | -----          |
| o-Toluidine                                 | 95534          | Glycol ethers <sup>2</sup>                        | -----          |
| Toxaphene<br>(Chlorinated camphene)         | 8001352        | Lead Compounds                                    | -----          |
| 1,2,4-Trichlorobenzene                      | 120821         | Manganese Compounds                               | -----          |
| 1,1,2-Trichloroethane                       | 79005          | Mercury Compounds                                 | -----          |
| Trichloroethylene                           | 796016         | Mineral fibers <sup>3</sup>                       | -----          |
| 2,4,5-Trichlorophenol                       | 95954          | Nickel Compounds                                  | -----          |
| 2,4,6-Trichlorophenol                       | 88062          | Polycyclic Organic Matter <sup>4</sup>            | -----          |
|   |                | Radionuclides<br>(including radon) <sup>5</sup>   | -----          |
|   |                | Selenium Compounds                                | -----          |

<sup>1</sup>X'CN where X=H' or any other group where formal dissociation may occur, for example, KCN or Ca(CN)<sub>2</sub>.

<sup>2</sup>Includes mono- and di-ethers of ethylene glycol, diethyl glycol and triethyl glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-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-(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup>Includes 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.

<sup>4</sup>Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

<sup>5</sup>A 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<br>(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.

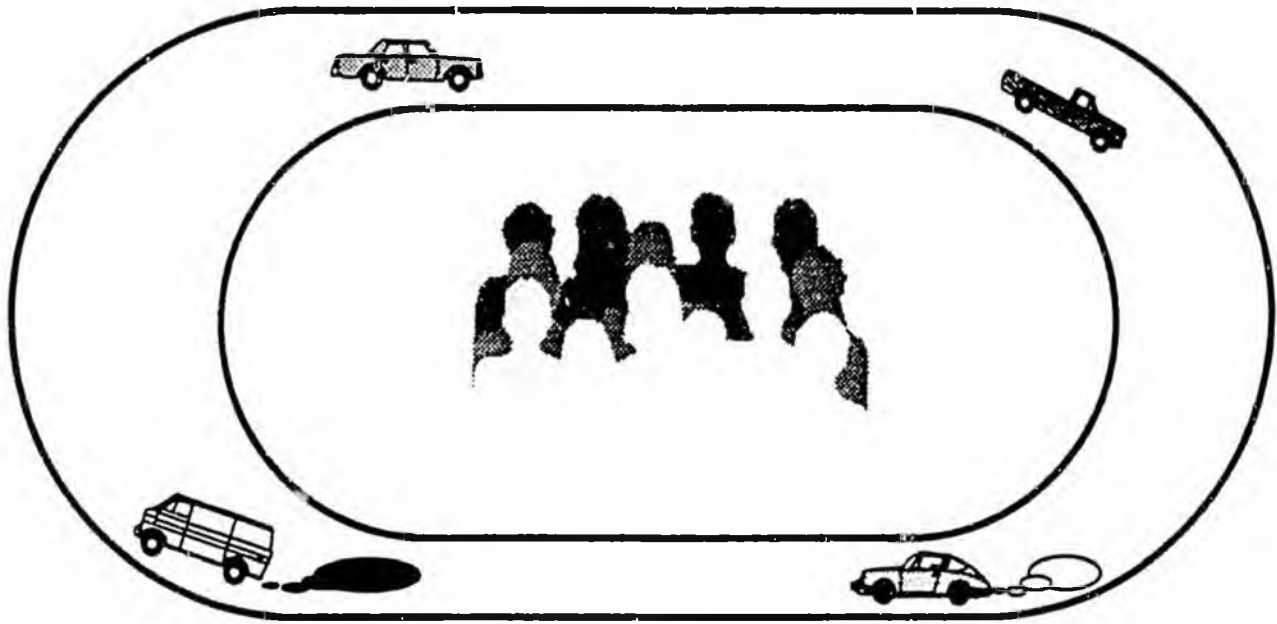
### **Early Reductions**

A program where a facility operator can receive a 6-year compliance extension to a MACT deadline, if the HAPS emissions are reduced by 90% (95% in the case of HAPS which are particulates) before the proposal of a MACT standard.

### **Equivalent Emission Limitation**

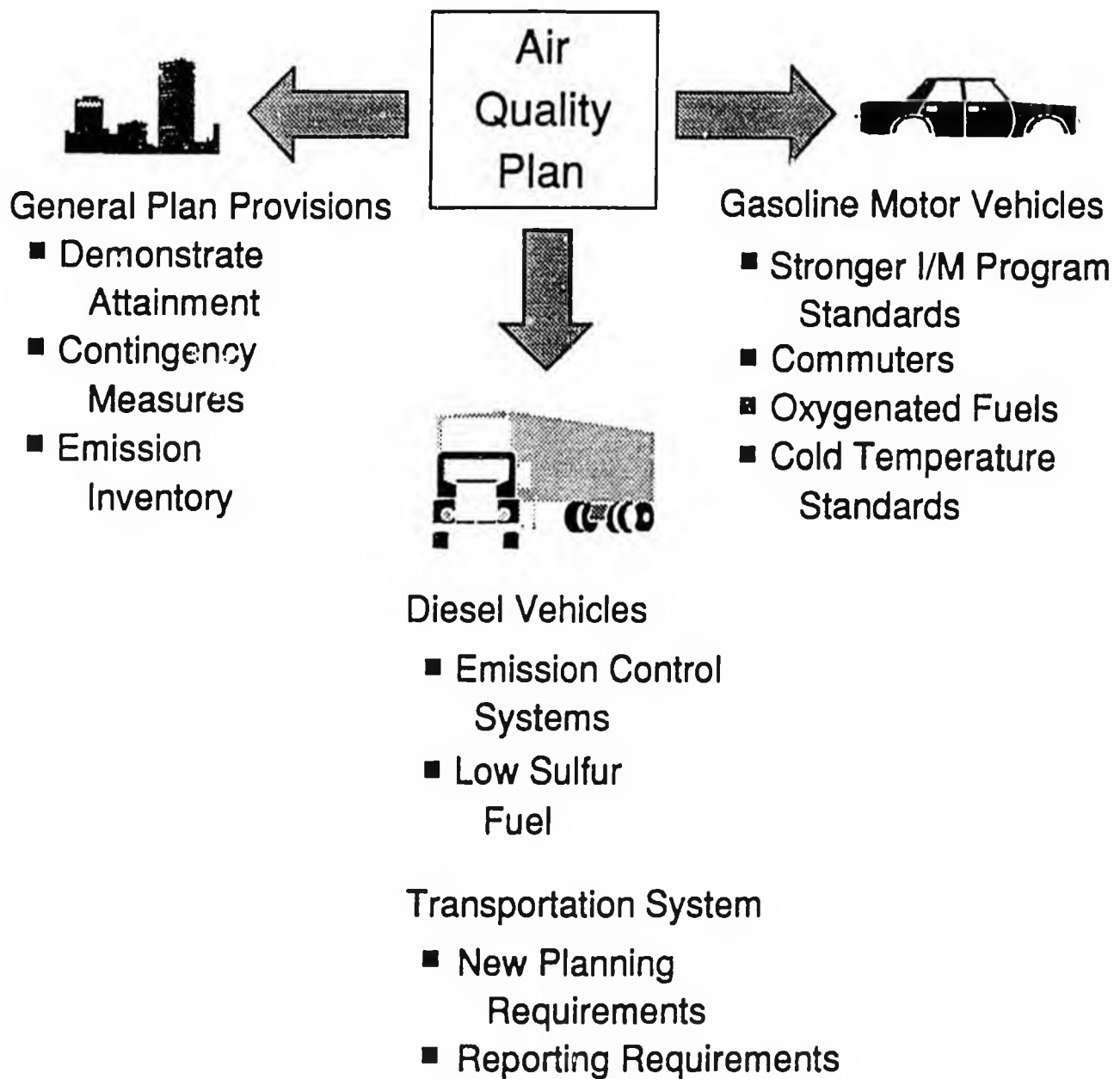
A degree of emission reductions established by a state air quality program which would be equivalent to what the Administrator would have developed as MACT, and implemented by the state after the Administrator has failed to promulgate the MACT standard on schedule.

# Title I & II Charting A New Course



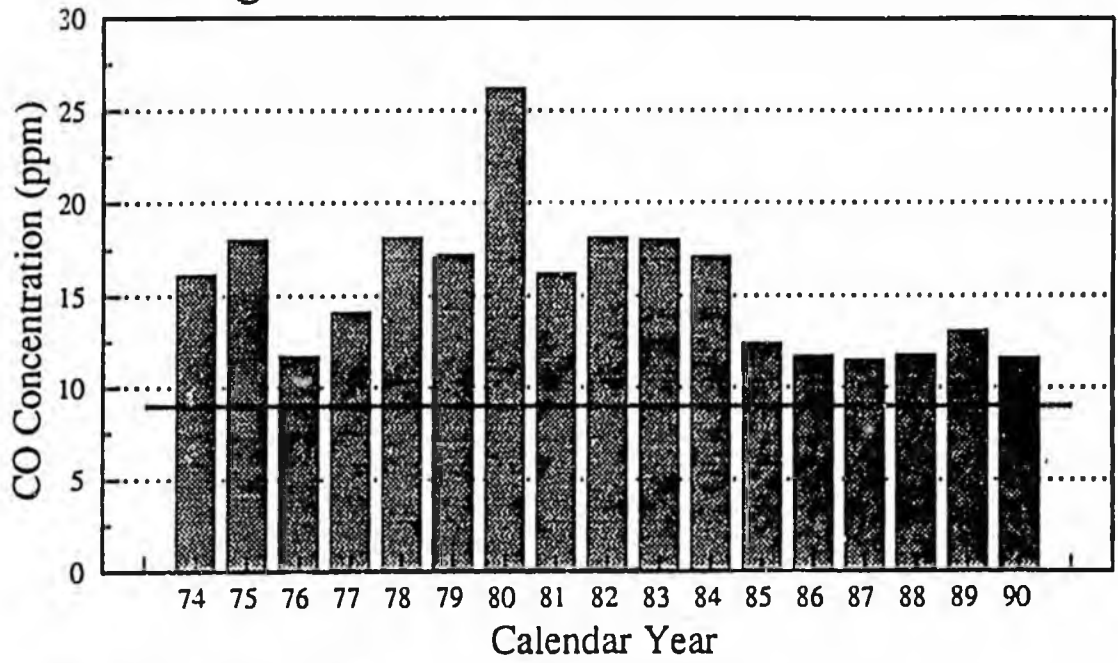
- Classification System
- Emission Reduction Targets
- Attainment Demonstrations
- Required Control Measures
- Provisions for Failures
- Federal Measures

# Develop New Air Quality Plan

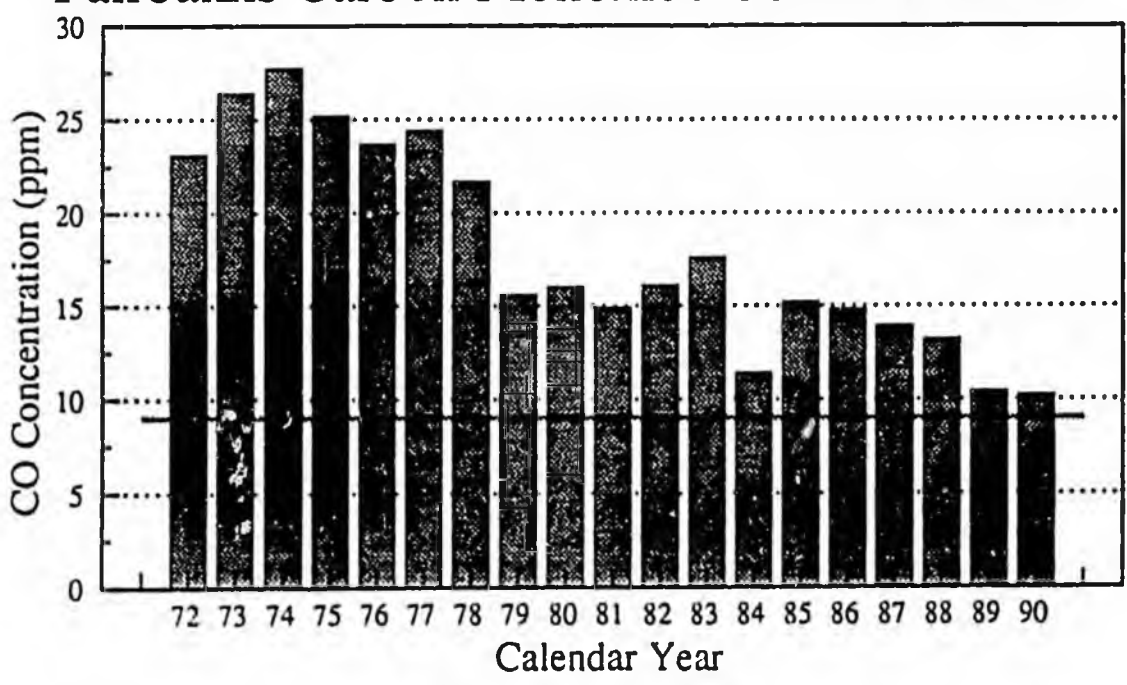


# Where Do We Stand?

## Anchorage Carbon Monoxide Concentrations



## Fairbanks Carbon Monoxide Concentrations



Ambient Concentration      National Health Standard

**DEC Clean Air Act Contacts  
Air Quality Management Section  
465-5100**

Chief, Air Programs

Leonard Verrelli

Manager, Permit Program

Tom Chapple  
Environmental Engineer

Manager, Hazardous/Toxic  
Air Pollutants

John Stone  
Environmental Engineer

Manager, Transportation  
and Mobile Sources

Ron King  
Environmental Specialist

Manager, Ambient Air Analysis

Gerry Guay  
Environmental Engineer

**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") source 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.

*Abel*  
*Kirkpatrick*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 27 1991

JUL 05 1991

AIR & RADIATION  
BRANCH

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

## Attachment A

### 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 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 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

2 1 1990

# 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 NO<sub>x</sub>, 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 SO<sub>2</sub> 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 (SO<sub>2</sub>) 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 SO<sub>2</sub>/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 SO<sub>2</sub>/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 within 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 SO<sub>2</sub> 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 **SO2 Reduction:** A 10 million ton reduction from 1980 levels, primarily from utility sources. Caps annual utility SO2 emissions at approximately 8.9 million tons by 2000.
- o **Allowances:** SO2 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 SO2 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:** SO2 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 SO2 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 803 - 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.

**HCFCs.** -- 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 (RACM).** -- 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 (SO<sub>2</sub>).** -- 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 improvements 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% O<sub>2</sub>) 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 SO<sub>2</sub>, 2 million ton/year reduction in NO<sub>x</sub>
- 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                |                  |



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 black ink, appearing to read "Michael S. Shapiro".

**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. Ludwiszewski, 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 . . . 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.

**DIVISION OF LEGAL SERVICES**

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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 *Thil*  
Legislative Counsel

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.

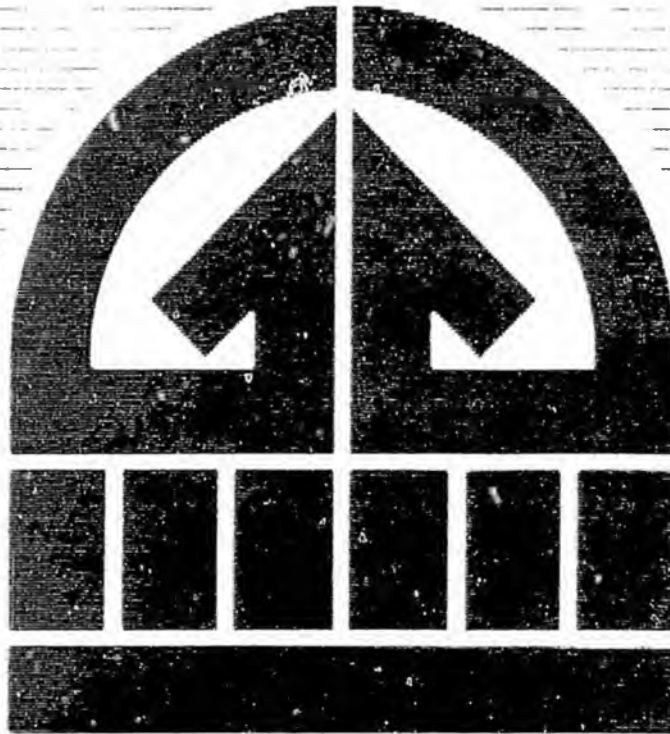
Sec. 17. Governs local programs that are operating when this Act takes effect.

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

# 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

**Vol. 4, No. 1**      **March 1991**

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101st Congress in Review

**The Clean Air Act Amendments of 1990**

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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 ( $\text{NO}_x$ ) 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  $\text{NO}_x$  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, canisters 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<sub>x</sub>. 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 (SO<sub>2</sub>) and nitrous oxides (NO<sub>x</sub>) 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: SO<sub>2</sub>.** 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<sub>x</sub>.** Starting in 1995, utilities must reduce nitrous oxides by two million tons per year from 1980 levels.

**Allowances:** Marketable "allowances" help implement SO<sub>2</sub> 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 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 provisions 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 Pollu.* : *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.<br><br>H.R. 1496 introduced by Congressman Gerry Sikorski (Minnesota) regarding Acid Rain.<br><br>H.R. 2585 introduced by Congressman Mickey Leland (Texas) regarding Air Toxics.<br><br>H.R. 4 introduced by Congressman John Dingell (Michigan) regarding Air Toxics.<br><br>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.
- 1990**
- 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.

|                                   |  |
|-----------------------------------|--|
| <b>May 23</b>                     | 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.             |
| <b>June 6</b>                     | Senate announced its 9 conferees.  |
| <b>June 28</b>                    | House announced its 138 conferees, with many specific jurisdictional restrictions.   |
| <b>July 13</b>                    | First meeting of Conferees. Senator Max Baucus (D-Montana) selected as Conference Chairman. House members selected John Dingell as leader of House delegation. |
| <b>August 3</b>                   | Conferees reached agreement on stratospheric ozone depletion.  |
| <b>September 14</b>               | Conferees reached agreement on Title I. (provisions governing nonattainment), and on permits.  |
| <b>September 14 to October 10</b> | Conferees wrestled with provisions of Title II, mobile sources and fuels. Adopted provisions on October 10.  |
| <b>October 22</b>                 | Conferees reached final agreement on reauthorization of the Clean Air Act.   |
| <b>October 26</b>                 | House adopted Conference Report by a vote of 401-25.   |
| <b>October 27</b>                 | Senate adopted Conference Report by a vote of 89-10.   |
| <b>November 15</b>                | 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-titled 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 <sub>x</sub> ) | 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 <sub>x</sub> ) | 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<sub>x</sub> 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 <sub>x</sub> ) | 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 <sub>x</sub> )  | 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 <sub>x</sub>  | 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 <sub>x</sub>   | 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 lvw and up to 5,750 pounds lvw and up to 6,000 pounds gvwr.

|                 |           |           |
|-----------------|-----------|-----------|
| NMOG            | 0.1 gpm   | 0.13 gpm  |
| CO              | 4.4 gpm   | 5.5 gpm   |
| NO <sub>x</sub> | 0.4 gpm   | 0.5 gpm   |
| HCHO            | 0.018 gpm | 0.023 gpm |
| PM <sup>a</sup> | -----     | 0.08 gpm  |

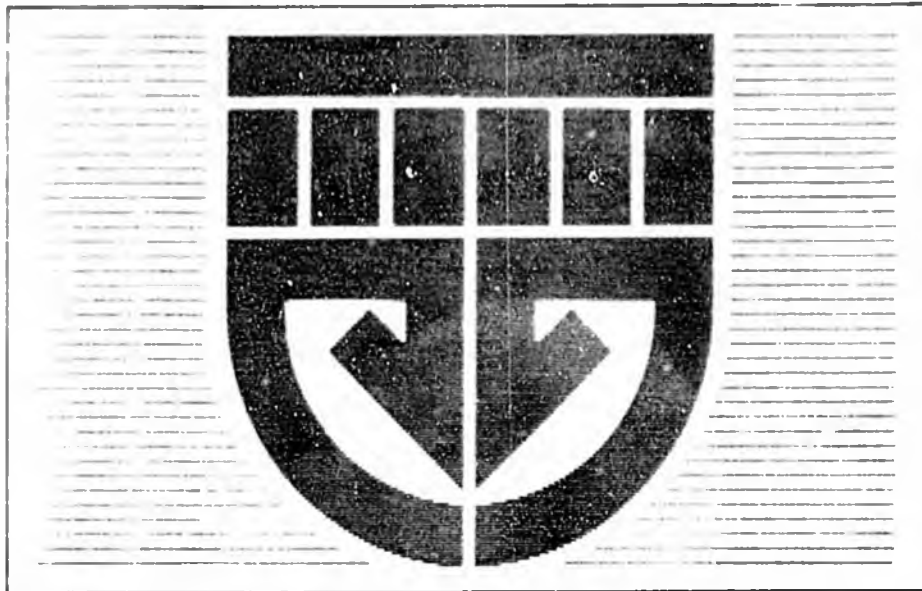
**TABLE 8.**

**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  
of State Legislatures  
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# 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 feet<sup>7</sup>.

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 episodes<sup>4</sup>.

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 tissues<sup>2</sup>. 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 roadsides, 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 deserts<sup>7</sup>.

**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 sky<sup>10</sup>.

**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 met<sup>8</sup>.

**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 ozone<sup>6</sup>.

**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.

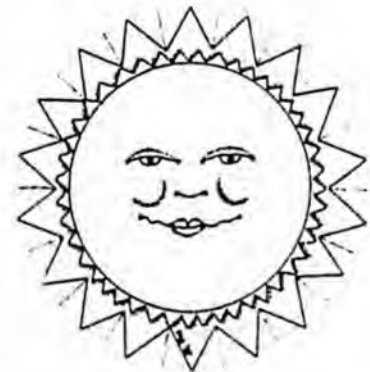
**Nitrogen dioxide** is a byproduct of combustion from automobiles, power plants, and furnaces. It is a reddish brown gas formed by the reaction of nitrogen oxide with sunlight and is corrosive and toxic to man. Unpolluted air has a relative high ratio of nitrogen oxide to nitrogen dioxide; that ratio reverses as sunlight and converts the nitrogen oxide into nitrogen dioxide in the middle of the day<sup>5</sup>.

**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 Alyeska 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 Rideshare, 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.

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